

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of applications for resource consent by the Central Plains Water Trust and a notice of requirement for the designation of land by Central Plains Water Limited associated with the construction and operation of the Central Plains Water Enhancement Scheme

**SUBMISSION ON BEHALF OF THE MALVERN HILLS PROTECTION SOCIETY
INCORPORATED**

Introduction

1. This submission is made on behalf of the Malvern Hills Protection Society Incorporated (“the Society”). It is in response to the minute/directions from the Commissioners, dated 1 April 2009 and the Memorandum of Counsel for CPW dated 1 May 2009.
2. As you would expect, the Society strongly supports the interim advice from the Commissioners (in para 5) that you are proposing to recommend that CPW should withdraw its Notice of Requirement for the Waianiwaniwa dam and reservoir, and for the associated upper Waimakariri intake and tunnel and that the consents associated with those aspects of the proposal should be declined.
3. Much of the Society’s case presented at the hearing focussed on those aspects, and with the effects they would have had in a number of respects. As well as direct effects on many of its members, these include effects on Coalgate, on the Malvern Hills Heritage Landscape, and on the Waianiwaniwa Valley and Upper Waimakariri environment and ecology (such as the Canterbury mudfish habitat.).
4. The Society would like to express to you as Commissioners its appreciation that those concerns have been recognised, and the great relief that this finding has given to many of its members. A huge weight which had been a burden on them for many years has now been lifted from their shoulders

5. However, the Society does still have a number of concerns, and there are still members of the Society who would be adversely affected if the remaining aspects of the proposal were to be granted.
6. These include Madeleine de Jong, who would still have the headrace canal running beside her private hotel business, Gillie and Tim Deans who would lose part of their family farm, Auchenflower, to the headrace as well. Other MHPS members affected by the headrace crossing their properties are Philip and Jocelyn Deans and Cynthia MacKenzie of Homebush, John and Rosalie Austin and the property of Nicholas and Ruth Owers of Hororata. Louise Deans asks the question - how will a revised scheme affect the headrace construction on Homebush farm? It is her wish to see the whole scheme rejected. The Robertson family will no longer lose their farm in the Waianiwaniwa Valley, but their three farms on the plains would still be affected by the distribution canals. The property of Heather Thompson and Geoff Fowlds is also affected by a by-wash canal at Halkett near the Waimakariri River.
7. As it said in my submission to you last year, the Society and its members also have wider concerns as to the sustainability of the CPW proposal, and the conversion of large tracts of the Canterbury Plains to dairy farming which is (in large part) its aim. Those include the effects on the rivers of further water takes, the increased discharges of nutrients, groundwater mounding and the effects on aquifers.
8. These are technical matters which, at the hearing, the Society largely left to be addressed by other parties. Nevertheless, both its concerns in these areas, and the effects a revised scheme would still have on some of its members, mean its position on the question asked by the Commissioners in para 27 of your minute is that you should close the hearing now and proceed to issue a final decision.
8. The Society also supports the preliminary view which is expressed in paragraph 6 of your minute that, as a consequence of rejecting the dam and reservoir, and related aspects of the proposal you should also reject the balance of the project.

A changed scheme

9. Other parties have already addressed you on the legal issues raised in both the minute and the Memorandum of Counsel for CPW. The Society adopts those submissions, and does not propose to repeat them, or to advance any separate legal submissions of its own.

10. However, its general submission is that the whole way in which the CPW case was presented runs counter to the proposition that the scheme can now be separated out into its individual components and have some granted/confirmed and some declined. That was certainly not the way its proposal was put forward at the hearing. The scheme was both publicly promoted, and presented by the applicant at the hearing, as an integrated package. All the evidence presented, particularly the economic evidence, was founded on all the components of the scheme proceeding. The Upper Waimakariri intake, and the storage to be provided by the dam and reservoir were advanced by CPW as a particularly significant and beneficial feature of its proposal, not some kind of incidental component which could be taken or left without any great effect on the overall scheme.
11. This is not a simple situation whereby a proposal can be easily reduced at a hearing to accommodate submitters concerns. It is not analogous to removing a few levels of a high rise building to reduce amenity effects, or reducing the number of turbines on a wind farm to remove some from a prominent ridge. This scheme is far more complex, and the consents far more interrelated, than in such cases.
12. Certainly, the Society has always understood those components to be an essential feature of the proposal. So has CPW. As one significant example of its recognition of that, the Society refers to paragraph 3.3 of CPWL's application to the Minister to become a requiring authority where it said:

