

**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

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**BRIEF OF EVIDENCE OF DENIS JOHN O'ROURKE**

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## **Qualifications and experience**

1. My full name is Denis John O'Rourke. I hold the degree of Bachelor of Laws.
2. From October 1989 to October 2004 I was an elected member of the Christchurch City Council. In March 2000 I was appointed by the Christchurch City Council to the Central Plains Water Enhancement Scheme Steering Committee, being a joint committee of the Christchurch City Council and the Selwyn District Council, to investigate the feasibility of an irrigation and water enhancement scheme for the Central Plains area of Canterbury ("the Scheme"). I was later appointed by the two councils as a trustee of the Central Plains Water Trust ("the Trust"), and I continue to serve in that role.

## **Scope of Evidence**

3. My evidence is given on behalf of the Trust. I will discuss the role of the councils in setting up the Trust and supporting the Scheme, the work of the Central Plains Water Enhancement Steering Committee, the functions of the Trust, and Central Plains Water Limited ('the Company'); and I will also describe the role of the Trust as the guardian and promoter of community interests.
4. In particular I will outline the Trust's role in holding the resource consents in perpetuity, licensing them to the Company on appropriate conditions, monitoring the Company's operation of the Scheme and ensuring its adherence, and that of the farmer water users, to an agreed regime of environmental standards and sustainable farming practices, and in ensuring compliance with resource consent conditions and other legislative and regulatory requirements.

## **Introduction**

5. A community water scheme for the Central Plains was conceived by the Christchurch City Council and the Selwyn District Council following discussions with various community and irrigation groups over the course of 1999. These discussions prompted the two Councils to establish a widely representative joint standing committee in March 2000 to carry out consultation and undertake a feasibility study into a community irrigation and water enhancement scheme on the Central Plains. The Councils were aware that competition for the use of water for irrigation on the Central

Plains was increasing, that continued extraction of water from aquifers was unsustainable, and that after decades of discussion within the community it was timely for a comprehensive scheme to be considered so that an orderly and equitable approach to the allocation of water might be achieved. It was considered that the likely sources of water would be the Waimakariri River, the Rakaia River, and Lake Coleridge.

6. It was also desired to take a broad approach, so that not only would water for irrigation be included in the scope of the investigation but also water for wider community uses, and so that the broader environmental social and economic effects of a scheme could be considered. The economic benefit to the people of Selwyn and Christchurch was a primary driving force, but the need to balance this with environmental protection of water resources and other environmental values was considered to be imperative. At an early stage the need to ensure that domestic water supplies, especially the Christchurch water supply, would not be compromised, was identified.
7. By February 2002 the Steering Committee had concluded, on the basis of consultation, feasibility studies and other enquiries, that a scheme would be both feasible and beneficial for the area administered by both Councils. The report of the Committee to the two Councils identified significant environmental social and economic benefits to the Central Plains area, its people, and to the City of Christchurch. Some environmental issues then required further study but were considered not to be significant or a barrier to a scheme. The report confirmed that a scheme could be built without risk to domestic water supplies, and that there would be no risk for the Christchurch water supply. At this point, and after more consultation with the community, the two Councils decided that the project should be further progressed through the formation of the Trust.
8. In May 2003 the Company was established by the Councils on the recommendation of the Trust to raise the necessary funds to consent, build and, eventually, operate, the Scheme. These activities, by their very nature, have a commercial dimension and it would have been inappropriate for an entity such as the Trust to carry them out itself.
9. The concept is for the Trust to be the permanent owner of the Scheme's resource consents. The Company is to finance and conduct the application for the resource consents on behalf of the Trust. In return the Company is to have exclusive use under licence, of the Scheme's resource consents,

subject to paying the ongoing administration costs of the Trust and to the terms of use imposed by the Trust in the licence agreement made between them. These terms must:

- (a) Be consistent with the economic use of water by the Scheme's users and with the terms of the resource consents.
- (b) Adhere to and uphold best practice environmental standards. These standards are to be incorporated into water use agreements between the Company and the irrigators, and the Trust will monitor the Company's environmental performance to ensure that these standards are met.
- (c) Accommodate and/or facilitate the recreational, social, cultural or environmental benefit/s which it is proposed will be added to the Scheme.

