

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of applications for resource consent by the Central Plains Water Trust and a notice of requirement for the designation of land by Central Plains Water Limited associated with the construction and operation of the Central Plains Water Enhancement Scheme

**FURTHER SUBMISSION ON BEHALF OF THE MALVERN HILLS PROTECTION
SOCIETY INCORPORATED**

DATED 13 OCTOBER 2009

Introduction

1. This further submission is made on behalf of the Malvern Hills Protection Society Incorporated ("the Society"). It is in response to the further information provided by the applicant and your tenth minute/directions dated 10 July 2009.
2. The Society reiterates its strong support for the conclusions in the minute that you are proposing to recommend that CPW should withdraw its Notice of Requirement for the Waianiwaniwa dam and reservoir, and for the associated upper Waimakariri intake and tunnel and that the consents associated with those aspects of the proposal should be declined^[u1].
3. Much of the Society's case presented at the original hearing focussed on those aspects, and with the adverse effects they would have had in a number of respects. These included direct effects on many of its members, and wider effects on Coalgate, on the Malvern Hills Heritage Landscape on the Waianiwaniwa Valley and Upper Waimakariri environment and ecology (such as the Canterbury mudfish).
4. The Society would like to express again to you as Commissioners its appreciation that those concerns have been recognised, and the great relief that this finding has given to many of its members. A huge weight which had been a burden on them for many years has now been lifted from their shoulders
5. However, the Society does still have a number of general concerns, and there are still some members of the Society who would be significantly adversely affected if the remaining aspects of the proposal were to be granted. The weight remains upon them.
6. The general concerns include the sustainability of the amended CPW proposal, and the conversion of large tracts of the Canterbury Plains to dairy farming which is (in large part) its aim. Of particular concern are the effects on the rivers of further water takes, the increased discharges of nutrients, groundwater mounding and the effects on aquifers.
7. These are technical matters which, as at the original hearing, the Society is content to leave to be addressed by other parties. However, it does wish to express its ongoing support for the position taken by Fish & Game, Royal Forest & Bird Protection Society, Canterbury District Health Board and others who have produced

- further evidence at this hearing in opposition to those aspects of the revised proposal.
8. The original proposal was a storage one. Now it is proposed as run-of-the river. The storage, which was said to be a key component of the original proposal, has simply been removed altogether. The applicant nevertheless contends that the remaining components still result in an environmentally acceptable and economically beneficial project. That approach should flag a need to look afresh at the amended project in its entirety and ask whether it meets the tests in the Act. In the Society's submission it does not.
 9. However, this submission will focus on the main aspect of the revised proposal which directly affects some of the Society's members, which is the proposal to continue with the Notice of Requirement (NOR) designating land for the headrace. Overall, however, the Society's submission is that, as well as rejecting the dam and reservoir and related aspects of that part of the proposal, you should also reject the balance of the project as well.
 10. A list of the Society's members who will be particularly affected by the continuation of the NOR for the headrace is attached. As you will see, these are:
 - Louise Deans
 - Gillie and Tim Deans
 - Philip and Jocelyn Deans
 - Cindy MacKenzie
 - Nicholas and Ruth Owers
 - Madeleine de Jong
 11. Louise Deans and Gillie Deans will present brief statements outlining the impacts on them, and on their properties, following this submission. Particularly in the case of Louise Deans' property, the proposed construction and location of the headrace raises wider issues about the effects of the NOR on heritage buildings and a heritage landscape. These concerns are shared by the NZ Historic Places Trust which has filed a statement of evidence by a heritage planner, Joanne Easterbrook, confirming the values of Homebush and the Trust's support for the removal of the headrace from

it to ensure that what she describes as the "significant heritage values" of Homebush will remain.

Submissions on NOR

12. The applicant has chosen to revise its scheme, but to continue with the NOR for the headrace in the same location as in its original proposal. In summary, the Society submits that you should recommend that the NOR for the headrace should not be approved for the revised scheme because:

- There has been no consideration (much less an adequate consideration) of alternatives to a headrace in this location for a revised scheme;
- The applicant has not established the necessity for this headrace for the revised scheme;
- There will be significant adverse effects from the headrace which the applicant is not proposing to avoid, or to adequately remedy or mitigate; and
- The alleged economic benefits are much reduced in respect of the revised scheme, and are insufficient to outweigh the significant adverse effects of the NOR for the headrace continuing in place.

13. These are the main criteria that you considered in making your recommendation about the NOR for the dam and upper river intakes in your minute dated 10 July 2009. In the Society's submission, a number of the same factors which led you to conclude that aspect of the NOR should not proceed apply equally to the NOR for the headrace in respect of the revised proposal.

Consideration of alternatives

14. In paragraphs 6.16 to 6.19 of your minute you expressed some reservations about the adequacy of the applicant's consideration of alternatives for the scheme as a whole.

