

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF a joint application by Central Plains Water Trust and Ashburton Community Water Trust to:

Canterbury Regional Council for resource consents to take water from the Rakaia River for use by the Central Plains Water Enhancement Scheme and the Rakaia Terrace Hydro Scheme

IN THE MATTER OF applications by Central Plains Water Trust to:

Canterbury Regional Council for resource consents to take and use water from the Waimakariri River and to use water from the Rakaia River for the Central Plains Water Enhancement Scheme and for associated consents required for the construction and operation of the Central Plains Water Enhancement Scheme; and to

Selwyn District Council for resource consents to construct and operate the Central Plains Water Enhancement Scheme

AND

IN THE MATTER OF a notice of requirement by Central Plains Water Limited to:

Selwyn District Council for the designation of land for works associated with the construction and operation of the Central Plains Water Enhancement Scheme

IN THE MATTER OF applications by Ashburton Community Water Trust to:

Canterbury Regional Council for resource consents to use and divert water from the Rakaia River for the purposes of hydro electricity generation and associated consents required for the construction and operation of the Rakaia Terrace Hydro Scheme.

**SUBMISSIONS ON BEHALF OF APPLICANT (CENTRAL PLAINS WATER TRUST) TO
RECONVENED HEARING**

Dated 12 October 2009

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Introduction

1. This is an extraordinary reconvening of the hearing for the limited purpose described in the Commissioners' Minute No. 9:

"To receive the further information we have requested from Central Plains Water (CPW) and responses to that information from officers and submitters."

2. CPW has not interpreted your minute as a general invitation for it or the submitters to relitigate the whole range of consent issues. The evidence and submissions received at this resumed hearing must be restricted to the purpose for which it has been reconvened.
3. The reconvened hearing was triggered, at least in part, by the request CPW made to place evidence before you to support the grant of the other consents notwithstanding the indication of likely refusal (now confirmed in Minute 10) of the consents/designations associated with the dam and reservoir. That request was the subject of detailed consideration and in Minute 7 you agreed to hear further evidence addressed to the "amended" proposal – i.e. a scheme without the enhancement brought about by the availability of storage in the proposed Waihiwaniwa Valley reservoir.
4. Your provisional view was that the amended proposal would have less adverse effects, both overall and in most discrete areas. You agreed that this would need to be determined after hearing further evidence directed at that issue.
5. In response to the suggestion that a run-of-river scheme would involve taking water in greater rates and volumes during the irrigation season, you expressed the view (again provisionally) that it was highly unlikely that the overall impacts on in-stream values would be greater. You requested further evidence on the possible alternative take regimes in the Waimakariri, and developed this further in Minute 9 (below).
6. You also identified that without the enhancement provided by the reservoir some of the benefits of the scheme would be reduced. The reduction of some beneficial effects of what was originally sought does not translate into an adverse effect of the reduced scheme, but a "reduced positive".
7. Therefore, arising out of the decision to reconvene the hearing and the reasons for this, the further evidence should address:
 - (a) An alternative take regime particularly from the Waimakariri River, for a fully run-of-river scheme rather than one with the proposed storage;
 - (b) Whether any of the other adverse effects (unrelated to the now defunct dam and reservoir) are likely to be made worse (or better);

- (c) The reduction in positive effects.

Minute No. 8 – Report on Nitrates

8. Since Minute 7 you have also directed (in Minute 8) the preparation of a report on the potential for nitrate contamination, particularly as the risks of adverse effects may be different with a “scaled back” scheme. This was identified as the most significant remaining issue, along with effects on the instream values in the Waimakariri River.
9. A report has been provided by Mr Norton and Dr Bidwell under s.41C as requested by you. It was contemplated that the report would be prepared in collaboration with the relevant experts from the applicant, submitters and the Council, and that comments could be made by them at this hearing.

Minute No. 9 – Waimakariri River “take” regime

10. In Minute 9 you indicated you intend to assess the application to take water from the Waimakariri River as fully discretionary, rather than restricted discretionary, and thereby to take into account consideration of “in-stream” values beyond the immediate vicinity of the intake. In Minute 9 you provided preliminary indications on the issue of in-stream flow requirements and potential regimes, so that consideration could be given to these by CPW in presenting the alternative take regimes for that river.
11. Mr Tipler has undertaken further modelling work in an endeavour to reflect the guidance provided in Minute 9. This is set out in his statement of evidence prepared for this reconvened hearing.
12. It should, perhaps, be recorded that the applicant is not “amending” the application by advancing evidence as to alternative take regimes. The evidence provided is responsive to the issues raised and developed in the hearing by submitters and Council officers, and by the Commissioners.
13. Ultimately, it is a balancing exercise among the competing claims to the flow of water in the Waimakariri River. CPW recognises that in-stream values (including recreational and other amenity) are a factor. Its concern, however, is the tendency (explicit in the case of submissions and implicit in Minute 9) that these considerations are to be fully accounted for before water is to be made available for the CPW scheme.
14. I respectfully point out that the “minimum flow” provisions of the Regional River Plan were arrived at principally to protect in-stream values, yet the approach taken seems to treat this as a “zero” base. While you have heard evidence and argument claiming that the minimum flow is not enough, it is not to be ignored.