### **The Role of the Councils**

10. Initially the role of the Councils was to establish and support the joint committee known as the Central Plains Water Enhancement Steering Committee ('the Committee'). This was established in March 2000 with terms of reference which included:

*"to improve the security and prosperity of the Central Canterbury region through water management schemes that enhance ecological and recreational values while providing opportunity for agricultural and horticultural diversity".;*

and the following objective:

*"to undertake feasibility studies for the Central Plains area sufficiently detailed to allow decisions on the advisability of proceeding to resource consent applications and eventual scheme implementation".*

11. The Committee reported to the Councils in February 2002, noting that extensive irrigation developments had occurred both north of the Waimakariri River and south of the Rakaia River, bringing with them very significant economic and social benefits, and that without a community based water enhancement scheme, the Central Plains community would have to continue with a pre-dominantly dryland farming existence, and the area (including Christchurch) would not have the opportunity to gain the

same economic and social benefits which had accrued elsewhere from diversified land uses facilitated by irrigation. The Committee noted that

*“future agricultural production on a viable commercial basis is considered by all professional farm advisers to be unsustainable without irrigation”.*

12. The Committee also concluded that the only alternative to a community based water enhancement scheme for farmers seeking a sustainable farming business, would be to seek access to ground water, but that

*“until definitive work to quantify the aquifers under the Central Plains has been completed, it is prudent management to treat this as a finite resource with definite limitations. To continue to access such a resource without limit is to risk disastrous and irreversible consequences, consequences that would be felt not just on the Central Plains but on the Christchurch water supply as well”.*

13. The Committee found that water storage was a critical element to the Scheme concept and was the key difference between the Scheme and historical water enhancement proposals, and that a

*“storage capacity has been established to provide a supply of water at levels of reliability that will completely change the mindset for agricultural production in this area.”*

14. The Committee advised the Councils that

*“on the balance of the information available at present, the [Scheme] does represent a sustainable use of the natural and physical resources of Canterbury, as required by the Resource Management Act”.*

It therefore recommended that further steps should be taken to establish a process to refine and develop the Scheme to the stage of readiness for resource consent applications and, subject to satisfactory consents being secured, for ultimate implementation. A part of the process was to determine an ownership structure which best met the diverse needs of the community.

15. Following adoption of the Committee’s recommendations, the Councils resolved to establish the Trust as a charitable trust, independent of the Councils, with clear objects reflecting the intended community nature of the Scheme over the Central Plains area as is discussed in Mr Marsh’s

evidence. Thirteen trustees, responsible for ensuring that the Trust pursued these objects, were appointed by the Councils. Two of the trustees were appointed on the recommendation of the Parliamentary Commissioner for the Environment and two other trustees were appointed on the recommendation of Te Runanga O Ngāi Tahu. The Trust held its first meeting on 15 April 2003.

16. The Trust is a Council Controlled Organisation for the purposes of the Local Government Act 2002, and therefore, in addition to appointing the trustees of the Trust, the Councils receive a statement of intent every year from the Trust for discussion and approval. The Councils also receive quarterly reports from the Trust on its work and in respect of its financial affairs. The Trust meets with the Councils as required by them from time to time. The Trust does not receive any funding from the Councils.
17. The likely expectations of the Councils for the Scheme were stated by them at the time the Trust was established to include the following:
  - (a) A controlling interest in the Trust in accordance with the Local Government Act;
  - (b) Economic development for the region and Canterbury;
  - (c) Enhancement of the environment;
  - (d) Use, development and protection of the region's water resources so as to provide for the social, economic and cultural wellbeing of the inhabitants of the region;
  - (e) Enhancement of, or at least no damage to, the Christchurch City aquifers;
  - (f) Benefit to Christchurch City's interests in the airport and port;
  - (g) Protection of rural land productivity.

