

IN THE MATER OF

the Resource Management
Act 1991

AND

IN THE MATTER OF

a notice of requirement by
Central Plains Water Limited
to Selwyn District Council

EVIDENCE OF JANE WHYTE

Introduction

1. My name is Jane Whyte. I hold the degrees of Bachelor of Arts and Master of Regional and Resource Planning from Otago University. I am a full member of the New Zealand Planning Institute.
2. I am currently a Director of RESPONSEPLANNING Consultants Limited, a consultancy company specialising in planning and resource management. I have over fifteen years planning and resource management experience working for local authorities and in private consultancy in strategic, community, policy, regulatory and statutory planning. I have a number of years experience in preparing, lodging, processing and holding and exercising delegation as a decision maker on resource consents and designation processes.
3. I am familiar with Variation 1 of the Proposed Natural Resources Regional Plan (PNRRP) having prepared submissions on it. I have evaluated a number of projects under the PNRRP and the Transitional Regional Plan and have prepared a number of resource consent applications. I have also evaluated a number of projects under the Waimakariri River Regional Plan.
4. I am familiar with the area affected by the Central Plains proposal. I am familiar with the proposal, the information lodged in support of the applications, the submissions received and the Section 42A and supporting reports. I am also familiar with the evidence provided by the applicant where this is relevant to the scope of my evidence.
5. The Regional Engineer at Canterbury Regional Council (ECAN) has asked me to prepare evidence on the application for designation to Selwyn District Council

Evidence Outline

6. My evidence today is in two parts. Firstly, I provide an overview of issues for the Regional Engineer relating to this proposal. Secondly, I consider the requirement sought by Central Plains Water Limited (CPWL) in the context of section 171(1) of the Resource Management Act (RMA), and examine how the issues of the Regional Engineer fit within this statutory context.
7. Central to, and informing my evidence on the third issue I will address (sufficient interest in the land) are the following statutory matters (based on advice of Counsel):
 - a. The bed of the Waimakariri River is vested in ECAN in accordance with Section 17 of the Waimakariri River Improvement Act 1922.¹²
 - b. Compulsory acquisition of this land pursuant to section 186 of the RMA is not available in this circumstance as ECAN in accordance with section 186(4)³ does not agree to it.
 - c. ECAN, due to the effect of the designation cannot undertake its duties and functions in accordance relating to the Waimakariri River Flood Protection Scheme (WRFPS) without the consent of CPWL⁴.
 - d. CPWL cannot undertake activities in accordance with its designation, if confirmed, if they interfere with flood control works in accordance with the functions, duties and responsibilities under the Soil Conservation and Rivers Control Act without ECAN's agreement to do so.

Hence, the situation is that CPWL cannot obtain an interest in the land necessary to implement the designation sought. In effect the situation is akin to a standoff, where neither ECAN nor CPWL can undertake their activities without the permission of the other.

¹ Section 17(1) of the Waimakariri River Improvement Act 1922 is "*The bed of the Waimakariri River outside the limits of the Waimakariri Harbour is hereby vested in the trust as an endowment*".

² Note 1 to the Waimakariri River Improvement Act 1922 identifies that "*Waimakariri River Trust disestablished on 10 February 1947 and succeeded by North Canterbury Catchment Board and Regional Water Board. See Gaz.1947, p 199. North Canterbury Catchment Board and Regional Water Board disestablished on 9 June 1989 and succeeded by Canterbury Regional Council. See Gaz. 1989 p 2296-2303.*"

³ Section 186(4) of the RMA is
186 Compulsory acquisition powers
(4) Any land held under any enactment or in any other manner by the Crown or a local authority may, with the consent of the Crown or that authority and on such terms and conditions (including price) as may be agreed, be set apart for a project or work of a network utility operator in the manner provided in sections 50 and 52 of the Public Works Act 1981 (with the necessary modifications), but the setting apart shall not be subject to sections 40 and 41 of that Act. Any land so set apart shall vest in the network utility operator.

⁴ Section 176(1)(b) and 178(1) of the RMA

Summary of Issues and Outcome Sought

8. The issues for the Regional Engineer are focused on those parts of the Central Plains Proposal (designation and land use) which impact on the Waimakariri riverbed, in particular the geographical area from the lower Waimakariri River intake near the Waimakariri Gorge downstream near Redmond Road. The outcome sought is that the designation as it affects that areas of concern for the Regional Engineer be declined.
9. There are three key issues. The first is that the physical works enabled by the designation will adversely impact on the Waimakariri River Flood Protection Scheme (WRFPS). The second is that the designation will affect the ability of ECAN to maintain and undertake future improvements to the WRFPS. The third is that even with the designation in place CPWL will still have insufficient interest in the land enable it to implement the works enabled by the designation. Sufficient interest in all of the necessary land cannot be obtained through compulsory acquisition.
10. These issues and the key arguments are summarised below.

