

ORC Omnibus Plan Change - Plan Change 8

Submission Reference no: 61

Bridget Irving/Derek McLachlan, Lower Waitaki Irrigation Company Limited



Submitter Type: Not specified

Source: Web Form

Overall Notes:

Clause

Are you a trade competitor?

Position

I am a person who would not gain an advantage in trade competition through this submission

Notes

Clause

What are you submitting on? You can submit on specific parts of Plan Change 8 or the whole plan change.

Position

I am submitting on the whole plan change.

Notes

See documents attached

Clause

What is your view on the Plan Change 8 or the specific parts listed above? Please select one, if you have multiple views state clearly in the notes box below.

Position

Multiple views

Notes

see documents attached

Clause

The reason(s) for my views are:

Notes

see documents attached

Clause

What decision would you like the Environment Court to make?

Notes

see documents attached

Clause

Do you wish to be heard in support of your submission? All submissions will be considered by the Environment Court. Please indicate if you wish to be heard in support of your submission.

Position

I wish to be heard in support of my submission

Notes

Clause

Please indicate your choice(s) below. If you do not indicate your intention to call experts, you can change your mind later and decide to call experts to give evidence in relation to your submission, provided you do so in time to meet any procedural direction the Environment Court might make.

Position

If others make a similar submission I/we would consider presenting a joint case with them at a hearing

Notes

Clause

Authority to act:

Position

I confirm I have the authority to sign this submission on behalf of the submitter

Notes

Submission on Omnibus Plan Change (Plan Change 8) to the Regional Plan: Water for Otago

Clause 5 First Schedule, Resource Management Act 1991

To: Otago Regional Council
By e-mail policy@orc.govt.nz

Name of submitter: Lower Waitaki Irrigation Company Limited - Richard Plunket (Chair)

Contact person: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Address for service: as above

- We could not gain an advantage in trade competition through this submission.
- The specific provisions of the proposal that our submission relates to and the decisions we seek from the Council are detailed on the following pages.
- We wish to be heard in support of our submission.
- If others made a similar submission, we **will** consider presenting a joint case with them at the hearing.

Signature on behalf of submitter



B Irving/D A McLachlan
Counsel for LWIC

Date: 17 August 2020

Submission on Plan Change 8 (PC8)

The Lower Waitaki Irrigation Company (**the submitter**) at present irrigates some 20,000 hectares covering 99% of the Lower Waitaki plains East of Black Point including 2,500 hectares on adjacent hill country. Current land use is made up of 81% Dairy and dairy support, 9% sheep and beef and 10% cropping & horticulture, a dramatic change in land use from the beginning of the Scheme in the 1970's. The scheme also supplies commercial water to local industries and domestic supply for the town of Oamaru.

The Lower Waitaki irrigation Scheme draws water from the Waitaki River at Black Point and distributes approximately 1.4 million m³ per day at peak operation to 200 shareholders via 9,000 hectares of border dyke and 11,000 hectares of spray irrigation. Water is delivered to the farm offtakes under gravity through a distribution network made up of 200 kilometres of open canals and 12.5 kilometres of siphons and pipework.

The company continue to invest money into the up grading of infrastructure including automated gate control systems and telemetered canal flow monitoring. Along with the recent construction of a 5-hectare balancing pond at Ferry Road, the Company is heavily focused on water efficiency whilst continuing to deliver a reliable supply of water to shareholders.

LWIC is supportive of measures to ensure land use activities do not give rise to unacceptable adverse effects on water quality. However, any regime must be efficient and effective so as to avoid unnecessary regulatory costs. PC8 largely duplicates the recently released National Environmental Standards for Freshwater and Stock Exclusion Regulations. To the extent that this occurs it LWIC submit that the PC8 is not required and only serves to create regulatory duplication and confusion. This is of particular concern given that ORC foreshadow a raft of further changes in the future. In light of that the extent of changes and controls created through PC8 should be kept to a minimum.

