

IN THE MATTER

Resource Management Act 1991

AND

In the matter of Proposed Plan Change 5A (Lindis:  
Integrated Water Management) to the Regional Plan:  
Water for Otago

BY

LINDIS CATCHMENT GROUP

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OPENING SUBMISSIONS

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Solicitor Acting: S Chadwick

**Webb Farry**

Lawyers

79 Stuart Street

PO Box 5541

Dunedin

Telephone: (03) 477 1078

Facsimile: (03) 477 5754

## OPENING SUBMISSIONS

### Proposed Plan Change 5A

- 1 Proposed Plan Change 5A (PC5A) to the Regional Plan: Water for Otago ("RPW") records in the introduction that the plan change:
  - Sets a management regime (allocation limits and minimum flow) for surface water and connected groundwater in the Lindis Catchment;
  - Sets a management regime (maximum allocation limits and take restrictions) for specified aquifers within the Bendigo-Tarras Basin (Ardgour valley, Bendigo and Lower Tarras Aquifers);
- 2 PC5A also maps the boundaries of these areas to outline the extent of these new management regimes. For the purposes of assessment and analysis of the plan change it is assumed that the setting of new management regimes is the objective of PC5A.
- 3 LCG accepts:
  - a The proposed maximum allocation limits for groundwater management in the Ardgour Valley, Bendigo and Lower Tarras (but not the proposed irrigation take restrictions).
  - b The supplementary allocation blocks and supplementary allocation minimum flows except to the extent they are consequently affected by the proposed primary allocation.
- 4 It is submitted that the proposed new management regimes raise four central issues for the Committee to determine:
  - a The setting of minimum flows for the Lindis River ("minimum flows");
  - b The wider management regime, including the allocation limits for the Lindis River ("allocation limits and management regime");
  - c The inclusion/exclusion of the Tarras area within the Lindis catchment ("catchment boundaries");
  - d Proposed restrictions on takes from the aquifers of the Bendigo-Tarras Basin between 1 May to 31 August ("Bendigo-Tarras aquifer restrictions").

- 5 These central issues must be considered and assessed against the background of current water use in order to determine the full extent of actual and potential adverse effects that may be expected as a result of the proposed changes.
- 6 These central issues must also be addressed in way that fits with the existing planning framework (including the NPS) and fully reflects the policy directives in the RPW.

#### **Deemed water permits**

- 7 Many of the existing water takes from the Lindis catchment are authorised by historical mining permits. Under section 413 of the Resource Management Act 1991 ("RMA") mining privileges become deemed water permits. Reliance on deemed water permits is a well-recognised characteristic of water use in the Central Otago region (as recorded in Issue 6.2.8 of the RPW).
- 8 Under section 413(3) of the Resource Management Act 1991 ("RMA") all deemed permits expire on the 30<sup>th</sup> anniversary of the date of the commencement of the RMA, being 1 October 2021.
- 9 Change is coming for all water users. Before 2021 resource consent applications need to be made to the ORC to enable ongoing use of water. To support those resource consent applications, water users across the entire catchment must plan for and invest in new and more efficient water infrastructure. This is the essential background against which the proposed new management regimes must be set and assessed.
- 10 There are a number of provisions of the RPW that recognise the need for a smooth and equitable transition as water permits expire. These are an essential policy context within which the objectives of PC5A must be set. This matter is discussed in more detail later in these submissions.

#### **Lindis Catchment Group**

- 11 The Lindis Catchment Group ("LCG") is an incorporated group made up of a 50 parties who rely on water from the Lindis River, including all 37 water users reliant on the Lindis Irrigation Company open race irrigation scheme. The LCG membership represents the majority of the people who will be most affected, on a daily basis, by the creation of a new management regime for the Lindis and neighbouring aquifers.