Impact of the Physical Works

11. The first issue is that the physical works allowed by the designation within the Waimakariri riverbed will adversely affect the function and capability of the existing WRFPS. The construction works allowed by the designation will have an immediate and long-term impact on the WRFPS by potentially resulting in:
 - the disturbance to, and removal of these protection works
 - increasing instability of the Waimakariri riverbed and reducing the berm buffer zone width
 - increasing riverbank erosion resulting in greater segmentation
 - affecting the ability to obtain and maintain access to and along the existing WRFPS.
12. The WRFPS is part of a long established natural hazard management system, which has a significant public good and investment history associated with it. These works have a critical function in relation to managing the health and safety of people and property and in ensuring the economic and social well-being of people in the community. Mr Vesey has described these works.

Designation affecting WRFPS

13. The second issue is that the designation will affect the ability of ECAN to undertake its functions and duties and responsibilities as they relate to the WRFPS. This will occur as no party can undertake any works in the area subject to a designation without the consent of the requiring authority. The designation is over part of the existing WRFPS.

14. Both the act of needing to obtain consent from the requiring authority, and the potential that that consent may not be obtained, will affect the efficient functioning of the existing WRFPS by:

- causing delays in undertaking essential works associated with the WRFPS
- reducing the ability for the existing WRFPS to be maintained
- reducing the potential ability to undertake future improvements to the WRFPS

15. The potential limitations will adversely impact WRFPS and important physical resource which could undermine the ability of the associated works to protect life and property.

Insufficient Interest to Act on the Designation

16. The third issue is that regardless of the designation it is unlikely the requiring authority can ever obtain sufficient interest in the land to enable the works to be undertaken. This is because:

- some areas of land over which the designation is proposed include the Waimakariri riverbed and land vested as endowment land with the Canterbury Regional Council. Compulsory acquisition rights do not apply to endowment land covered by the Waimakariri River Improvement Act 1922
- the land forming part of the riverbed and the WRFPS is subject to various permissions, authorisations and management regimes under other legislation including the Soil Conservation and Rivers Control Act 1941, and the Waimakariri River Improvement Act 1922. Not all the authorisations and permissions under this legislation can be over written by a designation under the RMA.

17. This is because the permission of the landowner and the controlling authority for WRFPS (in both cases ECAN) is required for the applicant to compulsorily acquire the land and implement the designation.

18. Given this, it is clear insufficient attention has been given to an alternative which would enable the Central Plains Scheme to be implemented without the constraints identified above. The issues with the WRFPS relate to the location and existence of the Lower Intake. Similar issues do not exist for the upper intake which may provide a practical alternative.

Substantive Evaluation

Location of Project Works of Concern

19. The geographical area of the proposal concerning the Regional Engineer is only a small part of the overall proposal. In this section I describe the geographical location and components of the scheme affected by the submission of the Regional Engineer.

20. The key geographical area of concern is within the Waimakariri riverbed extending from the lower Waimakariri River intake which is located near the Waimakariri Gorge to an area downstream near Redmond Road.
21. The affected works within the area described include, the headworks and ancillary structures in and beside the Waimakariri River, including
- channels
 - diversions
 - holding ponds and discharges
 - all associated earthworks
 - landscape plantings
 - the headrace.
22. These have been described in more detail in the evidence of Mr Vesey. These works are of concern due to their potential impacts on the WRFPS and are addressed in the following sections.

Issues

23. I summarised the three issues earlier in this evidence. I now address these in more detail. The are:
- the impacts of the physical works associated with Central Plains water irrigation scheme on the WRFPS
 - the implications of the imposition of a designation in this area of the Waimakariri riverbed on the WRFPS
 - whether CPWL can achieve sufficient interest in the land to enable the designated works to be undertaken in the Waimakariri riverbed.

Impacts of Physical Works

24. The designation once in place will enable, subject to an outline plan process, physical works associated with the development of the Central Plains Scheme to be undertaken. Some of these works, including critical intake structures will occur within the Waimakariri riverbed. Of concern to the Regional Engineer are the potential impacts these physical works will have on the WRFPS.
25. Mr Vesey has described the existing WRFPS and the important public safety role it fulfils. He has also described the works proposed as part of the Central Plains Scheme and the potential effects these works will have. These include:

- removal of protection works, including plantings
- reducing the berm buffer zone width
- increasing the instability of the Waimakariri riverbed
- the potential for the river banks and flood protection works to be undermined
- the channel and discharges from the channel to result in sudden and non sudden changes to the river flow affecting the safety and security of people working in or using the riverbed
- physical works affecting the ability to access the works which are part of the WRFPS to fulfil maintenance and operational requirements.

26. The evidence is that the proposed Central Plains Scheme will have adverse effects on the WRFPS. The proposed designation fails to adequately address the adverse effects on the very important public infrastructure asset of the WRFPS. This scheme has been in place for over many years and represents a significant long-term public investment as explained by Mr Vesey some parts were established as early as 1869. The WRFPS constitutes an existing physical resource which plays an important role in protection individuals, the community and property.