15. I also respectfully remind Commissioners of s.5(2)(b) RMA which gives primacy to the “life-supporting capacity of” water and soil. Recreational amenity while indirectly covered in s.5, is not accorded the same explicit recognition. CPW seeks to use the water for its life-supporting capacity and to enhance the life-supporting capacity of the soils of the Central Plains.
16. Accordingly, in the balancing exercise it is appropriate that you elevate the “ranking” of the proposed CPW irrigation scheme, and for the take regime you approve not to be a bare residual once all other claims to the river have been satisfied.
17. The basic regime discussed in the evidence of Mr Tipler, described as 30-25-1:1, meaning, in relation to the Waimakariri, a 1:1 sharing of B water with the river up to a maximum take of 25 m³/s.
18. Because of the recently notified Plan Change 1, Mr Tipler has also considered the indicated preference for a 30m³/s gap, then an uninterrupted take up to a maximum of 25m³/s. His evidence shows that while it makes very little difference to instream values, it further constrains the availability and utility of the CPW scheme.
19. Neither of these regimes (including the 30-25-1:1) is “optimal” for the CPW scheme, but they are Mr Tipler’s (and CPW’s) response to the matters identified by submitters and summarised in Minute 9, and by the recent PC 1. Any reduction in the availability to the CPW scheme of water from the Waimakariri River diminishes the scheme benefits and the Commissioners should not regard every m³ of water as sacrificial to the scheme. While CPW says it could still develop a scheme around the regime proposed, the issue ought not to be what is the minimum amount of water it can “live with”.

Nitrate concentrations

20. The increased availability of irrigation is considered likely to lead to intensification of agriculture on some (but not all) of the irrigated land and to the risk of increased incidence of nitrogen / nitrate contamination, particularly of surface water.
21. Concern about this has led to the Commissioners directing a report under s.41C from Bidwell / Norton. This is responded to in the supplementary evidence of Mr Tipler and Dr Burrell.
22. The problem is not unique to the CPW scheme and will not go away if consent is refused, so is not a reason for declining consent. What the CPW scheme offers, on the other hand, is a very real opportunity to bring about improvements so as to mitigate the potential adverse effects of the scheme. This includes improvements to already established irrigators (who will join the scheme for improved access) and who will need to sign on to CPW’s best management practice protocols.

23. As to Te Waihora, Dr Burrell confirms (as was already in evidence) that it is in a highly degraded state, and the prospects of a sufficient reduction in nitrates to restore it to pristine quality are very remote. The CPW scheme will make no appreciable difference. The environment to be assessed against is that which exists, not what we would wish for.
24. The issue of nitrate concentrations is also identified in the Canterbury Water Management Strategy. Again, through this consent process, the objectives of that strategy can be achieved more directly and (probably) more quickly. The implementation otherwise, through sporadic reviews of existing water consents, will not be nearly as effective as through this consent.

Canterbury Water Management Strategy (“CWMS”)

25. The CWMS is the culmination of many years of consultation with affected stakeholders. There has been a lack of recognition to date of how well the CPW proposals fit into the CWMS. Implementation of CWMS will require a massive change to existing water rights, however CPW can help by:
 - (a) Delivering surface water to the upper plains, where ground water is not readily available,
 - (b) Augmenting groundwater supplies so that groundwater in the lower plains is more reliable;
 - (c) Providing a network delivery system which can relocate water to where it is needed, whether that water is sourced from groundwater, run of river water or stored water (if the storage options proposed under the CWMS are realised).
26. As to the cumulative effects the Bidwell/Norton report sounds a cautionary note (albeit they are addressed by Dr Burrell’s and Mr Tipler’s evidence). However, the CWMS is premised on both the feasibility and the desirability of increased irrigated agriculture being permitted in Canterbury. It accepts that, with good environmental practices, nitrate and other nutrient leaching can be brought down to acceptable levels. The CWMS shows that with even a 20% reduction in nutrient leaching, significantly more irrigated agriculture can be sustained. It is accepted in the Norton/Bidwell report that improved farm practices can reduce leaching by up to 50%.
27. The CPW applications deserve to be assessed in this framework. CPW will bring 30,000 hectares of existing agriculture into more controlled practices and 30,000 hectares of new, but not reliably irrigated, land will also be required to adopt the CPW conditions. Your focus should be on accepting this irrigation proposal which will manage the adverse effects more rigorously than many existing farms, and which will not, in combination with existing consents, cause a tipping point to be reached in the environment. The task for

the Regional Council is to bring other farmers into line, through the NRRP to achieve similar improvements elsewhere. CPW will have done much of the work for them.

