

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

ENV-2020-CHC-128

UNDER the Resource Management Act 1991 (RMA)
IN THE MATTER of the Omnibus Plan Change - Plan Change 8, being part
of a proposal of national significance directed by the
Minister for the Environment to be referred to the
Environment Court under section 142(2)(b) of the RMA

AND

IN THE MATTER of an application under section 149T of the RMA

OTAGO REGIONAL COUNCIL

Applicant

**MEMORANDUM OF COUNSEL ON BEHALF OF THE OTAGO REGIONAL
COUNCIL
30 July 2021**

Judicial Officer: Judge Borthwick

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MAY IT PLEASE THE COURT

- 1 This Memorandum of Counsel is filed on behalf of the Otago Regional Council (**Council**) in relation to Plan Change 8 to the Regional Plan: Water for Otago (**PC8**).
- 2 At the pre-hearing conference of 14 July 2021 and in accordance with the Minute dated 23 July 2021, the Court directed the Council to file a memorandum by 30 July 2021 setting out the amended provisions agreed between the parties at mediation and a brief explanation of them.
- 3 The Council also signalled at the pre-hearing conference that it would provide an indication of the witnesses it intends to call to give evidence in support of the provisions agreed at mediation.
- 4 This memorandum addresses each of these matters.

Background

- 5 Environment Court facilitated mediation occurred in relation to the primary sector provisions of PC8 between Monday 28 June and Friday 2 July 2021. Mediation also occurred on a reserve day on Thursday 8 July 2021 to finalise the agreement reached on the Part B provisions.
- 6 The following parts of PC8 were topics of mediation. The provisions referred to mediation were set out in the Notice of Mediation dated 14 June 2021:¹
 - (a) Part A: Rural Discharges;
 - (b) Part B: Animal Waste Application and Storage;
 - (c) Part C: Good Farming Practices;
 - (d) Part D: Intensive Grazing;
 - (e) Part E: Stock Access to Water; and
 - (f) Part F: Sediment Traps.
- 7 As a result of the mediations, agreement has been reached between the parties in attendance at mediation on all of the topics and relevant provisions referred to mediation as listed in paragraph 6. The provisions

¹ Other than Topic A which incorrectly referred to Policy 7.C.5, Policy 7.C.6 and Policy 7.C.12 which being case managed as part of the “urban” topics for PC8.

of PC8 as agreed at mediation are included as **Appendix 1**. Outlined below are further details of the position reached by parties in relation to each part of PC8 that was referred to mediation.

- 8 A joint witness conferencing between expert witnesses for the parties also occurred on 8 and 9 June 2021 in relation to the Part B provisions. A copy of the joint witness statement (**JWS**) is available on the Environment Court's website for PC8. The JWS is referred to in this memorandum too, as it is the basis on which some of the changes to the Part B provisions have been agreed.

Explanation as to the position reached by parties

Part A: Rural Discharges

- 9 The Parties reached agreement on some relatively minor wording changes to the amendments to Policy 7.D.5 made by PC8 and also some additional amendments to new Policy 7.D.6. These changes have been to improve clarity, certainty and alignment with the National Policy Statement for Freshwater Management 2020.
- 10 These two policies both apply to rural discharges under section 12.C of the Plan, with new Policy 7.D.6 applying specifically to the discharge of nitrogen under discretionary Rule 12.C.3.2.

Part B: Animal waste storage and application

- 11 The Part B provisions of PC8 are a suite of both new provisions (and some amendments to existing provisions) intended to regulate land uses under section 9 in relation to animal effluent storage and also discharges of animal effluent under section 15 of the RMA.
- 12 *New Policy 7.D.7 and 7.D.8:* changes were agreed to these two overarching policies in response to submissions on the two provisions and the outcomes of the expert witness conferencing on the rules.
- 13 The *discharge rules* comprise of the following rules:
- (a) *Prohibited activity Rule 12.C.0.4;* This rule prohibits the discharge of liquid animal effluent in certain circumstances. As a result of expert witness conferencing and mediation, the notified rule (which applied to discharge of all animal waste) has been amended to refer only to the discharge of liquid animal effluent. Amendments to the conditions of the rule have also been agreed.

- (b) *New Permitted activity Rule 12.C.1.4A*; During expert witness conferencing technical experts agreed that the terms and definitions in PC8 were not appropriate because they did not differentiate between liquid and solid waste.² As a result of amendments being made to the other discharge rules to specifically regulate the discharge of liquid effluent, a new permitted activity rule regulating the discharge of solid animal effluent was required. This rule has a number of conditions that must be met for the activity to be permitted.
- (c) *Permitted activity Rule 12.C.1.4*; This short term permitted activity rule permits the discharges of liquid animal effluent from an animal effluent system whilst the system is also a permitted activity under the short term permitted activity Rule 14.7.1.2 (i.e. until a system is upgraded under Rule 14.7.3.1 or a new system is constructed under Rule 14.7.2.1 or 14.7.3.1). Some minor amendments to the rule were agreed, primarily as a result of some of the terminology changing.
- (d) *Restricted discretionary rule 12.C.2.5*: This rule, which requires the discharge of liquid animal effluent to obtain resource consent as a restricted discretionary activity, has had some minor amendment to reflect the agreed terminology. Further amendments to the matters of discretion were also agreed as a result of the expert witness conferencing and mediation.

14 The *land use rules* comprise:

- (a) *New permitted activity Rule 14.7.1.1A*; During expert conferencing, the technical experts agreed to a definition of “animal effluent storage facility” that excludes ancillary structures for the collection, conveyance or treatment of liquid or solid livestock animal effluent such as sumps, stone traps and weeping walls. As a result of this definition (and associated amendments to the land use rules to refer to animal effluent storage facilities) the parties agreed that a new land use rule regulating those parts of an “animal effluent system” that is not the “animal effluent storage facility” was

² JWS, paragraph 11.

required. This permitted activity rule is the outcome of those discussions.

- (b) *Permitted activity Rule 14.7.1.1*: The permitted activity land use rule has been amended to refer to the new agreed term “animal effluent storage facility”. Some amendments to the conditions of the rule have been made to simplify the rule structure, better reflect the technical operation of these types of facilities, and to include a new reference to the management plan requirements which are set out in new Schedule 21.
- (c) *Short term permitted activity Rule 14.7.1.2*: Some minor amendments have been made to refer to the new agreed term “animal effluent storage facility” and to remove reference to ancillary structures which are now regulated by Rule 14.7.1.1A
- (d) *Controlled activity Rule 14.7.2.1*: The controlled activity rule applies to the construction, use and maintenance of an animal effluent storage facility constructed after 25 March 2020. Some amendments to the conditions have been made, primarily to clarify technical aspects of their design and construction, and the rule now refers to a management plan prepared in accordance with Schedule 21.
- (e) *Discretionary activity Rule 14.7.3.1*: some minor amendments to this rule have been made to reflect that it is a “drop down” rule for both the rules controlling animal effluent storage facilities and those components of an animal effluent system that is not an animal effluent storage facility.