- 12 PC5A is the essential first step to enable the work required to move towards the creation of new water management systems and infrastructure. This plan change process will set the new parameters for future water use. Once the new parameters and management mechanisms are clear in the RPW, water users can then move on to the next step of creating a completely new water management system across the catchment.
- 13 Following PC5A and armed with the knowledge of how much water will be available, each farmer will then need to undertake a comprehensive re-evaluation of water use and practices that are reliant on irrigation. As the Committee will be aware, this catchment includes some substantial farming operations.
- 14 Having assessed their individual operations water users must then work together to establish then finalise a management framework and confirm the legal arrangements that will underpin and govern interactions between water users. This is a long process. Negotiations between more than 50 separate water users will be necessary to determine how the available water will be shared.
- 15 The new parameters and subsequent negotiations will impact every water user's business and their ability to obtain or confirm funding to support their operations. Access to water set through PC5A will have a direct impact on future investment decisions that will be necessary to continue businesses.
- 16 Once the management framework is established only at that stage will a new on the ground system of water distribution be able to be developed, and the details of points of take, amounts to be taken from different parts of the river, systems of irrigation to be used and similar decisions be able to be made. Only after these on the ground plans are made can funding for the infrastructure be secured.
- 17 There are clearly great benefits associated with the establishment of new systems of water use in the Lindis catchment. These benefits should not be underestimated in the overall evaluation of PC5A and in determining the appropriate plan provisions.
- 18 The LCG was initially established to assist with and facilitate the process of moving from deemed water permits to an entirely new system for water takes from the Lindis River. The RPW is fully supportive of a group approach being

taken to water use and the RPW provisions reinforcing this will be discussed further below.

### **Water management group**

- 19 The community of water users in the Lindis catchment are hopeful that the LCG will provide the vehicle as an approved water management group, for the shared use and management of water taken from the Lindis. Policy 6.4.12A applies to all water takes and states that the Council is:

*To promote, approve and support water management groups to assist the Council in the management of water by the exercise of at least one of the following functions:*

- (a) Coordinating the take and use of water authorised by resource consent.*
- (b) Rationing the take and use of water to comply with relevant regulatory requirements.*
- (c) Recording and reporting information to the Council on the exercise of resource consents as required by consent conditions and other regulatory requirements, including matters requiring enforcement.*

- 20 Appendix 2A sets out the criteria for consent holders to be approved by Council as a Water Management Group. The reasons for adopting this policy note that:

*Such groups are well placed to use local knowledge of water needs, to ensure local circumstances are taken into account and to avoid unnecessary conflict in periods of water shortage.*

- 21 It is submitted that the benefits of supporting a group or shared allocation scheme for the Lindis catchment with specific provisions is an essential point for the Committee to recognise and that such a provision will fit with this policy. There are quite a number of other policies and provisions which support the use of shared water infrastructure in the RPW.<sup>1</sup>

### **Lindis water**

- 22 The Lindis Irrigation Company presently manages water use from several races including the two longest, the Tarras and Ardgour races. The Tarras

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<sup>1</sup> E.g. 6.2.3 explanation, 6.4.0B, refer further RPW discussion below.  
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and Ardgour races start high in the catchment and deliver water to properties utilising gravity delivery. High flows are needed to transport water using this method, therefore it is necessary to combine to use the same race system. These water distribution systems are not considered to be very efficient by today's standards. The extent of the race systems is indicated in figure 1 on page 4 of the evidence of S McKeague who will be able to provide a full description of the existing system to assist the Committee.

- 23 A long history of parties working together has resulted in a high degree of cooperation and complex interactions to ensure the greatest use of the water available and to share the resource, particularly in the dry summer months.
- 24 At present there are no minimum flows requirements on water takes from the Lindis River. Existing water permits enable up to approximately 4,000l/s to be taken from the Lindis River. Although up to 4000l/s is authorised, roughly a third of this entitlement is 'paper water' i.e. water that is not actually utilised. The actual amount of water being taken from the Lindis is estimated to be in the region of 2,300l/s.
- 25 At the point that resource consents are applied for in 2021, the 'paper water' will immediately be removed from the water equation as the applications for resource consent needs to demonstrate actual use for the replacement of water in the primary block. That level of actual use will be assessed in support of the amount of water to be allocated by a new resource consent.
- 26 Users are also required to demonstrate efficient use of the resource. The removal of paper water and the implementation of more efficient practices are an expected benefit of the changes coming as a result of the expiry of the deemed water permits.
- 27 It is difficult under today's water use conditions to appreciate the extent of the beneficial effects that will accrue from the new management regime just as a result of regime change. It is submitted that these beneficial effects must be appreciated first before moving on to an assessment of the detailed provisions to be put in place.
- 28 Estimates of the level of total water use by existing users once efficient practices are in place is in the region of 1,900l/s. This provides the basis for the figure put forward by the LCG as a realistic level for the primary allocation limit.

