

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2020] NZEnvC 160

IN THE MATTER of the Resource Management Act 1991
AND of an application under section 87G for a
suite of resource consents to replace water
permits to take water from the Lindis River
that expire in 2021
BETWEEN LINDIS CATCHMENT GROUP
INCORPORATED
(ENV-2018-CHC-155)
Applicant
AND OTAGO REGIONAL COUNCIL
Respondent

Court: Environment Judge J R Jackson
Environment Commissioner K A Edmonds
Environment Commissioner R M Bartlett

Hearing: In Chambers at Christchurch
(Final memorandum received 17 September 2020)

Memoranda
lodged by: P J Page and B Irving for Lindis Catchment Group Incorporated
A J Logan and T M Sefton for Otago Regional Council

Date of Decision: 23 September 2020

Date of Issue: 23 September 2020

SEVENTH DECISION (OUT-OF-LINDIS-CATCHMENT CONSENTS – FINAL)

A: Under sections 87G, 104, 104B and 108 of the Resource Management Act 1991,
the Environment Court grants the following water permits on the terms and
conditions in the Schedule:

- (1) RM17.301.08 to Cluden Station Limited;
- (2) RM17.301.10 to Jolly Family Trust; and

(3) RM17.301.19 to Malvern Downs Limited.

B: Under section 87G conditions 3.1 to 3.4 of each of these resource consents will be amended to reflect those confirmed in the Fourth (Interim) Decision [2020] NZEnvC 121.

C: There is no order for costs since none are sought.

REASONS

Introduction

[1] This is a final decision in relation to three “out-of-catchment” takes sought by the Lindis Catchment Group Incorporated (“LCG”). All three water permits propose to take water from springs in a small corner of the (vast) Clutha/Mata-Au catchment immediately north of Tarras.

[2] The court issued a Third Interim Decision¹ (“the Third Decision”) on 24 July 2020 on these three water permits:

- RM17.301.08 Cluden Station Ltd;
- RM17.301.10 Jolly Family Trust;
- RM17.301.19 Malvern Downs Ltd.

[3] In the Third Decision the court raised questions about the commencement date (and thus the expiry date) of the proposed consents, and about what resource consents (if any) should be surrendered. We also reserved leave to correct any mistakes. Counsel for LCG and the ORC have responded in a memorandum dated 3 August 2020 and ORC filed an updated set of conditions attached to a memorandum dated 17 September 2020.

[4] We consider each permit in turn.

¹ [2020] NZEnvC 112.

RM17.301.08 Cluden Station

[5] Ms Irving, counsel for the LCG, advises that RM17.301.08 replaces water that is being taken from the Cluden Swamp. It does not replace any water that Cluden Station currently receives from the Tarras Race. The latter is being replaced with water which is part of the Lindis Irrigation Company consent at another take location – T1 – which is within the Lindis catchment. Consequently counsel submits, and we accept, that the exercise of RM17.301.08 should not be contingent on Cluden Station surrendering its interest in the Tarras Race take. Counsel suggested an amended wording of condition 1.2 and the deletion of the alternative 1.2A.

[6] Counsel also submitted that to avoid confusion the expiry date referred to in the operative clause of the consent should be amended to show that it runs from when the ORC accepts the surrender of the existing water permits. Counsel explained that the purpose of the change is to avoid the risk of confusion if the consent commences on a date other than 2 October 2021 as provided for by proposed condition 1.2. Counsel submit that section 123(d) Resource Management Act 1991 (“the RMA” or “the Act”):

...does not require a specific date to be referred to in the consent. It provides for a term to be specified. Whilst it is considered good practice to specify an expiry date, in this case that cannot happen due to the commencement being contingent on the surrender of the existing consents. The parties consider that reference to the Consent Authority's notice of acceptance ... will ensure certainty as to the expiry date of the consents.

[7] We accept that and will change condition 1.2 and the operative part of the consent accordingly.

RM17.301.10 Jolly Family Trust

[8] This consent is a simple replacement of existing water permit 2001.546. The new consent does not involve any water from the Tarras Race so the same types of changes as suggested for Cluden can be made. We accept that.

RM17.301.19 Malvern Downs

[9] The position is slightly more complex in respect of this property. RM17.301.19 replaces 40 l/s of Malvern Downs' total allocation of 114 l/s from the Tarras Race. The

balance of the allocation to Malvern Downs (being 74 l/s) is proposed to remain available until the Tarras Race is closed.

[10] Counsel confirm the Third Decision's² understanding that the ability for Malvern Downs to receive Tarras Race water is through its interest in Lindis Irrigation Ltd. They say that means the Tarras Race take will need to operate through the transition phase to the Gallery Regime. They submit³:

therefore it is proposed that Malvern Down[s] partially surrender[s] their interest in LIL so that they only retain the ability to receive 74 l/s from the Tarras Race, but that the LIL right to take water remains intact until the Tarras race is closed.

[11] We accept that and adopt their proposed wording for 1.2 (deleting 1.2A):

- 1.2 (a) This consent must not be exercised until Malvern Downs' interest in Lindis Irrigation Ltd equivalent to 40 l/s of the Tarras Race take (water permit 2001.807.V2) is surrendered (not transferred) in writing and records of the same provided to the consent authority.
- 1.2 (b) The date that the consent authority is notified in writing of the partial surrender of Malvern Downs' interest in Lindis Irrigation Limited required above shall be the "commencement date" of this consent.

Common conditions

[12] More generally counsel has made the following changes to the draft water permits⁴:

- (a) the headings and layout are as adopted in the Second⁵ and Fourth⁶ Interim decisions;
- (b) the commencement dates have been amended;
- (c) the reporting and recording conditions (3.1-3.4) are as adopted in the Fourth Interim decision; and
- (d) the relevant irrigation command area maps have been attached.

² [2020] NZEnvC 112 [11].

³ LCG and ORC memorandum dated 3 July 2020 [11] [Environment Court document 94].

⁴ Memorandum for ORC dated 17 September 2020 [17]-[19].

⁵ Second (Interim) Decision: [2020] NZEnvC 104.

⁶ Fourth (Interim) Decision: [2020] NZEnvC 121.

Result

[13] The Council has filed an updated set of conditions to reflect the changes set out above which we confirm and attach in the Schedule. We will make orders accordingly.

For the court:



J R Jackson
Environment Judge

Attachments:

Schedule: water permit RM17.301.08;
water permit RM17.301.10;
water permit RM17.301.19.