15 *New notes:*

- (a) *New notes above both section 12.C.0 and Section 14.7*: The parties agreed to include two new notes within both the discharge and land use rules alerting plan users that resource consent may also be required under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 for activities that occur within, or within a 10m setback of a natural wetland.
- (b) *New notes below rules 12.C.0.4, 12.C.1.4A, and 12.C.2.5*: These notes have been added alerting plan users that whilst these rules

manage discharges of animal effluent to land, they do not regulate the land use for the construction, use and maintenance of an animal effluent system and refer plan users to these rules which are set out in section 14 of the RWP.

- 16 *Schedule 18, 19, 19A, 19B:*
- (a) Schedule 18: Amendments have been made to Schedule 18 to reflect the JWS. Some additional minor changes have been made.
 - (b) Schedule 19: Amendments have been made to reflect the new terminology and to clarify that the calculation under Schedule 19A determines when an application is required to be made by.
- 17 *New schedule 20 and 21:*
- (a) Schedule 20 is a new schedule defining the qualifications a “suitably qualified person” needs to hold to be certified as such for the purposes of specific rules within this topic. These include specific qualifications in relation to certifying animal effluent systems as complying with specific rules and separate requirements for calculations using the dairy effluent storage calculator. The schedule replaces the notified definition and allows for variations in the requirements depending on the role the SQP is undertaking.
 - (b) Schedule 21 is a new schedule setting out the management plan requirements for the purposes of rules 12.C.2.5, 14.7.1.1A, 14.7.1.1, and 14.7.2.1.
- 18 *Glossary definitions:*
- (a) The definition of animal waste system has been amended to “animal effluent system” and changes have been made in accordance with the JWS.
 - (b) New definitions of the terms “Animal effluent storage facility”, “Liquid animal effluent”, and “Solid animal effluent” have been included. The terms reflect the terms agreed in the JWS.
 - (c) The definition of the “Dairy Effluent Storage Calculator” has been amended to refer to the Dairy NZ website, where the calculator is available.

- (d) The definition of “Suitably Qualified Person” has been amended to refer to Schedule 20 where the different requirements are now specified.
- 19 Finally, in relation to topic B, it is noted for completeness that two provisions were inadvertently omitted from the mediation agreement in relation to this topic. These were provisions included in the notified version of PC8 to:
- (a) amend prohibited activity Rule 12.C.0.2 to delete the reference to “an animal waste system” in the first line of the rule (so that Rule 12.C.0.2 only applies to discharges from silage storage and composting processes, now that the new rules in PC8 regulate discharges of animal waste); and
 - (b) the deletion of the definition of “agricultural waste” from the glossary (on the basis that this term was not used).
- 20 No amendments to the notified version of these two provisions were made as a result of mediation. Accordingly, the Council does not anticipate that any party will have issue with these two changes and given the minor nature of the changes has not re-circulated a mediation agreement including these two changes.

Part C: Good Farming Practices

- 21 Part C comprised of new Policy 7.D.9 and a new definition of critical source area and the deletion of the definitions of feed pad, sacrifice paddock and stand off pad.
- 22 The parties agreed to some wording changes to Policy 7.D.9 and the definition of critical source area. All parties agreed to the deletion of the definitions of feed pad, sacrifice paddock and stand off pad.
- 23 As the Court is aware, the only party that attended mediation but has not agreed to sign the mediation agreement for Part C in relation to Policy 7.D.9 (Part C) is Wise Response Society Inc. The Council considers that Wise Response’s submission is not on Policy 7.D.9 and therefore not within the scope of PC8 as detailed in the Legal Submissions on behalf of the Council dated 23 July 2021.

Part D: Intensive winter grazing

- 24 The Part D provisions in relation to intensive grazing notified as part of PC8 comprise of a new permitted activity Rule 14.6.1 (subject to conditions) and a discretionary activity Rule 14.6.2, along with a definition of intensive grazing.
- 25 The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 also regulate intensive winter grazing. The parties have agreed³ amendments to Rule 14.6.1 and 14.6.2 which provide that the rules will only apply until Regulations 26 and 27 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 or equivalent regulations come into force (to avoid duplication between different regimes regulating intensive winter grazing).
- 26 The parties also agreed that the PC8 rule should apply to intensive *winter* grazing and the definition of “intensive grazing” in PC8 has been amended to refer to “intensive winter grazing” as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.
- 27 Two new advice notes referring plan users to the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 have also been agreed between the parties.
- 28 The Council has committed to the issue of intensive winter grazing also being considered further in the context of developing the new proposed Land and Water Regional Plan which is due to be notified in December 2023.

Part E: Stock access to water

- 29 The notified version of PC8 provided for amendments to be made to Rule 13.5.1.8A to require dairy cattle and pigs to be excluded from certain water bodies from 2022.
- 30 The Resource Management (Stock Exclusion) Regulations 2020 (**Stock Exclusion Regulations**) were *Gazetted* on 5 August 2020 and came into force on 3 September 2020.

³ It is noted for completeness that the position of Otago and Central South Island Fish and Game Councils and Royal Forest and Bird Protection Society of New Zealand Inc was that they do not oppose the amendments to Rules 14.6.1.1 and 14.6.2.1 agreed to by the rest of the parties.

- 31 As is recorded in the Memorandum of Counsel on behalf of the Council dated 5 March 2021, whilst the Council wishes to avoid duplication of controls on stock access to water, it was not possible to remove the duplicative provisions within PC8 as the Stock Exclusion Regulations do not provide for the removal of rules in a plan that are inconsistent with the Stock Exclusion Regulations without using a Schedule 1 RMA process.
- 32 A number of parties had lodged submissions seeking to only rely on the Stock Exclusion Regulations. As a result of mediation all parties have agreed that the changes made to Rule 13.5.1.8A by PC8 should be deleted, along with the new definition of dairy cattle. This means that stock exclusion will be regulated under the Stock Exclusion Regulations (although there are some existing Rules in the RWP not being modified by PC8 that will also continue to apply).
- 33 The parties recorded in the mediation agreement that they discussed the need for further consideration to be given to stock exclusion setbacks (beyond the requirements of the Stock Exclusion Regulations) as part of developing the proposed Land and Water Regional Plan which is to be notified in December 2023. The Council has committed to the issue of setbacks being considered further as part of the development of the proposed Land and Water Regional Plan.

