

FARM ENVIRONMENT PLANS IN RELATION TO RESOURCE CONSENTS, REGIONAL/DISTRICT PLAN COMPLIANCE AND ON- FARM MANAGEMENT; THE ESSENTIAL ELEMENTS

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Regardless of where in the world you look for a definition that relates to a Farm Environment Plan they all refer to the plan being a tool, assisting farmers and landowners, setting out best environmental practice, forming a practical operating plan. Some also refer to the plans needing to be socially acceptable and economically viable. As a farmer that is exactly what you would expect in a management plan – a tailored identification of their issues, their capabilities, their situation, their goals and how/when they are intended to be achieved. They need to be a living document, adaptable and easy to change with market/financial/environmental forces, not caught up in the web of regulation and legality or used as a symbolic piece of four by two.

Yet there is an expectation from some that it is to be used in a regulatory plan assessment, assessing the activity and its effects, and a compliance plan where full compliance is anticipated, even expected. These expectations of the plan all serve different purposes, with different objectives and outcomes. They are not the same thing, nor should they be. One is a high-level assessment with options, the others should be detailed and specific.

Regional Plans set out objectives, policies and rules. Objectives and policies set out the community's environmental direction and outcomes sought to be achieved, including national requirements, whilst rules determine when an assessment of the activity is required. Rules are not an absolute, unless the activity is prohibited, they set a threshold for the level of assessment required. Resource consent applications are assessed against the objectives and policies of a plan, not the rules.

Where a resource consent application is required the legislation requires an assessment of the effects on the environment (AEE), actual and potential, arising from undertaking the activity. FEP's are not an assessment mechanism. Yes, they should identify issues and risks but they should detail the specific action being/to be undertaken by the farmer. Assessing actual and potential effects under the Resource Management Act 1991 is at a higher level and should discuss the range of options for avoiding, remedying or mitigating those effects. They should assess and detail the ability not the specific.

Asking for FEP's to be the mechanism to determine compliance or otherwise with the Regional Plans introduces a level of assessment complexity, terminology and bulk that is superfluous to the farmer using the FEP as a day-to-day management tool. Complexity, technical/legal jargon and bulk will all increase the chances of the FEP becoming an expensive doorstop.

Many farmers need to alter farm management plans due to circumstances at the time. These could be environmental, technological, financial or personal related; it is very difficult, if not impossible, to foresee these and incorporate them within the FEP at the resource consent stage.

Resource consents are a regulatory process and are a legal document. They are granted for a specific activity that is described and set out in the information supplied with the resource consent application. This then legally sets the scope of the application. If in the future the activity exceeds this scope then legally it is not in accordance with the resource consent applied for and granted. For the same reason a consenting authority cannot grant more than is being sought, although it can grant less.

The legislation, which has been upheld by case law, requires resource consent applications to be sufficient to understand the activity and its effects, both actual and potential, on the environment. The application needs to demonstrate that compliance can be achieved or that the effects are sufficiently minor, mitigated, remedied or avoided to the level of the outcome sought by the objectives and policies of the plan. The application is not required to specify or determine exactly how this will occur.

This is not as silly as it sounds as often an adverse effect can be mitigated, remedied or avoided, to the level required, a number of different ways. The final option/options chosen will be governed by a number of factors that are applicable at the time that decision is made. Influencing factors on the final option/options will include environmental, market, financial, technology and personal considerations. What the farmer chooses today, tomorrow or next year will change. This raises the issue of how readily and often the FEP needs updating relative to changes in management. If the FEP forms part of the scope of the application then the ability to change within the legal framework could be limited.

Can this scope issue be resolved by the conditions of the consent allowing for FEP's to be updated? Well, yes, but only to a point where the FEP change stays within the original application scope.

Conditions on resource consents are required to clear, certain, enforceable and for a resource management purpose. They can certainly require a FEP to be prepared and implemented. The desire for Regional Councils to receive a FEP with a resource consent application is understood, not everyone complies with their conditions of consent, just understand the implications arising from a less flexible FEP for the life of a resource consent. Currently even five years in farming is a long time given the speed of change in this area.

