

**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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**RESPONSE TO S42A OFFICER'S REPORT OF SUSAN ROBSON**

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1. My name is Susan Robson and I have the qualifications and experience which are set out in my evidence in chief, prepared earlier for this hearing. I have prepared this supplementary brief in response to specific issues raised in the S42A report prepared for Selwyn District Council by Nick Boyes on planning matters. I also have some general comments in response to Mr Boyes' assessment of the scheme as a whole, and, in particular, the matter of level of detail required for assessing a Notice of Requirement.

### **Specific items**

2. In paragraph 46, Mr Boyes states that CPW has not sought consent for non-compliance with a number of provisions under Rule III or IV. This is because, as I discuss below, it is highly unlikely that the proposed works would breach these rules and the consents are sought on the basis that there will be no non-compliances with these rules. If any non-compliances do arise, once the exact placement of such structures on the distribution network is fixed they would need to be dealt with by way of a resource consent application at the time, where the site specific issues arising can be addressed.

#### Rule III – Buildings

3. Utility structures are excluded from the definition of buildings. Thus it is likely that the only utilities likely to be captured by Rule III are pumphouses. They would be a Utility building and hence would be captured by the rule. The potentially applicable rules are:
  - (i) Relocated buildings. This is unlikely to apply but should a relocated building be proposed then an application for resource consent would be necessary.
  - (ii) Access and parking. This requires dwellings or principal buildings to have legal access to a road (not by crossing a railway). Utility buildings (pumphouses) are unlikely to fit the definition of a "principal building" (defined in the Plan as "*any building or buildings which is/are used as part of the primary activity or activities on the site. Principal dwellings include dwellings but do not include accessory buildings such as garages where only part of the accessory building issued for the main activity on the site, unless the accessory building is the only building on the site.*")

In the unusual circumstance that a pumphouse was the only building on a site then the rule applies and resource consent could be sought if the legal access standard was not met.

- (iii) This standard requires that no building encroach into the line of sight of a railway crossing. In the extremely unlikely event that this had to occur, then resource consent would be necessary.

#### Rule IV Rooding

The applicable rules are:

- (i) 1.8 - 1.13 These rules require roads, vehicular accessways, vehicle crossings, and vehicle parking associated with utilities to comply with specified standards. Very few of these items will be constructed and they will either comply or consent will be sought as design is finalised.
  - (ii) 1.14 - 1.18 These rules specify the amount of car parking to be provided in respect of specified activities and design standards for required manoeuvring areas. Again these will either comply (likely) or consent will be sought.
  - (iii) 1.1 Outstanding landscape. As no part of the distribution network (or the designation footprint) is within an area of outstanding landscape, this rule is not applicable.
4. Analysis of the above rules shows that non-compliance is most unlikely, but either a note attached to any consent granted or conditions reflecting the above standards would commit the consent holder to the need for future consents should the standards be breached.

#### Buildings and Heritage Trees

- 5. In paragraphs 49 - 53, Mr Boyes discusses the uncertainties to do with effects on heritage trees and heritage buildings.
- 6. All 6 listed heritage buildings on titles affected by the distribution network (Mr Boyes Appendix M) will be avoided. Five of these buildings are obvious features such as the homesteads and woolsheds on Terrace Station, Racecourse Hill, Haldon Station and Nesslea. The remaining building is "the Railway Long Drop" (H143) which is located on a long title (road/rail reserve) traversed by distribution canal SH 2. From inspection of the aerial photographs, it appears as though there are no buildings in the path of the

headrace and that the distribution canal will be able to avoid all buildings on the relevant title. Mr Lewthwaite's response to the s42A reports addresses this in more detail. Hence there will be no non-compliance with relevant rule (Rule 111, 10.4).

7. Mr Lewthwaite has also reported on the locations of the 6 heritage trees discussed by Mr Boyes (Appendix M) and I understand that they are all located at some considerable distance from the distribution canal. Hence there is no issue of non-compliance with the rules for heritage trees in respect of the distribution race (Rule 1, 1.8, Rule 2, 18.1) and no need to consider any potential for adverse effects.

**Removal of the Upper Waimakariri Intake – Unknown effects on archaeological sites and indigenous vegetation and the Kowai Statutory Acknowledgement**