15. In relation to the headrace, the original NOR stated in para 6.4.1 that:

"All of the distribution systems considered involve the level headrace canal. Having the ability to transfer Rakaia River water as far north as the Waimakiriri River and vice versa enhances the combined reliability of water from the two rivers. It also enables water from either river to be used to fill the reservoir if a pumped option is

finally selected. The 235m amsl contour was chosen because it maximises the irrigation area on the plains while at the same time maximising the length of headrace that can be constructed at or near grade."

16. As an analysis of alternatives, that might be described as cursory at best. However, at least it provides some explanation for the choice of a headrace in that location at that time. But in relation to the revised proposal, the applicant has provided no further consideration of alternatives at all, despite the fact that the reservoir will no longer exist to be filled.

17. From the Society's perspective, this raises a number of questions:

- Might some of the alternatives identified in para.6.16 of your 10th minute now be more viable options?
- Are there now alternatives other than those already considered to an above-ground headrace as well (such as piping all or part of it?)
- Does the headrace still have to be so large?
- Does the NOR still have to cover as wide an area?
- Does it still have to be in this location?
- Could it be located on the land of willing landowners, instead of (at least some) who do not want it?

18. The short point, from the Society's perspective, is that it just does not know because it has seen no information about consideration of alternatives for the headrace for the revised scheme, and neither have you as Commissioners. The applicant has simply carried on regardless with its original design and NOR, despite the fact that the original proposal that led to it has significantly changed.

19. In our submission, in the absence of any evidence of further consideration of alternatives, you cannot be satisfied that the applicant has met the requirements of s171 by giving "adequate consideration to alternative sites routes and methods of undertaking the work" that the headrace entails, and for that reason alone should decline to recommend that the NOR for it be upheld.

Necessity for the NOR and headrace to achieve the applicant's objectives

20. You are also required by s171 to have particular regard to "*whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.*"
21. In paragraphs 7.19 to 7.24 of your minute, you raised this issue in relation to the now discarded components of the NOR for the reservoir and upper river intakes, and concluded (at paras 7.23 and 7.24) that while you did not reach any final conclusion as whether a designation is reasonably necessary to achieve the applicants objectives, the works in question (in particular the reservoir and the dam) were not reasonably necessary to achieve its objectives.
22. In the Society's submission, the reservations you expressed in paragraphs 7.19-7.22 about the necessity for the designation for the reservoir and dam apply even more forcefully to the designation for the headrace as part of the revised proposal.
23. Almost all the land which is subject to the headrace NOR forms part of larger landholdings that are currently used for farming. Even more so than the land in the Valley, there is no evidence that it is under threat of other uses that would compromise its future availability for the headrace, whether or not it was designated.
24. As you point out in paragraph 7.22, a resource consent coupled with the applicant's requiring authority status would enable the applicant to acquire land under the Public Works Act in any event. Somewhat ironically, for a party so intent on retaining its designation and requiring authority status, the applicant has proved rather reluctant to actually purchase land for its scheme from those owners whose properties are subject to designation and wish to sell it.
25. Of the Society members, Brian Thompson and Helen Davey have had to take Environment Court proceedings to try and get the applicant to acquire their subdivided sections in the Waianiwaniwa Valley. These proceedings were adjourned on the eve of a Court hearing in July as a result of the applicant undertaking to withdraw that part of the NOR (although that has in fact not yet been done). Cindy MacKenzie has still had no success in getting the applicant to purchase her 4 hectare block which has been rendered unsaleable by the headrace NOR on it.
26. So far as the works are concerned, it is submitted that it will be difficult (if not impossible) for you to decide that a headrace, of this size and in this location, is

reasonably necessary to achieve the applicant's objectives in the absence of a robust assessment of alternatives for the revised proposal.

27. As the Environment Court said of a requiring authority in *Bungalo Holdings Ltd v. North Shore CC* :

"The City Council has failed to make a businesslike identification of alternative methods on the site, as required by paragraph (b) of section 171. A result of that is the Court is not able to make a credible decision on the question raised by paragraph (c) of that subsection. We are not able to judge whether the nature of the work makes it unreasonable to expect the City Council to use an alternative method occupying less of the site, for lack of evidence comparing the relative benefits and disbenefits of the proposal and such an alternative method."

28. The situation is the same here. You are not able to determine whether it is unreasonable to expect the applicant to have a smaller headrace, or a differently located headrace, or even no headrace at all, for its revised proposal, because you do not have any assessment of alternatives upon which to make that judgment.
29. The failure of the NOR for the revised proposal to meet the test in s171(c) of reasonable necessity is another reason why you should recommend it be declined.

