

**BEFORE THE COMMISSIONERS ON BEHALF OF
THE OTAGO REGIONAL COUNCIL**

Consent No. RM18.345

BETWEEN

**LUGGATE IRRIGATION
COMPANY LIMITED AND LAKE
MCKAY STATION LIMITED**

Applicant

AND

OTAGO REGIONAL COUNCIL

Consent Authority

MEMORANDUM OF COUNSEL FOR THE APPLICANTS

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MEMORANDUM OF COUNSEL**May it please the Commissioners:**

1. By Minute 2 dated 17 September 2019 the Commissioners directed that the evidence for the applicants be filed on or before 4pm on the 8th of October 2019. Filed with this memorandum is the applicants' Evidence in Chief accordingly.
2. There are two aspects in relation to which the evidence is incomplete.
3. Firstly, at 5.30pm on the 7th of October the Environment Court released its first decision [2019] NZEnv C 166 "Re PC5A to the Otago Regional Water Plan" in relation to the combined Lindis proceedings (a copy is filed herewith). The Court proposes to issue a companion decision in "the next few weeks"¹ dealing with a direct referral of the deemed permit renewal applications for the whole of the Lindis catchment.
4. The Lindis Catchment Group (for whom this counsel appeared) ran a joint case with the Otago Regional Council in support of the PC5A appeal and the water permit application direct referrals. A joint hearing of both proceedings was held over 3 weeks. The Lindis PC5A decision examines all of the evidence that was presented in the case, including in relation to the water permit renewals. The Court made a number of findings in relation to the statutory framework and the evidence in relation to trout and indigenous fish species that are apposite in the present proceeding. The Lindis PC5A decision would have been a useful guide to the applicants' witnesses in the preparation of their evidence had the decision been to hand in time.
5. The second aspect of incompleteness is in relation to draft permit documents. Planning witness Kate Scott had intended to append completed redrafts of the three proposed permits (Criffel Water Limited, Lake McKay Station, Luggate Irrigation Co Limited) to her evidence. However shortly before the filing deadline it became apparent that this was not going to be possible. Ms Scott's evidence is filed herewith, but

¹ Page 5, para [2].

the applicants seek leave to file the draft permits (should leave be necessary), by 5pm on Wednesday 9 October.

6. The purpose of this memorandum is therefore threefold:
 - (a) To alert the Commissioners to the Lindis PC5A decision and that the evidence does not fully take account of it. and to provide a copy so that it can be absorbed before the hearing of the present applications (it is a document of significant proportions).
 - (b) To indicate that for the most part the applicants' witnesses had not had the benefit of this decision before completing their evidence in the present application. The witnesses have been provided with a copy of the decision this morning and asked to be prepared to make a supplementary statement about it's significant to their evidence at the hearing should they wish to.
 - (c) To seek leave to file the draft permit documents on 9 October.
7. Counsel anticipates that the Commissioners might have their own views about how best to deal with the Lindis PC5A decision in the present application and, if so, directions about how a response might be of most help to the Commissioners would be welcomed.
8. Should the Lindis water permits decision be to hand prior to the hearing, then counsel will immediately supply a copy to the Commissioners.

Date: 8 October 2019



P J Page

Counsel for Luggate Irrigation Company Limited & Lake McKay Station Limited