

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

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

Decision No. [2020] NZEnvC 163

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: 28 September 2020

Date of Issue: 28 September 2020

EIGHTH (FINAL) DECISION

A: Under section 278 of the Resource Management Act 1991 and rule 11.10 of the District Court Rules 2014, the Environment Court orders that the water permit granted to T J and J Cooke (RM17.301.14) in Schedule 1 attached to decision [2020] NZEnvC 121 is corrected as set out in Schedule 1 of this decision. Decision [2020] NZEnvC 121 otherwise remains unchanged.

B: Under sections 87G, 104, 104B and 108 of the Resource Management Act 1991, the Environment Court grants each of the following water permits on the terms and conditions for each permit as set out in Schedule 2:

- (1) RM17.301.03 to R S and J Emmerson;
- (2) RM17.301.04 to Geordie Hill Station Limited;
- (3) RM17.301.07A to Lindis Irrigation Limited;
- (4) RM17.301.07B to Lindis Crossing Station Limited;
- (5) RM17.301.09A to A A and S E Rutherford;
- (6) RM17.301.09B to A A and S E Rutherford;
- (7) RM17.301.11 to Tarras Downs Limited;
- (8) RM17.301.12 to M A and F M Hayman;
- (9) RM17.301.13 to BDS and L M Jolly;
- (10) RM17.301.15 to Tarras Farm Partnership;
- (11) RM17.301.16 to Lindis Crossing Vineyard Limited;
- (12) RM17.301.17 to Cloudy Peak Pastoral Limited;
- (13) RM17.301.18 to Lindis Crossing Station Limited;
- (14) RM17.301.23 to A A and S E Rutherford; and
- (15) RM17.301.24 to Tarras Downs Limited.

C: For the avoidance of doubt, the court records that conditions 3.1 to 3.4 of each of the resource consents in Schedule 2 have been amended to reflect those confirmed in the Fourth (Interim) Decision [2020] NZEnvC 121 (and corrected in Order A).

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

REASONS

Introduction

[1] This is a final decision in relation to the majority of the water takes sought by the Lindis Catchment Group Incorporated (“LCG”) which were considered and provisionally confirmed by the court in the Fourth and Sixth Interim Decisions¹.

¹ [2020] NZEnvC 121; [2020] NZEnvC 134.

[2] The water permits subject to the Third² (Out-of-Lindis-Catchment) and Fifth Interim Decisions³ (Longacre and Timburn Stations) have been⁴ and will be respectively the subject of separate decisions.

[3] Counsel for LCG and the Otago Regional Council (“ORC” or “the Council”) have responded to each decision with a memorandum in reply⁵ suggesting relevant amendments to be made as per the Orders in each decision. A memorandum on behalf of the Council dated 17 September 2020, accompanying affidavits of Mr M A Hickey and Mr B Cowie, and a final suite of conditions have been filed to reflect the relevant changes sought.

[4] No other party has made submissions on the water permits which are the subject of this decision. However, the LCG and ORC confirm that their response⁶ has been prepared with the benefit of comments from Ms Baker-Galloway for the Otago Fish and Game Council and has incorporated her suggestions.

General conditions and amendments

[5] The Council has relodged consent conditions for RM17.301.14 which was granted to T J and J Cooke in the court’s Fourth Decision. This is so that condition 5.2 is deleted. We will make orders amending that consent by way of the slip rule⁷ in the District Court Rules 2014.

[6] There is general agreement with the court’s proposed conditions including those settled as an exemplar in the Cooke consent (RM17.301.14) in the Fourth Decision. The Council advises that some amendments have been made to conditions including⁸:

- (a) the general conditions in the water permits follow the Cooke exemplar (as amended);
- (b) condition 5.2 has been deleted to avoid repetition;
- (c) minor errors have been corrected;

² [2020] NZEnvC 112.

³ [2020] NZEnvC 130.

⁴ [2020] NZEnvC 160.

⁵ Joint memorandum in response to Fourth Interim Decision dated 18 August 2020; memorandum of counsel for LCG in response to Fifth Interim Decision dated 28 August 2020; and memorandum of counsel for LCG in response to Sixth Interim Decision dated 28 August 2020.

⁶ Joint memorandum in response to Fourth Interim Decision dated 18 August 2020 [2].