Designation affecting WRFPS

27. The designation CPWL is seeking includes part of the existing WRFPS administered by ECAN. A designation imposes constraints on the way the land subject to the requirement can be used. In this situation the CPWL requirement has serious implications for the Regional Engineer in fulfilling his responsibilities and duties relating to the existing WRFPS.

28. A designation, once imposed, provides protection for the project subject to the designation, from incompatible land uses and activities. Section 176 of the Resource Management Act identifies that the consent of the requiring authority is necessary to do anything in relation to the land which would prevent or hinder the project. This protection exists from the date that the designation is publicly notified.

29. This means it is necessary for ECAN to obtain the consent of CPWL to undertake any works within that area of land subject to the designation. The requiring authority is under no obligation to provide its consent. If consent is not forthcoming then its response is subject to appeal to the Environment Court under section 170 of the RMA.

30. This is a key feature of a designation process which protects the project which is the subject of the designation. However, these restrictions on current landowners make it essential that any designation, and its necessity, is considered very carefully. In this situation the designation

sought by CPWL has implications for an existing and very important public infrastructure work being the WRFPS.

31. Mr Vesey has explained the important role the WRFPS has in protecting people, the community and property from adverse effects associated with flooding of the Waimakariri River. The people and land it provides protection for represent a significant level of investment within this area of Canterbury. The WRFPS itself represents a significant public investment (66 million dollars in 2005).
32. The very nature of the WRFPS is that it requires ongoing maintenance, monitoring and upgrading to ensure that it remains effective in providing the necessary level of protection. The designation sought by CPWL could result in the Regional Engineer being restricted in his ability to undertake the necessary maintenance and upgrading work. This will undermine the safety and protection of people and property. In the best case the necessary work can still continue, however, the designation will likely result in delays.
33. In paragraph 68 of the Section 42A report of Mr Boyes, in addressing the designation of riverbed and concludes that it is of little consequence as activities in the riverbed required ECAN consent. I understand that Mr Boyes may have reached this conclusion that it is of little consequence to the requiring authority. However, the designation in the riverbed is of significant consequence to the regional engineer.
34. Bearing this consequence in mind it is important that the area of the designation be well defined, and necessary for the physical works. The physical area of the riverbed designated is a large area, and is likely larger than the physical works would require. While this provides greater flexibility for the requiring authority this is not outweighed by the implications of the designation on the Regional Engineer.
35. As with any project there is the potential that despite best intentions a proposal does not proceed. In this situation the applicant is seeking a lapsing period of 10 years, rather than the five years which is the standard lapsing time. Lapsing periods fulfil important roles to parties other than the applicant. They provide a level of certainty, or rather provide a time constraint to the uncertainty of whether a project may or may not proceed. A lapsing period avoids the 'possibility' of a project hanging over people, impacting on various decisions for an undefined and inappropriate time period.
36. While it is recognized that this is a significant project, which will take time to implement, it is considered that the flexibility for the requiring authority, in extending the time lapsing period to ten years, is not outweighed by the significant implications the designation has for a landowner, particularly given the importance of the flood protection scheme.

37. As identified having a designation over land has serious implications affecting a landowner's ability to undertake activities on the land subject to the designation. Given this, I consider it is necessary for any requiring authority to take responsibility and be able to implement the designation within a reasonable timeframe. In the situation given the potential implications of a designation on this very important public infrastructure asset, being the WRFPS, it is important that uncertainty as to whether the project will or will not proceed be minimised.
38. The next section of this evidence shows that there is considerable uncertainty as to whether the requiring authority can ever obtain sufficient interest in the land subject to the designation, to proceed with the project. Given this it is considered that the lapsing period should not be ten years.

Insufficient Interest in the Land

39. The third issue I address relates to whether the requiring authority can obtain sufficient interest in this land that would enable the project to occur. Ms Robson in section 3.3 of her evidence recognises that a key distinguishing feature of a designation is that, once designated, land can be acquired under the Public Works Act 1981. In the same paragraph Ms Robson expresses her opinion that it is appropriate that requiring authorities have the ability to apply to the Minister for Lands to acquire the designated land so that they may implement the designated works. She identifies two reasons why she considers this to be appropriate I quote:

Firstly, it is consistent with the effective control they are given over the use of the land by virtue of section 176. Secondly, it is consistent with the fact that a designation is recognition that use of the designated land is reasonably necessary for achieving the objectives of the public works, project or work, including in light of the requiring authorities consideration of alternative sites or routes.⁵

40. I agree with Ms Robson's interpretations of the purpose of a designation. In particular, I note her second point quoted above - that the ability to acquire the land is consistent with the fact that a designation is recognition that the use of the designated land is reasonably necessary for achieving the objectives of the public works, project or work, including in light of the requiring authorities consideration of alternative sites or routes.
41. It is relevant that the ability to use the designed land goes to whether the objective of the works can be achieved. The circumstances which apply to the land subject to the designation within the Waimakariri riverbed mean that the requiring authority is not able to obtain the necessary interest

⁵ Statement of Evidence Susan Robson Page 6 of 42 paragraph 3.3

in the designed land to enable it to be used in accordance with the designation. This is important when considering Section 171(1)(c).

