

**BEFORE THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2016-CHC-

UNDER	of the Resource Management Act 1991
IN THE MATTER	On an appeal under clause 14 of the First Schedule
BETWEEN	LINDIS CATCHMENT GROUP INC Appellant
AND	OTAGO REGIONAL COUNCIL Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT
ON PROPOSED PLAN CHANGE 5A**

**GALLAWAY COOK ALLAN
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DUNEDIN**

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To: The Registrar
Environment Court
Christchurch

1. The Lindis Catchment Group Incorporated (LCG) appeal against a decision of Otago Regional Council (“the Decision”) on the following regional plan:

Proposed Plan Change 5A (Lindis: Integrated water management) to the Regional Plan: Water for Otago (PC5A)

2. LCG made submissions and further submissions on PC5A (submission number 56 and further submission number 103).
3. LCG received notice of the decision on 13 August 2016.
4. The decision was made by the Otago Regional Council.
5. The decision that LCG are appealing is:

The entire decision of the Otago Regional Council in relation to PC5A, excluding the part of the decision that refuses relief sought by Lindis Catchment Group to extend the boundaries of the Lindis Catchment as depicted on Maps B4 and B7. Points of appeal raised in relation to specific matters, reasons for the appeal, and relief sought are set out below.

6. The general reasons for the appeal are as follows:
 - (a) Plan Change 5A does not provide for the economic viability or social wellbeing of the Lindis Catchment community. The community’s wellbeing is reliant on reliable water supply for irrigation to enable it to provide for itself and contribute to the wider region. Lack of reliable water results in inefficient use of the water and land within the catchment and does not recognise the investment in infrastructure that has previously occurred.
 - (b) The Section 32AA assessment of the economic and social impacts of Plan Change 5A was inadequate. As a consequence

the Decision does not achieve the Objectives of the Regional Plan Water ("RPW") or the Purpose of the Act.

- (c) The Decision will have significant economic and social costs which were not accurately assessed by the Council in the Decision.
- (d) The Council has erred in finding that the 1200l/s allocation limit will be sufficient to efficiently irrigate the area of land reliant on water from the Lindis Catchment and enable efficient use of the land.
- (e) The Summer Minimum Flow of 900l/s fails to appropriately take account of and enable the economic and social wellbeing of the Lindis Catchment community. A flow rate of 900l/s is not required to protect natural, ecological and cultural values and is therefore inconsistent with the purpose of the Resource Management Act.
- (f) The Council has failed to assess the environmental effects of the different minimum flow regimes and the various costs and benefits of those differing regimes. The minimum flow set in the Decision is not required in order to protect the life supporting capacity of the Lindis River. That function can be appropriately served by a lower Summer Minimum Flow rate. The flow rate in the Decision does however give rise to significant adverse effects on the economic and social wellbeing of the Lindis community. The Council failed to clearly establish and apply the status quo as the starting point for its assessment of the environmental effects of the different minimum flow regimes.
- (g) The Council has erred in finding that there are alternative sources of water for some water users. There is no evidential basis or cost/benefit analysis for these alternative sources.
- (h) The Council has erred in finding that PC5A provides a sufficient transitional period for those required to upgrade irrigation infrastructure by 2021. The infrastructure upgrades required to sustainably implement a minimum flow on the Lindis River are significant. They will come at a significant cost to water users. A

longer time frame to implement these changes is required in order to maintain the economic and social wellbeing of the community.

- (i) As a result of these failures PC5A does not achieve the purpose of the Act or give effect to:
 - (i) the National Policy Statement for Freshwater Management; and
 - (ii) the ORC Regional Policy Statement
- (j) Adequate regard has also not been had to relevant provisions of the Proposed Regional Policy Statement for Otago;
- (k) PC5A does not achieve the Objectives of the Otago Regional Plan: Water

7. Specific Points of Appeal

(a) *Lack of adequate transition time*

Reasons for Appeal

The Council erred in determining that a transition framework for the Lindis Catchment was beyond the scope of PC5A.

PC5A requires compliance with the minimum flow at the time that existing mining licences and deemed permits are renewed in 2021. This does not allow adequate time for water users within the Lindis Catchment to adapt their infrastructure and farming practices to accommodate the reduced reliability of supply arising from the imposition of a minimum flow and primary allocation limit under PC5.

The Decision took inadequate account of the complexity of water supply, irrigation and farm system changes that will be necessitated by PC5A and incorrectly concluded that no extension of the transition time was necessary or appropriate. The Decision failed to accurately assess the costs of the transition process and the economic and social impacts that this would have on the community. Inadequate regard was also given to

the feasibility of implementing the transition between the Decision date and the lapse of existing mining licences and deemed permits in 2021.

Relief Sought

The minimum flow and primary allocation limits not apply until 15 years from the date that PC5A becomes operative.