"The essential feature of the Scheme is that it includes the principle of 'water harvesting' i.e. taking water during periods of high flows and conveying it to the irrigation system or storage reservoir for use during periods of restricted flows."
13. CPW has consistently said that from the beginning of this scheme. The CPWL Prospectus (November 2004, page 17) says:

"However this water is not always in the right place at the right time. The rationale behind the scheme is to overcome this problem and to ensure that water is provided where and when it is most needed in the Scheme Area. This will be achieved by harvesting water that flows to the sea from the

Rakaia and Waimakariri rivers during periods of high flow and storing that water in a reservoir in the foothills until it is needed to irrigate the rich but otherwise dry areas of the Central Plains."

14. The Society is surprised to learn that while CPW considered the dam and reservoir to be the essential feature of the scheme when it obtained requiring authority status (to the great potential detriment of some of the Society's members), and to be the rationale behind the scheme when it set about raising money from its members, it now considers that "a scheme that does not include the reservoir will still involve all the other essential elements in the original proposal" as it will only "reduce some elements of flexibility as to the timing and volumes of the river takes" (Memo of Counsel, paras 69 & 70).
15. In the Society's submission, that approach defies logic. Without the storage and dam components of the Central Plains water scheme, it will be a very different proposal. It will rely on run-of-river. It will lose its key distinguishing feature, reservoir storage, and will be just the same as many other irrigation proposals. Furthermore, because the water is not being stored, the volume of water able to be used will now be significantly different to that originally contemplated. That will have different effects. While potentially these may include both positive and/or negative ones, they will be different.
16. The Society does not accept that all the effects of a revised proposal will be positive. While the consequences for Coalgate, the Waianiwaniwa Valley and many of its members certainly will be, that is not necessarily so for the aquifers. The revised proposal will potentially mean more water will be drawn from the aquifers to supplement water from the river, rather than water from the river supplementing, or reducing, water drawn from the aquifers. Furthermore, the reduction in irrigation from river water will also reduce nitrate dilution, leading to potential effects on the aquifers from increased nitrate levels.
17. These factors, in the Society's submission, render this proposal so different from that presented at the hearing, that if CPW wishes to proceed with its revised proposal that requires an entirely new application.
18. If the hearing were to resume on a revised proposal, the Society considers that, in some areas, new evidence required would be so fundamentally different that it would

be like presenting evidence for a completely new application. This is especially so for the economic evidence on the scheme. Without the dam and storage capacity of the proposal, the economics will significantly change.

19. As I said in my submission for the Society at the hearing, one of the few positive effects that CPW put forward in support of its original proposal was its alleged beneficial economic effects - on CPWL and its shareholders, on landowners within the area to be irrigated, on Canterbury, and indeed on the whole NZ economy. However, by doing so, they put "economic efficiency" at the heart of their case.
20. The economics of a "run-of- river" scheme, compared to a reservoir storage scheme, must be quite different. If the hearing resumes, a complete round of re-analysis by, and evidence from, the economists will be required.
21. In paragraphs 34 to 46 of their Memorandum, under the heading "economic viability" CPW confuse the concepts of "economic efficiency" and "financial viability". The question for you as Commissioners is not whether the proposal (revised or not) is financially viable, and no-one is asking CPW to show that it is. That is a matter for CPW, and as they say if any proposal eventually consented is not, then they have a number of options, including deciding not to proceed at all.
22. The issue which the economists addressed is whether the proposal is economically efficient, and if so whether those economic benefits outweigh other identified actual or potential adverse effects. That is a relevant consideration under s7 RMA, made more so here by the emphasis placed on it by CPW itself.
23. The contention in para 6 (i) of CPW's submission that "*the economics and viability of a truncated scheme are of limited ,if any, relevance*" is quite untenable. It is CPW who put the alleged economic benefits of their scheme at the forefront of their case. CPW having done so, in my submission the answer to the Commissioner's question "*to what extent would we need to revisit the economics and efficiency of a truncated scheme?*" is "*completely*". The economic evidence the Commissioners have heard relating to the initial proposal would need to be totally revised to assess the economic efficiency (or lack of it) of a different and revised one.
24. The other area of particular concern to the Society where a revised proposal would be significantly different relates to groundwater. Part of the case for CPW was that if a more reliable supply of water from the rivers and the reservoir were available, land