⁷ Rule 11.10 District Court Rules 2014.

⁸ Memorandum for ORC dated 17 September 2020 [25]-[28] and [35].

- (d) the pulse flow condition has been removed from supplementary take permits;
- (e) the review condition for the purpose of facilitating the out-migration of juvenile trout from the Lindis River has been removed from the supplementary take permits; and
- (f) the relevant irrigation command area maps have been attached.

[7] We have also made some amendments to the conditions as filed, specifically:

- (a) corrections to some formatting, numbering and grammar;
- (b) in the situation where an “old” permit’s expiry date has been corrected by parties to 1 October 2021, the ‘surrender’ condition has been deleted because the relevant consent commences on 2 October 2021; and
- (c) the reference to ‘RM17.301.07’ in the footnote to the FMP objective (e) has been amended to refer to ‘RM17.301.07A’.

[8] We are satisfied with the general amendments the Council has made for consistency and to amend errors so discuss them no further. Specific proposed changes are discussed in turn below.

Lindis Irrigation Limited

[9] Many of the takes from primary allocation in the mainstem and Lindis Alluvial Ribbon Aquifer will be through Lindis Irrigation Limited’s (“LIL”) water permits – originally called RM17.301.07. In the Fourth Interim Decision we proposed that the LIL permit be split into .07A for take between the Lindis Peak and Ardgour Road Flow Recorders and .07B for one groundwater take below the Ardgour Road Flow Recorder.

RM17.301.07A

[10] The parties generally agree with the court’s amendments subject to the below corrections below (which are adopted) for RM17.301.07A⁹:

⁹ Joint memorandum in response to Fourth Interim Decision dated 18 August 2020 [12]; memorandum for ORC dated 17 September 2020 [31].

- (a) take point 31(a) has been included because that take point is still required for the first 5 years and has a function related to the Tarras Race¹⁰. It has been deleted from Tables 2.1 and 2.2 so water may only be taken from that location during the first 5 years;
- (b) the map reference for take A7 has been corrected;
- (c) take point T4 can be deleted from RM17.301.07A conditions 1.1, 1.3(a) and 1.3(d)¹¹;
- (d) there are various numerical amendments to condition 1.4(1);
- (e) the reference to schedule 3 in condition 2.1 is correct but needs to be renumbered as there is no schedule 1 or 2. The table within schedule 1 (as renumbered) is corrected:
 - (i) to show that T3a is in combination with supplementary primary water taken under RM17.301.11; and
 - (ii) T4 needs to be deleted from this table.

[11] As RM17.301.07A relates to both takes from races to be closed at the end of the 5 year interim period and takes from ground water thereafter, counsel queries whether the court intended to include a fish screen condition in that permit. The same issue is raised in relation to RM17.301.12. We agree with counsel that a fish screen condition is not required for those permits and can be deleted.

[12] We will also amend the headings for tables 1, 2.1 and 2.2 for clarity.

RM17.301.07B

[13] In relation to permit RM17.301.07B and Lindis Crossing Station Limited's interests, the amendments are slightly more complex. In response to the court's discussion¹², the parties explain that:

- (a) Lindis Crossing Station Limited (LCSL) currently gets 56 L/s of primary allocation water from Tarras Race through shares that it holds in Lindis Irrigation Limited.
- (b) LCSL also holds a water permit 2004.382.v2 for a primary allocation from the catchment below the Ardgour Road flow recorder, for 90 l/s. That permit expired in 2015 but is being exercised under section 124 as application RM14.164.01 to replace

¹⁰ Joint memorandum in response to Fourth Interim Decision dated 18 August 2020 [6].

¹¹ Joint memorandum in response to Fourth Interim Decision dated 18 August 2020 [9].

¹² Joint memorandum in response to Fourth Interim Decision dated 18 August 2020 [8].

that permit is currently before the Otago Regional Council. That application is on hold awaiting the outcome of these applications.

