

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 CPWES

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

EVIDENCE OF PAUL WHYTE

For

TE RUNANGA O NGAI TAHU

INTRODUCTION

1. My name is Paul Stuart Whyte. I hold the qualification of a Bachelor of Town Planning from Auckland University. I am a Full Member of the New Zealand Planning Institute. I have practised in the field of town planning/resource management planning since 1984, primarily working for both local government and planning consultants in Dunedin and Christchurch. Currently I am Senior Planner – Associate in the Christchurch office of Beca Carter Hollings & Ferner Ltd.
2. I have read the March 2005 Practice Note containing the Code of Conduct for Expert Witnesses giving evidence, and confirm that I have complied with the code in the preparation of my evidence.
3. I have been asked by Te Runanga o Ngai Tahu (TRONT) to give evidence in relation to the respective applications made under the Resource Management Act 1991 (the Act) for the construction and operation of the Central Plains Water Enhancement Scheme (the Scheme). I was not involved in the preparation of the submissions by TRONT to the application.
4. The Scheme is described in detail in the applications and the reports of Council officers. My evidence addresses the following matters:
 - a. TRONT perspective
 - b. Approach to Assessment of Effects
 - c. Waahi Tapu/Archaeological sites
 - d. Effects on waterways, including Te Waihora
 - e. Planning/ Statutory documents
 - f. Officer Reports/planning evidence of applicant
 - g. Part II of the Act
 - h. Conclusion
5. The conclusion of my evidence is that the concerns of TRONT have not been adequately addressed. In particular

- the information provided in the assessment of effects does not allow the Commissioners to make an informed decision.
- the assessment of waahi tapu sites is inadequate.
- there will be a significant adverse effects on waterbodies including Te Waihora.
- consideration should be given to other planning instruments including iwi management plans.
- the status of the application is non-complying
- regard can be had to future land uses.
- the administrative structure could make monitoring and compliance difficult.
- the proposal is contrary to the objectives and policies of plans and the effects are significant and consequently the applications should be refused.

TRONT PERSPECTIVE

6. The place of Maori in the Resource Management Act is specifically recognised in Section 6(c) Matters of National Importance in respect of (e) - the relationship of Maori and their culture and traditions with their ancestral lands, water, waahi tapu and other taonga; Section 7(a) – Kaitiakitangi; and Section 8 Treaty of Waitangi.
7. The various regional and district plans relevant to this application carry this legislative intent into their provisions. In the Regional Policy Statement (RPS) objectives and policies relating to the tangata whenua are found in a significant number of chapters, including Chapters 5 and 6.
8. The (Proposed Natural Regional Resources Plan) PNRRP chapters relating to Air Quality, Water Quality, Beds and Margins of Lakes and Rivers, Wetlands and Soil conservation and the Waimakariri River Regional Plan all contain provisions relating to the tangata whenua.
9. The Proposed Selwyn District Plan contains numerous provisions relating to the tangata whenua including the Cultural and Heritage Values Sections as well as the Land and Soil, Water, Outstanding Landscapes and Natural Features Sections.
10. Pursuant to Section 15 of the Te Runanga o Ngai Tahu Act (1996) TRONT is the legal representative of Ngai Tahu Whanui. Accordingly Ngai Tahu is the tangata whenua for the area that the Scheme applies to.

11. Clearly the legislation and the relevant plans identify that the Maori or the TRONT perspective of the management of natural and physical resources must be taken into account. TRONT has outlined their views in two comprehensive submissions to Environment Canterbury and Selwyn District Council respectively. In my opinion the TRONT perspective has not been addressed satisfactorily in the application, particularly as it relates to:

- approach to assessment of affects
- waahi tapu/archaeological sites
- effects on waterways, particularly Lake Ellesmere/Te Waihora
- reference to other plans and documents

APPROACH TO ASSESSMENT OF EFFECTS

12. In my view there are significant gaps that do not allow the Commissioners to make an informed decision. The report of Mr Fietje for Environment Canterbury highlights a number of areas where there is insufficient information including the effects of bywash, the effects of discharging stormwater and sediments, the effects of tunnelling, the effects on flooding, crop relocation etc, the effects of nitrate leaching and discharging, the effects on groundwater use, the effects on fluvial processes, the effects on hydrological process and the effects on recreation and terrestrial ecology.