Part F: Sediment traps

- 34 Part F includes a new rule 13.5.1.10 providing for the construction of sediment traps, subject to conditions, as a permitted activity.
- 35 Agreement was reached by all parties in relation to some minor amendments to the Rule. As is recorded in the mediation agreement, the parties did discuss some submissions that had sought that Rule 13.5.1.10 be amended to provide for sediment traps to be constructed in a wider range of circumstances (for example, in flowing water).
- 36 As is recorded in the mediation agreement, whilst the parties saw some merit in there being a rule framework in the new proposed Land and Water Regional that provides for sediment traps to be constructed in a wider range of circumstances (e.g. in flowing water), the parties did not consider they are in a position to develop such a rule framework now. There are also potential scope issues with additional rules being introduced at this time.

- 37 The parties acknowledged that there would be benefit in having further discussions regarding how such rules might be able to be developed in the future including activity status as part of future planning processes.

List of witnesses giving evidence in relation to PC8

- 38 In its Minute dated 9 July 2021, the Court indicated the evidence that would be required in order for the Court to consider the provisions of PC8 as agreed at mediation. At the pre-hearing conference, the Council indicated it would signal the witnesses that it intends to call in support of the position agreed at mediation in this memorandum.
- 39 The Court's minute of 23 July 2021 has not directed that this occur and has made timetable directions that require those parties that did not attend mediation, or who have general submission points, to advise if they wish to speak or call evidence in relation to their submissions by 6 August 2021. In light of this timetabling direction, the Council respectfully suggests that it provide a further update to the Court in relation to the witnesses it will call once it has a clearer understanding if there are any other remaining issues in contention. The Council will update the Court further (and seek any directions it requires) once it has responses to the directions at paragraph 17(f) and (g) in the Court's minute dated 23 July 2021.

Conclusion

- 40 This memorandum has not been prepared as a joint memorandum, but given that it records matters agreed at mediation (and recorded in mediation agreements), Counsel has provided a copy of this memorandum to the parties in advance of filing it.
- 41 No party has raised any issue with the contents of this memorandum.

Dated this 30th day of July 2021



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L F de Latour / M A Mehlhopt

Counsel for Otago Regional Council

APPENDIX 1 – CONSOLIDATED PRIMARY SECTOR PROVISIONS OF PLAN CHANGE 8 AS AGREED AT MEDIATION

1.1 Parties reached agreement on all provisions referred to mediation being:

- a. Part A: Rural Discharges;
- b. Part B: Animal Waste Storage and Application;
- c. Part C: Good Farming Practices;
- d. Part D: Intensive grazing;
- e. Part E: Stock Access to Water; and
- f. Part F: Sediment Traps.

1.2 Explanation of changes:

- a. **Red** text shows changes to the planning provisions proposed in the notified version of proposed Plan Change 8 (underline shows new wording and strike-through showing deleted wording).
- b. **Green** text indicates further changes agreed to by the parties at mediation (underline shows new wording and strike-through showing deleted wording).

PART A: RURAL DISCHARGES

Policy 7.D.5

When considering any discharge under section 12.C, ~~including the duration of any consent,~~ have regard to:

- (a) The effects, including cumulative effects, of the discharge on water quality, ecosystem health and natural and human use values, including Kāi Tahu cultural and spiritual beliefs, values and uses; and
- (b) The physical characteristics ~~and any particular sensitivity~~ of the land and the sensitivity of the any receiving water; and
- (c) The quality and performance of the discharge management system ~~used, or proposed to be used,~~ and in particular:
 - (i) ~~options to be employed to reduce any adverse environmental effects of the activity discharge; and~~
 - (ii) monitoring of the performance of the discharge management system; and
- (d) Any staged timeframe and any environmental management plan to achieve:
 - (i) Compliance with the permitted activity rules and Schedule 16 discharge thresholds during for the duration of the consent; or
 - (ii) The demonstrable ongoing reduction of adverse environmental effects of the discharge over the duration of the consent, ~~where the permitted activity rules and Schedule 16 discharge thresholds cannot be met~~; and
- (e) Trends in the quality of the receiving water relative to the Schedule 15 freshwater characteristics, limits, and targets and relative to any national bottom lines specified in Appendix 2A and 2B of the NPS-FM; and
- (f) The extent to which ~~the risk of~~ potentially significant, adverse effects arising from the discharge activity may be adequately managed through review conditions are avoided; and
- (g) The value of the existing investment in infrastructure; and
- (h) The current state of technical knowledge and the use of industry best practice for managing environmental effects; and
- (i) The extent to which co-ordinating the discharges across multiple landholdings enables water quality objectives to be more effectively met; and
- (j) ~~Recognising t~~The social, cultural and economic value of the use of land and water that gives rise to the discharge.

New Policy 7.D.6

When considering applications for resource consent for discharges of nitrogen onto or into land in circumstances where it may enter water under Rule 12.C.3.2:

- (a) Restrict the duration of resource consents to a term of no more than 10 years; and
- (b) Have particular regard to:
 - (i) The water quality of the receiving water body; and
 - (ii) Any adverse effects on the natural or human use values of the receiving water body as set out in Schedule 1; and
 - (iii) Any adverse effects on Kāi Tahu cultural and spiritual beliefs, values and uses; and
 - (iv) ~~The expected~~ Any measures proposed to reduction in nitrogen discharged over the term of the resource consent, particularly from including any changes to land management practices or infrastructure; and
 - (iv) The administrative benefits of aligning the expiry date with other resource consents for the same activity in the surrounding area or catchment.

PART B: ANIMAL WASTE STORAGE AND APPLICATION

New Policy 7.D.7

Ensure the appropriate management and operation of animal waste effluent systems and management of the application of animal effluent to land by:

- (a) Requiring animal waste effluent systems to be designed, constructed and located appropriately and in accordance with good management practice best practice; and
- (b) Ensuring that all animal waste effluent systems:
 - (i) Have sufficient storage capacity to ensure that the disposal of effluent to land does not occur under conditions that will result in contaminants entering into water avoid the need to dispose of effluent when soil moisture or weather conditions may result in run-off entering water; and
 - (ii) Include contingency measures to prevent discharges of effluent to a water body, an artificial watercourse, or the coastal marine area, either directly or indirectly, to water in the case of equipment or system failure; and
 - (iii) Are operated in accordance with an operational management plan for the system that is based on best good management practice guidelines, and are inspected regularly; and
- (c) Avoiding the discharge of liquid and solid animal waste effluent to:
 - (i) water bodies, artificial watercourses, bores and soak holes, and the coastal marine area; and
 - (ii) to saturated land in a manner that results in ponding or overland flow to water; and
 - (iii) land when the soil moisture exceeds field capacity; and
- (d) Requiring low-rate effluent application to be in accordance with good management practice, for any new discharge of animal waste to land and encouraging the transition to low-rate effluent application for existing discharges of animal waste to land.

New Policy 7.D.8

Provide for the upgrading of existing animal waste effluent storage facilities systems that do not meet the standards in of Rule 14.7.1.1 by:

- (a) Granting resource consents only where consent applications contain a timebound action plan for upgrading the existing animal waste effluent storage facility system so that it meets the standards in of Rule 14.7.1.1 as soon as possible; and
- (b) Staging implementation of performance standards based on risk in accordance with Rule 14.7.1.2 and Schedule 19.