42. I now describe the particular circumstances applying to this land. I record that on legal interpretation matters Counsel has advised on the meaning of the legislation.

43. The Waimakariri River Improvement Act 1922 (WRIA) vested the bed of the Waimakariri River in the Canterbury Regional Council as an endowment. This is unusual in New Zealand terms as most riverbeds are unalienated Crown Land. When dealing with endowment land the Local Government Act 1992 (LGA) has restrictions on how Council can deal with such a property. Currently these restrictions are that the property must be retained by the local authority for the purpose for which the property was vested. Counsel has advised that the general-purpose of the endowment property is directed towards the drainage and prevention of flooding of the Waimakariri Trust District as constituted by the WRIA and subsequent amendments.

44. I am advised that neither the designation nor the compulsory acquisition provisions of the Resource Management Act override the WRIA provisions (which vest in the land as endowment) and the provisions of section 140 and 141 of the LGA.

45. Section 186(4) of the RMA is relevant and reproduced below:

186 Compulsory acquisition powers

(4) Any land held under any enactment or in any other manner by the Crown or a local authority may, with the consent of the Crown or that authority and on such terms and conditions (including price) as may be agreed, be set apart for a project or work of a network utility operator in the manner provided in sections 50 and 52 of the Public Works Act 1981 (with the necessary modifications), but the setting apart shall not be subject to sections 40 and 41 of that Act. Any land so set apart shall vest in the network utility operator.

46. While Section 186(4) of the Resource Management Act 1991 may allow the ECAN to reach an agreement which overrides the LGA provisions, such a decision cannot be forced. My understanding is that there is no agreement with ECAN which would enable the purchase of this land to occur.

47. In addition to whether the land can be compulsorily acquired or not, the provisions of the WRIA authorises the Canterbury Regional Council to construct works for the control of flooding. Any interference with those of works by any other person is prohibited by WRIA. The evidence of Mr Vesey is that works associated with the Central Plains Scheme could result in interference with the flood control works.

48. I am advised that while Section 363 of the RMA provides that where there is a conflict between the WRIA and the RMA, the latter prevails, in that part of the RMA dealing with designations there is no provision that the specific legislation is overridden.

49. In addition to the WRIA there is other legislation relevant to the subject land being the Soil Conservation and Rivers Control Act 1941 (SCRCA).
50. The SCRCA provides power for a Catchment Board (functions, duties and powers which are now vested in various Regional Councils) to carry out works and it also provides for the protection of these works. Interference with works carried out by the Board, without consent, is an offence under the Act. An exemption is provided that Boards have no power over Government works without consent of the relevant Minister. Counsel has advised me that by virtue of Section 23(1) of the RMA these rules apply notwithstanding the designation.
51. Relevant to the Central Plains proposal are the flood protection and river control works associated with the WRFPS. As described by Mr Vesey these include the berm, protection planting erosion protection, other flood protection works and access tracks. The implications are that the existence of the WRFPS can impact on the ability for the works subject to the designation to be undertaken, where these would affect the existing public work.
52. The above matters draw into question whether the objectives of the designation can be fulfilled in a situation where any CPWL works impact on land subject to the WRIA, or affect the existing WRFPS. This raises significant questions over whether the requiring authority has, or can obtain, sufficient interest in the land. Given this in considering the information in support of the application there is a lack of consideration of alternatives relative to the constraints identified above.
53. The designation, due to the consent of the requiring authority being needed before any works can take place, affects the ability of the Regional Engineer to undertake the roles and responsibilities relating to the WRFPS. This will occur in the knowledge that the requiring authority cannot act on the designation within the 10 year lapsing period sought as it cannot obtain sufficient interest in the land. This approach will impose unnecessary costs and time delays on ECAN.

Statutory Framework relating to CPW and WRFCS

54. The matters to be considered in making a recommendation on the designation are set out in section 171 of the Resource Management Act 1991. This is shown below.

Section 171 Recommendation by territorial authority

(1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—

(a) any relevant provisions of—

(i) a national policy statement;

(ii) a New Zealand coastal policy statement;

(iii) a regional policy statement or proposed regional policy statement;

(iv) a plan or proposed plan; and

- (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—*
- (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and*
- (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
- (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*
- (2) The territorial authority may recommend to the requiring authority that it—*
- (a) confirm the requirement;*
 - (b) modify the requirement;*
 - (c) impose conditions;*
 - (d) withdraw the requirement.*
- (3) The territorial authority must give reasons for its recommendation under subsection (2).]*

55. Part II is the overriding consideration for any requirement and submissions on that requirement. The other matters being a, b, c and d are matters particular regard is to be had to when considering the effects on the environment of allowing the requirement.

