

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of applications and notice of requirement by
the Central Plains Water Trust and the
Ashburton Community Trust

Submissions on behalf of the Taege Family

1. Trevor and Heather Taege and their family oppose the Central Plains Water Trust and the Ashburton Community Trust irrigation scheme proposals. However, in their evidence, for the purposes of this hearing, the Taege family are concerned primarily with the taking of water from the Waimak, the proposed Upper Waimakariri River intake works and the diversion channel.
2. While the Taege family support the Malvern Hills Protection Society, their evidence today is related directly to the proposed intake works and the taking of water from the Waimak. Trevor and Heather are members of the Society. Although their evidence focuses on Waimak intake, they support the evidence of the people directly affected by the irrigation scheme, as called by the Society, and the expert evidence of others including those called by the Fish and Game Council, the Department of Conservation and the Royal Forest and Bird Protection Society.

3. Trevor and Heather Taege live on a terrace high above the Waimak River and enjoy what can only be called an outstanding panoramic view of the river as it comes out of the Waimak Gorge. They overlook the river where it leaves the Gorge, forms its braided river channels, and flows down towards the coast.
4. Trevor Taege will give evidence on behalf of the family. Trevor has had a life long association with the river. He understands its many moods, its floods and freshes, its high and low flows, and the constantly changing river channels. His knowledge of the river is derived from this association and his observations over many years. He has an almost unique knowledge about the stretch of the river where CPW propose to take water and locate their river intake works and diversion channel.
5. The intake works would adversely affect the use and enjoyment of this stretch of the river by the Taeges, by the various river users, and by the public who visit the area known as Riverside at Toby Hill. They would also have a direct impact on Trevor's property at Riverside as well as impacting on the family's (and others) tourism business.
6. Over the years Trevor and Heather Taege have built up a very substantial tourism business at Riverside. This is described in Trevor's statement of evidence. It will be readily apparent that this business is very dependent on the river. The business is unique in Canterbury and provides an outstanding experience of which the river is the major part. It is also an international attraction with the bulk of the visitor numbers coming from overseas. The attraction is based on easy access to the river, a range of rural activities, a very attractive riparian environment, and a superb jet boat ride through the Waimak Gorge. Without immediate daily access to the river for the jet boat operation the business of both the tourist park and Waimak Alpine Jet would not survive.

7. The Waimakariri is one of the South Island's great rivers. In his evidence Trevor describes the varying flows in the river and the effects this has on its braided river channels. The river varies its course and its channels over time, though not necessarily over a long time. For instance, the main stem of the river has, since last year, been running up against the right bank at Riverside. This is the first time this has occurred since the Taeges have owned Riverside. This will be illustrated in the photographs attached to Trevor's evidence. With his long experience and knowledge of the river, Trevor is in a unique position to describe its nature and characteristics. It can be described as a constantly changing river and river environment.
8. There is a very real concern that CPW have seriously underestimated the force of the river, its flows, and its changing river channels. This would impact constantly on the works required by CPW to construct and maintain their proposed intake works in the upper Waimak. There is a concern that major river works will be required, much greater in scale than CPW envisage. The works will be required on an ongoing basis and will have a major impact on the river as it leaves the Gorge as well as on its riparian margin at Riverside.
9. There are concerns as well at the amount of water CPT propose to extract from the Waimak and the river's ability to sustain the level of take intended by CPT. From the point of view of one with a long association with the river and an excellent knowledge of its flows, Trevor queries whether the river can sustain the amount of water proposed to be taken from the river.
10. Of particular concern to the Taeges are the adverse effects that the intake works will have on Riverside and on the jet boat operation (Waimak Alpine Jet) which is an essential part of the tourism venture. This operation is dependent on access to the river on a daily basis. The proposed intake channel is immediately adjacent to Riverside and the jet boat operation. The

potential is there for the intake works and their ongoing maintenance to have significant adverse environmental effects on the river and on the tourism businesses.