New note above section 12.C.0

Note: Resource consent may also be required under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 which contains additional restrictions in relation to activities within, or within a 10m setback of, a natural wetland.

Amended Prohibited Activity Rule 12.C.0.2

- 12.C.0.2 The discharge of any contaminant from ~~an animal waste system~~, silage storage or a composting process:
- (i) To any lake, river or Regionally Significant Wetland; or
 - (ii) To any drain or water race that goes to a lake, river, Regionally Significant Wetland or coastal marine area; or
 - (iii) To the bed of any lake, river or Regionally Significant Wetland; or
 - (iv) To any bore or soak hole; or
 - (v) To land in a manner that results in overland flow entering any:
 - (a) Lake, river, Regionally Significant Wetland or coastal marine area

- that is not permitted under Rule 12.C.1.1 or 12.C.1.1A; or
- (b) Drain or water race that goes to any lake, river, Regionally Significant Wetland or coastal marine area that is not permitted under Rule 12.C.1.1 or 12.C.1.1A; or
- (vi) To land within 50 metres of:
 - (a) Any lake, river or Regionally Significant Wetland; or
 - (b) Any bore or soak hole; or
- (vii) To saturated land; or
- (viii) That results in ponding, is a **prohibited** activity.

New Prohibited Activity Rule 12.C.0.4

- 12.C.0.4 The discharge of liquid animal effluent waste from an animal waste effluent system:
- (i) To any lake, river or Regionally Significant Wetland; or
 - (ii) To any drain or water race that goes to a lake, river, Regionally Significant Wetland or coastal marine area; or
 - (iii) To the bed of any lake, river or Regionally Significant Wetland; or
 - (iv) To any bore or soak hole; or
 - (v) To land within 50 metres of:
 - (a) Any lake, river or Regionally Significant Wetland; or
 - (b) Any bore or soak hole; or
 - (vi) To land in a manner that results in ponding, or overland flow to water, including to frozen land; or
 - (vii) To land when the soil moisture exceeds field capacity; or
 - (viii) Where liquid animal effluent is distributed through the same infrastructure as water from a bore with no back flow prevention installed.
 - (vii) That results in any of the following effects in receiving waters, after reasonable mixing:
 - (a) the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or
 - (b) any conspicuous change in the colour or visual clarity; or
 - (c) any emission of objectionable odour; or
 - (d) the rendering of fresh water unsuitable for consumption by farm animals; or
 - (e) any significant adverse effects on aquatic life;
- is a **prohibited** activity.

Note: Rules 12.C.0.4, 12.C.1.4A, 12.C.1.4 and 12.C.2.5 manage discharges of animal effluent to land. They do not regulate the land use for the construction, use and maintenance of an animal effluent system. The construction, use and maintenance of animal effluent systems is managed by Rules 14.7.1.1A, 14.7.1.1, 14.7.1.2, 14.7.2.1, and 14.7.3.1.

New Permitted Rule 12.C.1.4A

- 12.C.1.4A The discharge of solid animal effluent (excluding any discharge directly from an animal to land), sludge, or vegetative material containing solid or liquid animal effluent, into or onto land including in circumstances where a contaminant may enter water is a permitted activity provided:
- (a) the material does not contain any hazardous substance or hazardous waste.

- (b) the material does not include any waste from a human effluent treatment process.
- (c) the material is not discharged:
 - (i) onto the same area of land more frequently than once every two months; or
 - (ii) onto land where solid animal effluent, or vegetative material containing liquid or solid animal effluent, from a previous application is still visible on the land surface; or
 - (iii) onto land when the soil moisture exceeds field capacity; or
 - (iv) within 20 metres of the bed of a lake, river, the coastal marine area, Regionally Significant Wetland, water supply used for human consumption, bore, soak hole or a landholding boundary.

New Rule 12.C.1.4 Permitted Activity

- 12.C.1.4 Notwithstanding any other rule in this Plan, the discharge of liquid animal effluent waste, or water containing liquid animal effluent waste, from an animal waste effluent system onto or into land is a **permitted** activity providing:
- (a) The animal effluent waste storage facility system is permitted under Rule 14.7.1.2; and
 - (b) The discharge is not prohibited under Rule 12.C.0.4; and
 - (c) The discharge does not occur within 20 50 metres of the boundary of the property landholding on which the liquid animal effluent waste is generated being discharged, or beyond that boundary; and
 - (d) There is no discharge to land when the soil moisture exceeds field capacity.

Note: Rules 12.C.0.4, 12.C.1.4A, 12.C.1.4 and 12.C.2.5 manage discharges of animal effluent to land. They do not regulate the land use for the construction, use and maintenance of an animal effluent system. The construction, use and maintenance of animal effluent systems is managed by Rules 14.7.1.1A, 14.7.1.1, 14.7.1.2, 14.7.2.1, and 14.7.3.1.

New Rule 12.C.2.5 Restricted discretionary activity

- 12.C.2.5 The discharge of liquid animal effluent waste, or water containing liquid animal effluent animal waste, from an animal waste effluent system onto or into land is a **restricted discretionary** activity provided:
- (a) The discharge is not prohibited under Rule 12.C.0.2A4; and
 - (b) The discharge is not permitted under Rule 12.C.1.4;

In considering any resource consent under this rule, the Otago Regional Council will restrict the exercise of its discretion to the following:

- (i) The extent to which the application depth and rate is consistent with industry agreed good management practice;
- (ii) Size and location of the disposal area, including separation distances from lakes, rivers, Regionally Significant natural Wetlands, bores, soak holes, the coastal marine area, water supply for human consumption and dwellings;
- (iii) Measures to avoid, remedy or mitigate adverse effects on water quality, taking into account the nature and sensitivity of the receiving environment, and any measures to avoid, remedy or mitigate these adverse effects;

- (iv) Measures to avoid, remedy or mitigate adverse effects on Kāi Tahu cultural and spiritual beliefs, values and uses, and any measures to avoid, remedy or mitigate these adverse effects;
- (v) Duration of consent and any review conditions;
- (vi) Quality and content of, and compliance with, a management plan for the purpose of preventing the unauthorised discharge of liquid or solid animal effluent to water that is prepared in accordance with Schedule 21 for the animal waste system; and
- (vii) Any information and monitoring requirements; and
- (viii) The value of existing investment in the animal effluent system.

Note: Rules 12.C.0.4, 12.C.1.4A, 12.C.1.4 and 12.C.2.5 manage discharges of animal effluent to land. They do not regulate the land use for the construction, use and maintenance of an animal effluent system. The construction, use and maintenance of animal effluent systems is managed by Rules 14.7.1.1A, 14.7.1.1, 14.7.1.2, 14.7.2.1, and 14.7.3.1.