(b) *Lack of Catchment Specific Objectives and Policies*

Reasons for Appeal

The Lindis Catchment is a unique catchment within Otago. Land users have existing irrigation infrastructure which has been developed to maximise the efficiency and effectiveness of water from the Lindis River. PC5A does not include any catchment specific objectives or policies that recognise the unique nature of the catchment and the impact that the proposed minimum flow regime will have on the Community. This lack of recognition leads to proposed rules that do not achieve sustainable management.

Relief Sought

Addition of specific Lindis Catchment objectives and policies that recognise the unique nature of the Lindis Catchment and the need to allow adequate time for water users to transition to a new regime with the minimum flows and allocation limits.

(c) *Use of water outside of Lindis Catchment*

Reasons for the appeal

Some water users currently take water from the Lindis River and apply it to land that has been deemed by PC5A to be outside of the Lindis Catchment as identified on PC5A Maps B4 and B7. The relevant land is within a sub-catchment of the Lindis River known as Tarras Creek. The implication of Rule 12.1.4.4 is that water taken from within the Lindis Catchment can only be applied to land within the Lindis Catchment as identified on Maps B4 and B7.

The infrastructure that provides irrigation to the land in the Tarras Sub-Catchment land is already in place. The LCG is concerned that the Lindis Catchment Boundary in the Decision will preclude water taken from the Lindis being applied to land in Tarras Creek sub-catchment where alternative supply is not practicable. This is not the most appropriate way to achieve the objectives and it is inefficient.

If the relevant land users cannot utilise Lindis Water on their land outside of the Lindis Catchment boundary it will give rise to significant adverse effects on their economic and social wellbeing. It would not enable the efficient use of the land or the existing infrastructure that has been developed. Ultimately it would fail to achieve sustainable management.

Relief Sought

Rule 12.1.4.4 be amended so that use of water taken from the Lindis Catchment on land within the Tarras Creek sub-catchment is not differentiated from the taking and use of water within the Lindis Catchment.

(d) *Minimum flow rate (Schedule 2A)*

Reasons for appeal

The Decision sets the minimum flow rate for the Lindis Catchment at 900l/s from 1 October to 31 May ("Summer Minimum Flow") and 1600l/s from 1 June to 30 September ("Winter Minimum Flow"). The Summer Minimum Flow will have significant adverse economic and social effects on the Lindis community. The Decision inaccurately assessed the economic impacts of the Summer Minimum Flow on water users which means that the Decision does not achieve the Objectives of the RPW or the purpose of the Act.

A Summer Minimum Flow of 900l/s is not required to maintain or enhance natural or ecological values at an appropriate level to achieve the Objectives of the RPW or the purpose of the Act. A Summer Minimum Flow of 450l/s provides adequate habitat protection to support the natural and human use values identified in the Lindis Catchment.

The Council erred by not appropriately assessing the status quo and utilising this as the starting point for its assessment of the environmental effects of the different minimum flow and primary allocation regimes. The Council erred in determining that 900 l/s was the necessary flow rate to maintain and enhance natural and human use values within the Lindis Catchment.

LCG considers that the minimum flow is not required to be 900l/s to maintain or enhance the ecological, cultural, amenity and natural character values of the Lindis River.

Relief Sought

That the Summer Minimum Flow rate from 1 October to 1 May is reduced to 450l/s and the Winter Minimum Flow rate retained at 1600l/s from 1 June to 30 September

(e) Primary Allocation Limit

The Decision sets a primary allocation limit in Schedule 2A of 1,200l/s

Reasons for appeal

Primary allocation limit of 1,200l/s does not provide adequate reliability of supply for water users in the Lindis Catchment. These reductions in water supply will have significant adverse effects on the economic and social wellbeing of the community and give rise to inefficient use of both water taken and the land to which is it applied.

The primary allocation limit is not required to maintain the ecological values of the Lindis River as these are protected by the minimum flow rate. Therefore a more liberal primary allocation limit can be set to improve reliability of supply for land users.

Relief Sought

8. The Primary Allocation limit within schedule 2A is set at 1,900l/s
9. Overall the Appellant seeks the following relief:
 - (a) That PC5A be cancelled; and

(b) Cost of and incidental to this appeal;

or

(c) Amendments to the Decision as set out in this appeal, or other such relief as may be necessary to address the Appellant's concerns; and

(d) Such further and consequential relief (including amendments of any provisions) as may be necessary to give effect to the relief sought in this appeal; and

(e) Cost of and incidental to this appeal;

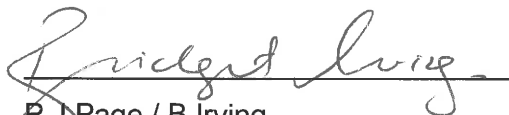
10. I attach the following documents to this notice:

(a) a copy of my submission or further submission (with a copy of the submission opposed or supported by my further submission);

(b) a copy of the relevant decision (or part of the decision);

(c) any other documents necessary for an adequate understanding of the appeal;

(d) a list of names and addresses of persons to be served with a copy of this notice.


P J Page / B Irving
Counsel for the Appellant

Date: 23 September 2016

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and (or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.