11. The intake works will be a visual intrusion into an attractive river environment, one that is frequented by river users, tourists and visitors. The effects on natural character, landscape and visual amenity will be adverse and there is insufficient information as to how this adverse effect will be avoided, remedied or mitigated.
12. A comparison can be made with a similar river of comparable size. The Rangitata and the RDR diversion works at Klondyke Corner provide a useful basis for comparison. Trevor Taeye will produce photographs to show the banks of shingle and gravel piled up beside the RDR's diversion race at Klondyke. This is an indication of what can be expected with the CPW scheme on the Waimak River. It is readily apparent that these shingle banks present an unsightly and ugly appearance which would be quite out of keeping with the very attractive Waimak River environment that currently exists. If the build up of shingle and gravel is to be removed this presents a new dimension which has yet to be considered. There is a lack of information on this point and this issue does not appear to have been factored into CPW's plans for the upper Waimak intake works.
13. It is submitted that there has been insufficient investigation or not enough preliminary work has been done to provide adequate information to justify the intake works proposed by CPW in the Waimak. For a major scheme as is proposed it should be expected that detailed investigations would have been undertaken to assess the ability the Waimak has to sustain the extraction of so much water, the effect this will have on river flows, the impact the intake works would have on the river and its margins, and the river works required to maintain the diversion channel.

14. This does not appear to have occurred and, in comparison with Trevor Taeye's first hand knowledge of the river, CPW seem to have made a number of assumptions that the intake and diversion works can be effected by a simple engineering exercise. It is submitted that the Waimak has a mind of its own and cannot be tamed in the manner contemplated by CPW. This is where the knowledge of someone as familiar with the river as Trevor Taeye assumes quite some importance.
15. This issue is also compounded by the fact that there are alternatives available to CPW which would have far less impact on the river, the riverbed and its margins than the proposed diversion channel as well as considerably lesser adverse environmental consequences.
16. In his evidence Trevor sets out three other alternatives that CPW has to take water from the Waimak for the irrigation scheme. They are –
 - locating the intake down river below Riverside:
 - construction of a tunnel from Milliken's Bank:
 - pumping water from the Waimak at Cabbage Tree Flat.
17. In respect of the second alternative, the Milliken's Bank tunnel proposal, it is understood that CPW's objection to this is on the grounds of cost. However, given the scale and ongoing nature of the river works required to maintain the proposed intake works, the capital cost of a tunnel could be more than offset by the ongoing cost of maintaining the works in the Waimak's riverbed. It does not seem that this cost comparison has been made. And also of particular importance is the fact that the tunnel proposal would have very significantly less adverse environmental impacts on the Waimak and its surrounds.
18. No detailed analysis of alternatives in respect of the taking of water from the Waimak appears to have been done. This is surprising given the amount of

water proposed to be taken from the river and the scale of the intake works required. Such an analysis would be expected to include alternative sites, routes and methods, the environmental effects, how they can be avoided, remedied or mitigated, as well as the engineering and river works required, and the costs involved.

19. As a separate issue, Trevor will raise the question of access to the riverbed at Riverside. He has proposed that an existing farm access be used by CPW rather than have a separate new one constructed. This would also provide better access to the riverbed. CPW have expressed interest in looking at this but to date this is still up in the air and it appears that CPW are continuing with their initial proposals. This is covered by the proposed designation. However the Taege family propose that this aspect of the designation be reviewed and the existing access, which is available to CPW, be considered instead.
20. The CPW proposals present what could be described as a classic challenge in terms of RMA principles. There are the enabling provisions of section 5 of the Resource Management Act which “*enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety*”. Then there are the matters set out in section 5(2)(a), (b) and (c) which would all appear to have application in this case.
21. This does not call for a bottom line approach. Nor are the commissioners called on to find a balance. Rather it is a matter for the judgment, the collective judgment of the commissioners. As described in *New Zealand Rail Limited v Marlborough District Council* (1993) 2 NZRMA 449 this calls for an overall broad judgment whether the proposal will promote the sustainable management of natural and physical resources. It is very apparent in this case that this is not an easy task. It will depend on the commissioners weighing up all relevant factors in their assessment of the evidence which is being

presented. As the Environment Court said in *North Shore City Council and Ors v Auckland Regional Council (Okura)* [1997] NZRMA this “*judgment allows for comparison of conflicting considerations and the scale or degree of them, and their relative significance or proportion in the final outcome.*”