New note at the beginning of section 14.7

Note: Resource consent may also be required under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 which contains additional restrictions in relation to activities within, or within a 10m setback of, a natural wetland.

New Rule 14.7.1.1A (Land use – permitted)

14.7.1.1A The use of land for the construction, use and maintenance of a component of an animal effluent system that is not an animal effluent storage facility is a **permitted activity** providing:

- (a) for a component with a volume of less than 35,000 litres, the component does not have any visible cracks, holes or defects that would allow effluent to leak from the component;
- (b) for a component with a volume of 35,000 litres or above, the component is certified by a Suitably Qualified Person, as defined in Schedule 20, within the last five years as having no visible cracks, holes or defects that would allow effluent to leak from the component;
- (c) the component (excluding conveyance pipes) is not located:

 - (i) within 20 metres of any lake, river, Regionally Significant Wetland, water supply used for human consumption, bore or soak hole; or
 - (ii) above subsurface drainage (excluding a leak detection system); and
- (d) where the total volume of the animal effluent system exceeds 35,000 litres, a management plan for the purpose of preventing the unauthorised discharge of liquid or solid animal effluent to water is prepared and implemented in accordance with Schedule 21.

New Rule 14.7.1.1 (Land use – permitted)

14.7.1.1 ~~The use of land for the use and maintenance of an animal effluent storage facility animal waste system (including storage pond(s) and ancillary structures) that was constructed prior to 25 March 2020 is a **permitted** activity providing:~~

- ~~(a) The animal effluent storage facility storage pond is sized in accordance with the 90th percentile as calculated by the Dairy Effluent Storage Calculator, and where relevant using a conversion factor for animals other than dairy cows determined by a Suitably Qualified Person as defined in Schedule 20;~~
- ~~(b) The animal effluent storage facility storage pond is either:~~
 - ~~(i) Fully lined with an impermeable synthetic liner and has a leak detection system underlying the storage pond which is inspected not less than monthly, there is no evidence of any leakage, and a written record is kept recording the results of each inspection; or~~
 - ~~(ii) Of impervious concrete construction; or~~
 - ~~(iii) An above-ground tank; or~~
 - ~~(iv) Certified by a Suitably Qualified Person as defined in Schedule 20, within the last five years as:~~
 - ~~(1i) having no visible cracks, holes or defects that would allow effluent to leak from the animal effluent storage facility; Structurally sound and without any visual defects; and~~
 - ~~(2ii) Meeting the relevant pond drop test criteria in Schedule 18 (excluding above-ground tanks, bladders, and solid animal effluent storage facilities); and~~
- ~~(c) A management plan for the purpose of preventing the unauthorised discharge of liquid or solid animal effluent to water is prepared and implemented in accordance with Schedule 21.~~
- ~~(e) A management plan for the animal waste system is prepared and implemented that requires:~~
 - ~~(i) Pond drop tests of the storage pond(s) every three years; and~~
 - ~~(ii) Implementation of contingency measures to prevent the discharge of animal waste to a surface water body, an artificial watercourse, or the coastal marine area, either directly or indirectly, in the event of power outage or the failure of equipment; and~~
- ~~(d) Upon written request by the Regional Council a written statement or certificate from a Suitably Qualified Person is provided to show compliance with Conditions (a) to (e). Any certifications under (a) and (b) are provided to the Otago Regional Council upon written request.~~

Note: ~~Rules 12.C.0.4, 12.C.1.4A, 12.C.1.4 and 12.C.2.5 manage discharges of animal effluent to land. They do not regulate the land use for the construction, use and maintenance of an animal effluent system. The construction, use and maintenance of animal effluent systems is managed by Rules 14.7.1.1A, 14.7.1.1, 14.7.1.2, 14.7.2.1, and 14.7.3.1.~~

New Rule 14.7.1.2 (Land Use – Short term permitted activity)

14.7.1.2 ~~The use of land for the use and maintenance of an animal effluent storage facility animal waste system (including storage pond(s) and ancillary structures) that was constructed prior to 25 March 2020 and does not comply with the conditions of Rule 14.7.1.1 is a **permitted** activity until the application date specified in Schedule 19.~~

New Rule 14.7.2.1 (Land use – controlled)

14.7.2.1 ~~The use of land for the construction, use and maintenance of an animal effluent storage facility animal waste system (including storage pond(s) and ancillary structures) constructed after 25 March 2020 is a **controlled** activity provided the following conditions are met:~~

- ~~(a) The animal effluent storage facility storage pond is sized in accordance with the 90th percentile as calculated by the Dairy Effluent Storage Calculator, and where relevant using a conversion factor for animals other than dairy cows determined by a Suitably Qualified Person as defined in Schedule 20; and~~
- ~~(b) The animal effluent storage facility storage pond is either:

 - ~~(i) Fully lined with an impermeable synthetic liner and has an effective leak detection system that underlies the animal effluent storage facility storage pond; or~~
 - ~~(ii) Of concrete construction; or~~
 - ~~(iii) Is an above-ground tank; or and~~
 - ~~(iv) Sealed with a clay liner; and~~~~
- ~~(c) The design of the animal effluent storage facility, and any leak detection system animal waste system has been certified by a Chartered Professional Engineer as being in accordance with the relevant parts of IPENZ Practice Note 21¹ and IPENZ Practice Note 27²; and~~
- ~~(d) The animal effluent storage facility waste system is not located:

 - ~~(i) Within 50 metres of any lake, river or Regionally Significant Wetland; or~~
 - ~~(ii) Within 90 metres of any water supply used for human consumption; or~~
 - ~~(iii) Within 50 metres of any bore or soak hole; or~~
 - ~~(iv) Within 50 metres of the property boundary; or~~
 - ~~(v) Above subsurface drainage (other than a leak detection system); and~~~~
- ~~(e) A management plan for the purpose of preventing the unauthorised discharge of liquid or solid animal effluent to water is prepared and implemented in accordance with Schedule 21.~~
- ~~(e) A management plan for the animal waste system is prepared and implemented that requires:

 - ~~(i) For ponds that are fully lined with an impermeable synthetic liner and has an effective leak detection system that underlies the storage pond, inspections not less than monthly with a requirement to keep a written record of the results of each inspection; and~~
 - ~~(ii) Pond drop tests of the storage pond(s) every three years; and~~
 - ~~(iii) Implementation of contingency measures to prevent the discharge of animal waste to a surface water body, an artificial watercourse, or the coastal marine area, either directly to water or onto or into land in circumstances which may result in those contaminants entering water, in the event of power outage or the failure of equipment; and~~
 - ~~(iv) If a leak is detected by the leak detection system, an assessment is undertaken by a Suitably Qualified Person within two months of the detection to determine whether the leak is within the normal operating parameters of the pond.~~~~