13. Mr Fietje also identifies in Appendix 1 of his report that there is insufficient evidence to show that certain activities will be discretionary. Given the lack of information these activities are accordingly dealt with as non-complying activities.

14. Similarly, the report of Mr Boyes for the Selwyn District Council identifies that insufficient information has been submitted in respect of social impact, archaeological/cultural/heritage, terrestrial ecology, recreational effects and economic effects.

15. In my view this lack of information makes it difficult for submitters such as TRONT to respond to issues. While the process of circulating evidence prior to the hearing is of some assistance in the "plugging of information gaps" submitters are in my view at a disadvantage in assimilating and responding to this information. In the case of TRONT I understand there has not been any consultation with the applicant since July 2006, and some of the recommendations of the Cultural Impact

Assessment (CIA) prepared by Dyanna Jolly have not been addressed, further reducing the flow of information.

16. It appears the applicant has relied on the mechanisms of management plans or the submission of outline plans for the designations to address many of the “missing” items in the assessment of effects. It is acknowledged that management plans have a place in the resource consent process and outline plans allow an assessment of the details of a designated project.
17. However in my view management plans and outline plans should not be used as a default for an assessment of environmental effects. They should be viewed as an outcome from and not a replacement for an AEE. In this respect Clauses 1 and 2 of the Fourth Schedule to the Act require a detailed assessment of effects and Form 18 of the Regulations of the Act requires a Notice of Requirement to provide an assessment of effects on the environment.
18. It is acknowledged there are difficulties with large applications such as this one where for example exact details of alignments are not known but nevertheless this does not excuse an assessment being undertaken. It is noted that the Management Plans have not been prepared rather they indicate matters that will require to be addressed and suggests standards to be complied with. I concur with Mr Fietje that management plans are useful tools to demonstrate how the conditions of consent will be complied with rather than determining environmental outcomes after consent is granted.

WAAHI TAPU SITES/ARCHAEOLOGICAL SITES

19. The assessment and methodology for an assessment of waahi tapu sites is outlined in the application and in the evidence of Mr Habberfield-Short. This approach has been criticised by Southern Pacific Archaeological Research as not providing the necessary information for informed decision making. I concur with those comments because in my view:
 - The assessment does not meet the requirements of the Fourth Schedule to the Act particularly having regard to Section 6(c); Section 6(f) the protection of historic heritage from inappropriate subdivision, use and development; and Section 8 of the Act.

- The reliance on the Historic Places Trust Act in terms of accidental discovery is not appropriate. In my experience it is common practice for a field survey to be undertaken to at least establish an indication of potential effects. While the site is an extremely large one and some of the alignments and works are not certain this does not excuse an assessment not being carried out.
 - There are a large number of potentially significant sites to TRONT in the area including the Ohinekakaraiki Pa.
 - The concerns of TRONT, Ngāi Tūāhuriri and Te Taumutu that were raised in respect of these matters and outlined in the CIA undertaken by ~~Danya~~ Dyanna Jolly do not appear to have been addressed.
 - In 2001 David O'Connell in the Cultural Impact Report for the Central Plains Water Enhancement phase II written on behalf of TRoNT and Te Taumutu Rūnanga raised the requirement of a comprehensive archaeological survey of the Waianiwaniwa Valley surrounds be undertaken.
20. There appears to be an assumption in the evidence of Dr Habberfield-Short that sites will be destroyed but that the location of these sites and the extent of damage is not known. Leaving aside the issue as to whether destroying a site is acceptable to TRONT, the submitter is placed in the situation where effectively they cannot react until the relevant sections of the Historic Places Trust Act are enacted.