If, as part of the resource consent application, an FEP has already been submitted then this should be reflected in the conditions of consent. There needs to be clarity around the plan submitted and what is deemed within scope of the application for future changes or amendments to comply with the newly granted consent. Remember also that the legislation only allows conditions can be varied, not the scope of the activity; this would be a new resource consent.

The strength of the FEP should be post consent; as a critical farm management tool that is tailored to that farmer and farm, that is understood, implemented and effective; and as an ongoing compliance tool around the actual options chosen to address the identified issues and risks.

Canterbury is a bit further along the process of a 'social license to operate' than many parts of NZ following the introduction of the LWRP in 2013, including Hawkes Bay which Colin is about to talk to you about.

In Canterbury, farmers over 10ha are now required, or overdue, to have assessed the status of their farming activity, and apply for land use consent where required. As such, farmers are in the thick of obtaining their consents right now.

FEP's are a cornerstone document required for LUC applications along with an N loss calculation. As a result, in general, FEP's are being used by farmers in a regulatory sense for compliance, rather than as an informative guide to best practice. At a regional level, there is a requirement for ECan to achieve water quality targets – in part through FEP's and consenting requirement.

Farmers are now farming with nutrient limits and rules, and in many cases nutrient loss reductions looming from 2020 onward.

The FEP has specified content requirements as defined in schedule 7 of the LWRP including:

- details of the property and owner,
- consents held,
- and a farm map showing boundaries, vegetation/biodiversity, location of waterways and stock crossings.

The FEP is also required to provide a description of HOW the objectives covered could be met for:

- Nutrients, Irrigation, Cultivation and soil structure, effluent, Waterbodies, Water use outside of irrigation, and point source e.g. offal pits, silage pits etc.

Current GMP's are recorded in the FEP, along with agreed actions and timelines for farmers where improvements have been identified. FEP's are then audited within 1 year of Land Use Consent being granted to ensure progress is made toward farming at GMP.

Nitrogen losses are monitored via annual N loss calculations to assess compliance with nutrient limits set for the property, based on baselines or regional limits, information required at the audit.

Most farmers require an FEP, whether required for a Land Use Consent or not. The question then becomes what does the FEP address, for what purpose is it for, and how will/could it be used in the future.

Given the FEP is a discoverable document if it forms part of the consent application submitted to council, farmers need to be aware of the potential use of the 'consent application FEP'. Often a farmer may have had a few hours with a consultant to complete an FEP and given a few days/weeks to consider a draft before being used for consent application. With time to fully consider the effects of the FEP content on the future running of the property, details may wish to be amended.

When asking a farmer what would be beneficial in a FEP, I often get a common themed response – what are a few key risks and ways to address them that is still beneficial to my business (ie financially viable). A more detailed 'Management FEP' consistent with the consent FEP containing this information may therefore be appropriate as a living document for the farmer to use, update and then be audited on. ECan has been quite clear that they do want FEP's to be updated, so the concept of an evolving 'Management FEP' is feasible.

FEP's should identify the key drivers of nutrient and sediment loss from individual farm systems, enabling the farmer to be informed as to the priority areas on-farm to enable the greatest and quickest benefits through picking the low hanging fruit.

We often see farmers FEP's partially completed at workshops and/or at home being offered for consent application, often incomplete or not identifying nor adequately addressing environmental risks. A consent may be granted, and the farmer is then in the position of being unprepared for the audit process, unaware of the information or practices required to achieve high audit grades. This makes it difficult for the farmer to strive for GMP's when not aware of what is required, and there is often a time delay in adopting GMP's. We don't want farmers saying "BUGGER", if only I had left that out of the FEP, or alternatively if only I'd known I needed to do X or Y to get a better grade.