In granting any resource consent under this rule, the Otago Regional Council will restrict the exercise of its control to the following:

- ~~(a) The design and construction of the animal effluent storage facility system, including storage capacity, nature of the animal waste solid or liquid animal effluent and the anticipated life of the animal effluent storage facility system; and~~

- ~~(b) The design, construction and adequacy of ancillary structures that are components of the animal waste system animal effluent system; and~~
- ~~(eb) The height of embankments and the placement and orientation relative to flood flows and stormwater run-off; and~~
- ~~(ec) Methods to protect the animal effluent storage facility system from damage by animals and machinery; and~~
- ~~(ed) Quality and content of, and implementation of, a the management plan prepared in accordance with Schedule 21 for the animal waste system which requires pond drop tests of the system's storage pond(s) every three years; and~~
- ~~(fe) Potential adverse effects of construction, maintenance and use on water bodies, drains, groundwater, bores, drinking water supplies, the coastal marine area, stop banks, dwellings, places of assembly and urban areas; and~~
- ~~(ef) Location of the animal waste system animal effluent storage facility; and~~
- ~~(hg) Measures to avoid, remedy or mitigate adverse effects on Kāi Tahu cultural and spiritual beliefs, values and uses.~~

¹. Available from Otago Regional Council's website at <http://www.orc.govt.nz>
<https://www.dairynz.co.nz/publications/environment/ipenz-21-farm-dairy-effluent-pond-design-and-construction/>

². Available from Otago Regional Council's website at <http://www.orc.govt.nz>
<https://www.dairynz.co.nz/publications/environment/ipenz-practice-note-27-dairy-farm-infrastructure/>

New Rule 14.7.3.1 (Land use – discretionary)

- ~~14.7.3.1 The use of land for the construction, upgrade, use or maintenance of an animal effluent storage facility or a component of an animal effluent system that is not an animal effluent storage facility animal waste system (including storage pond(s) and ancillary structures) is a discretionary activity provided it is not:~~
- ~~(a) Permitted under Rules 14.7.1.1A, 14.7.1.1 or 14.7.1.2; or~~
 - ~~(b) Provided for by Rule 14.7.2.1.~~

New Schedule 18

18. Schedule of storage pond drop test requirements and criteria

~~This schedule outlines the requirements for undertaking pond drop tests on storage ponds animal effluent storage facilities that are part of an animal waste system animal effluent system and the pass criteria for drop test results.~~

Requirements

- ~~• Testing is undertaken over a minimum period of 48 hours. A minimum of 24 hours of accurate data within a single test period.~~
- ~~• Testing recording equipment is to be accurate to 0.8 mm or less. Total test error of less than ±1 mm.~~
- ~~• Continuous readings are to be taken over the entire test period at not more than 10 second intervals.~~
- ~~• Any change in pond fluid level over the test period needs to be accounted for.~~
- ~~• Ponds must be at or over 75% design depth (excluding freeboard) before a test can be undertaken.~~
- ~~• The pond has been de-sludged in the 12 months prior to the test being undertaken and there is no sludge or crust on the pond surface during the test.~~

The level of sludge or crust on the pond surface during the test should be minimal so that it does not impact on test results.

- The pond surface is not frozen during any part of the testing.
- An anemometer is installed for the duration of the test and only data obtained when the wind speed does not exceed 50 kilometres per hour (14 m per second) at the test site is used in the test results. wind speed is at 10 metres per second or less for at least 24 hours during the test.

Criteria Table 18.1 Maximum allowable pond level change

When tested in accordance with the requirements above, the pond animal effluent storage facility is considered to meet the pond drop test criteria if the maximum pond level drop change does not exceed the following:

<u>Maximum design depth of pond (m) excluding freeboard</u>	<u>Maximum allowable pond level drop change (mm per 24 hours)</u>
<u><0.5</u>	<u>1.2</u>
<u>0.5 to 1.0</u>	<u>1.4</u>
<u>1.0 to 1.5</u>	<u>1.6</u>
<u>1.5 to 2.0</u>	<u>1.8</u>
<u>>2.0</u>	<u>2.0</u>

New Schedule 19

19. Schedule of progressive implementation of animal wasteeffluent storage requirements

Many animal waste effluent storage facilities systems in Otago will need to be upgraded to meet the requirements of this Plan. The intent of this Schedule is to stage implementation of the Plan's requirements according to the environmental risk posed by existing animal effluent storage facilities systems. To assess this risk, Schedule 19 provides two calculations that will determine the current storage volume available on a landholding (in days) as follows:

- Schedule 19A sets out the calculations required to determine days of storage available on a landholding.
- Schedule 19B sets out the date by which a complete resource consent application must be lodged with the Otago Regional Council under Rule 14.7.3.1 (and correspondingly Rule 14.7.1.2 ceases to apply). A complete application is one that is not determined as being incomplete by the Otago Regional Council pursuant to section 88 of the Resource Management Act 1991.

For clarity, this calculation under Schedule 19A does not determine the volume of the storage facility under section 14.7, it only determines the date that applications must be received.

New Schedule 19A

19A Storage calculation

Two calculations are required to determine the current minimum number of days of animal waste storage available on a landholding. These are set out below.

Step One: Daily waste volume

To calculate the daily waste volume per farm, use the following formula:

$$\frac{\text{Daily waste volume (m}^3\text{)}}{\text{}} \equiv \frac{\text{Maximum number of cows milked per day}}{\text{}} \times \text{0.05}^{\wedge} \times \frac{\text{Maximum number of times per day that cows are milked during milking season}}{\text{}}$$

\wedge being 0.05 cubic metres (50 litres per cow per day)

For example:

During milking season, Farm A milks 500 cows twice per day. Using the formula above:

$$\text{Daily waste volume (m}^3\text{)} \equiv 500 \times 0.05 \times 2$$

$$\text{Daily waste volume (m}^3\text{)} \equiv 50$$

Step Two:

To calculate the minimum number of days of storage available, use the following formula:

$$\frac{\text{Days of storage available}}{\text{}} \equiv \frac{\text{Actual storage volume (m}^3\text{)}^{\wedge}}{\text{Daily waste volume (m}^3\text{)}}$$

\wedge determined assuming that the storage facility is empty

For example:

As calculated above, Farm A has a daily waste volume of 50 m³. The farm has a storage pond with a storage volume of 1000 m³. Using the formula above:

$$\frac{\text{Days of storage available}}{\text{}} \equiv \frac{1000}{50}$$

$$\frac{\text{Days of storage available}}{\text{}} \equiv 20$$

Using the table in Schedule 19B, Otago Regional Council must receive a complete resource consent application under Rule 14.7.3.1 from Farm A no later than two years from the date Plan Change 8 is made operative.

New Schedule 19B**19B Application dates**

The following table sets out the dates by which complete resource consent applications must be received under Rule 14.7.3.1 (and correspondingly Rule 14.7.1.2 ceases to apply). The “application date” is the date Plan Change 8 is made operative, plus the number of years in the “year” column below.

