

BEFORE THE OTAGO REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act
1991 ("the Act")

AND

IN THE MATTER Proposed Plan Change 5A:
Lindis: Integrated Water
Management

**STATEMENT OF GRAEME NOEL MARTIN
EVIDENCE ON BEHALF OF THE LINDIS CATCHMENT GROUP LTD**

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INTRODUCTION

QUALIFICATIONS AND EVIDENCE

1. My name is Graeme Noel Martin.
2. I am the independent chairman of the Lindis Catchment Group (LCG). I am not personally directly affected by any decisions portended by the Proposed Plan Change 5A (PPC5A) or by the outcome of the LCG submissions on PPC5A.
3. I am fully retired.
4. My career spanning the years 1970 to 2012 was focussed around water and it's measurement, management, extractive uses, in-stream values, and community and environment dependencies.
5. By professional background I am an hydrologist, but formally moved into resource management in 1977.
6. Within the former Ministry of Works and development, from 1982 to 1988, I held responsibility for the then Crown owned irrigation schemes in Otago, including the Lindis irrigation scheme.
7. I held the position of Chief Executive of the Nelson-Marlborough Regional Council in 1989 to 1992. From 1993 to 2012 I held the position of Chief Executive of the Otago Regional Council (ORC).
8. I worked with the provisions of the Water and Soil Conservation Act 1967 until its demise at the commencement of the Resource Management Act (1991) (RMA). I have been actively engaged with the operation of the RMA from before its commencement through to my retirement. That engagement included developing pioneering water management regulation and operation appropriate to the unique Otago circumstances and elsewhere in New Zealand.
9. I chaired the Ministerial South Island High Country review in the 1990's and was the last General Manager of the Otago Catchment Board prior to its abolition in the local government reforms of 1989.

10. I confirm that I have read and agree to comply with the Environment Court Practice Note 2014 with regard to Expert Witnesses. This evidence is within my area of expertise, except where I state that I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

SCOPE OF EVIDENCE

11. My evidence provides an overview of:
 - a. the structure of LCG
 - b. the uniqueness of the Lindis catchment
 - c. the impact of the Proposed Plan Change 5A
 - d. how Proposed Plan Change 5A could be improved
 - e. critical matters affecting decision making of irrigators.

The Lindis Catchment Group

12. The LCG is an incorporated society with membership open to all irrigators and any others with an interest in management of the water of the Lindis Catchment. It has an elected Committee to manage its affairs.
13. The LCG has approximately 50 paid-up members, including all water users drawing from the Lindis Irrigation Company open race irrigation scheme.
14. The LCG was born out of a community recognition that cohesive community discussion and direction was needed as the future became increasingly uncertain due to changes to irrigation methods, proposals to impose a catchment minimum flow, suggested reduction of the primary water allocation, community irrigation scheme fragmentation, and the expiry of deemed permits.
15. The articles of incorporation of the LCG provide for it to be a water management group in terms of the Otago Regional Plan: Water. At present most water management is done by the Lindis Irrigation Company as it rosters water to its members and directly affected third parties.
16. The tenor of the LCG submissions to these hearings has been open for community input and debate, and the individual submissions of

Lindis Catchment irrigation farmers who have presented submissions to these hearings give support to the LCG and its community based approach to water need, water use and water management.

Lindis Catchment Uniqueness

17. Looking forward, water use and management in the Lindis Catchment is quite unique in a New Zealand context. This uniqueness is defined by the combination of the following determinative issues.
18. The flows of the Lindis River are extraordinarily variable between years, between seasons, and within seasons. (Opus: Lindis Catchment, February 2015. Report commissioned by Otago Regional Council and referenced in support of PPC5A).
19. The weekly weather during the irrigation season is very volatile with extreme desiccating conditions occurring in the main summer months. This creates an enormous span of irrigation demand with extreme crop demand in the desiccating dry nor-west winds of summer. (Opus: Lindis Catchment. February 2015. Report commissioned by Otago Regional Council and referenced in support of PPC5A).
20. The extent of irrigation, the river ecology and the character of the river and valley floor has been determined by over 80 years of water use set by deemed permits issued under former Mining Law and the design of the then Crown irrigation scheme utilising those permits. Today's environmental condition was created and has endured for that time.
21. Irrigation has been mostly undertaken using water supply races developed earlier last century under mining licences (deemed permits) and consolidated by the Crown into the Lindis Irrigation scheme. That scheme was privatised by Crown sale to the Lindis Irrigation Company in the early 1990's as part of the Crown exiting all its irrigation ownership in Otago and New Zealand.
22. The deemed permits that the Lindis irrigation scheme is based upon, together with all other deemed permits in the catchment, expire by statutory order in October 2021. Their lawful existence and exercise establishes rights to apply for Resource Management Act (RMA) consents in substitution. However all regulatory requirements current

at the time of substitution will be given effect. This “update” requires efficient use and conveyance of water and other matters not applicable to the deemed permits per se.