LWIC are also concerned that some of the analysis in the section 32 report has taken place based on incorrect assumptions. Particularly that granting consents pursuant to PC8 is likely to create certainty for consent holders. This may be true to an extent, but not where new plans create different rules or frameworks. In such cases people that have obtained consent may still be required to obtain further consents. As such the section 32 report has potentially underestimated the costs of PC8 and/or considered it has benefits which do not exist.

The submitter seeks the following decisions from the Otago Regional Council:

- 1.1 that the decisions sought in **Annexure A** to this submission be accepted; and/or
- 1.2 alternative amendments to the provisions of PC8 to address the substance of the concerns raised in this submission; and
- 1.3 all consequential amendments required to address the concerns raised in this submission and ensure a coherent planning document.

ANNEXURE A – REASONS FOR SUBMISSION AND DECISIONS SOUGHT BY LOWER WAITAKI IRRIGATION COMPANY LIMITED

(1) The specific provisions of Proposed Plan Change 8 (PC8) that the submission relates to are:		(2) Our submission is that:	(3) We seek the following decisions from the Otago Regional Council (Note: amendments sought to the text of PC8 are shown in tracked changes, with additions shown in <u>underline</u> and deletions shown in strikethrough).
Sub-section/ Point	Oppose/ support (in part or full)	Reasons	
Policy 7.D.5	Oppose in part	The proposed amendment to 7.D.5(g) does not allow account to be taken of the value of investment in new infrastructure that may be required. Both aspects are considered relevant, particularly with respect to duration of proposed consents	Either remove 'existing' from 7.D.5(g) or amend to include consideration of both 'existing and new infrastructure'.
Policy 7.D.6	Oppose	A 10 year duration does not provide sufficient certainty for landowners to obtain consents and invest in the required improvements to storage and discharge infrastructure. The section 32 analysis does not provide an adequate assessment of the need for such a term and/or whether it is efficient, effective and the most appropriate way of achieving the objectives of the Plan.	Remove Policy 7.D.6.(a).
Policy 7.D.7	Support in full	The submitter supports this policy as drafted. Requiring sufficient storage, and for systems to be designed and installed with best practice is inherent in ensuring that environmental effects are managed and minimised.	
Policy 7.D.8	Support in full	The submitter supports this policy as drafted. Requiring sufficient storage, and for systems to be designed and installed with best practice is inherent in ensuring that environmental effects are managed and minimised.	
Policy 7.D.9	Oppose	Further consideration of this policy is required in light of the SER and NES to ensure that there is not unnecessary regulatory duplication and inconsistency between the various statutory documents.	Delete policy 7.D.9 or amend to be consistent with the SER/NES
Rule 12C.0.4	Oppose in part	Condition (v) of Rule 12C.0.4 - the separation distance for the application of animal waste to land from waterbodies and bores is excessive. The national standard for this (from other regional council planning documents) is 20 metres. Condition (vii) of Rule 12C.0.4 should not be required if it is prohibited for animal waste to be discharged to any lake, river, or regionally significant wetland, and any drain of water races that discharges to any of these, or be discharged to land in a manner that results in overland flow. The standards specified in this condition are appropriate for discharges to surface water bodies and are not required for such a rule. It is also noted that the coastal marine area should be included more consistently throughout the rule. There is also one matter that need to be included. It is common practice for animal waste to be discharged with irrigation water (injection into the irrigation system). Where the irrigation water source is from a bore or gallery, backflow prevention is required in this instance to prevent.	Amend Rule 12C.0.4 to read: <u><i>The discharge of animal waste from an animal waste system:</i></u> (i) <u><i>To any lake, river, Regionally Significant Wetland or coastal marine area;</i></u> <u><i>or</i></u> (ii) <u><i>To any drain or water race that goes to a lake, river, Regionally Significant Wetland or coastal marine area; or</i></u> (iii) <u><i>To the bed of any lake, river or Regionally Significant Wetland; or</i></u> (iv) <u><i>To any bore or soak hole; or</i></u> (v) <u><i>To land within 20 metres of: (a) Any lake, river, Regionally Significant Wetland, or the coastal marine area; or (b) Any bore or soak hole; or</i></u> (vi) <u><i>To land in a manner that results in ponding or overland flow to water, including to frozen land; or</i></u> (vii) <u><i>Backflow prevention is not installed, and animal waste is discharged to land with irrigation water supplied from a bore or gallery.</i></u> <u><i>is a prohibited activity.</i></u>

