SUMMARY OF PLAN CHANGE 8 (DISCHARGE MANAGEMENT) AND PLAN CHANGE 1 (WASTE)

We have undertaken a review of PC8 and PC1 (collectively referred to the Omnibus Plan Change) which relates to Waste and Discharge Management. Some aspects of the Plan Change are not relevant to LWIC, so we direct your attention to the relevant components only:

1. Strengthen and clarify policy direction for assessing resource consent applications for rural land uses;

2. Improved minimum standards for animal waste systems (storage ponds) and application of animal waste to land (discharge consents);

3. Targeted minimum standards and good farming practices for high-risk practices (intensive grazing and stock access to waterbodies); and

4. Enabling the installation and maintenance of sediment traps as a permitted activity, subject to standards.

The Omnibus Plan change is Council's interim solution before a fundamental Plan Change is notified in December 2023 (supposedly). Additionally, there are some aspects that overlap with the Proposed NES/ Regulations. Where possible, we have identified the overlap and potential inconsistencies. Submissions on Omnibus Plan change are due on **17 August 2020**.

BROAD TOPIC	**COMMENTARY**
DISCHARGE POLICIES	PC6AA is now operative, and compliance with Nitrogen Discharge limits is not required until 1 April 2026. Effectively PC6A is on hold for another 6 years now. The prohibited activity rules that were already operative (ponding etc) continue to apply. This is just a holding pattern with ORC indicating new plans are in development that will overhaul the nutrient less/management/discharge framework. PC8 proposes to deal with 'discharge of animal waste' and 'discharge of Nitrogen' as separate matters. Council are proposing to implement new rules to ensure operators initiate upgrades to their storage ponds in the short term, and are applying effluent in accordance with best practice methodology. The key amendment the policy framework is the introduction of new Policy 7.D.6. Policy 7.D.6 introduces a 10 year restriction on any discharge consent granted under the proposed rules. Council's reasoning is that a 10 year consent will provide certainty to operators while the Council undertakes a fundamental Plan Change. The Council expects operators to apply for new consents once the fundamental plan change is operative.
ANIMAL WASTE AND STORAGE REQUIREMENTS	It is important to understand whether individual properties meet the minimum requirements for storage ponds, as this determines whether consent is required for the pond itself and/or for effluent discharge: We attach the following documents for ease of reference: i. **Appendix A** - Proposed Rule 14.7.1.1 (minimum construction standards for existing ponds); ii. **Appendix B** Schedule 18;19A & 19B – Drop Test; Pond Storage calculation & Sunset Period; and

iii. **Appendix C** Proposed Rule 14.7.2.1 (Minimum construction standards for new ponds).

It is important to understand whether your existing pond meets the minimum construction standards within Appendix A and B

TABLE 1: STORAGE REQUIREMENTS AND DISCHARGE OF ANIMAL EFFLUENT REQUIREMENTS

	Land Use Consent (Storage Pond)	**Discharge Consent (Effluent Discharge)**
Existing ponds constructed Prior to 25 March 2020	If you <u>comply</u> with the minimum standards within Rule 14.7.1.1 (**Appendix A**), then the existing pond will remain a permitted activity. We note that compliance with Rule 14.7.1.1 requires satisfaction of pond drop test every three years (**Appendix B**)	Discharge consent will be required for all ponds that comply with minimum standards within Rule 14.7.1.1.
	If you do <u>not comply</u> with the minimum standards within Rule 14.7.1.1 then you will be required to upgrade the pond in the short term. The pond will remain 'temporarily permitted' in accordance with the Storage Calculator and Sunset Period Table – Schedule 19A and 19B (**Appendix B**). If you have not applied for consent to upgrade the pond by the prescribed sunset date (maximum of three years), then the pond will be unauthorized and could result in enforcement proceedings.	Discharge consent will not be required for ponds that are temporarily permitted. Council's reasoning is that 'temporarily permitted' operators will soon be required to apply for consents for both storage pond and discharge.
Ponds constructed post 25 March 2020	All new ponds will require resource consent. If you <u>comply with</u> standards within Rule 14.7.2.1, an application for consent cannot be declined; however Council retains broad discretion to impose conditions on the design/location/size through this process. New ponds are required to be constructed and maintained to a higher standard than existing ponds, requiring IPENZ certification. (it is useful to compare Rule 14.7.1.1 and Rule 14.7.2.1 to understand additional obligations).	Discharge consent will be required for all new ponds constructed after 25 March 2020.