- 29 At present, when there is insufficient water in the Lindis to meet the maximum use of approximately 2,300l/s, arrangements are made to ration the supply. As the water flows drop during the summer months, lower priority takes located further down the Lindis River were the first to lose access to water. In recent times some of the takes have taken to sharing water more equitably rather than as would be dictated by priorities.
- 30 After the minimum flows are set through PC5A they will ensure that specified volume of water will remain in the lower Lindis into the dry months. Only at that time will we be able to see the actual extent of water that will be left in the river in the dry months, and it should also be remembered that the extent of flow in the upper sections will immediately change as soon as the single point of take for the Tarras and Ardgour races is decommissioned.
- 31 It is submitted that the extent of effect on water users must be fully appreciated and accounted for before setting minimum flows which create extensive and irreparable harm to the businesses of some water users. Banks are aware of the importance of water to ensure viability of some properties. It is important to ensure that the restrictions imposed by PC5A are not so prohibitive that water users will be unable to obtain funding to establish new infrastructure.
- 32 It is submitted that the Committee must consider that if a lower minimum flow has a high chance of a strongly adverse effect on existing water users, that impact must be fully assessed against the potential extent of environmental gains. Where any gains are difficult to demonstrate or are only add a very small additional benefit, it is submitted a regime that supports existing water users should be preferred.

### **Lindis river environment**

- 33 The Lindis River is a dynamic environment with volatile flows. The climate in the Lindis catchment is characterised by low rain fall during the summer months, with the river's flows being greatly reduced at this time.
- 34 These characteristics are not the norm across New Zealand. The more generalised national tools and provisions which may be used to analyse water flows on other rivers in New Zealand are difficult to apply to the Lindis, and have a high degree of inaccuracy because the assumptions built into them do not accommodate the extent of seasonal difference in flows seen in the Lindis.
- 35 It is submitted that any provisions to be inserted through this plan change process must therefore be based only on information and analysis specific to

the Lindis River. Given the impact of the changes, the new management regime must be based on information relevant to a dry river environment and preferably directly derived from a clear understanding of the Lindis environment itself.

- 36 The lower Lindis River also has a complex interaction with groundwater which has been difficult to clearly define in information compiled to support PC5A.
- 37 Areas below the Ardour Road alternate between gaining and losing reaches. For a river with this high degree of hydrological alteration it takes time to accumulate a clear picture of how the lower river works across different years – particularly in the driest years when water for irrigation is most critical. Without adequate information as to the effects on the lower river it is difficult to establish minimum flow options and to evaluate environmental effects of the different options.
- 38 The natural values supported by the Lindis River are specified in Schedule 1A to the Regional Plan for Water. For the Lindis River, the Plan records ecosystem values as including presence of significant fish spawning areas for trout, significant areas for development of juvenile trout, significant presence of trout and significant presence of eels. There is no outstanding natural feature or landscape associated with the Lindis recorded in the Plan, nor any significant indigenous vegetation and significant habitat of indigenous fauna. A high degree of naturalness above 900 metres ASL is recorded. It is submitted that Schedule 1A may guide consideration of the particular values the RPW contemplates as to be considered in relation to the Lindis River.

#### **Consultation process**

- 39 Workshops were held with the community in 2009, 2010, 2011 (two) and 2014 to consult on and discuss Proposed Plan Change 5A. Throughout these workshops the minimum flows proposed were 450l/s for the summer period December to April. In 2014 a draft of the Proposed Plan Change was circulated at the workshop.
- 40 On 1 April 2015, a new minimum flow of 750l/s was advised.
- 41 The Plan Change was also amended in 2015 to exclude the Tarras Creek area from the mapped Lindis River Catchment.
- 42 On 8 August 2015, PC5A with the new minimum flow limit was formally notified.