<u>Days of storage available as calculated in accordance with Schedule 19B</u>	<u>Year</u>
<u>0 – 10</u>	<u>0.5</u>
<u>11 – 40</u>	<u>2</u>
<u>41+</u>	<u>3</u>

New Schedule 20 (Suitably qualified persons)

20. Schedule defining Suitably Qualified Persons

A suitably qualified person for the purposes of this schedule is a person who has been certified by the Otago Regional Council as being appropriately qualified and experienced in accordance with the requirements below.

Requirements – Animal Effluent systems

For the purposes of Rules 14.7.1.1A(b), 14.7.1.1(b) and Schedule 20(i), a Suitably Qualified Person has either:

- (a) A relevant tertiary qualification in agricultural engineering, natural resources engineering or civil engineering and at least five years' professional experience in designing and constructing effluent management systems; or
- (b) A relevant equivalent qualification (for example, international qualifications) and at least five years' professional experience in designing and constructing effluent management systems; or
- (c) At least ten years' professional experience in designing and constructing effluent management systems.

Requirements – Calculations using the Dairy Effluent Storage Calculator

For the purposes of Rules 14.7.1.1(a) and Rule 14.7.2.1(a), a Suitably Qualified Person has:

- (a) For undertaking a calculation using the Dairy Effluent Storage Calculator, at least five years' relevant professional experience in designing effluent management systems, and
- (b) For determining a conversion factor for animals that are not dairy cows, a relevant scientific tertiary qualification or relevant research experience.

New Schedule 21 (Management plan)

21. Schedule of management plan requirements

- (1) A management plan for the purpose of preventing the unauthorised discharge of liquid or solid animal effluent to water is:

- (a) prepared by the landholding owner or their agent and retained on the landholding, identifying the matters set out in clause 2 below;
- (b) reviewed at least once every 12 months by the landholding owner or their agent, and the outcome of the review documented; and
- (c) provided to the Otago Regional Council upon request, and

(2) The management plan must contain the following:

- (a) physical address of where the animal effluent system is located, and the land where liquid or solid animal effluent is to be applied,
- (b) a description of the landholding ownership, and the contact details of the owner and the person in charge,
- (c) legal description(s) of the landholding,
- (d) a list of all the relevant resource consents held for the landholding and their expiry dates,
- (e) a map(s) or aerial or satellite photograph(s) showing the locations of:
 - (i) the boundaries of the landholding,
 - (ii) the location of any dairy shed, animal effluent storage facilities, and any other components of an animal effluent system,
 - (iii) lakes, rivers, natural wetlands, bores, soak holes, the coastal marine area, water supply for human consumption and dwellings within the landholding,
 - (iv) the area of land where liquid or solid animal effluent is to be applied, and in relation to this area:
 - soil types and their risk profile¹,
 - any critical source areas and the locations of known subsurface drains.
- (f) Operational procedures for using and maintaining the animal effluent system and for managing the discharge of animal effluent,
- (g) Inspection, monitoring and reporting requirements and timeframes,
- (h) The records of pond drop tests of the animal effluent storage facility undertaken at least every five years (excluding above-ground tanks, bladders, solid animal effluent storage facilities and an animal effluent storage facility with a leak detection system),
- (i) Contingency measures to prevent the discharge of liquid or solid animal effluent to a water body, an artificial watercourse, or the coastal marine area, either directly or indirectly,
- (j) Identification of measures to be taken to respond to a leak and the timeframe for response; including, for animal effluent storage facilities with a leak detection system where a leak is detected, a requirement for an assessment by a Suitably Qualified Person to be undertaken as soon as practicable and no later than two months of the detection to determine whether the leak is within the normal operating parameters of the pond, and
- (k) Responses to any other system failures or emergencies, including timeframes for response,

Footnote 1: A digital soil map for New Zealand can be found online at <https://smap.landcareresearch.co.nz/>

Glossary

<u>Agricultural waste</u>	Waste from an agricultural process or premises that is derived from primary agricultural production. This includes animal waste and animal dip material.
<u>Animal waste effluent system</u>	Includes <u>Means the</u> collection, conveyance, storage, <u>or</u> treatment, disposal or application of liquid or solid animal <u>effluent waste</u> .
<u>Animal effluent storage facility</u>	<u>A pond, tank, or structure primarily used for the containment or storage of animal effluent, but excludes any ancillary structures for the collection, conveyance or treatment of liquid or solid animal effluent, such as sumps, stone traps and weeping walls.</u>
<u>Dairy Effluent Storage Calculator</u>	Means the Dairy Effluent Storage Calculator available from Otago Regional Council's website at http://www.orc.govt.nz/ the Dairy NZ website https://www.dairynz.co.nz/
<u>Liquid animal effluent</u>	<u>Faeces and urine from land-based animals, including associated process water, wash-down water, contaminants and sludge but excluding solid animal effluent. For the purposes of this definition, it does not include incidental animal effluent present in livestock processing waste streams.</u>
<u>Solid animal effluent</u>	<u>Solid excreta from land-based animals that cannot be pumped and sprayed, including bedding material and manure, but does not include dead animals or animal parts.</u>
<u>Suitably Qualified Person</u>	A person that has been assessed and approved by the Otago Regional Council as being appropriately qualified, experienced and competent in the relevant field of expertise. <u>Has the meanings set out in Schedule 20.</u>

PART C: GOOD FARMING PRACTICES

Amend New Policy 7.D.9 as follows:

Enable farming activities while reducing their adverse environmental effects by:

- (a) Promoting the implementation of good management practices (or better) to reduce sediment and contaminant loss to water bodies; and
- (d)(b) Managing the risk of sediment and contaminants in run off entering water as a result of ~~from~~ farming activities by:
 - (i) Implementing setbacks from water bodies any rivers, lakes, drains (excluding sub-surface drains), natural wetlands or the coastal marine area and establishing or maintaining riparian vegetation margins, and
 - (ii) Limiting areas and duration of exposed soil; and
- (b)(iii) Managing stock access to water bodies to:
 - (i) Progressively exclude stock from lakes, wetlands, and continually flowing rivers; and
 - (ii) Avoid significant adverse effects on water quality, bed and bank integrity and stability, Kai Tahu cultural and spiritual beliefs, values and uses, and river and riparian ecosystems and habitats, and
- (e)(iv) Setting interim minimum standards for intensive winter grazing; and
- (e)(v) Promoting the identification and management of Managing critical source areas within individual properties, to reduce the risk of nutrient or microbial contamination and sediment run-off.