		For all new ponds that cannot meet the standards within Rule 14.7.2.1, then Discretionary consent will be required. Council will have the authority to decline such consent applications (i.e if a suitable location is not available).	Discharge consent will be required for all new ponds constructed after 25 March 2020.
	If a discharge consent is required under any of the scenarios above, then this will be processed as a Restricted Discretionary activity, with Council's discretion limited to the e following matters: i. The application depth and rate; ii. Size and location of the disposal area; iii. Measures to avoid, remedy or mitigate adverse effects on water quality, taking into account the nature and sensitivity of the receiving environment; iv. Measures to avoid, remedy or mitigate adverse effects on Kāi Tahu cultural and spiritual beliefs, values and uses; v. Duration of consent and any review conditions; vi. Quality of, and compliance with, a management plan for the animal waste system. Any consent will likely be restricted to 10 year period (Policy 7.D.6)		
INTENSIVE GRAZING REQUIREMENTS	Intensive winter grazing remains permitted provided performance standards are met. In some instances the requirements within PC8 and the proposed NES will overlap. It is also important to note that a Regional Plan cannot introduce standards that are more permissive that the NES, and compliance with PC8 does not necessarily satisfy requirements under NES.		

TABLE 2: COMPARISON OF PC8 AND NES WINTER GRAZING REQUIREMENTS

Under PC8, you will be able to undertake Intensive Winter Grazing as a permitted activity if:[1]	**Under the new regulations, you will be able to graze stock on forage crops in winter without needing a resource consent if:**
No slope requirement	your paddock is less than 10-degrees slope; and
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.	the area being grazed is either less than 50 ha or 10 per cent of the property, whichever is the larger
There is no intensive grazing in any critical source area. A vegetated strip of at least 10 metres is maintained between the intensively grazed area and any water body, and all stock are excluded from this strip during intensive grazing	The crop is set back more than five metres from a waterway.
No direct comparison	pugging is to be no deeper than 20 cm and cover less than 50 per cent of the paddock
No direct comparison	bare ground in paddocks subject to winter grazing is re-sown as soon as practicable, but in any event no later than within one month after the end of grazing

[1] Intensive Winter Grazing is Defined as: *means grazing of stock on forage crops (including brassica, beet and root vegetable crops), excluding pasture and cereal crops*

	Stock are progressively grazed (break-fed or block-fed) from the top of a slope to the bottom of a slope	No direct comparison
	Commentary: Some aspects of PC8 and NES standards are difficult to reconcile: i. The NES requires consent for any intensive winter grazing that is undertaken on more than a 10 degree slope. Even though PC8 does not adopt this restriction, the NES will apply. Therefore, any intensive grazing on a slope greater than 10 degrees will require consent, despite PC8 not adopting this requirement. ii. PC8 adopts a 100ha or 10% (whichever is lesser), whereas NES adopts a 50ha or 10% (whichever is larger). The NES will be more permissive, as it provides a 50ha minimum winter grazing allowance for any landholding and no cap on the maximum. PC8 is particularly restrictive for smaller landholdings and provides a cap at 100ha for larger landholdings. iii. PC8 adopts a new definition of Critical Source Area that is not within the NES. Any grazing within a Critical Source Area will require consent. Critical Source Area is defined as - *Means a landscape feature such as a gully, swale, or depression that accumulates runoff from adjacent flats and slopes and delivers it to surface water body such as rivers and lakes, artificial waterways, and field tiles.* iv. The set back limit under PC8 is quite significant. It is unclear what a 'waterway' is under the NES – whether it relies on a definition already within the RMA (such as river or water body) or whether it means something else. Therefore it is difficult at this point to determine the extent to which these provisions overlap (or which suite is more restrictive). Inconsistencies between NES and PC8 are likely to lead to confusion and instances of non-compliance. Our preference is to seek consistency between both sets of controls.	
STOCK EXCLUSION CONTROLS	PC8 provides a reasonably short timeframe to exclude dairy cattle and pigs from beds of lakes and continually flowing rivers. Dairy-cattle[2] is given a broad definition, including non-milking dairy cattle such as youngstock and bulls. PC8 is not designed to implement the NES exclusion regulations as there remains uncertainty as to their final form. As a summary, The NES regulations restrict stock access to water in different ways depending on the type of water body (wetlands, rivers and lakes), stock type (dairy, dairy support, pigs, beef cattle, deer) and slope of land. The NES imposes different timeframes for exclusion depending on whether the land is categorised as "low-slope" or "non-low-slope". There remains uncertainty on how that will be implemented.	