- 43 In the notified form of PC5A the restrictions on the Bendigo-Tarras aquifers were newly introduced.
- 44 For five years the Council provided a relatively settled indication for the community as to the expected form of PC5A to which the community became adjusted and water users began to build their future business decisions on.
- 45 In 2015, the Council officers made some very substantive changes to the proposed provisions. Water users who based infrastructure investment decisions on the consistent advice it had received from Council over some five years are contemplating significant losses if these more recent changes are adopted by the Committee.
- 46 If the newer parts of PC5A are adopted any planning and discussions that have been undertaken by water users to date that were based on the originally proposed minimum flows of 450l/s would have to start over. Arrangements and discussion between water users in the Tarras Creek area, including with users upstream, also would need to be set aside if this area is not included in the Lindis catchment.
- 47 It is acknowledged it is for the Council to determine the final form of any proposed plan change, however it is also the responsibility of the Council to ensure consistency in delivery of information and to understand the impact of the information they are providing to businesses.
- 48 The RPW provisions recognise there must be an equitable transition to the new water regime following the expiry of deemed water permits.<sup>2</sup> The changing goal posts would result in an inequitable process if the provisions setting higher minimum flows, excluding the Tarras creek area and restricting winter takes from the Bendigo-Tarras aquifers are imposed.
- 49 Certainty of information to enable a new framework to be established and to enable investment decisions and funding is a key matter for the Committee to consider in ensuring this process is equitable, and in supporting the transition to new water management practices in the Lindis catchment.

#### **Legal framework for plan changes**

- 50 The legal framework for considering plan changes was summarised by the Environment Court in *Fairley v North Shore City Council*<sup>3</sup> as follows:

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<sup>2</sup> Refer explanation to policy 6.6.3

<sup>3</sup> [2010] NZEnvC 208 at para 7

*The RMA's legal framework for considering plan changes begins with sections 72-76 and incorporates, by reference, sections 31 and 32. The process of analysis, once the matter is before the Court, was reviewed in the decision of Eldamos Investments Ltd v Gisborne DC (W047/2005) and further commented on in Long Bay-Okura Great Park Soc Inc v North Shore CC (A078/2008). In the circumstances of this Council initiated Plan Change the otherwise lengthy list of factors to be analysed can be compressed. We consider whether the terms of the Plan Change:*

- *accord with and assist the Council in carrying out its functions so as to meet the requirements of Part 2 of the Act;*
- *take account of effects on the environment;*
- *are consistent with, or give effect to (as appropriate) applicable national, regional and local planning documents; and*
- *meet the requirements of s32 RMA, including whether the policies and rules are the most appropriate for achieving the objectives of the plan.*

51 This approach was adopted and applied by the High Court in *Rangitata Diversion Race Management Ltd v Canterbury Regional Council*.<sup>4</sup>

### **Functions of the regional council**

#### *Minimum flows*

52 It is clear that section 30(1)(e) provides for the ORC to control the taking of water including the setting of a minimum flow. LCG agrees that it is appropriate for there to be a new management regime, particularly in the light of the impending expiry of deemed water permits. The setting of minimum flows for various waterways in the Otago region is contemplated in provisions of the RPW.

#### *Water allocations and catchment boundaries*

53 Section 30(1)(fa) provides that a function of the ORC is to establish rules in a regional plan to allocate the taking or use of water. LCG agrees that amendments to set primary and supplementary allocations is appropriate and

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<sup>4</sup> [2015] NZHC 2174 at para 30 and following  
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the mapping of the relevant catchment is necessary to support the applicable policies and rules.

#### *Restrictions on aquifer takes*

54 As noted elsewhere in these submissions the restriction on winter takes from the Bendigo-Tarras aquifers was only a very late introduction to PC5A. If the matter had been raised earlier the impact on the community could have been more clearly understood and discussed and more information gathered to evaluate the proposal.

55 It is submitted that the impact of the provision contravenes the requirements on regional councils not to re-allocate a resource which is the subject of an existing resource consent. Section 30(4) RMA restricts the rules that may be included in a regional plan. In respect of a new rule section 30(4)(a) states that:

*The rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent;*

56 Section 30(4) continues on in paragraph (c) to provide that if new restrictions are to be introduced then it should be made clear in the rule that the resource is being reallocated in anticipation of the expiry of existing resource consents and in para (d) it must be specified what type of activity the new allocation will be for.

57 It is submitted that section 30(4)(c) applies to the proposed new restrictions on winter takes from the Bendigo-Tarras aquifers and the way that the new restriction is incorporated in an existing policy inadequately meets the requirements of the RMA in imposing new restrictions on allocation of that resource.

58 As discussed further below there are also issues with the proposed amendment to Schedule 4B where is no evidence to suggest there exists any need for the restriction.