owners would switch from taking groundwater, and the overall effect (allegedly a beneficial one) would be the recharging of aquifers.

25. CPW acknowledges that, without the storage reservoir, *"the reduced quantities of water will reduce the incentive for farmers currently pumping groundwater to cease doing so"*(para 71) and that without the reservoir, it is likely that irrigation from groundwater *"is likely to supplement water from the CPW scheme"* (para 6k) but contends that *"this is not an effect of the consents"* (para 71)
26. While it is not an effect of the consents, it is an effect of changing the scheme from a water harvesting and reservoir storage one to a "run-of-river" one, and the consequent effect on the reliability and continuity of water supply from the scheme. Again, it removes what was previously put forward by CPW as a positive effect of its proposal, and shows that without a reservoir, this is a different scheme, with different effects, which calls for consideration as a new and different application.
27. Another consequence of the change from a reservoir storage to a "run-of-river" scheme is the resulting need to address effects on groundwater mounding and to run a transient groundwater model. If "run-of-river" had been contemplated as part of the original applications, this should have (and would have) been provided as part of the evidence at the hearing. The fact that it was not emphasises the different nature of this revised proposal.

Dairy Holdings Ltd

28. The Society also has concerns about the consequences of the granting of water take consents to CPW for a revised proposal as presented in the legal submissions of Mr Michael Parker on its behalf at the hearing.
29. Particularly, the Society is concerned that if the applicants are granted consents for those aspects of the proposal that relate to water rights, these consents are able, and are likely, to be transferred to Dairy Holdings Limited, see paras [28] – [31] of Mr Parker's submission, and especially para 32 below referring to the agreement between CPWL and Dairy Holdings Ltd:

[32] Clause 6 relates to the conduct of the application for Resource Consents, and provides for the assignment of all of CPWL's rights in respect of the conduct of the application to Dairy Holdings Limited if CPWL elects not to proceed or is unable to do so for a continuous period of six months or more,

and sums have not been repaid in accordance with the agreement. Under that clause DHL would be entitled by agreement with the Trust to conduct the application in the name of the Trust, or to conduct the application in its own name.

30. The Society has not been comforted by publicity about recent funding issues the applicants' are facing. In light of these issues, the Society submits that it is likely that any water take consents granted to the applicants will be transferred to Dairy Holdings Limited for its exclusive use. If that occurs, what has been promoted, and will have been consented, as a community irrigation scheme will in fact turn out to be for the benefit of a single commercial operator.

Conclusion

31. For these reasons, the Society submits that you should not call for further evidence on a revised proposal, but should close the hearing and proceed to issue your final decision.
32. If the proposal is to nevertheless proceed, the Society will need to consider further what evidence it would call, having regard to its resources and the remaining issues I have discussed above. However, it certainly considers there would be a need for new economic evidence (which would require an entirely new cost benefit analysis), and also for new evidence as to the effect on the aquifers and groundwater resource of reduced irrigation from a "run-of-river" scheme and the continuation of groundwater takes for irrigation in the area to be served by the scheme.

Dated this 8th day of May 2009

John Burns

Counsel for MHPS