23. The change from deemed permits is a major factor influencing future irrigation in the Lindis catchment. The Lindis Irrigation Scheme will inevitably cease use of its current water abstraction and distribution infrastructure through what will be a complex and difficult closure. That closure will need to be seamlessly matched by the creation of new abstraction and conveyance infrastructure which is unlikely to be held in a common ownership structure. Substantial community ownership and unitary operation will be replaced by distributed ownership with a need for coordinated management of abstraction.
24. The complex interaction of the above six factors and the multiplicity of affected parties makes for the most complex water management change ever undertaken in Otago since the Water and Soil Conservation Act 1967 began regulation of New Zealand's water resources.
25. The RMA has provided a 30 year sunset provision on deemed permits of which five years remains. Superficially it would appear elementary for each permit holder to seek an RMA consent in substitution as may be convenient to them and their irrigation redevelopment. But because deemed permits have a lawfully embedded priority of access to water it is almost impossible, without creating unintended detriment (through consequences of altered priorities), for any single deemed permit to be substituted in isolation from all other deemed permits within the catchment.
26. For the Lindis catchment no planning to substitute the major deemed permits is realistically plausible until the matters of minimum flow and primary allocation have been determined. Only then can the extent of needed change be assessed, design of a new regime be developed, agreement to participate in a new regime secured, and the individual rights (established by lawful history of use under deemed permits) be able to be fairly and equitably married into a new legal structure with coordinated applications being written and lodged for substitution RMA consents.

27. Applications for RMA consents in substitution of deemed permits must be lodged before April 2021 if the existing deemed permits are going to be able to be exercised until the RMA consents are finally issued and operative.
28. This appears a considerable span of time, but the time for community to create a proposal in whole, and enter contracts to make collective applications, is shorter than has yet been achieved in much simpler situations.
29. The timeline for Council processing of such applications is unproscribed, is complex and challenging for Council to assess, and is liable to multi-party appeals. A processing time of two years has been experienced in much simpler circumstances.
30. Regardless of timing of consent decisions each new consent will need to contain transition provisions appropriate to its unique location(s) and the practicalities of giving effect to it. Large investments in infrastructure cannot commence ahead of regulatory certainty.

Proposed Plan Change 5A Impact

31. PPC5A has a direct adverse effect on the community of Lindis Catchment irrigators. No other interests or values are adversely affected by the proposal.
32. The LCG recognises that the management of the Lindis river and its values should be the subject of some beneficial change, however any change must be fully cognisant of the human and farming history of the catchment community, and of the effects of change from the long established regime of co-dependency between farming, native fisheries, trout spawning, in-channel environment and recreational activities.
33. PPC5A provides a narrow static approach to low flow management and the application of the National Policy Statement on Fresh Water Management 2014 (NPSFW). It merely fixes a seasonally stepped minimum flow at a control point and augments that with a revised primary allocation. The actual requirement of the NPSFW is for a low flow management regime; it imagines possible beneficial outcomes if a

more dynamic and circumstance responsive regulatory arrangement was set in place. The LCG considers that if a lower summer minimum flow were set, if any necessary site-specific outcomes were defined, and if carefully constructed permitted activity rules for low flow river channel management were set in place a better outcome could potentially be achieved for all interests.

34. PPC5A contains two elements that, if unaltered, will cause substantive adverse impacts on the existing community of irrigators and farmers. These are the summer minimum flows and the primary allocation. The two, taken together, determine the reduction in water available for irrigation abstraction after deemed permits are replaced by RMA consents.
35. The adverse effects of these two elements is aggravated by three other plan deficiencies, viz,
 - a. the absence of any practicable, fair and equitable transition provisions on implementation of the minimum flow, and
 - b. lack of recognition of, and provision for, the transition time needed to make the enormously complex and costly infrastructure changes the irrigators face individually and collectively, and
 - c. the absence of any transition measures to assist the change from deemed permits to RMA consents.