With reductions below GMP required from 2022 onward like we have in Selwyn Te Waihora and the Hinds Hekeao regions from 2025, farmers can't afford to wait too long before starting to make progress where required, informative quality FEPs are needed.

For the greatest environmental improvements, and best chance of meeting water quality outcomes at a catchment level, we need farmers to have robust living FEP's being used as a guide for best practice, rather than being seen as just meeting a compliance tick box. The FEP would ideally not be confined to the bottom draw, but get dirty through use as a guide for on-farm decision making. There needs to be regular updates to reflect learnings and new aspirational goals set, without fear that an auditor may downgrade an audit result through not completing an aspirational action which may be above what is required as a minimum.

Achieving long term improvements in on-farm efficiency and environmental outcomes is ultimately what is trying to be achieved, we just need the appropriate tools being used for the right purposes, and by the right people.

Currently in Hawkes Bay, although we are completing FEPs for landowners in the Tukituki catchment, there is currently no associated consenting process. Landowners 4ha or 10ha (depending on intensity) up are required to have a compliant FEP by 31 May 2018 with the contents of the FEP laid out in detail in the Tukituki Plan Change (Schedule XXII).

Along with an array of maps, a Phosphorus Management Plan and management objectives in regard to nutrients, irrigation ,soils, wetlands, riparian areas, collected animal effluent and livestock, a key component is to assess each farmer's ability to meet regional N loss and stock exclusion rules.

Compliance with these rules is required by 31 May 2020 and as such the initial Nutrient Budgets, which need to be completed by all landowners no matter what their farming practices, have effectively been a drafting gate to assess those who are going to need to take further action. In regards to stock exclusion there are many who are already compliant or close to it, so outlining a work program to be completed over the next few years is a reasonably simple process.

Additionally in order to try to have the desired results in regard to improvements in water quality, we are also trying to encourage GMPs for situations such as winter cropping and grazing, but generally farmers just want to know if they are compliant with rules and tick the box to say they have an FEP and into the bottom drawer it goes.

But it is early days, with the sheep and beef farmers in particular newly exposed to the exciting world of environmental compliance. HBRC staff are working hard to implement a plan that was not entirely of their design and there are plenty of learnings to be taken for construction of future initial FEPs.

Come 2020 presumably the FEP will be a part of the consenting process and the points previously raised in regard to how best utilise the FEP to outline farmer agreed actions that will meet catchment targets will come into play.

So there is a requirement for HBRC (and of course other Regional Councils) to meet water quality targets and limits and stock exclusion rules have been put in place to play a large part in achieving them. But what if stock exclusion can't be done?

Firstly who says it can't be done? What is "reasonably practical" as used in the Tukituki Plan Change? Is it based on the cost of the fence and reticulated water system, the opportunity cost of not grazing a certain stock type in a certain paddock or the profitability of the farmer.

If alternative mitigations are to be carried out in place of stock exclusion, how are they to be initially justified and then potentially defended by either landowner or Regional Council if they accept them? If the outcome is the key is there a place for models such as LUCI or improvements in the cost and ease of reputable water quality monitoring to assist.

The actions or outcomes need to be auditable but there also needs to be flexibility. Too wishy washy and nothing will get done. Too structured and there is no room to utilise further technologies for example without having to redo the consent.

Given we are saying the FEP shouldn't be the sledge hammer used to crack a walnut, another consideration is where is the line drawn between the FEP and AEE if in a consenting process.

Most importantly it is the farmers who will actual cause the improvements in water quality from the actions they take, so if the FEP is going to continue to be an important tool in encouraging them to take the correct actions, let's make sure it is an effective tool

The "initial, high level" FEP (if required):

- Needs to demonstrate catchment & regional compliance can be achieved; and
- Not specify or lock down the 'How'.

The "operative & auditable" FEP needs to be:

- Aligned with catchment & regional requirements;
- Flexible and adaptable;
- Specific to the farming operation;
- Realistic, affordable & practical; and
- Implemented.

The FEP needs to be meaningful, not just words.