### **The Roles of the Trust and the Company**

18. The role and structure of the Trust was set out in a Memorandum of Understanding concluded in April 2003 between the Christchurch City Council and the Selwyn District Council. These provisions were later incorporated into the Trust's trust deed.

19. The Councils agreed that the Trust would be established as a charitable trust having as its overriding objective the ownership of the resource consents to be obtained for it by the Company, to ensure long-term community protection of the Central Plains region's water resources. Accordingly, the Trust was not established purely to pursue commercial objectives, it being the intention that such commercial objectives will instead be pursued through the Company.
20. In order to ensure the achievement of the non-commercial objectives in the trust deed, the Councils have the controlling right to appoint and remove the trustees of the Trust. The Councils also acknowledged that should either of them (for any reason) decide not to proceed with further involvement with the Trust, the remaining Council would have the right to continue alone. The trust deed makes appropriate provision for different classes of trustees to ensure a wide representation of interests.
21. The board of trustees of the Trust manage the affairs of the Trust. The trustees are accountable for the extent to which they have assisted in achieving the predetermined objectives of the Trust, and the required competencies for the trustees of the Trust are set by the Councils accordingly.
22. On 5 November 2004 the Trust entered into a Memorandum of Understanding ('the MOU') with the Company to define their respective roles and responsibilities. A copy of the MOU is **attached** to my evidence. The key aspects of the relationship between the Trust and the Company are summarised in the following paragraphs.

### **The Trust**

23. While the application for the resource consents in the name of the Trust is to be conducted by the Company, the Trust is to assist the Company in its conduct of the application wherever possible. The Trust will own the resource consents but, in consideration for the Company's services in procuring the resource consents, the Trust will make the resource consents available to the Company on an exclusive basis for the initial and any renewed term of the resource consents subject to the terms and conditions set out in the Memorandum.

### **Details of the Trust's role**

24. Prior to the issue of resource consents (Stage 1) and subject to the issue of those consents on terms and conditions satisfactory to the Company, and to the Trust in pursuance of its broader objectives, the Trust was required to, and has, entered into a licence agreement with the Company recording the terms and conditions on which the Trust makes the resource consents exclusively available to the Company. Such terms and conditions are to be consistent with the terms and conditions of the resource consents themselves and are not to be detrimental to the commercial viability of the Company's operation.
25. After the issue of resource consents (stage 2) on terms and conditions acceptable to the Company, and to the Trust, the Trust is to do the following in consultation with the Company :
- (a) Assist the Company in raising the investment necessary for Stage 2;
  - (b) Assist the Company in the construction, commission and operation of the Scheme;
  - (c) Monitor the activities of the Company, including establishing a complaints procedure to receive complaints in relation to adverse effects of the Scheme;
  - (d) Monitor Scheme users' compliance with the terms of Water Use Agreements to ensure compliance with the terms of the resource consents.
  - (e) Advise the Company of any actual or suspected breach of the terms of a Water Use Agreement and request that the Company take appropriate steps to require that such breach be remedied;
  - (f) Propose projects which it considers will further its charitable objects to the Company from time to time and request that the Company give consideration to funding such projects;
  - (g) Collect the Environmental Enhancement Levy of \$2 per irrigated hectare which the Company has agreed to fund from its annual revenue. This will be paid into a fund to be established and administered by the Trust for charitable purposes for environmental

enhancements. These are likely to be local projects such as the establishment of areas of native plants, and areas for public use ;

- (h) Subject to the Company complying with its obligations under the MOU, at the expiry of the term of the resource consents to apply for a renewal of the resource consents or for such consents or approvals reasonably required to replace the resource consents, and make such consents or approvals available to the Company on the same terms as are set out in the MOU;
- (i) Defend the resource consents from any challenge that might threaten the suspension of the resource consents;
- (j) Allow the Company to manage and administer the resource consents;
- (k) Allow the Company to grant water users rights to use the water available under the resource consents on terms consistent with the conditions attached to the resource consents.

