Otago Regional Council

ORC RECOMMENDATION REPORT

Consent No: RM25.407.01

Prepared for: Independent Decision Maker

Prepared by: Principal Consents Planner

Date: 28 October 2026

Subject: Review of Consent Conditions under Section 128 of the Resource Management Act 1991 for Consent RM25.407.01

1. Purpose

The purpose of this report is to provide a recommendation to an independent decision maker on whether conditions on discharge permit RM25.407.01 (the Consent) for SJ Allen Holdings Ltd (the Consent Holder) to discharge waste activated sludge, grease trap waste, mud tank/sump waste, and winery wastewater to land should be reviewed by Otago Regional Council (Council) under Section 128 of the Resource Management Act 1991 (the Act).

2. Executive summary

Council issued Discharge Permit RM25.407.01 to the Consent Holder on 28 January 2026 to discharge waste activated sludge (WAS), grease trap type waste, mud tank/sump type waste, and winery wastewater to land (the activity) at a site in Lauder, Central Otago.

After the granting of consent, concerns were raised with Council by members of the public. The concerns raised the possibility that the Consent Holder's application for resource consent (the application) had not accurately described the site or the receiving environment and therefore had not identified or assessed all the relevant actual or potential adverse effects arising from the consented activity.

In response, Council has considered whether grounds exist for a review of the conditions of the consent under section 128 of the Act, and if so, whether the Council should exercise its discretion to initiate a review. I note that the conditions of consent include a 'review condition' (Condition 29), as provided for in section 128 of the Act, which has also specifically been considered.

To support Council's consideration of this matter and to address the concerns raised by the public, independent expert technical advice has been sought from E3 Scientific Ltd (E3) and Irricon Ltd (Irricon) to advise on groundwater and land management matters respectively.

The Act places the onus on an Applicant to describe a proposed activity and assess its effects on the environment in an application. Council must therefore be able to reasonably rely upon the information in an application. Council has reached the view that there are inaccuracies in the Consent Holder's application and as a result, the actual or potential adverse effects on the environment arising from the activity were not adequately identified and assessed in the application. These inaccuracies materially influenced the Council's decision on the application.

Council's assessment has identified specific concerns about nitrogen loading and crop uptake, groundwater contamination, surface water quality, monitoring adequacy and operational safeguards. An awareness of these issues would have materially influenced Council's decision and consent conditions imposed.

Appropriate management of the actual and potential adverse effects of the consented activity would necessitate changes to conditions that would require the Consent Holder to adopt the best practicable option to remove or reduce any adverse effects on the environment and would allow Council to appropriately monitor the activity.

Therefore, this report recommends initiating a review of consent conditions under the following provisions of section 128 of the Act:

1. s.128(1)(a)(ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
2. s.128(1)(a)(iii) - for any other purpose specified in the consent (by reference to condition 29 to the consent, which is the 'review condition'); or
3. s.128(1)(c) - if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

Table 2 of this memorandum identifies the conditions recommended for review and those recommended to remain unchanged.

3. Background

Consent Holder:	SJ Allen Holdings Limited
Site address or location:	Lauder, approximately 1 kilometre (km) northeast from the intersection of Muddy Creek Road and Brown Road
Legal descriptions of the site:	Section 25 and Section 47 Block V Lauder Survey District (RT OT10B/341) Section 20 Block V Lauder Survey District (RT OT392/70)

Map reference (NZTM 2000): E1336545 N5011220 (approximate site midpoint)

Table 1. Consent Details:

Consent number	Purpose	Date granted	Expiry date
RM25.407.01	To discharge waste activated sludge, grease trap waste, mud tank/sump waste, and winery wastewater to land for the purpose of disposing of waste from various sources around Central Otago and Queenstown-Lakes Districts.	28 January 2026	28 January 2041

The site is located in Lauder, Central Otago (Figures 1 and 2) and is legally described as Section 25 and Section 47 Block V Lauder Survey District (RT OT10B/341) and Section 20 Block V Lauder Survey District (RT OT392/70).

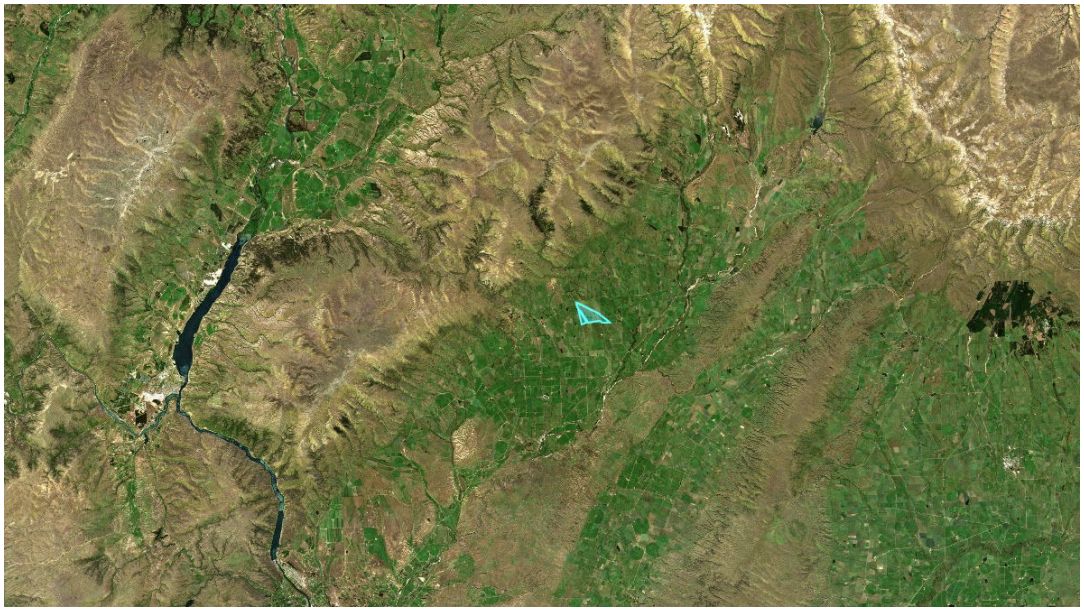


Figure 1. Location of the site (Source: Otago Maps)



Figure 2. Location of the site and immediately surrounding area (Source: Otago Maps)

The site and the consented activity are described in the Consent Holder's application for resource consent prepared by Lowe Environmental Impact Ltd dated 21 August 2025, including the supporting technical documents and further information provided in response to the Council's requests for information under section 92 of the Act.

The Council's assessment of the Consent Holder's application was undertaken in line with the requirements of the Act and was closely informed by the application, including the supporting technical material, a technical audit undertaken by Council's internal Land and Soil Scientist, the Consent Holder's responses to Council's requests for further information under section 92 of the Act, and the planning analysis carried out by the Council's reporting officer.

The Consent (Appendix 4) was issued subject to 29 conditions, which are also summarized in Table 1 of this report. Conditions within the consent are grouped into three categories:

- Conditions 1 – 10 which specify the nature and scope of the consented activity;
- Conditions 11 – 26 which specify the monitoring and reporting requirements for the consented activity;
- Conditions 27 – 29 which are general conditions, including a condition providing for the review of the consent under section 128 of the Act.