Effects

30. While the removal of the reservoir and the upper river intake removes or reduces a number of the worst adverse effects of the original proposal, nevertheless significant adverse effects remain which arise from the revised proposal. These include some of the effects identified in parts 8-10 of your minute.
31. In particular, the NOR for the headrace will;
- Adversely affect the historic Homebush property (as Louise Deans will outline);
 - Cause ongoing effects associated with noise, dust and general construction activity on affected landowners;
 - Have significant visual and landscape effects (particularly on landowners where it runs through, or adjacent to, their properties; and

- Continue the sense of social inequity resulting from the simple fact that (as you put it in your minute) *"those who would benefit are not those who would suffer the adverse effects."*
32. The applicant has not put forward any new proposals to avoid, remedy or mitigate these adverse effects in respect of its revised scheme. It could at least reduce those effects by simply withdrawing the remainder of the NOR for the headrace and, if its revised proposal is consented, proceeding to design and construct a headrace (or other alternative) to the extent it needs on land it purchases from those willing to sell to it. Given its offer made at the earlier hearing not to acquire land compulsorily for the dam reservoir, the Society has difficulty understanding why the applicant does not apply that same principle to the land which is subject to the headrace NOR, and just do that now.

Economic considerations


33. At paragraph 12.15 of your minute, after considering the evidence as to the alleged economic benefits of the original scheme, you concluded that *"the likely net benefits of the scheme would be insufficient to outweigh the actual and potential social costs resulting from the scheme as proposed."*
34. The applicant has produced further economic evidence in respect of the revised scheme. As Mr Donnelly concludes at para 42 of his additional evidence *"the amended scheme substantially reduces the scale of positive impacts on the community."*
35. He goes on to nevertheless conclude that the scheme is likely to involve an efficient use of society's scarce resources.
36. I do not propose to re-visit the economists' evidence which you have already heard. However, I would note that, as recent events have shown, the economics of dairying are (and always will be) sensitive to a number of factors, such as milk prices and the relative strength and weakness of the NZ dollar.
37. In our submission "economic efficiency" is a relative concept, not an absolute. The result of the revised scheme has been a substantial reduction in the projected economic benefits from the scheme. As previously submitted, these economic benefits are really the only substantial positive effects the applicant can put forward.

While the adverse effects from the revised scheme will certainly be significantly reduced from the original one, there will still be adverse social and environmental effects, and some of those will be significant.

Conclusion

38. As you did in your minute for the original proposal (at paras 13.1-13.4), you are required to adopt an overall balancing approach to your decision on the revised proposal, taking into account Part II considerations, the effects (both positive and negative) and (in respect of the NOR) section 171 matters as well.
39. In the Society's submission, the result of that exercise for the revised proposal should lead you to the same conclusion, which is that the remaining consents, and in particular the NOR for the headrace, should also be declined.

Dated this 15th day of October 2009



John Burns

Counsel for the Society

MHPS members affected by the Headrace canal:

Louise Deans – Has provided a statement on the effects of the headrace canal crossing Homebush Station, and in particular the impacts of canal construction on heritage buildings and landscape.

Gillie and Tim Deans – The proposed headrace canal runs across the length of their Homebush farm, Auchenflower. Auchenflower is the land between Homebush Station and Rowallan Farm. They have provided a statement of evidence.

Philip and Jocelyn Deans - The headrace crosses important land on their property Rowallan. Rowallan borders Auchenflower farm and was part of the original Homebush run. Land on Rowallan is affected by the NOR. Mr and Mrs Deans point out that the headrace should not run over, or impact on Black Stream at this point of their property, as this is an important habitat for Canterbury mudfish (which DOC and ECAN are currently monitoring). There is also evidence of early Maori occupation along the riverbed and vicinity of the proposed headrace canal on Rowallan, ie a Maori oven site. The Rowallan farming operation has valuable farming land at this proposed site, and it is also the farm's airstrip. It was stated initially that the canal could bypass this area to meet Cullens Road with some extra cost, which this area requires to retain its rare environment and farming operation.

Cindy MacKenzie - Owns a 4ha block on Cullens Road affected by the NOR. Wants to sell her block but has been unable to sell because of the NOR. On 31 May 2009 she wrote to Pat Morrison, Chairman of CPWL, requesting CPWL purchase her block of land. The letter refers to para 2.93 in Minute 7 issued by the Commissioners on 19 May 2009, which urged CPWL to address the matter of purchasing the block rather than Ms Mackenzie having to pursue a remedy under s185 of the RMA. On 10 June 2009 John Burns wrote to Matt Casey on her behalf asking for an early settlement of the matter. CPWL subsequently informed Ms Mackenzie that it was requesting a valuation of her land. However as at the beginning of October 2009 she had received no further reply.

Nicholas and Ruth Owers – As far as they are aware the proposed headrace canal will go through the bottom corner of their property and will interfere with their access from Maffey's Road into the sheep yards and into the flat parts of our farm. Access is needed for stock trucks to get in to transport stock as required. The rest of the farm is hilly and not suitable for stock truck access. The headrace is likely to interfere with access to their house which is further up the hill off Maffey's Road.

Madeleine de Jong - The NOR is not on her property but the headrace runs beside her accommodation business. She gave evidence at the earlier hearing about the effects of that.