- (c) The primary allocation sought from take point T4 is in substitution for water taken from the Tarras Race, but relates to annual volume only. This is because the rate of abstraction from T4 is intended to be exercised in conjunction with RM14.164.01 such that the combined take does not exceed 90 l/s.
- (d) The Court is therefore correct at [49] ...LCSL is only adding primary volume, not increasing its primary allocation rate of take. The volume of 729,000m³/annum will be shared with the LCSL supplementary permit (RM17.301.7B) with 729,000m³/annum.
- (e) LCSL only seeks an additional rate of 56 l/s as supplementary allocation from take point T4 in permit RM17.301.18.
- (f) This means that the RM17.301.07B primary allocation permit should have:
 - (i) a rate that must be linked to RM2004.382.v2 or any replacement thereof such that the combined total rate of take must not exceed 90 l/s.
 - (ii) In combination with the supplementary permit (RM17.301.18) for T4 the total annual volume must not exceed an annual volume of 729,000m³
- (g) The LCSL RM17.301.18 supplementary permit would have:
 - (i) A maximum rate at 56 l/s.
 - (ii) In combination with .07B (primary permit) the total annual volume must not exceed an annual volume of 729,000m³.
- (h) RM17.301.07B primary allocation permit should only commence once the consent holder has surrendered its interest in the Tarras Race and thus cannot receive water under RM17.301.07A.

[14] ORC has made the relevant amendments in its draft water permit to reflect the situation as set out above. It submits that RM17.301.07B can be issued directly to Lindis Crossing Station Limited, instead of LIL, as no other party has an interest in those permits. That would also address the transition issue identified at [48] of the Fourth Interim Decision. We consider the amendments to be appropriate.

Rutherford

[15] LCG has responded to the Sixth Interim Decision which considered the consents to be granted to A A and S E Rutherford. RM17.301.09A relates to takes from Rutherford's Race to be closed at the end of the 5 year transition period and takes from groundwater thereafter. Counsel raised three points in relation to this consent.

[16] Condition 1.2(b) prevents extraction from the Lindis mainstem and Lindis Ribbon Alluvial Aquifer at the same time. As noted in the Fourth Decision it is expected that over the 5-year transition period the consent holder will move away from reliance on the Lindis mainstem take. However, counsel submits it is possible that there will be a need for some

flexibility between these takes points whilst the consent holder establishes the gallery takes. It therefore proposes that condition 1.2(b) be deleted and a new condition 1.3 added as follows¹³:

1.3 The combined total abstraction exercised under condition 1.1 and condition 1.2 must not exceed 295 litres per second.

[17] Following the 'expiry' of the right to take water from the Lindis mainstem, condition 1.2 will continue to control takes from the Lindis Ribbon Alluvial Aquifer. Counsel submits¹⁴ that for clarity a condition be included controlling the volume of water that can be taken (similar to condition 1.1(b)). A new condition 1.2(b) is proposed as follows:

1.2(b) In combination with this consent, RM17.301.9B and RM17.301.23 the annual volume of water taken during the period 1 July to 30 June of the following year inclusive must not exceed 4,090,500 cubic metres.

[18] We will add this condition to RM17.301.09A as it was omitted from the ORC's draft permit.

[19] As noted above, it is counsel's understanding that the court had not intended to impose fish screen conditions in relation to transitional takes from the Lindis River mainstem or the ground water takes, accordingly condition 9 can be deleted¹⁵.

[20] We consider LCG's amendments to be appropriate.

Result

[21] We confirm the updated set of conditions to reflect the changes set out above – subject to some further minor changes also recorded above. We will make orders accordingly referring to the conditions in Schedules 1 and 2 to this decision.

[22] We wish to thank the expert witnesses for the Council (Dr Cowie) and the LCG (Ms Dicey and Mr Hickey) for their prompt and efficient work on checking and finalising the conditions. Counsel for the ORC, LCG and Fish and Game also have our gratitude for bringing their expertise and local knowledge to the LCG's application. Without their

¹³ Memorandum of counsel for LCG in response to Sixth Interim Decision dated 28 August 2020 [4].

¹⁴ Memorandum of counsel for LCG in response to Sixth Interim Decision dated 28 August 2020 [6].

¹⁵ Memorandum of counsel for LCG in response to Sixth Interim Decision dated 28 August 2020 [7].

experience, as reflected in their concise submissions, this complex proceeding would have taken much longer to resolve and probably have been considerably more expensive for the parties.

For the court:



J R Jackson
Environment Judge

Attachments:

Schedule 1: water permit RM17.301.14.

Schedule 2: water permits RM17.301.03; -04; -07A; -07B; -09A; -09B; -11; -12; -13; -15; -16; -17; -18; -23 and; -24.