Subsequent to granting of consent, concerns about the consented activity were raised by members of the public. The concerns raised the possibility that the application had not accurately described the site or the receiving environment and therefore had not identified or assessed all relevant actual or potential adverse effects arising from the activity. The concerns raised related to the following matters:

- Odour and / or dust;
- Groundwater quality;
- A permitted water take at [redacted] (for potable and stockwater supply) not identified in the application documents;
- Crop suitability in relation to assumed Nitrogen uptake;
- Operational matters relating to slope, stockpiling, hardstand areas and a water race; and
- Adequacy of the Operations and Maintenance Manual.

Council subsequently initiated an investigation into whether a review could be undertaken under section 128 of the Act. Council's Compliance Team have also been undertaking proactive monitoring of the consent in response to the public's concerns.

Members of the public have also suggested that additional consents should have been sought. I note that a review under section 128 of the Act cannot require the consent holder to seek additional resource consents.

Subsequent to the granting of consent, and as required by conditions of the consent, the Consent Holder has provided the following documents that provide additional details on the activity:

- Operations and Management Manual - Version 01 (OMM-V1) dated May 2026.

Condition 11 requires the consent holder to prepare and submit an Operations and Management Manual to be certified by the Council and thereafter complied with by the Consent Holder. OMM-V1 was submitted to Council for certification on 4 May 2026. Council had it audited and the audit recommended changes. The Applicant made changes and resubmitted an updated version (OMM-V2) for certification. However, Council considered further updates were necessary. The changes included additional measures to address concerns about potential adverse effects on the permitted water take at [redacted].

- Operations and Management Manual - Version 03 (the OMM) dated June 2026. The OMM was submitted to Council for certification on 23 June 2026 and certified by Council.
- Environmental Management Plan and Nutrient Management Plan (EMP/NMP) dated September 2026. Condition 24(a) requires the Consent Holder to prepare and maintain the EMP / NMP (but does not provide for Council certification).

Also as required by conditions of the consent, the Consent Holder has also provided the following monitoring results:

- Baseline groundwater monitoring results (4 & 14 May 2026)
- Initial groundwater monitoring results (30 June & 4 Aug 2026)
- Waste Activated Sludge (WAS) sampling results (14 May 2026)
- Waste Activated Sludge (WAS) sampling results (2 Oct 2026)

The Consent includes a review condition (Condition 29), which enables Council to review the conditions on the consent on a variety of grounds. Condition 29 is set out in full in Section 5 of this report.

Council has considered whether grounds exist for a review of the conditions of the Consent under section 128 of the Act, and if so, whether the Council should exercise its discretion to initiate a review.

To support Council's consideration of this matter, independent expert advice has been sought from:

- Nicole Freeman, Environmental Scientist (B.Sc (hons) Soil Science) of E3; and
- Keri Johnston, Technical Director / Natural Resources Engineer (B.Eng (hons) Natural Resources) of Irricon.

Ms Freeman provided expert advice in relation to groundwater while Ms Johnston provided expert advice on land management practices. The reports from E3 and Irricon are attached to this report as Appendices 1 and 2 and are adopted for the purpose of this report.

To inform, their assessment, the following documents were provided by Council to E3 and Irricon:

- Application and Assessment of Effects prepared by Lowe Environmental Ltd dated August 2025.
- Council audit of the application dated 28 August 2025 and associated correspondence.
- Response (including appendices) from Lowe Environmental Impact dated 17 October 2025 to Council's request for further information.

- Council audit of the application following receipt of additional information dated 16 January 2025 and associated correspondence.
- Overseer Farm Impact Report (printed 10 Aug 2026) (Irricon only).
- Volunteered conditions dated 15 January 2026.
- Baseline groundwater monitoring results and sampling methodologies (4 & 14 May 2026).
- Waste Activated Sludge (WAS) sampling results (14 May 2026).
- Certified Operations and Maintenance Manual dated June 2026.
- Technical Review of the OMM prepared by Babbage Ltd dated 11 June 2026.
- Groundwater monitoring results (30 June 2026).
- Groundwater monitoring results (4 Aug 2026).
- Environmental Management Plan and Nutrient Management Plan (EMP/NMP) dated September 2026.

4. Site Visit

A site visit was undertaken on Friday 16 October 2026 between approximately 11:30 am and 1:45 pm by the reporting officer, accompanied by Keri Johnston of Irricon. Nicole Freeman of E3, Chris McSweeney (Team Leader Compliance) and Shannen Barns (Senior Environmental Officer) were also present for the site visit but had arrived earlier than the reporting officer and Ms Johnston.

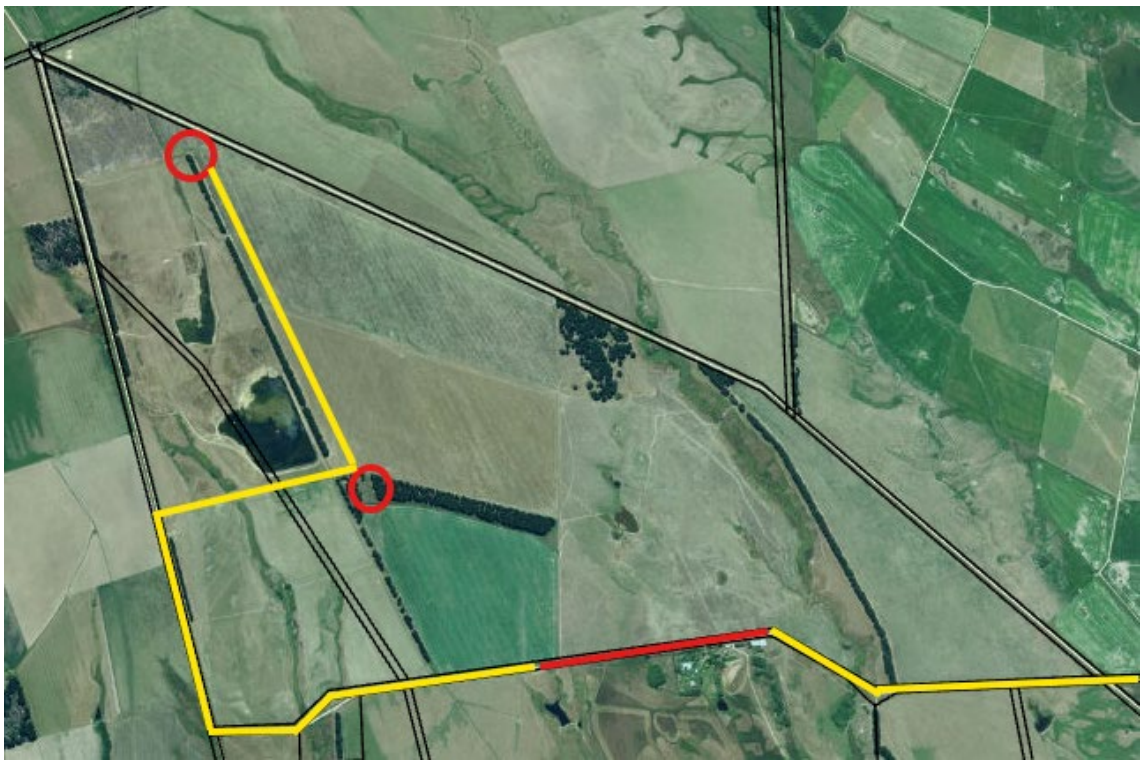


Figure 3. Site locations visited by the reporting officer during site visit (yellow indicates areas driven and red indicates areas walked) (Source: Otago Maps)