#### **Give effect to the National Policy Statement: Freshwater**

59 The National Policy Statement for Freshwater ("NPS") is an essential document which you must consider as a part of this plan change process.

60 It is submitted that the way that it has been relied on to date by Council officers represents a misunderstanding of the process, and inadequately recognises

the steps set out in the NPS. The NPS does not just require minimum flows to be set. The NPS also requires a full and comprehensive analysis of a particular catchment in order to underpin the level of minimum flows imposed. In order to apply policy B1 it is also necessary to have a full understanding of the analysis required in Policies CA1-CA4, including the identification of Freshwater Management Units.<sup>5</sup>

- 61 It is submitted that the analysis required by the NPS has not been completed by the Council in its section 32 report. At all stages the Council's documents are silent on Freshwater Management Units ("FMU"). The Ministry for the Environment has produced a guide to the NPS and also a draft guide to identifying FMU's. It is submitted that through this plan change process it is appropriate to establish that the Lindis catchment, including the Tarras Creek area, is an FMU.
- 62 The NPS allows for a broad range of matters including community connections to be taken into consideration when identifying an FMU. It is submitted that the Tarras Creek area has a long association with the Lindis catchment and based on the historical group water sharing which links this community with the Lindis, this area should be included within the Lindis FMU.
- 63 The NPS records that in setting freshwater objectives for each FMU a regional council must also consider the following matters:
- a The current state of the freshwater management unit, and its anticipated future state on the basis of past and current resource use (Policy CA2(f)(i)); and also
  - b The timeframes required for achieving the freshwater objectives, including the ability of regional councils to set long timeframes for achieving targets (Policy CA4(f)(vi)).
- 64 A recent decision of the New Zealand Supreme Court considered and discussed the role of National Policy Statements in relation to the development of plan provisions ("King Salmon case").<sup>6</sup> Clear signals were sent in that decision as to the importance and role of national policy statements. It is submitted that the NPS must be given full effect through this plan change process.

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<sup>5</sup> The section 42A report attaches part B of the NPS but the document needs to be read as a whole.

<sup>6</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Limited* [2014] NZSC 38

- 65 The *King Salmon* case considered the National Coastal Policy Statement, however a number of the comments made relating to priority of planning documents are clearly also applicable to other policy statements such as the NPS. The Environment Court has recently applied the *King Salmon* case in respect the NPS for freshwater.<sup>7</sup>
- 66 It is submitted that this Committee must apply the assessment process set out in the NPS for freshwater to the maximum extent possible, and also take account also of the matters noted above in setting future objectives for the Lindis catchment.
- 67 It is submitted that the NPS supports an analysis which fully recognises the reduction in impacts on the Lindis following the decommissioning of existing races and new efficient practices, but also appreciates the need for changes to occur over reasonable timeframes.<sup>8</sup>

#### **The requirements of section 32 RMA**

- 68 A full copy of the present form of section 32 which sets out the requirements for consideration of PC5A is attached to these submissions. It is inferred for the purposes of applying the requirements of section 32 that the objective of PC5A is essentially the setting of new management regimes for the Lindis catchment and aquifers within the Bendigo-Tarras Basin. This reflects the introduction to the plan change and also the introduction to the section 32 report.
- 69 LCG agrees that the setting of a new management regime is appropriate and therefore section 32(1)(a) does not need to be further addressed in any detail.
- 70 It is submitted that the steps set out in section 32(1)(b) and (c) are the steps which have been inadequately addressed in the section 32 assessment provided.

#### **Section 32(1)(b)(i) Options**

- 71 As a first step section 32(1)(b)(i) RMA requires the consideration of appropriate options to achieve the objective of PC5A.

#### *Minimum flows*

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<sup>7</sup> Ngati Kahungunu Iwi Inc v Hawkes Bay Regional Council [2015] NZEnvC 50 at paras 16-17

<sup>8</sup> See also discussion in evidence of S Dicey paras 96-119

- 72 LCG accepts that the options available to the Committee in terms of minimum flows are adequately identified. The choices for the Committee are between the original proposal put forward by the Council (refer consultation draft of PC5A dated April 2014) which proposed the Minimum flow (litres per second – instantaneous flow) as:

*750 (October to November)*

*450 (December to April)*

*750 (May)*

*1600 (June to September)*

- 73 The proposal incorporated in the notified form of PC5A recorded the Minimum flow (litres per second – instantaneous flow) as:

*750 (October to May)*

*1600 (June to September)*

- 74 In LCG's submission the original proposal which provides for minimum flows of 450l/s in the summer months is the optimal solution.

