

Hearing Statement

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To: **Otago Regional Council - Hearing Panel**

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

By: Federated Farmers of New Zealand

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I. Introduction

1. My name is Kim Reilly. I am the Federated Farmers of New Zealand South Island Regional Policy Manager.
2. I have a Bachelor of Laws degree from the University of Otago and come from a proud farming background. I have represented the needs and interests of farming members across the South Island for the past five years.
3. During my time with Federated Farmers I have gained significant experience in the implementation of the Resource Management Act, including an understanding of the impact that it has on farmers and primary production.
4. Aspects of my role include preparing submissions and further submissions on regional and district council plans, and supporting our members to effectively represent their own interests in planning matters.
5. My comments today are made in the context of the significant contributions primary production makes to the economic, social, and cultural well-being of the Lindis catchment, and the positive impacts of primary production on the economic sustainability and continued viability of many of the Central Otago district's towns and rural communities.
6. I appreciate that as part of this hearing process, in addition to the significant background information, technical and scientific information, submissions and further submissions, you have already had the opportunity to hear from a range of individuals, organisations and expert witnesses.
7. I am not a scientist and my statement will not purport to add to the wealth of scientific information you have already received as part of this hearings process.
8. As both our submissions and further submissions are taken as read, Federated Farmers attendance here today is to serve three functions.

9. Firstly, we're here to support our members impacted by the plan change. Specifically we support the farmer statements, expert evidence and alternative flow regime proposal and planning provisions provided by the Lindis Catchment Group, which have already been presented to you over the past week.
10. The submissions, evidence, statements and independently obtained expert opinion put together on behalf of the farmers within the Lindis Catchment provide a persuasive case for you to consider.
11. The second aspect of our involvement relates directly to our concerns with the Otago Regional Council's approach to this plan process. We have members across Otago who are yet to undergo similar plan processes and we are very concerned that similar failings that have occurred through this process could occur elsewhere.
12. I will further expand upon our concerns with Council's approach to this overall plan change process below. I will subsequently address concerns with the inadequacies in Council's assessment of the economic impact of the plan change and other relating matters.

II. OVERALL PROCESS

Section 42A Report: Information to assist decision-making

13. We support and accept that through Plan Change 5A, Council must achieve the purpose of the Resource Management Act (the Act) and give effect to its obligations under the National Policy Statement for Freshwater Management 2014 (NPS).
14. Our position is that under these legislative requirements, any proposed water management regime must provide for a fair, reasonable management regime for plan users and must ensure an appropriate balance between competing demands.
15. The purpose of the Act, as set out within section 5, is to 'promote the sustainable management of natural and physical resources'. Sustainable management provides under section 5(2) for a balancing

between the four well-beings – environmental, social, economic and cultural.

16. Within the Section 42A Report, at page 3, reference is made to two Environment Court cases: the first in 2011, Blakeley Pacific Ltd v Western Bay of Plenty District Council and the second a 2012 case, Manawhatu-Whanganui Regional Council v Day. The Report's conclusion from these cases was that "the plan change should achieve the purpose and principles of the RMA by safeguarding the social, cultural and environmental values supported by the Lindis, while at the same time enabling socio-economic activity in the Lindis catchment".
17. We do not necessarily draw the same conclusions as Council from these cases, and dispute that the Environment Court intended their decisions to mean that the mere 'enabling' of socio-economic activity was a sufficient balance under section 5, whereas social, cultural and environmental factors required 'safeguarding'.
18. We refer to the decision in Kiwi Property Management Ltd v Hamilton City Council (2003) 9 ELRNZ 249, where the Environment Court held that the "enabling" and "management" functions of s 5(2) are of equal importance. As noted by the court, the circumstances of each case determine the level of management required to promote the sustainable management of natural and physical resources.

King Salmon case

19. At section 1.1.2.2 on pages 3 and 4 of the Council's Section 42A Report, there is a discussion on 'giving effect to the National Policy Statement for Freshwater Management 2014'.
20. Reference is made to the Supreme Court's decision in Environmental Defence Society Inc v New Zealand King Salmon Company Limited [2014] NZSC 167 (King Salmon).
21. The King Salmon case specifically related to a matter under the New Zealand Coastal Policy Statement. The National Policy Statement for Freshwater Management was neither considered nor discussed at any point of the Supreme Court's decision and we dispute it specifically being used in the way proposed within the s42A Report.

22. We draw these conclusions for a number of reasons. Firstly, in making its decision, the Supreme Court placed significant emphasis on specific wording within section 58 of the Act (which relates to the contents of New Zealand Coastal Policy Statements). This focus was particularly on the words “priorities”, “preservation” and “protection” within section 58(a). These words do not appear in section 45 of the Act, which relate to national policy statements more generally. In fact, there are a number of differences between the statutory prescriptions for each instrument under the Act.
23. Secondly, the tone and content of the preambles to both the NZCPS and NPSFM are quite different. In addition, both Objectives A1 and B1 of the NPSFM directly reference “sustainably managing the relevant activities”, which brings users back to section 5(2) of the Act. There is no similar Objective referencing ‘sustainable management’ within the NZCPS.
24. Thirdly, the policies of the NPSFM are less “specific and directive” than policies 13 and 15 of the NZCPS, which in the Supreme Court’s view set “something in the nature of a bottom line”. The Supreme Court itself even noted that other provisions of the NZCPS were ‘less directive’ and by their nature had left councils with greater flexibility and scope for choice. It is reasonable that the same conclusion could also be drawn between differences between the NZCPS and the NPSFM.
25. Arguably in fact, unlike the NZCPS, the NPSFM does not itself set bottom lines at all. Rather it establishes a framework within which regional councils must themselves establish limits and targets and set bottom line requirements for their specific region. Local solutions for local issues.
26. Therefore, we disagree with the Section 42A conclusion at 1.1.2.2 in which the King Salmon decision was taken to imply that by giving effect to the NPSFM a further balancing exercise under section 5 was not required.
27. The intent of the notified proposed plan was stated to be “to give effect to the NPS”. In our view, the NPS must still be interpreted and given

effect to within the context of the Act, and economic factors must be given appropriate consideration.