Weather conditions during the site visit were cold and overcast with little to no wind. The Consent Holder was not discharging WAS or any other waste at the time of the site visit. Council's Compliance Team indicated that, to the best of their knowledge, waste had been discharged to the site on either the Tuesday (13th October) or Wednesday (14th October) prior to the site visit. During the visit, the reporting officer sighted the areas indicated in Figure 3, being:

- The existing monitoring bore locations on the site, and the buildings and spring on [redacted] adjacent to the site.
- The main yard containing spreading and discing equipment toward the centre of the site.
- The current discharge area that has recently been sown in oats in the north of the site.
- The periphery of portions of the site.

5. Statutory Grounds for a Review under Section 128

Section 128 of the Act provides that the Council may (but is not required to) review the conditions of a consent on several grounds. The following grounds are potentially relevant here:

Section 128 RMA

s.128(1)(a) - at any time or times specified for that purpose in the consent for any of the following purposes:

> (i) - to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage;
>
> (ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
>
> (iii) - for any other purpose specified in the consent; or

s.128(1)(aa) - if the consent authority determines that the holder of the consent has contravened a condition of the consent; or

s.128(1)(c) - if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

Review condition on RM 25.407.01

In terms of s128(1)(a), Condition 29 of Discharge Permit RM25.407.01 states:

The Consent Authority may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the Consent Holder of its intention to review the conditions of this consent during the period of three months either side of the date of granting of this consent each year, or within two months of any enforcement action taken by the Consent

Authority in relation to the exercise of this consent, or on receiving monitoring results, for the purpose of:

a) *Determining whether the conditions of this consent are adequate to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage, or which becomes evident after the date of commencement of the consent;*

b) *Ensuring the conditions of this consent are consistent with any National Environmental Standards, relevant regional plans, and/or the Otago Regional Policy Statement;*

c) *Reviewing the frequency of monitoring or reporting required under this consent;*

d) *Amending the monitoring programme set out in accordance with Conditions of this consent; or*

e) *Requiring the Consent Holder to adopt the best practicable option, in order to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.*

It is not within the scope of a s128 review to consider whether additional consents may be required to lawfully undertake an activity, or to assess whether it would be appropriate to either grant or decline any such consents.

6. Council's Scope of Consideration

The purpose of this assessment is to determine whether grounds exist to initiate a review of the conditions of Discharge Permit RM25.407.01 under section 128 of Act and Condition 29 of the Consent, and if there are grounds that are made out, whether the Council should exercise its discretion to initiate a review.

The Council's assessment has considered the conditions of consent as imposed. As part of the assessment, the measures contained within the OMM, certified in accordance with Condition 11 of the consent, were also considered. Particular consideration has been given to measures specified in section 3.2.5 of the OMM were intended to address potential effects on a permitted water take at [redacted], which include:

- A permanent 50 m exclusion setback from the water take will be maintained, within which no WAS (winery wastewater/treated waste) application will occur, consistent with existing surface water setback conditions.
- WAS discharge will initially commence more than 400 metres (m) from the surface water take and will remain beyond this distance for the first year of application.
- A 200 m water take setback zone will be implemented for the first 5 years following commencement of WAS application.
- After 5 years, any WAS application within 200 m will only occur where there is a soil moisture deficit in the top 50 mm of soil, as assessed by the feel and appearance method (i.e. the soil is not wet).
- After 5 years, no WAS application within 200 m will occur during the months of May to August.

- Land use within the 200 m setback zone will be limited to cut-and-carry or sheep grazing only.
- A piezometer (groundwater monitoring bore BH-002) has been installed upstream of the surface water take. Quarterly monitoring of BH-002 will be undertaken to assess groundwater quality on an ongoing basis.

The Council asked Ms Johnston of Irricon and Ms Freeman of E3 to consider the following specific matters:

1. Taking into account the nature of the activity and environmental characteristics of the site, is it practicable for the activity be undertaken in accordance with conditions 1 – 10 and the OMM, including?

   In relation to Nitrogen management in Conditions 2 (and 11(c)):

   i. can a crop suitable for this purpose reliably be established on this site?

   ii. is a crop likely to be able to take up the nitrogen resulting from discharges to this site on an annual basis?

2. Do the current measures reflected in conditions 2 – 10 and the OMM adequately avoid, remedy or mitigate the actual or potential adverse effects of the activity on the environment as described in the Application? If not, what other measures are required?
3. Do the current measures reflected in conditions 2 – 10 and the OMM adequately avoid, remedy or mitigate the actual or potential adverse effects of the activity on the nearby permitted water take on at [redacted]. If not, what other measures are required?
4. Are current monitoring conditions (Conditions 11 – 26) adequate to accurately monitor the actual or potential adverse effects of the activity on the environment, including groundwater generally, and the nearby permitted water take on at [redacted].
5. Would any mitigation measures detailed in the approved OMM be more appropriate as conditions of the consent?
6. As noted above, the scope of the review process does not extend to requiring the consent holder to obtain additional resource consents (such as for discharges to air). That said, please consider and make any comment on the feasibility of the applicant complying with condition 28(d) in respect of odour. Please also consider and make any comment on potential dust effects (noting there are no specific conditions in respect of dust).
7. Members of the public have raised other specific matters. Could you please comment specifically on:

   i. Whether any additional measures, such as a setback, are necessary to mitigate any potential adverse effect on the water race through the site?

   ii. Whether a hardstand area for depositing WAS (to then spread onto receiving land) is necessary to mitigate any potential adverse effect on the environment?

   iii. Whether the OMM adequately addresses any adverse effect on the environment from the discharge to land with a slope of more than 15 degrees. The Council notes that the application indicates that there will be no discharges to land with a slope

of more than 15%, but the OMM does not specifically restate that direct limitation (refer to section 3.2.7 in the OMM)?

If you are unable to address questions (1 – 7) because there is insufficient information in the application, please state what information is required, with an explanation of the reasons.

Council's Compliance Team, who have been monitoring compliance with the conditions of consent under the existing monitoring framework were asked to consider the following specific questions:

1. Are the current conditions of RM25.407.01 clear, certain and enforceable?
2. Are the requirements of the OMM clear, certain, enforceable, and consistent with the conditions of the consent?
3. To date, has the applicant been able to achieve compliance with all conditions of their consent? If not, please specify the reasons for non-compliance.
4. Would any mitigation measures detailed in the approved OMM be more appropriate as conditions of the consent?