28. As the evidence shows, there is a large measure of consistency between the CPW scheme and the objectives of the CWMS.

Plan Change 1 to Waimakariri River Regional Plan (“WRRP”)

29. CPW acknowledges that since this hearing began, Environment Canterbury has notified a plan change to the WRRP. A number of the officers’ reports suggest that you should take this into account.
30. It is respectfully submitted that the weight to be given to Plan Change 1 must be negligible, if any.
31. Albeit not at CPW’s behest, the hearing has become a major inquiry as to how Waimakariri River flows should be managed.
32. In the normal course, very little weight would be given to a proposed plan change while at such an early stage, and this is reinforced by the recent amendment to the Resource Management Act, albeit that the Amendment is not applicable to this case.
33. It is also apparent from the material before you that there is significant public interest in, and opposition to, the proposed plan change.
34. As Environment Canterbury and its consultants have been responsible for initiating the plan change, it can be expected that the “advice” you receive from that quarter will be in favour of your implementing the plan change in your decision. However, it is improper for you to try and guess the outcome of the nascent plan change.
35. Ecan’s officers and advisers will be expected to reconsider their views in light of the submissions (and cross submissions) received; it is likely that independent commissioners will be appointed to hear the submissions and (most unlikely) that they will regard their role as a rubber-stamping one; and (as recently affirmed by Parliament) there are full rights of appeal to the Environment Court.
36. The officers reports already indicate that one of the outcomes might be a 20 cumec “gap” rather than the 30 cumec gap currently proposed. If CPW was held to a 30 cumec gap by this consent, this would mean that it would lose out altogether on that 10 cumecs, no doubt to the delight of some much later applicant.
37. It would be grossly unfair on CPW for this committee to be influenced in its decision by the current form of Plan Change 1. It would also be an abrogation of your duty to base your decision on the evidence that you have heard, and the other considerations that you must

take into account, which are not reflected in PC 1. Furthermore, whatever form PC 1 eventually takes, it does not preclude the granting of consent, even to what might then be a non-complying proposal¹.

Suggested conditions

38. At the conclusion of the main hearing, it was acknowledged that discussion of conditions was better left until after the determination of the principal applications as to the grant of consent / recommendation for designation.
39. In the lead up to this reconvened hearing, there has been no suggestion that conditions would be addressed at this hearing. CPW have proceeded on the basis that the detailed consideration of conditions will follow the Commissioners' decision to grant / refuse.
40. Suggested conditions have been raised by a number of other participants. It is not proposed to address those in detail at this stage.
41. CPW's consultants have been working through proposed conditions with submitters, and consider that good progress has been made. These include discussions with Peter Callander. It is premature to report on those discussions at this stage. However, it is expected that the result will be the presentation to the Commissioners of a reasonably well developed and hopefully, largely agreed, set of conditions.
42. There may be particular issues in respect of which the Commissioners might consider that the substantive decision requires consideration of the likely parameters of the consent conditions. Otherwise, however, it is respectfully submitted that this is an issue best left until after the substantive decision.

Positives still positive

43. The positives of the scheme are still there. These include some groundwater recharge and improved lowland stream flows. Dr Burrell will confirm that there are real benefits to habitat, particularly of trout. No-one seems to have factored this in a holistic assessment of the effects on recreational fishers across the region.
44. The economic benefits which, while not as stellar as under the original scheme, are still significant and should weigh heavily in your decision. While the economic benefit assessed for the scheme as originally proposed will reduce by about 50%, it is still very positive both in terms of benefits and economic efficiency.
45. It is a long time since you heard the evidence of just what a profound difference irrigation makes to the productivity of the land resource in this area. That evidence seems to have

¹ Under s 88A, the activity status of the current proposal (whether restricted or full discretionary) cannot change

become lost sight of in the myriad of complaints about loss of amenity and other criticisms of the scheme.

Summary

46. CPW strongly opposes your hearing from those submitters who have simply come along to restate their opposition to the proposal, and whose evidence is not directed to the “scaling down” other than as a launching pad for the repetition of their earlier evidence.
47. The evidence from CPW addresses the matters that were requested and which flow on from the decision not to approve the reservoir and dam. Due to the tight timeframes and the delay in receiving some of the other information, the replies of Mr Tipler and Dr Burrell will be provided during their evidence.
48. Time has not stood still while this application has been progressing through a lengthy hearing process. However, decisions must be made based on what you have heard. Concerns about nitrates are acknowledged but can be accommodated.
49. Provision has been made for a “right of reply” so I have kept these comments brief and expect (if matters are kept relevant) for the reply to be brief also.

DATED this 12th day of October 2009.

Matthew Casey QC / Rachel Dunningham
Counsel for Central Plains Water