[2] Dairy Cattle is Defined: *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.*

PC8 takes a much 'simpler' approach by simply required exclusion from all waterbodies wider than a metre. This means the provisions are of much wider application than the NES.

A comparison on NES and PC8 controls are outlined in Table 3 below:

TABLE 3: COMPARISON OF STOCK EXCLUSION CONTROLS

Under PC8, the following stock exclusion requirements will apply:	**Under the NES regulations, the following requirements will apply:**
By 2022All dairy cattle and pigs are excluded from the beds of lakes, continually flowing rivers[3] wider than 1 metre and Regionally Significant Wetlands	All dairy cattle (except dairy support cattle) and pigs must be excluded from lakes and rivers more than a metre wide (bank-to-bank) by 1 July 2023, regardless of land slope.
Where stock exclusion is required, a setback of five metres from the beds of lakes, continually flowing rivers wider than 1 metre and Regionally Significant Wetland is implemented.[4]	Wetlands already identified in a regional or district plan must have cattle, deer, and pigs excluded by 1 July 2023. By 2025, councils are expected to have identified more wetlands in line with the new National Policy Statement for Freshwater Management, and stock will also have to be excluded from these.
PC8 includes 'non-milking dairy cattle' within the definition of 'dairy cattle'.	All dairy support cattle must be excluded from lakes and rivers more than a metre wide (bank to-bank) by 1 July 2025, regardless of land slope.
	All cattle and deer must be excluded from lakes and rivers more than a metre wide (bank-to-bank) where land is used for fodder-cropping, break-feeding or grazing on irrigated pasture by 1 July 2023, regardless of land slope.
	On land less than 10-degrees slope, beef cattle and deer must be excluded from lakes and rivers more than a metre wide (bank-to-bank) by 1 July 2025.
	For all stock exclusion, there must be a minimum setback of three metres from the edge of the waterway, except where an existing permanent fence or existing riparian planting already effectively excludes stock. This means existing permanent fences will not have to be moved.

Commentary:

PC8 has more stringent requirements for cattle and pigs (5m v. 3m) and within a tighter timeframe (2022 v. 2023) The definition of 'dairy cattle' also includes aspects of dairy support cattle (as dry cows and replacements need to be excluded from waterways by 2022 as well) that under the NES do not require exclusion until 2025.

[3] PC8 Plan Notes provides clarification on continually flowing river: *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.*

[4] PC8 Plan Notes provides clarification on setback measurements: *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.*

<table>
<tr><td></td><td colspan="2">PC9 currently does not include controls for other stock types (which would have to comply with the NES Regs regardless).

The ORC may impose more restrictive rules, although in this case it is not clear why 5m is considered necessary.</td></tr>
<tr><td>SEDIMENT TRAPS</td><td colspan="2">PC8 provides a pathway to install a Sediment Trap as a permitted activity within any ephemeral or intermittently flowing river.</td></tr>
<tr><td></td><td colspan="2">TABLE 4 SEDIMENT TRAP REQUIREMENTS</td></tr>
<tr><td rowspan="9">The construction of a Sediment Trap will be permitted provided the following can be satisfied:

NOTE:
Sediment Trap is defined as: An excavated area in the bed of an ephemeral or intermittently flowing river designed and constructed solely for the purpose of slowing water velocity to allow sediments to drop from the water column.</td><td>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</td></tr>
<tr><td>The construction or maintenance does not result in destabilisation of any lawfully established structure or cause increased risk of flooding or erosion; and</td></tr>
<tr><td>The works do not occur in flowing water; and</td></tr>
<tr><td>The sediment trap cannot be accessed by livestock; and</td></tr>
<tr><td>Any build-up of sediment and other debris (including vegetation) within the sediment trap is removed as soon as practicable; and</td></tr>
<tr><td>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</td></tr>
<tr><td>No lawful take of water is adversely affected as a result of the disturbance; and</td></tr>
<tr><td>There is no change to the water level range or hydrological function of any Regionally Significant Wetland; and</td></tr>
<tr><td>There is no damage to fauna or New Zealand native flora in or on any Regionally Significant Wetland.</td></tr>
<tr><td></td><td colspan="2">Commentary:

The Plan does not provide any prescriptive requirements for the construction of sediment traps. The question that remains is whether the performance standards are practical to implement or not.</td></tr>
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