7. Findings

The findings below address the technical questions set out in Section 6. Each topic presents the expert advice, the reporting officer's conclusion and the review grounds considered relevant. Table 2 in Section 8 then brings those findings together at the level of individual consent conditions. The recommendation in Section 9 outlines the reporting officer's view on whether a review should be initiated.

I note that this report recommends whether or not a review should be undertaken under section 128 of the Act. It is not within the scope of this report to comment on any requirements or specific wording of any potential conditions that may be determined to be necessary as the result of a review.

1. Taking into account the nature of the activity and environmental characteristics of the site, is it practicable for the activity to be undertaken in accordance with conditions 1 – 10 and the OMM, including;

   In relation to Nitrogen management in Conditions 2 (and 11(c));

   i. can a crop suitable for this purpose reliably be established on this site?

   ii. is a crop likely to be able to take up the nitrogen resulting from discharges to this site on an annual basis?

The audit provided by Irricon states that the activity is practicable in principle but highlights several areas of concern about the various aspects of the consented activity.

Ms Johnston highlights several concerns about assumptions made in the application that may not be realistic for the site. Firstly, she notes concerns that the site's variable soils and climate may affect crop establishment and nitrogen uptake in a manner that has not been anticipated by the Applicant in their application for resource consent, stating:

> *"Central Otago's cold winters and short shoulder seasons restrict plant growth and nitrogen demand for part of the year. Where waste is applied before a crop is actively growing, or where establishment is delayed by cold, wet or dry conditions, nitrogen may be mineralised before the crop can use it. Imperfectly drained or slowly permeable soils may further restrict root growth and even access to the site, while increasing the risk of ponding, runoff or nitrogen loss. Soils also vary across the site; the excavations inspected near the current discharge area showed a gravellier profile than expected, which is likely to hold less water and drain more freely. A suitable crop can therefore be established, but reliable establishment and effective uptake cannot be assumed solely because land is available for planting."*

Secondly, Ms Johnston also points out that the currently consented 600 kg N/ha limit (with a 3-year return period) mirrors the three-year averaging approach in the NZ Biosolids Guidelines (NZWWA, 2003) but states;

> *"However, that approach was developed for stabilised biosolids, of which only about 10% of total nitrogen is expected to become available each year. WAS is not stabilised. The applicant assumes 40% first-year release, or about 240 kg N/ha from a single 600 kg N/ha application. That is well above the likely uptake of a dryland oat crop, which is in the order of 100–150 kg N/ha."*

Ms Johnston indicates that in her view a single application of 300 kg N/ha would release about 120 kg N/ha in the first year, which would be more closely matched to realistic crop demand. Ms Johnston suggests that two applications of up to 300 kg N/ha within any three-year period (rather than one application of up to 600 kg N/ha with a 3-year return period) would be more appropriate as it would halve the peak nitrogen release, which could more realistically be taken up by crops. Ms Johnston caveats this by noting that an application rate would still need to be set for each application block based on specific criteria listed in her report.

Additionally, Ms Johnston notes several inconsistencies in the input parameters used within the Overseer model itself and consequently in the outputs, stating;

> *"A number of Overseer reports and outputs have been supplied, including different baseline and proposed scenarios. These do not present a single, consistent description of the modelled system."*

And;

> *"These results differ from other supplied outputs, including results that remove irrigation and report different farm-scale losses, drainage and concentrations. The differences are not minor presentation issues; they arise from assumptions about irrigation, soil water storage, crop yield, drainage and the timing and availability of waste nitrogen, and materially affect the predicted outcome."*

Ms Johnston in her report notes various assumptions in the model that are either unsubstantiated (e.g., 10 t DM/ha oat yield), inconsistent with information obtained from the site visit (e.g., soil type, irrigation vs no irrigation) or inconsistent within the model (e.g., higher plant-available water storage of 79 mm vs 25 mm). With respect to these assumptions regarding crop yield and plant-available water storage, Ms Johnston's report states:

> *"Under dryland conditions, with annual rainfall of approximately 510–545 mm and the gravellier soil profile observed near the current discharge area, both assumptions are likely to be optimistic. If crop yield is lower, or the soil holds less water than modelled, predicted crop uptake will be overstated and predicted drainage understated."*

Ms Johnston suggests that the assumed yield and nitrogen removal should be reviewed for dryland conditions. However, she also notes that if irrigation is reintroduced on any block:

> *"the block-specific assessment should be updated and irrigation included in the soil-water balance, because application when the profile is already wet may initiate drainage and mobilise accumulated nitrate."*

Ms Johnston points out that even if this yield is achieved, nitrogen removal depends on both the nitrogen concentration of the harvested material and whether that material leaves the site.

> *"Nitrogen in roots, stubble or an unharvested crop may return to the soil during decomposition, while grazing returns a substantial proportion of consumed nitrogen to the block. Waste nitrogen also becomes plant-available at different rates, so repeated applications can create a residual soil nitrogen pool where crop yield or nitrogen removal is lower than assumed. Linking the discharge rate to demonstrated crop demand and removal provides a clearer basis for avoiding nitrogen accumulation and loss."*

Ms Johnston has recommended changes to the activity that could be reflected in conditions to address these matters. These are detailed in her report.

The audit by E3 raises concerns with the practical implementation of the consent conditions, rather than raising concerns about the underlying assumptions made in the application for resource consent. Ms Freeman stresses the importance of an upgradient bore for the purpose of providing upgradient groundwater quality data to compare against down-gradient results.

Ms Freeman also states that surface water monitoring locations may not always be flowing, and contingencies should be provided for when surface water monitoring sites are dry. In Ms Freeman's view it is also not practical for soil sampling to occur from the base of the grease trap and mud sump trenches. She states:

> *"It is not clear how this will be achieved when the trenches contain grease trap/ mud sump waste without contaminating the soil sample. Applying grease trap and mud sump waste via soil injection was also discussed in the application, and this, or an alternate method, would be preferable,…."*

Therefore, an upgradient bore is required to suitably monitor any potential effects on groundwater, and the current methodology for sampling the base of the grease trap and mud sump trenches is impractical. Ms Freeman recommends changes to the activity and monitoring regime that could be reflected in conditions to address these matters and details these in her report.

<u>Conclusion</u>

The Act places the onus on an Applicant to describe an activity and assess its effects on the environment. Council must therefore be able to reasonably rely upon the information in an application.

In this case, while in principle it may be practicable for the activity to be undertaken on the site, the application is predicated upon assumptions that have not been validated for the site (climate, soil) or the activity (N-limits, crop yield, nitrogen removal) and consequently cannot be relied upon as accurate. It is therefore unclear whether a suitable crop can, in practice, reliably be established on this site or that appropriate nitrogen up-take would be achievable.

Lack of appropriate nitrogen uptake would have the potential to result in adverse effects on groundwater and the users of groundwater. An awareness of this and inclusion of this in the application would have materially influenced Council's decision on the application and consent conditions.

To address the matters identified, both Irricon and E3 have recommended changes to the activity and monitoring regime that could be reflected in conditions of the consent and that would require the Consent Holder to adopt the best practicable option to prevent or minimise adverse effects on the environment.