56. In the context of this requirement all of the matters in a, b, c and d are able still 'live' matters to be considered. I will address these below.

57. I record here that in undertaking an evaluation of the matters in Section 171(1) I have focused on those matters that are directly relevant to the effects the Central Plains Scheme will have on the WRFPS as described by Mr Vesey. I have not undertaken a full evaluation of the entire Central Plains project. My evaluation relates to the proposal in relation to the matters of concern of the Regional Engineer.

Any Relevant Provisions

58. In the section of my evidence I list the relevant provisions of the statutory documents in particular the Regional Policy Statement, the Proposed Selwyn District Plan, and the relevant proposed regional plans. While not undertaking a comprehensive evaluation of the entire Central Plains proposal I have considered those provisions that would support the overall concept of the Central Plains proposal along with the specific provisions relating to works in the beds of rivers and natural hazards.

Regional Policy Statement

59. Mr Boyes, Ms Robson and Mr Murray are generally consistent in the Regional Policy Statement Provisions which they consider to be relevant. I also consider that in a broad sense that the provisions identified are the most relevant.

60. There are three areas where I will specifically focus on the objectives and policies, these relate to water, beds of lakes and rivers and natural hazards.

61. Turning firstly to Water, this is addressed in Chapter 9. I note that Policy 2 specifically identifies that augmentation or storage of water is a way of enhancing the availability of water for present and future generations. This policy provides some support for the concept of augmentation and storage which is the focus of the Central Plains Scheme.

62. I now consider Chapter 10 – Beds of rivers and lakes and their margins in more detail. Objective 1 and policies 1, 2 and 3 are primarily concerned with the appropriate protection and enhancement of natural, cultural and social values associated with the beds and margins of lakes and rivers.

63. Objective 2, Policy 4, Objective 3 and Policy 6 are of particular relevance.

Objective 2

Protect the flood-carrying capacity of rivers from the adverse effects of land use within the beds and margins of rivers, or the obstruction of waterways by the accumulation of bed material and vegetation.

Policy 4

Land use within beds and margins of rivers should be undertaken in such a way that any adverse effects on the following values are avoided or mitigated:

(i) the free passage of floodwaters within the beds; and

(ii) the contribution of vegetation or structures to the control of flood flows or the control of erosion.

Objective 3

Protection of the stability and performance of essential structures from the adverse effects of land use within the beds and margins of rivers.

Policy 6

Land use activities within the beds and margins of rivers should be undertaken in such a way that any adverse effects on the stability or performance of essential structures are avoided.

64. Within Objective 2 and Policy 4 the contribution of vegetation or structures to control flood flows or the control of erosion are of particular importance. Mr Vesey identified that the works forming part of the Central Plains Scheme that will occur in the bed of the Waimakariri River will remove a significant amount of vegetation which currently plays an important flood management role.

65. Objective 3 and Policy 6 address land use activities that can cause adverse effects on the stability or performance of essential structures within riverbeds and the margins. The WRFPS has essential structures within the beds and margins of the Waimakariri River. In this regard Policy 6 requires that land use activities be undertaken in such a way that **any** adverse effects on the stability or performance of essential structures are **avoided** (my emphasis).

66. Policy 6 is a strongly worded policy. The evidence provided by Mr Vesey is that the works undertaken in the bed of the Waimakariri River associated with the Central Plains Scheme will not avoid any adverse effects on the stability or performance of essential structures.

67. Given the above my conclusion is that the Central Plains scheme as it relates to the natural hazard provisions does not appropriately manage the effects to the extent required.

68. I note that the evidence of Ms Robson and Mr Murray relies on the evidence of Mr Lewthwaite with respect to the effects on the existing WRFPS. Mr Lewthwaite relies on the fact that practical solutions may be available at the time detailed design is done. I note that at this stage in considering this submission there is no certainty as to what these detailed design solutions are, whether they are sufficient to address the effects, or that they will be developed or implemented as part of the project. This issue is far too important to be addressed at a later stage.

Natural Resources Regional Plan

69. There are two chapters of the proposed natural resources regional plan that I will focus on in this evaluation. The first is Chapter 5- Water Quantity and the second is Chapter 6 - Beds and Margins of Lakes and Rivers.

70. Chapter 5 Issue WQN 8, Objective WQN 8, and Policy WQN 21 contain specific provisions relating to augmentation of water bodies. This objective and policy specifically recognize the importance of augmentation processes and provide for augmentation to occur where this is consistent with other objectives in the Plan and does not adversely affect other permit holders' reliability of supply and access to water. Again as with Regional Policy Statement provisions these provide some support for the broad concepts of augmentation and water storage. I note that these provisions of the NRRP do not apply to the area covered by the Proposed Waimakariri River Regional Plan.

