

IN THE MATTER OF

the Resource Management Act 1991

AND

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 and Rakaia Rivers and for all
associated consents required for the
construction and operation of the Central
Plains Water Enhancement Scheme

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

**SUBMISSIONS OF THE APPLICANT REGARDING SECTION 6(c)
4 JULY 2008**

1. The Commissioners' Minute (No 4) sought an explanation of the applicants' position in respect of section 6(c) and whether it is satisfied that protection will be achieved by the conditions proposed.
2. Section 6 states that in achieving the sustainable management purpose of the Act, certain matters of national importance are to be recognised and provided for. These include under s.6(c) "the protection of ... significant habitats of indigenous fauna".
3. There are several terms used in s.6 and elsewhere in Part 2 of the Act to describe different levels and types of consideration to be given to the various matters referred to. Other terms include "preservation" – s.6(a), "maintenance and enhancement" - s.6(d). The "protection of habitat" (of trout and salmon) is also a matter to which particular regard must be had under s.7(h). This is consistent with the use of the term "protection" rather than "preservation" in relation to habitat. A *particular* habitat does not need to be preserved in order for the fauna it supports to have its habitat protected. Thus the provision of a substitute area of habitat for fauna displaced by a proposal is consistent with the concept of "protection" as used in both ss.6(c) and 7(h).
4. Section 6 requires that the listed matters be "recognised and provided for" as of national importance. It has been held that there is a hierarchy of importance and that section 6 matters have a significant priority. However even they are subject to the overriding principle of promoting sustainable management: *NZ Rail Ltd v Marlborough District Council* [1994] NZRMA 70. Albeit that they are matters of national importance, the requirement that they be protected (or preserved etc) is not absolute. The requirement that they be recognised and provided for does not impose an absolute standard of protection at any cost.
5. *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* [2006] NZRMA 193 required consideration of s.6(e) as the proposed open-cast coal mine on the Stockton Plateau (north-west of Westport) would result in the loss of significant habitat of the nationally endangered *Powelliphanta patrickensis* indigenous snail, which was unique to that area
6. The proposal to address the s.6(e) requirement was described as "mitigation plan" and involved relocating snails from within the affected area and providing measures to protect against predators, with ongoing monitoring and management. Although there was a risk of failure, the Environment Court had decided on the balance of probabilities that the programme would be successful.
7. The High Court rejected an argument that a higher standard of proof was required in the case of nationally important matters. The High court also rejected the argument that by finding that the mitigation plan would "compensate" for the loss of the significant habitat the lower Court had not applied the correct test. The Court accepted that a mitigation plan of the type proposed would be a sufficient compliance with the requirements of s.6(e).
8. What can be taken from the High Court judgment is that if the Environment Court had not found that the mitigation plan was likely to succeed, it should then have considered, its evaluation under s. 104, whether this was a sufficient