Considering the grounds for a review set out in Section 5 of this report under section 128 of the Act and condition (29) of Discharge Permit RM25.407.01, I consider the following to be relevant:

Section 128:

i. 128(1)(a)(ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
ii. s128(1)(a)(iii) - for any other purpose specified in the consent [refer Condition 29(d) as listed below];
iii. s.128(1)(c) - if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

Condition 29:

d) Amending the monitoring programme set out in accordance with Conditions of this consent; or

e) Requiring the Consent Holder to adopt the best practicable option, in order to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.

Therefore, in relation to the matters above, in my view there are grounds for review under section 128.

For the avoidance of doubt, I note that clause a) of Condition 29 states Council may initiate a review upon receiving monitoring results for the purpose of;

a) *Determining whether the conditions of this consent are adequate to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage, or which becomes evident after the date of commencement of the consent;*

Elevated analytes were observed in groundwater quality results taken relative to baseline samples. In relation to this I make three points:

1. An elevated level of an analyte in a water sample is not, in itself an adverse effect on the environment, and no adverse effect on the environment has been attributed to the elevated analyte levels in the samples.
2. Ms Freeman states that to assess trends in water quality a minimum of 8-10 bimonthly or quarterly samples would be required.
3. Ms Freeman states that in the absence of comparative water quality results from an upgradient bore and ongoing monitoring results, it is not possible to attribute the elevated analytes to the discharge activity.

Therefore, in my view, the water quality results received to-date cannot yet be relied upon as grounds for review under Condition 29(a).

2. Do the current measures reflected in conditions 2 – 10 and the OMM adequately avoid, remedy or mitigate the actual or potential adverse effects of the activity on the environment as described in the Application? If not, what other measures are required?

Ms Johnston states that in her view, the conditions provide a useful base but are not adequate in several material respects. She identifies the main gaps as:

i. The absence of a crop-responsive nitrogen rate,

ii. Unclear controls for unsuitable soil and weather conditions,

iii. Incomplete mapping of wetlands, ephemeral and intermittent waterways, CSAs and connected runoff paths,

iv. Inadequate control of localised wastewater and trench loading, and

v. Limited controls for unstabilised WAS.

Ms Johnston raises the following concerns about potential adverse effects of the activity as a result of these gaps;

> *"The nitrogen limit is not linked to verified waste composition, plant or soil available nitrogen, previous applications, realistic crop demand or actual nutrient removal off the property. This creates a risk that nitrogen will accumulate in soil or be lost where crop establishment or yield is lower than assumed."*

And;

> *"….flat ground is more prone to ponding, and the ephemeral and intermittent waterways and CSAs observed during the site visit provide pathways where runoff can concentrate during wet periods. Under wet, frozen or runoff-prone conditions,*

infiltration and soil storage are reduced, increasing the likelihood of ponding, overland flow, sediment movement and contaminant transport."

And;

"Winery wastewater and trench disposal create a separate risk because repeated discharge to a confined area can impose high local hydraulic and organic loads even where site-wide annual limits are met. This can lead to soil saturation, anaerobic conditions, odour, seepage or breakout."

Ms Johnston has recommended changes to the activity that could be reflected in conditions to address these matters. These are detailed in her report.

Ms Freeman is of the view that the actual or potential adverse effects on the environment do not appear to be accurately understood or described in the application. Therefore, the consent conditions and the OMM do not adequately avoid, remedy or mitigate the actual or potential adverse effects as they were based on the application. Ms Freeman's report highlights the following potential adverse effects of the activity:

i. Viral contamination of soil / groundwater (including drinking water) from WAS
ii. E.coli contamination of soil / groundwater (including drinking water) from WAS
iii. Elevated Nitrogen levels in soil / groundwater from WAS and winery waste
iv. High Biological Loading Rate from winery wastewater and the grease trap and mud sump sludge
v. Dispersion of soils from high concentrations of sodium in winery waste

Ms Freeman has recommended changes to the activity and to the monitoring regime that could be reflected in conditions to address these matters. These are detailed in her report.

Conclusion

The Act places the onus on an Applicant to describe an activity and assess its effects on the environment. Council must therefore be able to reasonably rely upon the information in an application.

Irricon and E3 have identified potential adverse effects that were either not described, or not fully described and assessed in the Application on groundwater (including drinking water), surface water and soils arising from Nitrogen loads, discharge of contaminants to surface water, organic load, bacterial and / or viral contamination, and dispersion of soils. Consequently, these are either not addressed or not fully addressed by Conditions 2 – 10 of the consent nor the OMM.

An awareness of this and inclusion of these matters in the application would have materially influenced Council's decision on the application.

To address the matters identified, both Irricon and E3 have recommended changes to the activity and monitoring regime that could be reflected in conditions of the consent and that

would require the Consent Holder to adopt the best practicable option to prevent or minimise adverse effects on the environment.

Considering the grounds for a review set out in Section 5 of this report under section 128 of the Act and Condition 29 of Discharge Permit RM25.407.01, I consider the following to be relevant:

Section 128:

i. S128(1)(a)(ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
ii. s128(1)(a)(iii) - for any other purpose specified in the consent [Refer Condition 29(d)];
iii. s.128(1)(c) - if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

Condition 29:

d) Amending the monitoring programme set out in accordance with Conditions of this consent; or

e) Requiring the Consent Holder to adopt the best practicable option, in order to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.

Therefore, in relation to the matters above, in my view there are grounds for review under section 128.

3. Do the current measures reflected in conditions 2 – 10 and the OMM adequately avoid, remedy or mitigate the actual or potential adverse effects of the activity on the nearby permitted water take at [redacted]? If not, what other measures are required?

The property adjacent to the site at [redacted] contains a permitted, spring-fed water take. However, this was not identified or considered in the Consent Holder's application.

Ms Freeman states that the current measures reflected in conditions 2 – 10 and the OMM are not sufficient to adequately avoid, remedy or mitigate the actual or potential adverse effects of the activity on the water take at [redacted]. This take is a permitted activity that is not (and does not need to be) registered with Council. However, it forms part of the receiving environment and it is reasonable for Council to have expected that the application would have identified it and considered the effects of the activity on it.

Ms Freeman's responses to Question 2 highlight potential adverse effects on groundwater. As the permitted water take is spring-fed and therefore derived from groundwater, there is the potential for such adverse effects to be experienced by the owners and /or occupiers at [redacted]. However, as noted on page 13 of this report, the Consent Holder is required to monitor water quality as a condition of consent and a minimum of 8-10 bimonthly or quarterly

samples would be required before any trend in water quality can be determined, and in the absence of results from an upgradient bore, it isn't possible to attribute a trend to the activity.

E3 have recommended changes to the activity and monitoring regime that could be reflected in conditions of the consent to address the matters identified, including changes to monitoring and the adoption of the best practicable options to prevent or minimise potential adverse effects on the environment. These recommendations are detailed in the E3 report.

Conclusion

The Act places the onus on an Applicant to describe an activity and assess its effects on the environment. Council must therefore be able to reasonably rely upon the information in an application.