- 75 LCG also proposes a transition process for the implementation of minimum flows. As described earlier in these submissions the changes necessary before new water take infrastructure can be built are substantial. The Committee has heard from a number of water users who have detailed the potential impact of an onerous regime on their livelihoods.

- 76 The changes implemented by the water policy provisions proposed by LCG provide a transition process and it is submitted that the implementation of PC5A must recognise the practical realities of the proposed changes on the ground and also provide time to make the transition.

#### *Allocation limits*

- 77 It is submitted that the options for primary allocation limits provided in the section 32 report are inadequate. It is submitted that the methodology used to reach a proposed allocation limit of 1,000l/s was undertaken in an ad hoc manner and is insufficiently linked to the actual water use in the Lindis.

- 78 The evidence for LCG provides a full analysis and basis for the primary limit of 1,900l/s.<sup>9</sup> A primary allocation limit of 1,900l/s is an important option which

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<sup>9</sup> Refer para 29-38

best applies the methodology provided in the plan for setting such limits.<sup>10</sup>  
This also reflects the current practice of the Council in assessing resource consent applications.

#### *The wider management regime*

- 79 The blunt management tool that relies on inserting specified allocation limits as proposed is one option for the Committee to consider in incorporating the new management regime in the plan.
- 80 However it is submitted that there are more options available to provide provisions that better reflect the impact of the proposed changes. The Committee will appreciate that the application of any new regime of water management will take time to establish in a catchment. The RPW contains provisions that acknowledge and require support for the impact of change.
- 81 There is a full discussion of the range of provisions that LCG proposes to support the new management regime in the evidence of Ms Dicey, including a proposal to enable channel management works to enhance instream habitat. The suggested policies and rules are intended to provide for an equitable transition process into the new management regime.

#### *Catchment boundaries*

- 82 Generally speaking there are two practicable options available in relation to the proposed mapping of the Lindis catchment, essentially to include or exclude the Tarras Creek area from the Lindis catchment.

#### *Bendigo-Tarras aquifer restrictions*

- 83 There are two practicable options available, to include the additional restriction on takes in winter or not.

#### **Section 32(1)(b)(ii) & (iii)**

- 84 Having determined the appropriate options for consideration the Committee must then assess the efficiency and effectiveness of the proposed provisions in achieving the objective of PC5A.
- 85 Under section 32(1)(c) the evaluation report completed by the Committee must:

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<sup>10</sup> Policy 6.4.0A  
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*(c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal.*

- 86 For the members of the LCG, the scale of the economic and social effects of PC5A are significant.

### **The RPS, Proposed RPS and RPW**

- 87 Section 32(3) RMA requires an evaluation of the existing objectives and policies of the plan as they relate to the proposed objectives and policies of PC5A. This analysis requires close consideration of how PC5A fits with the existing planning framework. It is submitted that this is particularly necessary where the amendments proposed by PC5A will almost literally in some places just slot in to fit within the existing provisions governing water use.

- 88 The objectives and policies of the RPW which are particularly relevant for consideration are assessed in the evidence of Ms Dicey.<sup>11</sup>

### *Shared/group water use*

- 89 Of particular note are the policies which support group water management (discussed above), shared water use<sup>12</sup> and shared water infrastructure.<sup>13</sup>

- 90 Policy 6.6.1 requires the promotion of water conservation practices such as shared water infrastructure to minimise loss of water. The RPW also promotes water storage at periods of high water availability. By working together, the LCG membership is most likely to be able to obtain funding to establish shared water practices and establish water storage. There are very limited sites for water storage in the catchment, and the ground conditions are a further limiting factor. It is noted that in this area establishing water storage is likely to be a costly exercise.

- 91 Any group application for resource consent will logically ensure a very efficient sharing of the water resource, therefore it is submitted that the proposed plan provisions which enable a shared water application would be appropriate and reflect these policies. Ms Dicey on behalf of the LCG has included proposed provisions for this purpose in her evidence.

### *Deemed permits*

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<sup>11</sup> Paras 120-132.