22. There are also matters of national importance to consider. In this regard, in relation to the intake works, section 6(a), (b) and (d) are particularly relevant and set out matters that have to be recognised and provided for as matters of national importance. In varying degrees other matters set out in section 7 also need to have particular regard paid to. Apart from this, the evidence of other parties and their expert witnesses raise a large number of issues under sections 6 and 7 that have to be recognised and provided for or have particular regard paid to.
23. The question has therefore to be asked whether the irrigation scheme as proposed promotes the sustainable management of natural and physical resources. This is where an overall judgment has to be made. The Part II matters have to be given appropriate weight and, as the Court said in *Trio Holdings Limited v Marlborough District Council* [1997] NZRMA 97, “*to what extent the adverse effects are acceptable is, however, a question of fact and degree.*”
24. In respect of the notice of requirement for the upper Waimak intake works, section 171(1) sets out the matters which, subject to Part II of the RMA, the commissioners are to have particular regard to. This includes –
 - “(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;

25. These matters are subject to Part II of the RMA. The question has also to be asked whether, in view of the injunction to avoid remedy or mitigate adverse effects on the environment in section 5(2)(c), as well as the injunction in section 171(1), adequate consideration has been given by CPW to alternatives to the proposed river works required for the upper Waimak intake. In addition, the commissioners are to have particular regard (section 171) to significant adverse effects on the environment.
26. Again, given the alternatives available and the adverse effects on the environment of the proposed intake works, the question has to be asked whether the proposed intake works in the river are in fact “*reasonably necessary*” for the CPW irrigation scheme.
27. Trevor Taege describes in his evidence the adverse effects that would result from the upper Waimak intake works. Many submitters have raised adverse effects on the environment that will be caused by the scheme as a whole. A number also relate to the adverse effects arising from the proposed intake works and the taking of water from the Waimak at Riverside. These effects are not minor. They are significant and have serious impacts on the environment. These are matters the commissioners will have to consider in exercising their judgment and in coming to a decision on the scheme and on the proposed intake works.
28. CPW have advised Trevor Taege that they envisage that the jet boat operation would be able to operate from the diversion channel and that they are agreeable to enabling the jet boat operation to continue. While this assurance is appreciated, it is considered that this underestimates the Waimak River and does not take adequate account of the force and flows in the river and its shifting channels. Nor does it recognise the scale and ongoing nature of the

works that would be required to maintain the channel. Again, it does not recognise the adverse effects there would be on the environment

29. However, if consent is given to the scheme and the notice of requirement is upheld, it is requested that appropriate conditions be imposed that would go some way to safeguarding and maintaining the jet boat operation. Trevor Taege has set out in his evidence the type of conditions that the Taege family seek in the event that the CPW and ACT scheme is approved with the upper Waimak intake works and diversion channel as currently proposed.
30. In conclusion, it is submitted that the adverse effects of the scheme, and of the intake works in particular, are so significant that they call the scheme into question. In respect of the intake works however there are alternatives that do not have such adverse environmental impacts as those proposed by CPW. It is submitted that more consideration of these alternatives is warranted given the effects that the river intake works will have. It is also submitted that insufficient information on the nature of the river has been provided and that inadequate account has been taken of the force, flows, and changing nature of the river.
31. For these reasons it is considered that CPW have seriously underestimated the works that will be required to construct and maintain the diversion channel and have not taken adequate account of the adverse environmental effects that such a proposal will have.
32. These are matters the Taege family ask the commissioners to consider when they deliberate on the CPW irrigation scheme applications and the notice of requirement in respect of the upper Waimak intake works.

A F J Gallen
11 June 2008