#### **Details of the Company's role**

- 26. Prior to the issue of resource consents (stage 1) the Company is required to conduct the application for the resource consents on behalf of the Trust including:
  - (a) Paying all expenses in connection with the application incurred or committed to by the Company ;
  - (b) Negotiating with parties objecting to the issue of the resource consents; and
  - (c) Seeking appropriate variations to the form of application for the resource consents as required;
  - (d) Act as the vehicle to raise the funds necessary to meet the costs of applying for the resource consents; and
  - (e) Take such steps towards Stage 2 as it considers necessary in anticipation of the resource consents being obtained".
- 27. After the issue of resource consents (stage 2) the Company must:

- (a) Seek and obtain funding for the construction and completion of the Scheme, including any available Central Government funding;
- (b) Take all necessary steps to be a network utility operator and apply to be granted the status of a requiring authority for the purposes of the Resource Management Act 1991 and otherwise;
- (c) Apply for designation of such parts of the Scheme Area as may be necessary to construct the Scheme infrastructure as part of the Selwyn District Council planning process;
- (d) Make any acquisitions of land necessary to construct the Scheme including, if required, under the Public Works Act 1981;
- (e) Become the permanent infrastructure owning entity for the Scheme;
- (f) Construct, commission and operate the Scheme;
- (g) In consideration for its services in obtaining the resource consents, become the exclusive user of the resource consents on the terms and conditions set out in the MOU. In doing so the Company must ensure that:
  - (i) The Scheme distributes and uses water as efficiently as is reasonably practicable;
  - (ii) The annual operational cost of supplying Scheme water to users is financially viable for both the Company and water users; and
  - (iii) All of the conditions contained in the resource consents are complied with by water users.
- (h) Report and provide audited financial statements to the Water Trust as required by the licence agreement.
- (i) Consider projects proposed by the Trust and, if such projects are considered by the Company to be in the interests of the Scheme and do not affect the financial viability of the Scheme and its operation, to contribute to the funding of such projects;
- (j) Pay the Environmental Enhancement Levy to the Trust.

- (k) Respond to any issues arising in respect of the operation of the Scheme as reasonably required by the Trust in its monitoring role.
28. The Trust will annually prepare and publish a Sustainability (or Triple Bottom Line) report, including the outcomes of the monitoring procedure, to its stakeholders and community partners. Such stakeholders and community partners will include the Selwyn District Council and the Christchurch City Council, organisations representing the communities in the Scheme area, Ngai Tahu iwi, relevant environmental interest groups, and appropriate government departments. The report will include a description of any measures proposed to address issues raised in the monitoring process, together with reports on:
- (a) the economic performance of the Scheme (including its effects on the regional economy);
  - (b) the environmental effects of the scheme,
  - (c) the recreational benefits of the Scheme,
  - (d) the social effects of the Scheme,
  - (e) cultural effects of the Scheme (with special reference to the cultural issues for the Tangata Whenua and in particular to Ngai Tahu values in relation to water, the natural environment and other taonga).

**Functions of the Trust for environmental and recreational enhancements:**

29. The Trust will carry out its Environmental policy and programme, and its recreational programme, in the ways set out in the MOU to realise the wider environmental objectives of the Scheme. In so doing the Trust will discuss its plans with the Company, and the parties will co-operate with each other on the means by which the Trust will carry out the programmes. The parties have agreed upon those aspects of the Scheme which will require action by the Company to accommodate the Trust's requirements. Such requirements include:
- (a) the definition of land areas to be held for environmental and / or recreational purposes;
  - (b) reasonable alterations and additions to the Scheme infrastructure which can be accommodated without infringing the provisions of the

MOU relating to the economic viability of the Scheme or to the economic viability of water use;

- (c) other such issues fundamental to the performance of the Trust's role in the achievement of its environmental, social, cultural, and recreational objectives.

However the detail of such requirements have yet to be agreed, and the parties will discuss and agree upon such detail in due course before the commencement of the resource consents by which the Scheme will become enabled.