Glossary

<u>Critical source area</u>	Means a landscape feature such as a gully, swale, or depression that accumulates runoff from adjacent flats and slopes and delivers <u>contaminants</u> it to surface water bodies such as rivers, and lakes and artificial <u>watercourses waterways and field tiles</u> (excluding subsurface drains, and artificial watercourses that do not connect to natural water bodies)
<u>Feed pad</u>	Any confined, uncovered structure, located on production land, which is designed for the purpose of controlled intensive feeding of stock with supplementary feed.
<u>Sacrifice paddock</u>	Any paddock which is set aside for the prolonged confinement and the controlled, intensive feeding of stock with supplementary feed, in order to avoid damage to their usual pasture.
<u>Stand-off pad</u>	Any purpose-built uncovered area, located on production land, for the confinement of stock in order to avoid damage to their usual pasture.

PART D INTENSIVE GRAZING

New rule 14.6.1

14.6.1 Permitted activities: No resource consent required

14.6.1.1 Until Regulations 26 and 27 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 or equivalent regulations come into force, the use of land for intensive winter grazing is a **permitted** activity providing:

- (a) The total cumulative area of the landholding used for intensive grazing is the lesser of:

 - (i) 100 hectares; or
 - (ii) 10% of the total cumulative area of the landholding;
- (a) Land on the farm was used for intensive winter grazing between 1 July 2014 and 30 June 2019 (inclusive); and
- (b) At all times, the area of the farm that is used for intensive winter grazing is no greater than the maximum area of the farm that was used for intensive winter grazing between 1 July 2014 and 30 June 2019 (inclusive); and
- (c) Stock are progressively grazed (break-fed or block-fed) from the top of a slope to the bottom of a slope; and
- (d) A vegetated strip of at least 105 metres is maintained between the intensively grazed area and any water body river, lake, wetland or drain (excluding sub-surface drains), and all stock are excluded from this strip during intensive winter grazing.
- (d) The intensive winter grazing does not occur in a natural wetland.
- (e) There is no intensive winter grazing in any critical source area unless contaminants are prevented from entering a surface water body

Advice Note: when regulations 26 and 27 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 come into force, for rules applying to the use of land on a farm for intensive winter grazing refer to Subpart 3 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

New Rule 14.6.2

14.6.2 Discretionary activities: Resource consent required

Until Regulations 26 and 27 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 or equivalent regulations come into force, except as provided by Rule 14.6.1.1, the use of land for intensive winter grazing is a **discretionary** activity.

Advice Note: when regulations 26 and 27 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 come into force, for rules applying to the use of land on a farm for intensive winter grazing refer to Subpart 3 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

Advice Note: Resource consent may also be required under Regulation 30 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020. A resource consent may only be granted under Regulation 30 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 if the consent authority is satisfied that granting the consent will not result in an increase in—

(a) contaminant loads in the catchment, compared with the loads as at the close of 2 September 2020; or

(b) concentrations of contaminants in freshwater or other receiving environments (including the coastal marine area and geothermal water), compared with the concentrations as at the close of 2 September 2020.

Any resource consent granted under Regulation 30 must be for a term that ends before 1 January 2031.

New definition: Intensive grazing

Intensive winter grazing ~~Means grazing of stock on forage crops (including brassica, beet and root vegetable crops), excluding pasture and cereal crops, has the same meaning as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.~~

PART E: STOCK ACCESS TO WATER

Amended Rule 13.5.1.8A

The disturbance of the bed of any lake or river, or any Regionally Significant Wetland by livestock, excluding intentional driving of livestock, and any resulting discharge or deposition of bed material, is a **permitted** activity, providing ~~it does not~~it does not:

- (a) ~~It does not~~
- ~~(i)~~ Involve feeding out on that bed or wetland; or
 - ~~(b)ii)~~ Cause or induce noticeable slumping, pugging or erosion; or
 - ~~(c)iii)~~ Result in a visual change in colour or clarity of water; or
 - ~~(d)iv)~~ Damage fauna, or New Zealand native flora, in or on any Regionally Significant Wetland; and
- ~~(b) From 2022:~~
- ~~(i) All dairy cattle and pigs are excluded from the beds of lakes, continually flowing rivers wider than 1 metre and Regionally Significant Wetlands; and~~
 - ~~(ii) where stock are excluded under (i), a setback of five metres from the beds of lakes, continually flowing rivers wider than 1 metre and Regionally Significant Wetlands is implemented.~~

~~Note: 1. For the purposes of Rule 13.5.1.8A(b), a continually flowing river is considered to be wider than 1 metre if the river is wider than 1 metre at any point within the boundary of a landholding at its annual fullest flow without overtopping its banks.~~

~~2. For the purposes of Rule 13.5.1.8A(b)(ii), setbacks are measured from the edge of the wetted bed of a lake or river wider than 1 metre or Regionally Significant Wetland and are averaged across the landholding.~~

Glossary

~~Dairy cattle — Means cattle farmed for milk production and includes dairy cows, weaned and unweaned calves of dairy cows, and non-milking dairy cattle such as youngstock and bulls.~~

Advice notes added below Rule 13.5.1.8A

Advice Note: For regulations on stock exclusion from waterways refer to the Resource Management (Stock Exclusion) Regulations 2020.

Advice note: The proposed Land and Water Regional Plan, when notified in December 2023, may introduce provisions regulating stock exclusion in a Freshwater Management Unit, or any part of a Freshwater Management Unit in addition to Resource Management (Stock Exclusion) Regulations 2020.

PART F: SEDIMENT TRAPS

Rule 13.5.1.10 as follows:

The disturbance of the bed of any ephemeral or intermittently flowing river for the purpose of constructing or maintaining a sediment trap and any associated deposition of bed material is a **permitted** activity providing:

- (a) The construction or maintenance of the sediment trap is undertaken solely for sediment control purposes or to maintain the capacity and effective functioning of the sediment trap; and
- (b) The construction or maintenance does not result in destabilisation of any lawfully established structure or cause increased risk of flooding or erosion; and
- (c) ~~The No~~ works ~~do not~~ occur in flowing water; and
- ~~(d) The sediment trap cannot be accessed by livestock; and~~
- (ed) Any build-up of sediment and other debris (including vegetation) within the sediment trap is removed ~~as soon as practicable regularly to maintain the effectiveness of the sediment trap; and~~
- (fe) All reasonable steps are taken to minimise the release of sediment ~~to the ephemeral or intermittently flowing river~~ during the disturbance and there is no conspicuous change in the colour or clarity of the water body beyond a distance of 200 metres downstream of the disturbance; and
- (gf) No lawful take of water is adversely affected as a result of the disturbance; and
- (hg) There is no change to the water level range or hydrological function of any Regionally Significant Wetland; and
- (ih) There is no damage to fauna or New Zealand native flora in or on any Regionally Significant Wetland.

Glossary

Sediment trap An excavated ~~or banded~~ area in the bed of an ephemeral or intermittently flowing river designed and constructed solely for the purpose of ~~slowing water velocity~~ to allowing sediments to drop from the water column.