

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

**RESPONSE TO SUBMISSIONS IN OPPOSITION TO CPW BEING GRANTED
CONSENTS WITHOUT APPROVAL TO THE DAM, RESERVOIR AND UPPER
WAIMAKARIRI INTAKE**

Dated 11 May 2009

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Forest & Bird

1. Forest & Bird's submissions rely heavily on the decision in *Unison Networks Limited v Hastings District Council*, where the Environment Court decided that it would not consider granting consent to a reduced proposal, and its decision was upheld in the High Court.
2. This decision is not authority for the proposition contended by Forest & Bird, that a consent authority cannot grant consent for a reduced proposal. Indeed, the High Court made it clear that the Environment Court "*did not decide that it was not open to it to approve a reduced proposal*". It says no more than a consent authority is not obliged to consent a reduced proposal when it does not have sufficient evidence before it to be satisfied of what the effects of that redesigned and reduced proposal might be. The logical corollary is that is perfectly in order to approve a reduced proposal when there is sufficient evidence as to the effects of a reduced proposal. This is what was done in *Motorimu Wind Farm Ltd v Palmerston North City Council* (WO67/08).
3. The Central Plains Scheme was presented a series of applications to take and use for irrigation, with storage supplied to provide the optimum reliability. The scenarios included a range of possible take quantities (particularly from the Waimakariri River) and a range of storage capacities. The assessment of effects dealt with the worst case scenario of potential adverse effects assuming maximum take and use, the largest dam and no mitigation. It is self-evident that there may be a range of options for providing irrigation within that envelope of effects, which would have reduced adverse effects.
4. Most of the effects of the dam and upper intake were discrete and are clearly severable if those applications are not approved (e.g. effects on mudfish, effects on Mr & Mrs Taeye). It is a considerably more simple task to assess the remaining consent applications without those adverse effects specific to the dam, reservoir and upper take.
5. Some of the effects of the take and use consents will change as a consequence of rejecting the dam and reservoir. For the most part, the adverse effects will be the same and in some respects will be reduced. There will also be a reduction in the economic benefits achievable, (but noting there will also be a reduction in the cost of the scheme). The applicant can provide evidence on such of these altered effects as the Commissioners consider will assist them in understanding what the effects of the reduced proposal might be. That puts this case in an entirely different category from *Unison Networks*.

Bull Family Trust

6. The essence of the Bull Family Trust's complaint is that it has been "*living under the shadow of the proposed scheme for most of this decade*". As was said in CPW's primary submissions, the time required to present further evidence if the

dam is not approved is not large in the scheme of things, and it pales into insignificance when one considers the time it will take to deal with appeals.

7. Nothing in the reductions proposed affects the Bulls Family. It is not correct to say that there are different, or new issues which will face this submitter or any other submitter.
8. It is not plausible that there are other potentially affected parties who would have submitted in respect of the other had they known the scheme would not have the Wainiwaniwa Dam.
9. The Bull Family Trust is critical of Central Plains saying that storage of water at Coleridge may be back on the table, as may on-farm storage. However these were all options which were considered by Central Plains, but rejected in favour of what it saw, at the time, as the best alternative, the Wainiwaniwa Reservoir. It cannot be criticised for reconsidering these options in the event its preferred option is not available.
10. Rejection of CPW's consents will not magically take away the pressure to provide the central plains land with additional irrigation water, and this is acknowledged in the Canterbury Strategic Water Study. If the Central Plains Scheme is declined, either its promoters will commence a fresh scheme, or an alternative scheme will be advanced by other entities. It is therefore sensible that this scheme be given an opportunity to adapt to meet the Commissioners' concerns, so long as that adaptation does not create additional adverse effects. If the Bull Family Trust was able to view the matter objectively, it might prefer the devil it knows.

Malvern Hills Protection Society Incorporated

11. The submissions of the Malvern Hills Protection Society make various factual assumptions about the nature of the "changes" involved in a reduced scheme which are unsupported by evidence. For example, it says that if "run-of river" had been contemplated as part of the original applications this should have been provided in evidence. However the scheme has always relied on "run-of-river" water as its first source of water for the entire scheme area, with the dam providing water to cover times when there was a shortfall of run-of-river water. While of course the scheme as presented relied on storage, that was as the means of providing the desired reliability. By granting the take and use consents, reliability can be attained at least in the interim, by existing ground water takes. It leaves open the opportunity to add on a storage component consistent with the outcome of the Canterbury Strategic Water Study.
12. The Society expresses concern about the possibility of consents being transferred to Dairy Holdings Limited. What the Society's submissions ignore is that the consents are still held by the Trust and subject to the requirements and obligations imposed by the Trust, just as they are if Central Plains Water Limited is using the water consent.