71. Turning now to chapter 6, which does generally apply in the Waimakariri Catchment, of relevance are Objective BLR1 and Policy BLR1. These are reproduced below:

Objective BLR1 Activities within the beds and margins

Activities in the beds and margins are able to be undertaken while:

- (a) protecting flood carrying capacity to avoid increased risk of flooding of surrounding lands;*
- (b) protecting the stability of lawfully established structures and the banks of lakes and rivers;*
- (c) minimising the spreading or colonising by pest or undesirable plants;*
- (d) preserving natural character;*
- (e) protecting outstanding natural features and landscapes;*
- (f) protecting areas of significant indigenous vegetation and significant habitat of indigenous fauna;*
- (g) promoting the maintenance and enhancement of amenity values;*
- (h) providing for the relationship of Ngai Tahu and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga;*
- (i) avoiding, remedying or mitigating adverse effects of reductions in sediment transport to the coast where there is a crucial link to rates of coastal erosion; and*
- (j) protecting significant habitat of trout and salmon.*

Policy BLR1 Effects of activities within the bed or margins

- (1) Control land use activities, including:*

- (a) the use, erection, reconstruction, placement, alteration, extension, demolition or removal of structures;*
 - (b) excavating, drilling, tunnelling or other disturbance;*
 - (c) the introduction, planting, pruning, removal or harvesting of plants;*
 - (d) the depositing of any substance, including residential, commercial and industrial waste; and*
 - (e) reclamation or drainage,*
- within:*

- (i) the beds of lakes and rivers;*
- (ii) 7.5 metres of the bed of a lake or river; or*
- (iii) 7.5 metres of any flood control structure,*

to ensure that the achievement of objective BLR1 is not compromised. In particular, activities shall not:

- 1. restrict the passage and/or the dynamics of water flow in a manner that generates or leads to a reduction in flood carrying capacity;*
 - 2. cause localised scouring or erosion that adversely impacts on the bed or banks of lakes and rivers, or the stability of lawfully established structures; or*
 - 3. create an increase in undesirable or pest plant infestation, unless it can be demonstrated through the resource consent process that adequate mitigation measures can be undertaken.*
- (2) Encourage land holders and users of the beds and margins of lakes and rivers to undertake their activities such that the achievement of Objective BLR1 is not compromised.*

72. This objective and policy seeks to ensure that activities do not reduce the flood carrying capacity nor do they adversely impact the bed or banks of lakes and rivers or the stability of lawfully established structures.

73. Similar objectives and policies are expressed in the Waimakariri River Regional Plan.

Objective 5.1

Enable present and future generations to gain cultural, social, recreational, economic, health and other benefits from the rivers, lakes and wetlands in the Waimakariri River Catchment, and from hydraulically connected groundwater while:

- (a) safeguarding their existing value for efficiently providing sources of drinking water for people and their animals;*
- (b) safeguarding the life-supporting capacity of the water, including its associated: aquatic ecosystems, significant habitats of indigenous fauna, and areas of significant indigenous vegetation;*
- (c) safeguarding their existing value for providing mahinga kai for Tangata Whenua;*
- (d) protecting wahi tapu and other wahi taonga of value to Tangata Whenua;*
- (e) preserving the natural character of rivers, lakes and wetlands and protecting them from inappropriate use and development;*
- (f) protecting outstanding natural features, and landscapes from inappropriate use and development;*
- (g) maintaining and enhancing amenity values; and*
- (h) protecting the significant habitat of trout and salmon.*

Policy 5.1

Set and maintain water flow, water level and water allocation regimes and control the taking, use, diversion, discharge and damming of surface water, and the taking of water from hydraulically connected groundwater, while achieving (a) to (h) of Objective 5.1, so that:

- (a) above Woodstock (Figure 4 and Map 1):*

- (i) the range or rate of change of levels or flows of water in or entering lakes Blackwater, Grace, Grasmere, Hawdon, Letitia, Marymere, Mavis, Minchin, Pearson, Rubicon, Sarah, and Vagabonds Inn are preserved in their natural state;
- (ii) the natural flows, including flow patterns and variability, in the Waimakariri River and tributaries are protected;
- (iii) the natural water levels in wetlands are protected;
- (b) below Woodstock (Figure 4 and Map 1):
 - (i) the braided character of the Waimakariri River, aquatic ecosystems and habitats, wetlands, amenity based on the river, and groundwater recharge from the river, are protected;
 - (ii) the aquatic ecosystems and habitats, wetlands and amenity based on the Kaiapoi-Cam-Cust, Otukaikino Creek, Styx, Kowai and upper Eyre River systems, are protected.