### **Other roles**

- 30. The Trust is required to liaise and consult effectively with its stakeholders and to communicate effectively with the community generally, including:
  - (a) Establishing and maintaining a community liaison group;
  - (b) Maintaining liaison with Ngai Tahu; and
  - (c) Establishing appropriate liaison with recreational and environmental groups.

For these purposes The Trust will regularly issue news releases, and will maintain a website for public information, will publish a Sustainability report, and will report to the Christchurch City Council and the Selwyn District Council by way of the Statement of Intent process and the other requirements specified by the Local Government Act.

### **The Trust as the guardian and promoter of community interests**

- 31. The concept of a community based scheme relies upon the independent role of the Trust as the holder of the resource consents on behalf of, and for the benefit of, the community as a whole. The consents are then to be licensed to the Company, which will own and operate the Scheme under the terms of the resource consents, and also under the terms of the licence agreement referred to above. A copy of the licence agreement is **attached** to my evidence.
- 32. Under the licence agreement the Trust has the reserve powers referred to in clause 15 of the MOU to withdraw the Company's right to exercise the resource consents to continue to operate the Scheme, or to review the

terms upon which the resource consents are made available exclusively and to give directions to the Company as essential conditions upon which it is permitted to continue to exercise the resource consents.

38. Also fundamental to the terms of the licence agreement is the obligation of the Company to require its water users to adhere to the Sustainable Farming Protocol referred to in the licence agreement, requiring it to *“Adhere to and uphold best practice environmental standards of such type and to such levels of performance as shall be agreed by the Parties.”* The Company, in turn, will then bind its water users by way of Water Use Agreements to carry out the actions required by those agreements. In these ways the Trust exercises the control needed to ensure that its environmental protection objectives are achieved.
39. This regime is intended to provide a practicable and effective way in which the Trust can monitor the actual results of the Company’s use of the resource consents under the Sustainable Farming Protocol; and provides the means for the Trust to acquire accurate information, have that information competently and independently assessed, and to engage with the Company to address any deficiencies (and if necessary to impose penalties). In providing for the Trust to be pro-active in this way, and not a ‘bare trust’, the need for what is described as “heavy handed monitoring” by the consenting authorities could be minimised. The Trust will also carry out the reporting to the authorities, and will publish the results of its work annually.
40. In addition, the Trust will pursue its programmes for environmental enhancements and for recreational facilities which can be achieved as part of the Scheme. This includes the administration of an Environmental Enhancement Fund to be funded by way of a levy upon water users. The Trust and CPWT are also committed to work together to achieve the recreational opportunities available as a result of the Scheme.
41. The Trust has also developed an education programme for schools about the Scheme; and is committed to the publication of an annual sustainability report on the results of its monitoring of the Scheme. All of these functions as the guardian and promoter of community interests will be funded by the Company in consideration for the use of the resource consents licensed to it by the Trust.

## Conclusion

42. The Trust has sought to appropriately balance the need for a commercially viable scheme with its wider community and environmental objectives. In doing so the Trust has required that it be satisfied, as a fundamental condition to allowing the Scheme to develop and to proceed to the resource consent application stage, that:
- (a) The quality of groundwater for community water supply purposes, and especially the high quality of the Christchurch City water supply, will not be compromised by the Scheme.
  - (b) The Scheme will comply with the Rakaia River Water Conservation Order and with the Regional Plan requirements for the protection of the Waimakariri River.
  - (c) Any effects on Te Waihora / Lake Ellesmere will not be more than minor.
  - (d) Best practice sustainable farming standards will be imposed by way of the Sustainable Farming Protocol to a degree capable of avoiding or satisfactorily mitigating the potential for pollution of the physical environment; and that the Protocol will be effectively monitored and enforced.
  - (e) Environmental enhancements and recreational facilities in conjunction with the Scheme will be facilitated.
43. The MOU and licence agreement have been put in place to secure the Trust's future capacity to see that these requirements are delivered on an ongoing basis; and the Trust's additional objectives for sustainability reporting and for public information and education, have also been provided for.

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Denis O'Rourke