III. SECTION 32 REPORT

28. Our submissions to the proposed plan change raised considerable concerns with Council's approach to the Section 32 Report.
29. For the reasons provided within our submission, we do not consider a full and proper Section 32 evaluation was carried out. Council did not appropriately consider the costs of the different options under the proposal or assess full risks to the community and the economy, nor did it adequately evaluate environmental benefits or potential gains. Both these concerns have been reinforced through the evidence of George Collier and Matthew Hickey on behalf of the Lindis Catchment Group.
30. Within our submission, we drew attention to the fact that over the 5 to 6 year period through to April 2014, all scientific, planning, legal and other information was prefaced around Council's recommended position that a minimum flow of 450 litres a second was both necessary and appropriate.
31. We accept that scientific knowledge and understandings grow and change over time. However, at the time of the section 32 evaluation, we do not consider Council's significantly changed position was adequately substantiated nor linked to any accompanying scientific, or other, information.
32. Perhaps our biggest concern with the Section 32 Report relates to the evaluation, or lack of evaluation, to the likely economic impact of each option. It is not appropriate to conclude that both proposed options 3 and 4 would "likely result in about a 5% reduction in gross margin and employment". We consider this statement significantly underestimates the economic impact on individual landowners, the community and regional economies.
33. Council has also generically replicated the assessed economic benefits for each option under the proposal as 'scope to increase

productivity in local primary sector through the use of alternative water sources, water storage and efficient irrigation systems’.

34. We consider these statements significantly underestimate the economic impact on individual landowners, the community and regional economies. The evidence provided by George Collier on behalf of the Lindis Catchment Group provides useful supporting information to challenge the conclusions reached by Council.
35. At the time the Council indicated economic analysis through BERL was to be undertaken, Federated Farmers raised concerns with both the Council Chief Executive and Chair as to the narrow scope of the proposal. We also expressed concern with the cancellation of a collaborative working group set up initially by a Council staff member to bring parties together and to work through concerns and solutions.
36. We note that independently, a subsequent Lindis Think Tank was established by the Lindis Catchment Group, to work through matters previously to be addressed by Council’s stakeholder working group.
37. Federated Farmers supports the alternative planning provisions proposed by Sally Dicey within her evidence, on behalf of the Lindis Catchment Group, in response to the Think Tank discussions and we’ll expand further on this below.

IV. Transitioning

38. As hearing commissioners, you have the unenviable task of appraising the submissions, information and evidence presented to you throughout this process. The objective being to identify workable solutions for the Lindis Catchment’s Integrated Water Management.
39. In Federated Farmers view, part of this solution may be found through the establishment of appropriate transitioning timeframes. We note that this has been referenced in a number of submissions, including that of Fish & Game NZ.
40. A significant number of deemed permits, or mining rights, still are to be addressed across Otago. In likelihood the expiry of all such privileges

will not precede 2 October 2021. We have raised concerns with Council in relation to their current approach to these transitions.

41. We do not consider that the guide referenced within the Section 42A Report '*Preparing a resource consent application to take surface water, including replacing a deemed permit*' is all that useful for permit holders.
42. We are aware that a Plan Change 1C project implementation programme is being developed by Council to provide guidance and support to water users and consent holders, but we are yet to see a draft of this programme, so are not sure as to whether it will provide the information and advice needed. Nor do we think it is adequate for such information to come out in mid 2016, given only 5 years remains before such privileges expire.
43. In short, we do not consider there is a sufficient period of time between now and 2021 through which farmers can undertake the investment and change of practices required to comply with all aspects of this plan.
44. The Lindis River catchment is an extremely complicated system that requires an innovative solution. This is a catchment within which the ability to access irrigation is already restricted by the environment, where competing values exist, uncertainty remains about alternative options that both other parties and Council are promoting, and the river itself is still not clearly understood, despite the additional scientific analysis undertaken over the past few years.
45. The NPSFM itself provides for an extended implementation timeframe out to 2030 if the 31 December 2025 timeframe within it would be impracticable to fully implement. Policy E of the NPSFM outlines the timing for implementing the NPSFM.
46. Significant additional information is being learned about the Lindis River, yet a number of unknowns remain. As a result, we don't feel 2021 is an appropriate timeframe within which landowners can secure the investment, or make decisions around matters such as piping, easements, alternative water sources or storage options proposed by other parties and Council, which are necessary to enable them to

adequately continue their farming businesses, particularly given the complexity surrounding changing scientific views, changing positions from both Council and other parties and uncertainty around the ability to access alternative water sources.

47. In Federated Farmers view, a transition framework specific to the Lindis catchment needs to be adopted. We consider at least an additional five years will be required beyond October 2021 to enable appropriate transitioning, the establishment of a catchment-wide water management group, the adoption and investment into more efficient irrigation practices and the evaluation and obtaining of alternative sources of water.
48. We believe this reflects a 'real communities, real people and real impacts' situation, similar to that accepted by the Board of Inquiry into the Ruataniwha Dam.
49. I thank the hearing commissioners for hearing our concerns.
50. Bob Douglas, Policy Advisor to the Federated Farmers High Country Industry Group will now provide additional comment.

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