<sup>12</sup> Policy 6.4.0B

<sup>13</sup> Policy 6.6.0



- 92 The issues relating to deemed permits are recognised at 6.2.8 of the Plan and in policy 6.6.3. The explanation for and principal reasons for adoption the policy state:

***Explanation***

*Deemed permits (see Appendix 2) have become a significant element of Otago's water management regime and confer significant benefits upon the region's people and communities. This policy establishes means to assist in the development of methods and strategies for the orderly transition from deemed permits, which expire in 2021, to resource consents. The means in (a) to (c) of the policy are intended to introduce equity in the implementation of minimum flows, remove excessive allocation and provide resource use information. There will be consultation with users to ensure that no arbitrary changes are required. Where voluntary methods fail the Council may consider using other options.*

***Principal reasons for adopting***

*This policy is adopted to support a possible transition from deemed permits to resource consents. This transition may be needed because the exercise of deemed permits can constrain opportunities to implement minimum flows established by this Plan to maintain the life-supporting capacity for aquatic ecosystems and natural character of rivers.*

*Seeking the co-operation of holders of deemed permits is an effective means of developing more appropriate provisions for management of water in the long term.*

- 93 It is submitted that this policy recognises the effect of the transition, and that the amendments to be made by PC5A should reflect the intention in the plan to introduce equity in the introduction of a new management regime.

**Effects on the environment**

- 94 The present environment in the Lindis catchment has been shaped by a long history of water use in the Lindis catchment and will continue to be unrestricted by minimum flows until the existing deemed water permits expire and minimum flows are implemented, either through review of all relevant consents or otherwise (for example, through a new policy as proposed by Ms Dicey).<sup>14</sup>

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<sup>14</sup> Refer Page 33 of evidence of S Dicey  
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- 95 Under the deemed water permits water is taken from many sites throughout the catchment both in the tributaries and main stem. Three large takes in the lower catchment owned by the Lindis Irrigation Company use large and lengthy races which run beside the river. In summer a section of the lower river dries out completely.
- 96 The decommissioning of the irrigation races used by the community for almost 100 years will promote a more natural river environment in the lower reaches. At present the large take which feeds the Tarras and Ardgour races has a great impact.
- 97 The irrigation races, and the complex systems for bywashing, returns and re-taking water will be decommissioned following the adoption of a new regime which will be authorised by resource consents from 2021. When making these resource consent applications, water users must demonstrate the efficiencies of their water use and the existing races will be unlikely to meet these tests.
- 98 Until the new water takes are constructed and begin to be used, the full benefit of the new management regime cannot be fully quantified. It is clear that the implementation of a minimum flow regime with an appropriate transition package will improve the existing environment considerably.
- 99 The extent of the benefits that can be seen between the two minimum flow options are evaluated in the evidence of Mr Hickey. The amount of benefit that accrues does not rise correspondingly with an increase in flow. It is Mr Hickey's evidence that there are minimal additional gains to be made above the summer minimum flow of 450l/s proposed by LCG.
- 100 Where any potential environmental gains above the setting of a 450l/s minimum flow add limited additional value, it is submitted a regime that avoids undue effects on existing water users should be preferred.

### **Economic Evidence**

- 101 There is a comment in the section 42A report which suggests that it is only necessary to undertake an economic analysis of PC5A at a wider regional or national level. This is frankly a complete misunderstanding of the requirements of section 32(2)(a)(i) and (ii).
- 102 The 42A report goes on to refer to a 2002 Environment Court case to justify this misinterpretation. A decision made in 2002 could not be relevant to the

application of a clear directive in the legislation that impacts on economic growth and employment are to be identified identified and assessed.<sup>15</sup>

- 103 It would be unreasonable not to quantify the economic impacts on the ratepayers who will be affected, on a day to day basis, by the proposed amendments. LCG has provided economic evidence to enable the given the potential direct impact on the water users of the Lindis catchment, including the water users in the Tarras Creek area.
- 104 It is submitted that the effects on the community, not only the direct effects on water users, but the effect of changes on farming families, and on businesses that supply and support these farms must be at the forefront of the analysis of the economic evidence before the Committee as required by section 32(2)(a)(i) and (ii).
- 105 It is submitted that the economic analysis of Mr Porter and Mr Collier is unchallenged and provides a clear indication of the extent of the economic impacts of PC5A which must be taken account of in determining the appropriate new management regime.