The application for resource consent did not identify or consider the spring-fed water take. E3 have identified potential adverse effects on groundwater (including drinking water) that would in turn have adverse effects on the owners and / or occupiers at [redacted] that are not addressed or not fully addressed by Conditions 2 – 10 and the OMM.

An awareness of this and inclusion of this in the application would have materially influenced Council's decision on the application.

To address the matters identified, E3 have recommended changes to the activity and monitoring regime that could be reflected in conditions of the consent and that would require the Consent Holder to adopt the best practicable option to prevent or minimise adverse effects on the environment.

Considering the grounds for a review set out in Section 5 of this report under section 128 of the Act and Condition 29 of Discharge Permit RM25.407.01, I consider the following to be relevant:

Section 128:

i. s128(1)(a)(ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
ii. s128(1)(a)(iii) - for any other purpose specified in the consent [Refer to Condition 29d)];
iii. s.128(1)(c) - if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

Condition 29:

d) Amending the monitoring programme set out in accordance with Conditions of this consent; or

e) Requiring the Consent Holder to adopt the best practicable option, in order to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.

Therefore, in relation to the matters above, in my view there are grounds for review under section 128.

4. Are current monitoring conditions (Conditions 11 – 26) adequate to accurately monitor the actual or potential adverse effects of the activity on the environment, including groundwater generally, and the nearby permitted water take on at [redacted].

Ms Johnston states that;

> *"The current monitoring framework is useful but is not sufficient to demonstrate sustainable loading or provide reliable early warning of adverse effects. Groundwater and permitted-take monitoring are addressed separately by E3 Scientific. For the remaining effects, the principal weaknesses are sample representativeness, monitoring duration, verification of actual loading and the absence of defined action triggers."*

Her report details recommendations to address these issues.

Ms Freeman is also of the opinion that Conditions 11 - 26 are not adequate to accurately monitor the actual or potential adverse effects of the activity on the environment, including the water take at [redacted]. Her report details recommendations to address these issues.

Conclusion

The Act places the onus on an Applicant to describe an activity and assess its effects on the environment. Council must therefore be able to reasonably rely upon the information in an application.

As effects were not accurately identified, there are inadequacies in the current monitoring regime. To address the matters identified, Irricon and E3 have recommended changes to the activity and monitoring regime that could be reflected in conditions of the consent and that would require the Consent Holder to adopt the best practicable option to prevent or minimise adverse effects on the environment.

Considering the grounds for a review set out in Section 5 of this report under section 128 of the Act and Condition 29 of Discharge Permit RM25.407.01, I consider the following to be relevant:

Section 128:

i. s128(1)(a)(ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
ii. s128(1)(a)(iii) - for any other purpose specified in the consent [refer to Condition 29(d)];
iii. s.128(1)(c) - if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of

the exercise of the consent are such that it is necessary to apply more appropriate conditions.

Condition 29:

d) Amending the monitoring programme set out in accordance with Conditions of this consent; or

e) Requiring the Consent Holder to adopt the best practicable option, in order to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.

Therefore, in relation to the matters above, in my view there are grounds for review under section 128.

5. Would any mitigation measures detailed in the approved OMM be more appropriate as conditions of the consent?

Ms Johnston is of the view that mitigation measures detailed in the approved OMM would be more appropriate as conditions of the consent. She states;

> *"Measures that set a material limit, exclusion, monitoring obligation or response requirement should be stated directly in the consent conditions. These safeguards define the authorised scale, location and circumstances of the discharge, how effects will be measured, and what action is required if performance is not as expected. Including them in the consent provides a clear and enforceable basis for compliance and prevents critical safeguards from being weakened through a later OMM update. The OMM should instead contain the procedures used to comply with those requirements, including staff responsibilities, inspection methods, record forms and equipment checks. This distinction allows operating procedures to improve without reducing the level of environmental protection required by the consent."*

Additional details are provided in Ms Johnston's report.

Ms Freeman is also of the view that mitigation measures detailed in the approved OMM would be more appropriate as conditions of the consent. Additional details are provided in her report.

I agree with Ms Johnston and Ms Freeman that the OMM measures that set material limits or other specific requirements should be included in the conditions, rather than being set out in the OMM.

<u>Conclusion</u>

Irricon and E3 have both recommended mitigation measures detailed in the approved OMM would be more appropriate as conditions of the consent as this would provide a clear and enforceable basis for compliance of those measures, in order to prevent or minimise adverse effects on the environment

Considering the grounds for a review set out in Section 5 of this report under section 128 of the Act and Condition 29 of Discharge Permit RM25.407.01, I consider the following to be relevant:

Section 128:

i. s128(1)(a)(ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
ii. s128(1)(a)(iii) - for any other purpose specified in the consent [refer Condition 29(d)];

Condition 29:

d) Amending the monitoring programme set out in accordance with Conditions of this consent; or

e) Requiring the Consent Holder to adopt the best practicable option, in order to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.

Therefore, in relation to the matters above, in my view there are grounds for review under section 128.

6. As noted above, the scope of the review process does not extend to requiring the consent holder to obtain additional resource consents (such as for discharges to air). That said, please consider and make any comment on the feasibility of the applicant complying with condition 28(d) in respect of odour. Please also consider and make any comment on potential dust effects (noting there are no specific conditions in respect of dust).

Ms Johnston is of the view that compliance with the odour condition appears feasible, but only if odour is actively managed from receipt through to incorporation into the soil. She notes that:

> *"The available information does not set clear acceptance criteria for abnormal, highly odorous or long-stored loads, maximum holding times, complaint response, or when work must stop. Without those controls, compliance relies heavily on operator judgement and may only be tested after an off-site effect has occurred."*

Regarding dust, Ms Johnston states that dust should be controlled through clear operational requirements, subject to Council confirming that those requirements are within the scope of this discharge consent.

Ms Johnston has made recommendations relating to odour (e.g., covered and sealed bins, minimising storage times, prompt spreading and incorporation) and dust (e.g., maintaining ground cover, limiting cultivation, avoiding soil disturbance in strong winds) that could be reflected in conditions to address these matters. These are detailed in her report.

<u>Conclusion</u>

With respect to odour and dust, Ms Johnston has highlighted potential condition amendments that would strengthen the ability of the consent to prevent or minimise any adverse effect on the environment beyond the boundary of the site and to comply with the performance standards of the applicable permitted activity rule in the Regional Plan Air, being Rule 16.3.7.1.

Considering the grounds for a review set out in Section 5 of this report under section 128 of the Act and Condition 29 of Discharge Permit RM25.407.01, I consider the following to be relevant:

Section 128:

i. s128(1)(a)(ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
ii. s128(1)(a)(iii) - for any other purpose specified in the consent [refer to Condition 29(d)];

Condition 29

d) Amending the monitoring programme set out in accordance with Conditions of this consent; or

e) Requiring the Consent Holder to adopt the best practicable option, in order to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.

Therefore, in relation to the matters above, in my view there are grounds for review under section 128.