Rule 12.C.2.5	Oppose in Part	<p>Rule 12.C.2.5 provides a Restricted Discretionary consenting pathway for discharges of animal waste (or water containing animal waste) from an animal waste system. The submitter agrees and supports the matters of discretion identified within Rules 12.C.2.5(i)-(vii), however, given the intended life span of PC8, it is appropriate for this to be processed as a controlled activity consent.</p> <p>The submitted does not wish to amend the relevant matters of discretion, as these provide the mechanism for Council to ensure implementation of best practice methodology. Amending Rule 12.C.2.5 to a controlled activity, will retain the same level of effectiveness, but provide greater certainty to landowners that consent will be granted for them to continue operating during the lifetime of PC8.</p>	<p>Amend Rule 12.C.2.5 as follows:</p> <p><i>The discharge of animal waste, or water containing animal waste, from an animal waste system onto or into land is a restricted-discretionary <u>controlled activity</u> provided:</i></p> <p><i>[assessment matters remain unchanged]</i></p>
Rule 14.7.1.1	Oppose in part	<p>Many of the conditions of this rule are onerous for the activity, for example, requiring a leak detection system for a pond with a synthetic liner.</p> <p>The rule as drafted also fails to take into account the location of the animal waste systems on farm and it is the submitters view that this is an important consideration for a permitted activity rule.</p> <p>The submitter agrees and supports the fact that control is needed on the animal waste systems and has been actively working with its shareholders in this regard. However, any rule needs to be practical, enforceable and required in order to ensure the potential environmental effects are managed and minimised.</p> <p>With reference to consistency with other regional councils, and the direction of the newly gazetted freshwater reforms, a re-worked rule is proposed.</p>	<p>Amend Rule 14.7.1.1 to read:</p> <p><i><u>The use of land for the use and maintenance of an animal waste system (including storage pond(s) and ancillary structures) that was constructed prior to 25 March 2020 is a permitted activity providing:</u></i></p> <p><i><u>(a) The storage pond is sized in accordance with the Dairy Effluent Storage Calculator; and</u></i></p> <p><i><u>(b) The storage pond is either: (i) Fully lined with an impermeable synthetic liner; or (ii) Of impervious concrete construction; or (iii) An above-ground tank; or (iv) Certified by a Suitably Qualified Person within the last five years as: (1) Structurally sound and without any visual defects; and (2) Meeting the relevant pond drop test criteria in Schedule 18; and (3) and a written statement or certificate has been provided to the Regional Council; and</u></i></p> <p><i><u>(c) The land used for the animal waste system (including storage pond(s) and ancillary structures) is not: (i) within 20 metres of any surface water body, a bore used for water abstraction, or the coastal marine area; or (ii) within 50 metres of the boundary of a property; or (iii) within 90 metres of any water supply used for human consumption; or (iv) above sub-surface drainage; and</u></i></p> <p><i><u>(d) The operation, management and maintenance of the animal waste system is the subject of a Farm Environment Plan.</u></i></p>
Rule 14.7.2	Oppose in part	<p>For the same reasons outlined for Rules 12C.0.4 and 14.7.1.1, this rule is opposed in part and a re-worked rule is proposed. For further explanation, many of the matters for consideration are engineering considerations that must be taken into account in the condition of the rule requiring the design of the animal waste system to be in accordance with IPENZ practice notes 21 and 27 and are therefore unnecessary duplication. .</p>	<p>Amend Rule 14.7.2 to read:</p> <p><i><u>The use of land for the construction, use and maintenance of an animal waste system (including storage pond(s) and ancillary structures) constructed after 25 March 2020 that does not meet one or more of the conditions of Rule 14.7.1 is a controlled activity provided the following conditions are met:</u></i></p> <p><i><u>(a) The design of the animal waste system has been certified as being in accordance with IPENZ Practice Note 21 and IPENZ Practice Note 27;</u></i></p> <p><i><u>In granting any resource consent under this rule, the Otago Regional Council will restrict the exercise of its control to the following:</u></i></p>