Enable present and future generations to gain cultural, social, recreational, economic, health, and other benefits from river and lake beds in the Waimakariri River Catchment while:

- (a) safeguarding the existing value of rivers and lakes for efficiently providing sources of drinking water for people and their animals;
- (b) safeguarding the life-supporting capacity of the water in the beds of rivers and lakes, including its associated: aquatic ecosystems, significant habitats of indigenous fauna, and areas of significant indigenous vegetation;
- (c) safeguarding the existing value of rivers and lakes for providing Mahinga kai for Tangata Whenua;
- (d) protecting wahi tapu and other wahi taonga of value to Tangata Whenua;
- (e) preserving the natural character of rivers, lakes and wetlands and protecting them from inappropriate use and development;
- (f) protecting outstanding natural features and landscapes from inappropriate use and development;
- (g) maintaining and enhancing amenity values;
- (h) protecting and where appropriate enhancing the habitat and heritage values of river and lake beds;
- (i) protecting and where appropriate enhancing the flood carrying capacity of rivers;
- (j) protecting the banks of rivers and lakes, and the stability and performance of essential structures in their beds; and
- k) protecting the significant habitat of trout and salmon.

Control in the bed of any river or lake in the Waimakariri River Catchment:

- (a) the use, erection, reconstruction, placement, alteration, extension, removal, or demolition of any structure or part of any structure in, on, under, or over the bed;
- (b) the excavation, drilling, tunnelling, or other disturbance of the bed;
- (c) the introduction or planting of any plant or any part of any plant (whether exotic or indigenous) in, on, or under the bed;
- (d) the deposition of any substance in, on, or under the bed;
- (e) the reclamation or draining of the bed; and
- (f) the disturbance, removal, damage, or destruction of any plant or part of any plant (whether exotic or indigenous) or the habitats of any such plants or of animals in, on, or under the bed; so that (a) to (k) of Objective 7.1 are achieved and in particular:
 - (i) the flood hazard to adjacent land is not increased;
 - (ii) disturbance to protected wildlife and their breeding habitat, and indigenous vegetation is minimised;
 - (iii) salmon spawning sites are not disturbed;
 - (iv) wetlands are protected;
 - (v) the braided character of the Waimakariri River where it exists is sustained;
 - (vi) the natural patterns, colours and textures of the riverbed areas are maintained;

- (vii) above Woodstock, defined in Figure 4 and Map 1, river and lake beds are kept free of weeds and other exotic vegetation; and*
(viii) below Woodstock, defined in Figure 4 and Map 1, the present natural character of river beds is at least maintained.

74. As with consideration of the Regional Policy Statement the objectives and policies identified above recognise the importance of protecting the flood carrying capacity of rivers, protecting essential structures in their beds, and managing the flood hazard. The evidence provided by the Regional Engineer is that the CPWS designation and subsequent works will adversely affect these.

Proposed Selwyn District Plan

75. Mr Boyes and Ms Robson have provided consideration of all relevant objectives policies and other provisions in the Proposed Selwyn District Plan. With respect to the Transitional Selwyn District Plan, both have concluded it is not relevant. I agree that the Transitional District Plan is not relevant and have not considered it.

76. As with my evaluation of the regional documents there are two key areas in the Proposed District Plan of relevance. The first relates to utilities (which large parts of the Central Plains Scheme fit within) The general approach of the Plan towards utilities is enabling provided that adverse effects on other activities in the environment are appropriately mitigated.

77. When considering natural hazards the District Plan has an objective that "activities do not cause or exacerbate natural hazards" Objective 3.1(i): The policies have a primary focus on managing land uses so that the impacts on them from natural hazard impacts are avoided or mitigated.

Consideration of Statutory Provisions

78. My evaluation considers those parts of the project affecting the geographical area of interest to the Regional Engineer. Therefore, I do not reach overall conclusions relating to the proposal relative to all of the relevant statutory matters. My consideration has considered the broad and generally enabling provisions which can be seen as being supporting of the Central Plains Scheme, and in more detail the provisions most relevant to the WRFPS (primarily provisions dealing with beds of lakes and rivers and natural hazards).

79. While, it is evident that there are general enabling provisions relating to augmentation schemes, all of the statutory documents contain provisions which specifically recognize the importance of flood protection structures and the important role in natural hazard management that these play.

80. The proposed works as they relate to the lower intake and associated structures do not adequately manage the effects on the WRFPS and thereby create tension with the objectives and policies relating to natural hazards.

Adequate consideration to alternative sites, routes or methods of undertaking the work