For the avoidance of doubt, I note that under section 128(1)(aa) a consent authority can initiate a review if the Consent Authority determines that a Consent Holder has contravened a condition of the consent. Based on monitoring undertaken by Council's Compliance Team there is no evidence that the consent holder has breached the conditions of RM25.407.01 relating to odour. There are no conditions related specifically to dust.

While not relevant to a review of conditions under section 128, I also note for completeness that there is no evidence based on monitoring undertaken by Council's Compliance Team that the Consent Holder has breached the permitted activity standards of Rule 16.3.7.1.

7. Members of the public have raised other specific matters. Could you please comment specifically on; i. Whether any additional measures, such as a setback, are necessary to mitigate any potential adverse effect on the water race through the site? ii. Whether a hardstand area for depositing WAS (to then spread onto receiving land) is necessary to mitigate any potential adverse effect on the environment? iii. Whether the OMM adequately addresses any adverse effect on the environment from the discharge to land with a slope of more than 15 degrees. The Council notes that the application indicates that there will be no discharges to land with

a slope of more than 15%, but the OMM does not specifically restate that direct limitation (refer to section 3.2.7 in the OMM)?

Water Race

Regarding the water race, Ms Johnston stated:

> *"The site visit confirmed that the race is not bunded for large parts of the farm, where it follows a natural watercourse. Along these reaches runoff from adjacent treated land can enter the race directly, and the race should be treated as a natural surface watercourse with the 50 m setback in Condition 6(d) applied. Where the race is a constructed channel, the existing 5 m setback may be adequate where site inspection and checks of the spreading equipment demonstrate that waste will not be deposited into the race and runoff from treated land will not enter it."*

Hardstand Area

In Ms Johnston's view a contained, impermeable and cleanable transfer area is appropriate wherever WAS is deposited, transferred or bins are held before spreading. She states:

> *"On bare soil or an unsealed surface, liquid can infiltrate before it is detected or recovered, while rainfall can mobilise spilled material and carry nutrients, microorganisms and organic matter to adjacent land, drains or water races. Repeated use of the same unsealed area can also cause cumulative nutrient loading, odour, soft ground and vehicle rutting, making effective clean-up increasingly difficult."*

And;

> *"Covered, leak-proof bins should remain the primary storage and transfer method, residence time should be minimised and the area should be inspected after each transfer. Open ground stockpiling should not be allowed because it would create an uncontrolled point source discharge point and make the actual loading and extent of contamination difficult to quantify."*

Ms Freeman concurs that a hardstand area would reduce potential adverse effects and states;

> *"Liquid runoff from the hardstand would need to be captured because this would have a high nitrogen concentration. The need for additional pathogen reduction will be informed by testing the WAS for viruses, clarification on depth to groundwater across the disposal area and soil type across the disposal area. These factors will allow pathogen reduction to be accurately calculated and alongside this the required setback for application of WAS from the permitted water take. It may be that treatment of WAS on a hardstand is required prior to application to land to ensure acceptable pathogen levels are achieved at the down-gradient water take."*

Slope

Ms Johnston notes that the application states there will be no discharge to land steeper than 15 percent, but that the OMM does not restate that limit or explain how slope will be confirmed on site. Ms Johnson recommends that;

> *"Land exceeding 15 percent should therefore be shown on the application area maps and excluded through both a consent condition and the OMM, including within Blocks 15 and 16, where the OMM currently allows flexible application. The exclusion mapping should be site checked, and gentler land should also be excluded or subject to a wider buffer where local topography creates a direct or concentrated runoff pathway to any receiving environment, such as the CSAs and ephemeral flow paths observed during the site visit."*

Conclusion

The Act places the onus on an Applicant to describe an activity and assess its effects on the environment. Council must therefore be able to reasonably rely upon the information in an application.

Regarding the water race and hardstand areas, Irricon and E3 recommend practical options that would reduce the risk of adverse effects on the environment arising from the exercise of the consent.

Regarding slope, while a discrepancy between the OMM and conditions is not grounds for a review under section 128, Irricon's comments note the potential for adverse effects as a result of features of the site not identified or adequately assessed in the application, e.g., CSAs and ephemeral flow paths.

An awareness of this and inclusion of this in the application would have materially influenced Council's decision on the application.

Irricon's recommendations would also require the best practicable option to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.

Considering the grounds for a review set out in Section 5 of this report under section 128 of the Act and condition (29) of Discharge Permit RM25.407.01, I consider the following to be relevant:

Section 128:

i. s128(1)(a)(ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
ii. s128(1)(a)(iii) - for any other purpose specified in the consent [refer to Condition 29(d)]; and
iii. s.128(1)(c) - if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

d) Amending the monitoring programme set out in accordance with Conditions of this consent; or

e) Requiring the Consent Holder to adopt the best practicable option, in order to prevent or minimise any adverse effect on the environment arising as a result of the exercise of this consent.

Therefore, in relation to the matters above, in my view there are grounds for review under section 128.

Council Compliance Team analysis

Council's Compliance Team have provided an audit of RM25.407.01 in response to the following queries (noting question 4 was also put to the technical experts as discussed above). Their comments are attached in full as Appendix 3 and are summarised below.

1. Are the current conditions of RM25.407.01 clear, certain and enforceable?
2. Are the requirements of the OMM clear, certain, enforceable, and consistent with the conditions of the consent?
3. To date, has the applicant been able to achieve compliance with all conditions of their consent? If not, please specify the reasons for non-compliance.
4. Would any mitigation measures detailed in the approved OMM be more appropriate as conditions of the consent?

1. The Compliance Team have identified 15 conditions of the consent that, in their view could be improved in some respect. The conditions identified are:
    - Conditions 2, 3, 7 and 9, which are within the conditions that specify the nature and scope of the consented activity; and
    - Conditions 11 – 15, 18, 19, 21 – 24, which are within the conditions that specify the monitoring and reporting requirements for the consented activity.
2. Overall, the Compliance Team are satisfied that the OMM requirements are consistent with the conditions of consent and that the monitoring programme is clearly outlined in the OMM.
3. The Compliance Team has not identified any non-compliance with the conditions by the Consent Holder, noting that ambiguity in Condition 9 (regarding discharge of waste that exceeds heavy metal limits in Condition 7) makes confirmation of compliance with that condition difficult.

    The Compliance Team also note that compliance with many of the conditions cannot be assessed at this stage as not enough time has elapsed to be able to determine compliance (e.g. the 12-month monitoring report, annual report, five-yearly loading rate sampling).
4. The Compliance Team have indicated that in their view the measures in the OMM do not need to be included as conditions of consent as the Consent Holder must operate in accordance with the OMM at all times (Condition 11). However, the Compliance Team have noted that neither Condition 11 nor any other condition require

recertification of the OMM if the Consent Holder makes any updates to it. The Compliance Team recommended that if any such updates are proposed, the OMM should be submitted to Council for recertification.

I note the conclusion reached by Ms Johnston that the OMM includes important limits and other fundamental parameters that would best be included in the conditions. On this matter I agree with the advice of Ms Johnston. However, I concur that the Consent Holder should submit any updated OMM to the Council for recertification.