Making Improvement

36. The RMA has often been hailed as enabling legislation. The ORC has a history of using those enabling capabilities to provide for better and more cost effective water management than would otherwise be possible. That has been achieved by judicious but frequent use of controlled activity and permitted activity rules, of self-monitoring and self-management provisions, of transition time provisions, of empowerment of local management groups, and allowing adaptive resource management that is outcomes based rather than specification based.
37. PPC5A could greatly benefit from those capabilities being explicitly provided. Their absence leaves implementation of PPC5A as cumbersome, costly, uncertain, and extensively in the hands of ORC staff managing process and plan interpretations.

38. A sound and effective PPC5A would provide rules and policy to assist the transitions necessary for the Lindis community. In setting a plan change it is incumbent upon the Regional Council to ensure the community can adequately align to the change, including taking actions and making provisions that might be either within or conjoined with the plan content.
39. The LCG recognises that the base line for consents in substitution of deemed permits includes all existing legal requirements and approvals. And PPC5A must similarly recognise all other existing legal requirements and authorities. LGC members understand that PPC5A of itself does not spell the end for use of much of the old irrigation infrastructures on and off farm. But PPC5A intersects with the existing requirements for replacement consents under the RMA. The two go together in such a way as to determine the viability of future irrigation investments and changes to existing irrigation operations. That in turn will revamp the farm enterprises and in so doing set the tone for the future of the Lindis/Tarras community.
40. The portended off-farm infrastructure changes will need to be married with largely new on-farm irrigation infrastructure to efficiently distribute and apply water as required by the Regional Plan-Water and the NPSFW.
41. Both off and on farm infrastructure changes require major capital investment by farming enterprises. Such change can only proceed into detailed planning and design when a cascade of prerequisites can be met. For each irrigating enterprise this includes:
- a. Suitable resource consents to take and use water
 - b. Availability of design and construction contractors
 - c. Legal contracts with other parties who might mutually advantageously share infrastructure elements
 - d. Negotiated financing instruments
 - e. Electrical supply capability at pumping sites
 - f. Easements and consents for construction of abstraction and conveyance infrastructure located off-farm
 - g. Manufacturer/supplier capability to deliver electrical systems, water pumps, control equipment, pipes and valves, and irrigator units defined by the overall design.

42. The LCG has worked closely with its community and beyond.
43. The LCG convened a sequence of “think tank” meetings with Otago Fish and Game Council (OFG) and to which latterly Iwi and the Department of Conservation were engaged. At the last “think” tank meetings a repeat invitation was made for attendance by Otago Regional Council executives and this was taken up. The “think tank” developed a lot of unprecedented common ground around transition needs and arrangements.
44. In rejecting the transition suggestions the ORC executive provided some degree of explanation for their decisions. The key reasons appeared to be:
 45. Transitions were unnecessary as existing processes and lawful capability could be used to provide the flexibility needed and give fair and equitable outcomes.
 46. Permitted activity rules for low flow river channel management were obviated by an ORC held “universal” consent to manage river channels.
 47. Transition matters are referred to in the Section 32 report that goes with PPC5A. The LCG offers to work with the Panel and/or like-minded submitters to assist the Panel to consider and craft beneficial and effective provisions. The evidence of Ms Dicey includes an approach to provisions addressing transitional matter for the Lindis catchment.
 48. The LCG has engaged several experts to independently assess the irrigation, farm management and economic effects of PPC5A. That evidence is put to the Hearings Panel.
 49. The LCG experts have some material divergence of views to those expressed by NIWA, OPUS and BERL in their ORC commissioned reports used by ORC as support documents for PPC5A.
 50. However the LCG believes that fairness, equitable treatment, and protection of both community and environment are required to sit

alongside expert technical analysis which provides understanding of linkages, consequences and change expectations.

Critical Decision Making for Irrigators

51. In discussion with numerous individuals interested in the water resources of the Lindis catchment I have become aware that very few have a full picture of the decision making cascade that the affected irrigators must face.
52. How, and whether, irrigation farmers see they can get themselves through this decision making cascade will determine the fundamental success, failure or court based contortions in getting to the necessary final form and implementation of PPC5A.
53. Firstly the effect of the minimum flow of the river during the growing season is determinative of future rationing of water from the Lindis. But the primary allocation figure has to be interpreted for risks it poses for reliability of access to water.
54. The higher the primary allocation is, up to the existing actual primary allocation, the more of the existing non-low flow accessible resource may be able to be rostered and rationed amongst lawful users into the future.
55. If the new primary allocation is too much lower than the existing actually accessible primary allocation component the future available water resource is reduced by the amount of that difference plus the loss of access to water in the flow range gap between the primary allocation limit and the first supplementary allocation level. That “flow gap” is accessible at the moment and is used in part at least.
56. When irrigators know the loss of accessible water due to the final plan change they will individually and collectively need to review that impact on their enterprises and determine whether or not they might have any plausible alternative options for access to water or use of water. Those options, with and or without Lindis water, must be designed in concept and costed to enable investment choices to be made.