81. In this situation because the requiring authority does not have an interest in the land sufficient for undertaking the work it is necessary to consider whether adequate consideration has been given to alternative sites, routes or methods of undertaking the work.
82. Again my consideration of the proposal as it relates to the alternatives is focused on those parts of Central Plains Scheme which impact on the area of Waimakariri riverbed and surrounding environment as addressed in the submission of the Regional Engineer.
83. In reading the application documents and the evidence presented by the requiring authority on alternatives it is evident that no consideration has been given to alternative sites, routes or methods of undertaking the works as they relate to the WRFPS. This is especially important because Counsel has advised that without agreement of ECAN sufficient interest in the land will not be able to be obtained, even if the designation is confirmed.
84. Much of the information furnished by the requiring authority relating to alternatives relates to alternatives to the overall scheme. Specific consideration has been given to alternatives to the locations of the reservoir and the channels. Similar consideration of the intakes and the structures necessary, and their locations has not been undertaken.
85. Mr Lewthwaite in his evidence has made some specific reference to the concerns of the Regional Engineer. He identifies that the concern expressed relating to the channel and the possible erosion effects is also a concern to the requiring authority. Mr Lewthwaite concludes that these concerns can be addressed by protection works which would likely consist of a selection or mixture of vegetative plantings, riprap, channel excavations and rocks.
86. I note that the resource consent applications do not include such works, and there is no information available in the supporting information for the notice of requirement that indicates this is a part of the proposal. In addition, it is not clear that these works will address the significant concerns that have been raised by Mr Vesey.
87. With respect to the possible conflict between the CPW structures and the ECAN river protection system the conclusion of Mr Lewthwaite is that discussions have concluded that there will be practical solutions that can be developed in the detailed design stage of the scheme and CPWES should propose solutions for the approval of ECAN.
88. This approach indicates to me that at least Mr Lewthwaite in giving evidence for the requiring authority considers that it is necessary to consider alternatives to the present proposal in order to address the concerns raised in the submission. As it stands inadequate consideration has been given to these. There is no indication as to what outcome any detailed design may result in, nor,

in relation to a designation, is there any surety that the requiring authority will promote such design options if, and when, the scheme is developed.

89. This proposal, in not adequately considering alternative sites, routes or methods, has the result of imposing greater costs and risks on another important public work, being the WRFPS through:

- increasing risk of failure (flood damages caused by undermining of works)
- increased risk of failure and foregone future improvement
- potential inability to undertake maintenance and improvements
- increasing operational costs.

90. Given the above it is clear that adequate consideration at this time has not been given to alternative sites, routes or methods of undertaking the work when the requiring authority does not have an interest in the land sufficient for undertaking the work as it relates to the area of the WRFCS.

91. As a final consideration on alternatives, although not evident from the application, in evidence Mr Leithwaite indicated that it is unlikely that both the upper and lower intake structures will be developed. He identified that only one intake is likely. If this is the case then it does mean that the upper intake does provide a true alternative to the lower intake. The upper intake does not have conflict with the WRFCS.

Work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought

92. The objective of the requiring authority as expressed in the Section 42A report of Mr Boyes is "to supply reliable irrigation water from these two rivers Rakaia and Waimakariri, in accordance with the provisions of the relevant statutory and planning documents, in order to achieve economic and social benefits which come from increased productivity or irrigated rural land."

93. While it can be seen that the work forming part of the scheme is necessary in order to meet the requiring authority's objective there is question over whether the designation will enable the requiring authority to undertake the necessary work. This is important in the context of the second part of the consideration being the appropriateness of the designation for achieving the objectives of the requiring authority.

94. There are issues with the requiring authority being able to implement the designation as it applies to the Waimakariri riverbed, due to the tenure of the land and the other legislation that applies. The designation will not achieve the objectives if it is unable to be acted upon.

95. In addition, the evidence of Mr Lewithwaite presented for the applicant, indicated that both the upper and lower intake structures on the Waimakariri River may not likely to be necessary for the

functioning of the scheme. This raises an issue to me as to whether the designation as applied for is reasonably necessary to achieve the objective of the requiring authority.

96. The final matter to consider is whether the entire size of the designation as it applies to the Waimakariri riverbed is necessary to achieve the objective of the requiring authority.

Part II of the Resource Management Act

97. The consideration of a requirement and any submissions is subject to Part 2 of the Resource Management Act.

98. As identified my evidence is focussed on that part of the proposal affecting the Waimakariri riverbed from the lower Waimakariri River intake downstream near Redmond Road. Considerations under Part II require an overall broad judgment on whether or not a proposal promotes the sustainable management of natural and physical resources. Therefore having not addressed the entire scheme in evidence is not possible for me to reach an opinion or conclusions on Part II.

99. What I have done is to identify where in Part II the issues of the regional engineer should be considered.

- a. Both CPW and WRFCS are to be considered as physical resources. Therefore consideration under Sections 7(b) and 5(2)(a) is appropriate, relevant matters include:
 - i. WRFCS is an existing physical resource which has long been recognised as a resource with significant public good
 - ii. historically the trend is for an increasing desire for higher levels of protection from natural hazards
 - iii. maximising the potential of existing assets to fulfil this role tends to be highly cost effective.
- b. It is foreseeable that future generations will need to rely on the flood control potential of WRFCS (5(2)(b)).
- c. WRFCS is part of the existing environment. It is important that adverse effects on WRFCS are avoided, remedied or mitigated ((5(2)(c)).
- d. WRFCS is a physical resource that provides for social and economic wellbeing and peoples' health and safety to significantly reducing flood damages, to people and property throughout the area where WRFCS provides protection (5(2)).
- e. CPW has the potential to provide for social and economic wellbeing, if it can be implemented (5(2)).

Outcome Sought

100. As identified earlier the outcome sought by the Regional Engineer is that the designation as it affects the Waimakariri riverbed from the lower Waimakariri River intake downstream near Redmond Road be declined.