EFFECTS ON WATERBODIES, INCLUDING TE WAIHORA

21. TRONT has particular concerns in respect of the effects of the Scheme on waterbodies including the Rakaia, Waimakariri and Kowai Rivers and other smaller waterbodies. While Te Waihora is not in the Scheme area it is directly down gradient of the Scheme located between the Waimakariri and Rakaia Rivers and will be indirectly affected. Te Waihora is of particular significance to Ngai Tahu representing a major mahinga kai and an important source of mana. As a result of the Ngai Tahu Claims Settlement Act the lake bed is vested in TRONT and there is a Crown commitment to restore the lake from its degraded state. A joint management plan has been prepared by TRONT and the Department of Conservation (DOC) with an emphasis on rehabilitation of the lake. Te Waihora is identified as an outstanding natural feature in the Selwyn District Plan.

22. It is apparent that there are potential adverse effects on the waterbodies arising from the Scheme including:

- Construction activities
- The movement of groundwater particularly in proximity to Te Waihora
- Reduced flows in the Waimakariri River affecting fish and invertebrates, water clarity and algal growth
- Nitrate concentrations in lowland streams and waterbodies
- Increased flows in Te Waihora affecting salinity and fish species and opening of the lagoon.
- Loss of habitat including mudfish and terrestrial habitats
- Loss of recreation opportunities
- Mixing of waters from two different catchments which has ecological as well as spiritual effects

23. Any resource consents granted will be required to be monitored for compliance in order such matters as water quality can be retained. As I understand the Scheme, the Central Plains Water Trust will hold the resource consents (although I note they are not the Requiring Authority) but then licence the consents to Central Plains Water Limited (the company) who will then presumably interact with the individual farmers or companies who will be directly using and discharging the water. The mechanisms for these interactions are not clear. Environment Canterbury will potentially be dealing with three different parties (the trust, the company and the individual or company) when undertaking monitoring. In my opinion the potential for adverse effects on the environment could be exacerbated by what appears a complex structure, particularly as the end user is somewhat removed from the Trust. The three parties may have conflicting objectives in the management of the natural and physical resources. I note the "Sustainability Protocol" which I understand is envisaged as a key management tool is not a regulatory mechanism.

24. In my opinion concerns relating to the potential severity of the effects on waterbodies, the uncertain mitigation measures and compliance issues must be resolved before resource consent can be granted.

PLANNING/STATUTORY DOCUMENTS

25. Section 104(1)(b) of the Act specifies which plans regard must be had to. These include:

- i. A national policy statement
- ii. Regional policy statement
- iii. District or regional plans.

Section 104(1)(c) allows the consent authority to consider any other matter which is reasonably necessary to determine the application.

26. The officer reports and the planning evidence of the applicants provide a comprehensive analysis of the objectives and policies of the RPS, regional plans and the Selwyn District Plan.

27. Given the complexity and the significant area of the Scheme, the direct effect on land and water resources and the effects on such sites as Te Waihora and other taonga, it is my view other plans and statutory documents should also be considered by the Commissioners as an other matter under Section 104(1)(c).

28. These plans/strategies include

- Ngai Tahu Freshwater Policy (2000)
- Te Taumuta Runanga Natural Resources Plan (2002)
- Te Waihora Joint Management Plan 2005

I note that documents have not been referred to in the evidence of the Council officers or the applicant's witnesses. I believe these documents demonstrate TRONT's commitment to the sustainable management of resources and provide the perspective of the tangata whenua.

29. In particular, the TRONT Freshwater Policy sets out a number of objectives and policies relating to waihi tapu, mauri, mahinga kai and kaitiatangi and has a specific strategy dealing with irrigation. I consider that the information submitted by the applicant does not allow a full assessment of the objectives and policies of this document and on this basis is likely to be contrary to these provisions.