			<p><u>(a) Managing 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</u></p> <p><u>(b) Location of the animal waste system; and</u></p> <p><u>(c) Measures to avoid, remedy or mitigate adverse effects on Kāi Tahu cultural and spiritual beliefs, values and uses.</u></p>
Rule 14.7.3	Support	This rule is supported provided that the submitters changes to rules 14.7.1 and 14.7.2 are adopted.	
Schedule 18	Oppose in part	The requirements of the storage pond drop test are onerous, for example, requiring testing over a minimum period of 48 hours, and for continuous readings to be taken. The proposed criteria are also inconsistent with best practice (1 mm per day).	<p>Amend Schedule 18 to read:</p> <p><u>This schedule outlines the requirements for undertaking pond drop tests on storage ponds that are part of an animal waste system and the pass criteria for drop test results.</u></p> <p><u>Requirements</u></p> <ul style="list-style-type: none"> • <u>Testing is undertaken over a minimum period of 24 hours.</u> • <u>Testing recording equipment is to be accurate to 1 mm or less.</u> • <u>Any change in pond fluid level over the test period needs to be accounted for.</u> • <u>Ponds must be at or over 75% design depth before a test can be undertaken.</u> • <u>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.</u> • <u>The pond surface is not frozen during any part of the testing.</u> • <u>The wind speed is at 10 metres per second or less for the entire duration of the test.</u> • <u>Evaporation over the duration of the test must be accounted.</u> <p><u>Criteria</u></p> <p><u>When tested in accordance with the requirements above, the pond is considered to meet the pond drop test criteria if the maximum pond level drop does not exceed one millimetre per day.</u></p>
Schedule 19A	Oppose in part	<p>There is an error in the calculation of the daily waste volume. As the cows milked and washdown use are all specified in “per day”, then the additional multiplier for the number of milkings per day is not needed.</p> <p>The submitter is also concerned about the use of the arbitrary figure of 50 L/cow/day for washdown. Washdown use varies greatly between sheds and any figure used should be based off actual use.</p>	<p>Amend the daily waste volume calculation to read:</p> <p><u>Daily waste volume (m3) = maximum number of cows milked per day x washdown water used per cow per day (m3)</u></p> <p><u>Where the washdown per cow is expressed in L/cow/day, divide by 1,000 for m3.</u></p>
Rule 14.6.1	Oppose in full	The National Environmental Standards for Freshwater Management 2020 (NES) comes into effect on 3 September 2020. Intensive grazing standards are contained within the NES and therefore, Rule 14.6.1 creates a double consenting framework. At the very least it needs to align with the NES unless there is robust justification for not doing so or be deleted in its entirety as the NES applies	<p>Delete Rule 14.6.1 in its entirety or align with the NES rules on Intensive Winter Grazing.</p> <p>Any definition within PC8 is amended to be consistent with the NES, or otherwise deleted.</p>

		<p>anyway.</p> <p>As some examples (but not limited to):</p> <ul style="list-style-type: none"> i. The requirement for a 10 metres setback (from any intensively grazed area and any waterbody) is much larger than the 5 metre setback required by the NES. The proposed 10 metres setback takes out more productive land with no environmental justification for doing so. ii. The NES has a slope threshold, whereas, Rule 14.6.1 manages runoff by use of Critical Source Areas. iii. The NES and PC8 have different criteria on the maximum area of intensive grazing. PC8 adopts a 100ha or 10% (whichever is lesser), whereas NES adopts a 50ha or 10% (whichever is larger). While the spatial controls within PC8 are more restrictive, it remains unclear how the additional factors such as slope (which is only found within the NES) will be applied on a site specific basis. This may result in inconsistencies. iv. The NES introduces a new permitted activity pathway for intensive winter grazing where adverse effects have been assessed through a Certified Freshwater Certificate to be no greater than the effects otherwise generated by the spatial/ slope restrictions. Such flexibility is not imported into PC8. v. The NES also has additional restrictions relating to the use of 'new' land for intensive winter grazing. PC8 does not include such restrictions which may result in inconsistencies in the application of spatial calculations. vi. PC8 does not adopt the definition of pugging (or incorporate controls relating to pugging) or sacrifice paddocks. Again, this may also result in inconsistencies in the application of spatial calculations. vii. The NES and PC8 adopt different definitions of Intensive Winter Grazing. The definition of intensive winter within the NES introduces an additional timing requirement. viii. Intensive Winter Grazing that does not comply with permitted activity standards within the NES will result in either RD or D activity status (Regulations 27-30). Under PC8 breach of Rule 14.6.1 will result in a D activity status. The matters of discretion with Regulations (27-30) and PC8 may result inconsistent treatment of relevant matters. 	<p>The activity status of intensive winter grazing within PC8, and any matters of discretion (whether RD or D) shall be consistent with NES.</p>
--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------