Director General of Conservation

13. The Director General's submissions, like other submissions, emphasises that the dam was integral to the scheme, ignoring that the note of the Commissioners is in relation to the relation to the applications for resource consent, not for approval of the scheme as a whole. As already said, it was not the dam as such, but rather the reliability that the dam provided, which was so important. In the interim, that reliability can be supplemented by existing groundwater consents. More likely, however, that reliability will be provided by alternate storage, as envisaged by the Canterbury Strategic Water Study, and consents or other planning approvals will need to be sought for that in the usual way and the impacts of that reliability will be assessed in that case.
14. DoC's submissions cite a long extract from *Contact Energy*, where an adjournment to present further evidence was declined. However in that case the Commissioners relied on the fact that further consents needed to be applied for to implement the amended proposal. CPW does not seek additional consents for a run-of-river scheme, albeit that it is reduced from the original scheme. Such a scheme can be operated without the requirement for additional consents. If alternative storage is sought at a later date, then the effects of adding that to the scheme will be considered at that time.
15. The submissions also refer to *Marlborough Aquaculture Limited v Marlborough District Council W27/09*, where an adjournment to allow a three year programme of study to be completed, was granted. CPW submits that this case supports its assertion that it is open to the Commissioners to give more time to present further evidence. It really doesn't matter whether the adjournment is for further evidence on the effects of the original application (as in the *Marlborough Aquaculture Case*), or further evidence on the effects of a modification to the proposal given an indication that some part of the proposal will not be consented.
16. It is accepted that section 171 requirements will still need to be satisfied in relation to the headrace. However the mere fact that further evidence may be required does not of itself make the change "*beyond the scope of the hearing*". That scope in turn is defined by the applications as lodged and notified. If the envelope of adverse effects remains the same or is reduced, then the applications remain within scope. It is a matter for legal submission whether the grounds under section 171 have still been satisfied.

Fish & Game

17. Fish & Game spend some time covering the case law on scope. Central Plains does not take any issue with the cited cases. However the conclusions at 2.8 are really findings of fact and it is presumptuous of Fish & Game to assume that the answers are "yes" without any evidence to that effect.


18. It is also important to recognise that in the extract cited from *Waitakere CC v Estate Homes Limited* [2007] 2NZLR 149(SC), the discussion relates to the scope of an application for resource consent. In Central Plains' case, the individual applications remain the same, it is only the proposal that will differ because it has some elements removed from it. However again, the *Estate Homes* case does not fundamentally change the law. It recognises that it is question of fact and degree whether a change to an application is such that it cannot proceed at all.
19. In the *Blueskin Project Limited* case, the particular application clearly changed from a subdivision consent to a land use consent. That is quite different from dropping some applications out from a suite of applications and leaving the others on foot substantially unaltered except for a reduction in effects.
20. In response to paragraph 2.17 it is helpful to consider the following responses:
 - (a) There may be on farm storage; or Lake Coleridge may now be back on the table as an option. Those are options for the future and each will be considered on their merits if they are applied for.
 - (b) No additional consents are required for the water to be used at present.
 - (c) No changes are required to existing groundwater consents but they may happen and again those will be examined on their merits.
 - (d) It is not clear that existing groundwater consent holders will be affected at all except possibly, advantageously, because groundwater will be more reliable. That was an effect that was always anticipated in the original applications.
 - (e) There are no newly affected persons.
21. Fish & Game also makes much of the possibility that the Commissioners will need to receive entirely new hydrological evidence on predicted post- CPW flows. That is not accepted, (although it may be presented to show what CPWs reasonable requirements for water will be in this changed scenario). The only possible impact of a scheme that relies on run-of-river water only is that water will be taken from the river less often as it will not be being used to re-charge storage. If it is not used to supply storage, that must be within the scope of possible effects of the application as a resource consent need not be implemented in full in any event and Central Plains could have taken as much or as little water of its permitted take as it liked even if it had been granted consent as sought. Even Fish & Game does not suggest that the effects on hydrology of rivers will be increased by a change to a run of river scheme, just that *"it would be unlikely that the effects of the river will decrease under the new proposal unless the command area was greatly reduced"*.

22. It is correct that the Central Plains scheme had been subject to modification over the last 8 years. That should not be a criticism. The changes implemented prior to the hearing were in response to consultation undertaken. It is inevitable that in a hearing with over a 1,000 submitters that further changes will occur during the hearing process. That is often regarded as a beneficial outcome of the hearing process. The fact that the scheme changes to pare away unsustainable aspects of its proposal, is a positive, not negative outcome.
23. No unfair burden is placed on submitters by this extension. If additional adverse effects are raised then there will not be scope to grant CPW its consents and submitters in opposition will be satisfied. If CPW's evidence is that the scope of effects is within the original envelope, then there should be no need for submitters to have to do anything additional. The Commissioners have heard at length from submitters and it is unlikely that there will be anything further they can contribute by way of evidence, except to acknowledge that their concerns might be alleviated to some degree.
24. This flows on to Fish & Game's submission on prejudice. The gist of the submission is that Fish & Game does not have unlimited resources to expend on opposing these applications. Ironically, if this application is thrown out, Fish & Game will simply be addressing, in the future, an alternative application for the same water, where it will have to consider these issues all over again from scratch. Fish & Game is critical of allowing applicants to "*perfect, or significantly amend, their application through the hearing process*". However, as said above, this is an inevitable and intended consequence of the participatory resource consent process. If Central Plains' applications can be amended to the point where they are acceptable, then one would have thought that was a positive RMA outcome.
25. If Fish & Game (and other submitters with a concern for in-stream values in the Waimakariri) are successful in persuading the Commissioners to impose on CPW a flow-sharing regime, they are likely to be significantly better off with CPW than with other applications that might follow if the Central Plains consents are rejected.

Te Runanga o Ngai Tahu

26. Like other submitters in opposition, TRoNT emphasises that the water storage component of the scheme was integral to it. Like others, it notes the significant reduction in reliability of the supply of water that would necessarily result from the loss of the storage dam. It then makes the assumption that that would be made up for by "*placing greater pressure on the rivers from which the water is being abstracted*". This is incorrect, as has already been discussed. This scheme was always going to take run of river water when that was available and it will be less, rather than more pressures on the rivers if water is not being taken when it is not required for irrigation, for storage.

27. It is correct that in the absence of a supply from storage water, farmers will seek to supplement their supply of surface water with ongoing takes of groundwater. However, Central Plains never relied on the relinquishing of groundwater consents. Indeed that was an issue on which TRoNT was critical of Central Plains Water.



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