30. The Te Waihora Joint Management plan is as a result of the Ngai Tahu Claim Settlement Act (1993) which specifies such a plan should be prepared. The Plan

seeks to restore Te Waihora by improving the water quality habitats. Policies include Policy 2.3.3, which “*recognises the link between land and water and in particular the link between JMP (Joint Management Plan) Area and the water catchment*”. Methods include “*(d) advocating for the prevention of contaminants into water or into land that results in the contaminant entering water and (f) restriction on the unnatural mixing of water sourced from different waterbodies.*”

31. TRONT are concerned about the possibility of elevated nitrates in Te Waihora as a result of more intensive farming practices arising from the increased availability of irrigation. Mr White has addressed this matter in his evidence. Mr Fietje’s report states that the applicant acknowledges Te Waihora will receive increased nitrogen loading but does not consider this significant given the already enriched state of the lake. In my view this is not justification for further loading and ignores the steps being undertaken to reduce contaminants. Policy 10 of Chapter 9 of the RPS also specifically refers to the progressive improvement of such degraded waters as Te Waihora and the proposal will be contrary to this provision, There is also the possibility of the “unnatural mixing of waters” which is of concern to TRONT.
32. In my view the potential adverse effects have not been avoided, remedied or mitigated to TRONT’s satisfaction. Accordingly the Scheme is contrary to the above policies and could undermine the measures in place to improve the water quality and habitats of Te Waihora.
33. The National Water Conservation Orders are also relevant documents. The Water Conservation Order for Lake Ellesmere (1990) does not appear to have been considered by the applicant’s witnesses. The outstanding feature in the Conservation Order is that:

“Lake Ellesmere provides an outstanding wildlife habitat.”

In my view the evidence does not establish that this feature will be retained as a result of the effects of the Scheme including increased nutrients and flows.

34. The Conservation Order also controls the lake openings. The applicant has indicated on average an extra opening per year will be required as a result of increased groundwater levels which as indicated above could affect salinity and fish species. It is not known if the extra opening will affect the restrictions in the

Conservation Order. If it does affect the restriction, it appears the Scheme consents could not be granted pursuant to Section 217 of the Act.

35. The Rakaia Conservation Order is referred to in the application and concludes that its provisions are complied with. However, my understanding is that it is protecting values on a national scale whereas the protection of regional and local values including those of the tangata whenua must also be considered under the Act. As indicated previously it does not appear these values will be protected. Mr Fietje in his report also raises the possibility that the further allocation required by the Scheme could breach the provisions of Section 217 of the Act.

OFFICER REPORTS/PLANNING EVIDENCE OF APPLICANT

36. As indicated above, I concur with the Officer Reports in respect of the lack of information and the difficulty in recommending approval on the current level of information provided.
37. Whether the objectives or policies of the RPS, the NRRP, and the Selwyn District Plan are met is largely dependent on the content of technical reports undertaken by the various experts. Accordingly the Officer Reports and the planning evidence of the applicant in respect of the objectives and policies of the above documents generally reflect the technical experts. The applicant's witnesses generally consider the Scheme is consistent with the objectives and policies while the officers do not consider there is the same consistency.
38. In my view many of the objectives and policies of the various documents are brought into question in respect of TRONT's interests and in particular those relating to the tangata whenua, heritage sites, water quantity and water quality provisions in the respective plans.
39. In respect of the regional council consents Mr Fietje does not appear to address the matter as to whether the status of the application should overall be considered as non-complying or whether each consent should be considered individually depending on its status. Mr Murray considers the Section 104 D test should only be applied selectively as many of the activities are not closely related.

40. It appears the non-complying activities generally relate to the discharge permits (14 discharge resource consents are non-complying). Given that the discharges are an integral part of the project (and certainly related to the water takes) and that very few of the activities are controlled or restricted discretionary then in my view the whole application should be considered as a non-complying activity. This view appears to be supported by the relevant case law.

41. Mr Fietje also states in paragraphs 32 the following:

“Irrespective, activities are only required to pass one of the two ‘gateway’ tests of section 104D, therefore the consents for non-complying activities do not need to be tested against the objectives and policies of relevant plans and proposed plans if effects are considered minor. If some activities remain non-complying and effects cannot be adequately mitigated such that residual effects are less than minor the applicant will need to demonstrate that the second limb of this test is passed.”

While it may not be the intention it appears Mr Fietje is implying that objectives and policies are not a consideration. However, objectives and policies of regional and district plans must still be considered under Section 104(1)(b).