Rule 13.5.1.8A	Oppose in full	<p>The Stock Exclusion Regulations (SER) and National Environmental Standards (NES) come into effect on 3 September 2020. Stock exclusion requirements are therefore contained within Rule 13.5.1.8A are inconsistent with these regulations. At the very least it needs to align with the SER/NES unless there is robust justification for not doing so or be deleted in its entirety as the SER/NES apply anyway.</p> <p>As some examples (but not limited to);</p> <ul style="list-style-type: none"> i. The requirement for a 5 metres setback is much larger than the 3 metre setback required by the stock exclusion regulations. The proposed 5 metres setback takes out more productive land with no environmental justification for doing so. The economic impacts between 3m and 5m were considered in the Regulatory Impact Analysis, <i>Action for Healthy Waterways Part II: Detailed Analysis</i> (prepared for the NES).¹ ii. PC8 introduces a requirement to exclude Cattle and pigs from beds and lakes from 2022. The Stock Exclusion Regulations Require compliance by 1 July 2023. iii. The definition of dairy cattle is inconsistent between NES and PC8. For example, the NES does not include weaned calves but PC8 does. iv. PC8 only addresses dairy cattle and pigs, whereas the NES includes restrictions on Dairy Support Cattle; Beef Cattle and Deer. The SER exclusions apply to all new pastoral systems (including beef cattle and Deer). v. The setback requirements within PC8 (in particular clarification within Note 1 and 2 below rule 13.5.1.8A) are likely to cause inconsistencies with the definition of 'wide river' and '3 metre-setback' definitions within the SER. We outline below: <ul style="list-style-type: none"> a. PC8 provides clarification on how to interpret 'continually flowing river' within Note 1 (below Rule 13.5.1.8A(b)). The Note provides that a river is considered wider than 1 metre if at any point within a landholding the river is wider than 1 metre at its annual fullest flow without overtopping its banks. b. PC8 provides clarification on how setbacks are to be measured within Note 2 (below Rule 13.5.1.8A(b)(ii)) as measured from 'the edge of the wetted bed of a lake or river wider than 1m or regionally significant wetland and are averaged across the landholding). 	Delete Rule 13.5.1.8A in its entirety or align with the NES/SER rules on Intensive Winter Grazing.
----------------	----------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------

¹ Journeaux, P. May 2019. Modelling of Mitigation Strategies on Farm Profitability: Testing Ag Package Regulations on-Farm.

		<p>c. The SER adopts a definition of 'Wide River' which relies on 'land parcel' rather than 'landholding'.</p> <p>d. The SER applies a 3-metre setback as defined by Regulation 3 in conjunction with the definition of 'Wide River'.</p> <p>vi. The SER applies a retrospective regulation to permit existing fences that effectively exclude stock from waterways. PC8 does not have equivalent provisions.</p>	
Definition – 'Critical source area'	Oppose	The proposed definition is unhelpfully vague and uncertain.	Delete or amend to include clear parameters that enable plan users to determine when there is a critical source area or not.
Definition – Intensive grazing	Oppose	The definition is inconsistent with the definition of intensive winter grazing in the NES. It is not clear why or whether it is intended that the activities are different	Delete
Definition – Dairy Cattle	Oppose	The definition is inconsistent with the definition of Dairy cattle in the NES. It is not clear why or whether it intended that the activities are different	Delete