8. In paragraphs 347 and 348, Mr Boyes concludes that due to potential cultural and ecological effects, he considers that the Upper Waimakariri Intake should be withdrawn from the scheme. I agree that a weighing of competing objectives is required (and I shall discuss this in more detail below). For Mr Boyes this weighing seems to have been tipped by the "Statutory Acknowledgement Area" shown on Planning Map 36 and reported on by Mr Jacomb. Extensive enquiries have been made by the CPW team, and I confirm that the District Plan Map Mr Boyes refers to is in error in this regard, although this was subsequently amended by a change to the plan notified in September 2007. This seems to have been acknowledged in the text of the Plan (4.2.4) where the Kowai Statutory Acknowledgement Area is not included where statutory acknowledgement areas are discussed. In addition, the applicant's solicitors have provided me with Schedule 26 from the Ngai Tahu Claims Settlement Act, being the only Schedule which refers to the Kowai River. This is attached to this brief as Appendix A and it clearly relates to the Kowai River situated north of the Waimakariri River at Leithfield. Te Runanga o Ngai Tahu has also confirmed that this is the case. To the extent Mr Boyes' conclusions are driven by this consideration, he is in error.
9. The question of unknown effects on archaeological sites has been discussed by Dr Habberfield-Short. There is also the potential for archaeological sites or areas of cultural significance that are still unknown to be disturbed. This is particularly the case for the Upper Waimakariri Intake area which is also on or near the site of the Ohinekakaraiti Pa. This area, as well as the riparian areas of the Rakaia and Lower Waimakariri Intakes may also contain species

of significant indigenous vegetation, the effects of the scheme on which are also as yet unknown.

10. I suggest that in the case of a major project such as this, which is the subject of a designation, it simply is not practicable to identify all potential adverse effects, except in a relatively generic way, especially as final designs are not normally completed until much later. In the case of archaeological sites, and heritage and cultural values, it is further complicated by difficulties of obtaining access to privately held land which comprises the vast majority of the area affected by the NOR. This potential difficulty needs to be balanced by accepting that a NOR is different from a project that is the subject of a resource consent. There are differences in the scale of the project, the degree of flexibility to locate the activity in an alternative site, and in the process which is followed after confirmation of the NOR.
11. For the NOR, the design is finalised in a subsequent stage, an important part of which is the outline plan process. It allows a further stage of input from the territorial authority into the appropriateness of what is proposed, and a right of appeal by that authority if the requiring authority does not accept the territorial authority's recommendations. Conditions and management plans are volunteered at this stage in order to address the range of potential effects on archaeological/cultural values and significant indigenous vegetation, and to ensure avoidance and/or mitigation measures are implemented if these are to be adversely affected. In the case of archaeological sites/cultural values, the mitigation could involve accurate recording and adding to the knowledge base, where destruction of sites could not be avoided. For indigenous vegetation, mitigation could involve replanting or propagating species of threatened vegetation elsewhere in equal or greater quantities.
12. In the present case, I accept that there could well be some loss of archaeological sites and perhaps of small pockets of significant indigenous vegetation. While such losses run counter to sections 6, 7 and 8, I consider that these costs have to be assessed in the overall balancing exercise which must be undertaken in respect of the scheme. They do not automatically mean that the territorial authority should recommend withdrawal of the requirement as appears to have been the approach taken in this case by Mr Boyes.

## General comment - NOR and detailed plans

13. The final matter I wish to address in this brief is the general principle of timing of detailed designs, especially of matters such as restoration planting. Mr Boyes seems to conclude that, given the lack of design for restoration planting, that effects on the landscape will be negative. He seems to ignore Mr Craig's main theme which is that the effects on the landscape will be in keeping with the existing rural character. Mr Craig does seek more details such as restoration/rehabilitation/enhancement plantings, but it is difficult to do any more until final levels, land forms etc are known. For example, the shoreline shape of the Waianiwaniwa Reservoir will depend on the levels/operating regime that is eventually chosen. Trees will have to be planted above the water's edge and the location of this is not known.
14. I do not accept that lack of detail of the implementation stage should be fatal now. The conditions volunteered set absolute standards and/or criteria which have to be achieved and the management plans and final designs have to reflect these. So long as the conditions of the NOR require restorative and/or enhancement landscaping, and set clear objectives for what such landscaping should achieve, then I believe the specific design of this is appropriately left to outline plan stage.
15. I refer the commissioners to Appendix 1 of the **Beadle**<sup>1</sup> decision (in respect of a designation for a new corrections facility at Ngawha Springs) which contains relevant examples of the approach of using conditions to specify details to be included and objectives to be achieved at the time of submitting specific plans for outline plan approval. I attach the designation conditions approved by the Environment Court in that case as Appendix B of my evidence. I consider that in this case the conditions put forward by CPW are generally similar in intent to those in **Beadle** but they are capable of improvement by including objectives such as in **Beadle**, Appendix 1, Condition 5. Landscaping.
16. I reiterate that the territorial authority is able to recommend changes to outline plans, and if those recommendations are not accepted by the requiring authority, it is able to appeal to the Environment Court (S176A(5)).
17. Given my comments above, I consider that Mr Boyes' approach in respect of requiring a high level of detail as to mitigation, as opposed to simply setting objectives or standards to be achieved, is inappropriate for a designation.

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<sup>1</sup> Beadle Wihongi and Wihongi v the Minister of Corrections (A074/2002).