42. Mr Boyes in his report concludes that the District Plan resource consents which essentially relate to the distribution network are discretionary activities. While I concur with this assessment, the issue of whether the bundle of regional and district consents should be considered non-complying does not appear to have been addressed. I presume this is on the basis that the consents are distinct because of their district and regional status.

43. In respect of the Notice of Requirement (NOR) it is beyond dispute that CPW has requiring authority status. I concur with Mr Boyes and Ms Sue Robson that the NOR is a suitable tool but its application is flawed because the assessment of effects lacks detail or the effects are of such significance that the NOR should be withdrawn.

44. In terms of future land use, Mr Boyes has indicated this generally does not need to be given consideration to given that it will be controlled by rules in district and regional plans. However the benefits of future land uses have been referred to in the economic evidence..

45. The consent authority can have regard to “future and cumulative effects” under Section 3 of the Act. One of the inevitable future effects of the Scheme is a change in land use and that almost inevitably a major land use will be dairying. Ms Robson indicates that the effects of dairying will be controlled by resource consents and the “Sustainability Protocol”.
46. Dairying is not a permitted activity and there are rules in both the Selwyn District Plan and the regional plans. For example Rule WQN 25 in the NRRP irrigation is a non-complying activity in the Christchurch Recharge Zone and resource consents will be required for dairy shed effluent disposal. Accordingly there is not a “permitted baseline” for dairying and I believe that the potential future effects of dairying and other land uses can form part of the overall assessment.

PART II OF THE ACT

47. I consider that based on the current level of information the proposal is not in accordance with Part II of the Act. While it will enable a section of the community to provide for their well being and which may have economic benefits for the wider region Section 5(2)(a)-(c) matters are unlikely to be met given the potential adverse effects identified including those effects on the life supporting capacity of the waterways and ecosystems.
48. In terms of Section 6(a) there is considerable doubt the natural character of waterbodies, including Te Waihora will be preserved. As noted there is a plan in place to rehabilitate the lake and the Scheme could affect this with increased nitrates and flows.
49. The relationship of Ngai Tahu with the land, water and waahi tapu is also not provided for given the mixing of waters, the reduction in water quality, and the potential effect on sacred sites caused by inundation, construction and earthworks. (Section 6(e)). The protection of historic heritage sites may not be recognised in an appropriate manner (Section (6)(f)).
50. In respect of Section 7(a) it appears that Kaitiakitangi has not been observed, particularly given the lack of consultation. In terms of Section 7(b) the evidence of Mr Copeland indicates that the Scheme may not result in an efficient use and development of resources. In relation to 7(d) it is also apparent there will be some effect on ecosystems as a result of a reduction in water quality and inundation (e.g.

mudfish). Section 7(g) refers to finite characteristics and in this particular case the water is a finite resource that is utilised for a variety of economic, ecological and cultural purposes. The effects of this application indicate not all these purposes can be met.

51. Section 8 of the Act requires the principles of the Treaty of Waitangi to be taken into account. I understand these principles include a duty to consult and a duty to actively protect Maori interests. It appears the consultation undertaken between the applicant and TRONT has not been on going. The interests of TRONT clearly have to be protected in any decision.

CONCLUSION

52. The technical reports indicate that the proposal will result in a potentially significant adverse effect on waterbodies, ground water, waahi tapu sites, and ecosystems. This assessment is partly based on a lack of information and an absence of detailed mitigation measures.
53. The proposal will also be contrary to a number of the objectives and policies in the relevant plans in respect of water abstractions, groundwater quality, surface water quality, tangata whenua, terrestrial ecology, indigenous vegetation, waterbodies and their margins. The proposal is also not in accordance with a number of other management plans.
54. As indicated above the proposal is not in accordance with Part II of the Act. If the application is considered as a non-complying activity then in my view neither of the gateway tests are passed. Even if some of the consents are assessed as discretionary activities then there is insufficient reason to grant resource consent. Similarly in respect of the Notice of Requirement it is my view the requirement should be withdrawn.