57. The costed options will necessarily include not only the options involving sourcing of water but also the options of farm management change of diminishing their existing irrigation scale.
58. Farm budgets, management changes and financial viability of the degree of change will then be able to be developed, reviewed, and iterated in a holistic way.
59. At that point attention can then turn to securing resource consents, mostly by way of substitution for deemed permits.
60. At about that point the Lindis Irrigation Company will be able to appraise its future and formulate an approach to change that will be viable for the company, comply with the Water Plan, and be reasonably cohesive with the assessments of individual clients.
61. The Lindis Irrigation Company's plan of approach will then require member consultation and iteration to move toward a membership vote to give a mandated Company position. The Company is a membership based cooperative and must ensure it remains governance stable and financially viable – a challenge of significance in times of stressed circumstances, of divergent opinions, divergent needs, and divergent affordability.
62. When the Company has achieved endorsement of a futures plan it will be able to turn its attention to applying for RMA consents in substitution for its dominant deemed permits. At that point it would be hoped that all other deemed permit holders will be able to join a catchment-wide coordinated approach to simultaneous consent application and processing.
63. For protection of all affected enterprises the RMA consent applications must be lodged with the Otago Regional Council no later than 1 April 2021. Inherently an incentive exists to lodge applications as early as possible. However experience with these types of complex multi-party decision trees would strongly indicate that reaching the stage of lodging applications is implausible in much less than three years from time of plan change decisions. If PPC5A is finalised by mid-2017 after some court mediation but not Court arguments, then mid 2020 is about

the earliest realistic prospect of getting good consent applications lodged.

64. No enterprise can commit very much resource to infrastructure design detail, construction contracts and the like until the consent applications are determined and can be impartially appraised by designers, financiers, and enterprise management.
65. Thus from time of lodgement of consent applications until the issue of new consents the community is in limbo.
66. Once consents are issued the mechanics of the many enterprises individually proceeding with their infrastructure changes and investments can take its course. A five year span is a realistic minimum for this phase of work.
67. Until final completion of the new infrastructure most irrigators will need to continue in operation under some form of transition condition of the new consents.
68. It is far from improbable that the new consents might not be issued before 2 October 2021. In that event continuation will initially be under the deemed permits provided applications were lodged by 1 April 2021.
69. The LCG has always recognised this decision cascade and its complexity. The LCG is painfully aware that neither it, its members, the ORC, interested submitters, nor any other party actually has a material control over the indefinite time lines outlined here. It will take a lot of shared common understanding of the difficulties. It will need cooperation amongst all parties. All parties will need to be fully cognisant of the stress on individuals and their community. All parties will need to engage in making essential transitions work successfully.
70. Too much pressure will inevitably cause catastrophe whether it be in the courts, in businesses, or on farms.

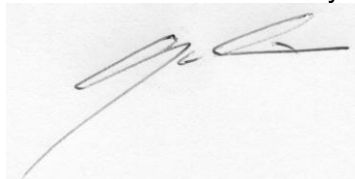
71. A leadership effort of strength, knowledge and compassion will be needed, not just with farmers, but with the ORC and the allied interest groups too.
72. Better outcomes for all interests are predicated on assisting successful irrigation farming change.
73. As noted in the S42A report the ORC took the need for a minimum flow to the public in 2011. The path to these hearings is recognised, understood and is unalterable history. By comparison what must be achieved in each of the next two five year spans is extraordinarily daunting.

CONCLUSION

Remote but not alone

74. The Lindis Catchment community is isolated and small, but has a rich diversity that sustains it in its remoteness. Some are self-employed, some are hired employees; some provide paid services into the rural businesses, many provide voluntary services ensuring their community wellbeing; some are self-supporting, some are retirees; some provide support for visitors, some depend on visitors; some provide rescue help for those stranded or injured as they travel through the catchment. Collectively they create the stable and unique fabric of the Lindis/ Tarras community. Farming with irrigation is the substantial foundation of their community. Material detriment to that foundation needs to be skilfully avoided. The RMA and the NPSFWM do provide for sustaining communities and their wellbeing. The challenge for PPC5A is to ensure all round betterment for all values and interests at minimal transaction cost.

Dated this 18 day of March 2016



Graeme Martin