#### **Proposed aquifer restrictions**

- 106 As noted above, consultation was undertaken between 2009 and 2015 on proposals relating to Proposed Plan Change 5A. The consultation draft circulated at the community workshop on 1 April 2014 did not include the provision included in the notified version of the plan change which includes an addition to schedule 4B.
- 107 It is submitted that it is inappropriate to make any late changes such as this without full community consultation to assess and understand how the amendment would impact current water use. By creating this new restriction the Council may be seen to be providing a priority allocation for hydro electricity use.
- 108 It is further submitted that the amendment is unsupported as there is no evidence that demonstrates that there is any impact on the Clutha/Mata-Au from existing winter use by irrigators that might justify the imposition of such a restriction.

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<sup>15</sup> The High Court case referred to in the section 42A report reflects the same misunderstanding.

- 109 It is submitted that if other interested parties wish to seek a restriction on water use they have adequate opportunity to do so through the resource consent process.

## **Summary**

### *Minimum flows*

- 110 There are complex and substantial changes to the way water is taken in the Lindis catchment coming for all water users. The imposition of minimum flows and the proposed levels for seven months of the year are accepted by LCG. Following implementation of minimum flows rationing of water will continue in the summer months between water users. The evidence before the Committee is that there is a limited benefit that will accrue from additional flows above 450l/s in summer. The economic evidence is however clear that there are adverse effects on farm operations if access to those additional flows is lost.
- 111 The RPW provides for an equitable transition to a minimum flows regime. It is submitted that the Council must take care not to impose a very restrictive minimum flow when the extent of additional environmental benefit that might accrue is limited, but the strongly adverse economic and social effects are. It is submitted that the proposed 450l/s minimum flow limit from December to April strikes a better balance.
- 112 LCG is interested to ensure the minimum flows is finalised as soon as possible to enable the catchment's water users to begin the process of change that must then follow. In terms of timeframes it is submitted that the Council must recognise the reality of the process of change. The amount of work required even before resource consent applications are lodged in 2021 is massive. Following the consent process the infrastructure must then be funded and constructed. It is submitted that an additional timeframe of at least five years is reasonable to allow for this to occur.
- 113 In their final form the amendments to the RPW inserted by PC5A must take account of the reality of this process of change, and provide time for it to be completed. The new framework for shared water must be strong and cannot be rushed.

### *Allocation limits*

- 114 1,900l/s is a well grounded primary allocation limit. It requires substantial efficiency improvements while also referring back to existing use in the catchment. A realistic primary allocation limit that reflects current consenting practice provides for certainty and better enables investment decisions to be supported and funded.

#### *Catchment boundaries*

- 115 It is submitted that the Tarras creek catchment must be included within the Lindis catchment. This area has a long history of association with the Lindis water races and the late removal of this area from the catchment maps is unreasonable and unworkable.
- 116 Much of the water used in the Tarras Creek area presently comes from the Lindis Irrigation Company. It is submitted that even just based social reasons and historical practice it is appropriate to maintain the Tarras Creek area within the Lindis catchment. The regional council must be responsible in the way that it encourages these water users to move to alternative sources and it should not be done so curtly as through the exclusion of the Tarras creek area from the plan maps.
- 117 The impact of a switch to a new water source is felt in loss of priority and in the need for completely new infrastructure – which would potentially need to be funded independently at high cost and with less efficiency gains than is made through shared infrastructure.

#### *Bendigo-Tarras aquifer restrictions*

- 118 On the basis of an inadequacy of evidence to support the proposed amendment, and also because the provision is contrary to section 30(4) RMA, it is submitted that the proposed Bendigo-Tarras aquifer restrictions to be incorporated as new clause 4B.2 (set out at the bottom of page 12 of the PC5A document) should be rejected.

#### **Conclusion**

- 119 The works on the ground to create new irrigation systems will actually be the last step of the coming process of change. The first step needs to be the clear identification of the water which will be available for use. It is submitted that the framework of provisions proposed by LCG for the new water management regime:

- a Promote and support a fair and equitable transition process;
- b Establish an effective management regime which meets the objectives of PC5A, and fits with the existing policy framework in the RPW; and
- c Provides for substantial steps to be taken to maintain and enhance the life supporting capacity and natural character of the Lindis River.

Dated at Dunedin this 4th day of April 2016

S M Chadwick  
Counsel for the Applicant  
**Lindis Catchment Group**