Conclusion

I have considered the comments made by the Compliance Team on the current conditions. I note that section 128 does not specifically enable conditions to be reviewed solely in order to improve drafting or enforceability. Additionally, the Compliance Team have not identified any non-compliance with conditions of the consent (that could in turn prompt a review under section 128(1)(aa)).

In light of the above, my recommendation to initiate a review of the consent conditions does not rely on the comments made by the Compliance Team. That said, it is possible that the review will include amendments to conditions that have the effect of addressing comments made by the Compliance Team on the current conditions.

8. Assessment of Conditions

Table 2: Conditions of RM25.407.01 with reasons to review under Section 128 and 129.

Conditions	Comments	Recommendation on review
Condition 1: Scope of consent	Condition 1 defines the scope of the activity as a whole. There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes to the nature of the activity, including mitigation measures are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent. A review of other conditions of the consent would require review of condition 1 to avoid inconsistency between conditions.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c)**

Condition 2: Discharge limits and authorised area	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes to the nature of the activity, including mitigation measures are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c)**
Condition 3: Maximum WAS application rate	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes to the nature of the activity, including mitigation measures are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 4: Incorporation of WAS	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes to the nature of the activity, including mitigation measures are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 5: Crop harvesting restriction	No audit raised concerns about the crops not being for human consumption.	It is recommended that this condition not be reviewed.
Condition 6: Setback distances	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes to the nature of the activity, including mitigation measures are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 7: Soil contaminant limits	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes to the nature of the activity, including mitigation measures are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**

Condition 8: Land disposal area restrictions	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes to the nature of the activity, including mitigation measures are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 9: Restriction where contaminant limits exceeded	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes to the nature of the activity, including mitigation measures are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 10: Lapse provision	This is a standard statutory lapse condition and is no longer applicable as the consent holder has exercised the consent.	No review of this condition is recommended.
Condition 11: Operations and Management Manual	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 12: WAS sampling	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 13: Trench sampling	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**

Condition 14: Winery waste sampling	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 15: Grease trap and mud sump sampling	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 16: Sampling and laboratory standards	This is a standard condition that is not application specific requiring analysis of monitoring samples to be performed by an IANZ registered laboratory or otherwise as specifically approved by the Consent Authority.	No review of this condition is recommended.
Condition 17: Discharge records	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 18: Maintenance requirements	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 19: First-year monitoring and adaptive management	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**

Condition 20: Installation of piezometer	This condition requires the drilling and installation of a piezometer prior to the first exercise of the consent. As the consent has been exercised, this condition, as written, is no longer applicable. However, E3 have recommended an upstream piezometer and two additional downstream piezometers. I recommend these matters are considered as part of a review of Condition 20 and the review more generally.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 21: Groundwater monitoring	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes to mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 22: Remedial actions for groundwater effects	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 23: Annual monitoring report	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 24: Environmental and Nutrient Management Plans	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 25: Non-compliance reporting	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**

	Additionally, changes to mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	
Condition 26: Complaints register	There are material inaccuracies in the application relating to the site, the surrounding environment and the activity. Additionally, changes mitigation measures and the nature and frequency of monitoring conditions are required to provide for the best practicable option to prevent or minimise adverse effects on the environment arising as a result of the exercise of this consent.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c).**
Condition 27: Compliance with OMM	This is a standard condition that is not application specific requiring compliance with a certified OMM at all times.	No review of this condition is recommended.
Condition 28: Environmental performance standards	This is a standard condition that is not application specific requiring the consent holder to avoid the discharge of wastewater resulting in adverse outcomes. However, in order to avoid any potential inconsistencies with any conditions that arise from the review, this condition may need to be amended.	**It is recommended that this condition be reviewed under s128(1)(a)(ii), s128(1)(a)(iii) and s128(1)(c)**.
Condition 29: Review condition	This is a standard condition that is not application specific enabling review of consent conditions under sections 128 and 129 of the RMA where necessary.	No review of this condition is recommended.

For completeness I note that, while not all conditions are recommended to be reviewed, a possible outcome of the review initiated under section 128(1)(c) is the cancellation of the consent under section 132(3).

Conclusion

This assessment has determined that there are grounds to initiate a review of the conditions of Discharge Permit RM25.407.01 under section 128 of Act, being:

1. s.128(1)(a)(ii) - to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment;
2. s.128(1)(a)(iii) - for any other purpose specified in the consent; or
3. s.128(1)(c) - if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

The technical audits prepared by E3 and Irricon have demonstrated that;

i. There are inaccuracies in the application and as a result, the actual or potential adverse effects of the activity were not accurately identified or assessed in the application (and supporting documents);
ii. As a result of the inaccuracies, Council did not have an accurate understanding of the actual and potential adverse effects of the activity, and this materially influenced Council's decision on the application; and
iii. Changes to the monitoring regime of the consent are necessary to require the Consent Holder to adopt the best practicable option to remove or reduce adverse effects on the environment.

Therefore, I recommend the Council exercise its discretion to initiate a review under section 128 of the Act.

Section 128(1) of the RMA provides for Council to serve notice of its intention to review the conditions on the consent holder, with the notice to address the matters set out in section 129. The review process would proceed as set out in sections 130 – 132 of the RMA, with that process being similar to the process for considering a resource consent application lodged with the Council. In particular:

- Council would decide whether or not to notify the review (on a limited notification or full public notification basis), generally considering the same matters that would be considered on a notification decision for a resource consent;
- If notified, those notified would be entitled to make submissions on the review (on the same basis and within the same 20 working day timeframe as for submissions on notified resource consent applications);
- If the Council considers a hearing is necessary, or submitters or the consent holder wish to be heard, the Council would arrange for a hearing to be held; and
- Any hearing would generally follow the format of a hearing on a resource consent application (including in respect of evidence exchange).
- The Council would then make a decision considering the matter set out in section 131 and in accordance with section 132.

Of note section 129(4) provides that Council "may propose, and invite the consent holder to propose within 20 working days of service of the notice, new consent conditions". Council does not recommend proposing new consent conditions at this initial stage. Instead, Council proposes inviting the consent holder to propose new conditions (the consent holder will decide whether to take up that invitation), with more detailed consideration to be given to condition amendments in the subsequent stages of the review process.

9. Recommendation

In accordance with Section 128(1)(a)(ii), 128(1)(a)(iii) and 128(1)(c) of the Resource Management Act 1991 (RMA), it is recommended that the Otago Regional Council reviews the consent conditions of RM25.407.01 for reasons outlined above.



Otago Regional Council

Principal Consents Planner

Decision

To **review** the specific conditions listed in Table 2 is **approved** for the reasons outlined above and in the attached documents.



Allan Cubitt
Independent Decision Maker for Otago Regional Council

Attached:

Appendix 1	E3 Technical Audit
Appendix 2	Irricon Technical Audit
Appendix 3	Compliance Review
Appendix 4	Discharge Permit RM25.407.01
Appendix 5	Council s95 and s42A Report
Appendix 6	Certified Operations and Maintenance Manual