

**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 Scheme

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**SUBMISSIONS IN RESPONSE TO THE APPLICANT'S FURTHER INFORMATION:  
FROM THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW  
ZEALAND**

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Dated : 14 August 2008

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## INTRODUCTION

1. These submissions are in response to new material provided by the applicant, at the request of the commissioners, pursuant to their Minute Number 4, dated 6 June 2008. In particular, Forest & Bird has looked at the following:
  - Evidence of Clifford John Maxwell Tippler, dated 4 July 2008
  - Additional evidence Christopher Glasson, 25 July 2008
  - Photo simulations PPT 01a to PPT 15, Christopher Glasson 25 July 2008
2. Forest & Bird submitted on the take and use applications notified in June 2006 by the Canterbury Regional Council; on the notification by the Selwyn District Council of the notice of requirement lodged in June 2006; on the resource consent applications notified by the Selwyn District Council in June 2006; and on the additional applications and amended notice of requirement notified by the Selwyn District Council in May 2007.
3. On 10 June 2008, Forest & Bird presented legal submissions, and Dr Colin Meurk presented evidence on the adverse effects of the proposal on indigenous vegetation.
4. At this hearing we have concentrated on the effects of the scheme on indigenous vegetation and habitat, although our concerns are wider than this. We have relied on the shared evidence provided by Department of Conservation and Fish & Game witnesses, and we are not addressing those effects on birdlife and native fish which have already been covered by those witnesses, in particular:
  - Dr Ken Hughey, birdlife of the braided rivers and Te Waihora/Lake Ellesmere
  - Dr Angus McIntosh, the Canterbury mudfish
5. We earlier submitted that the residual effects of the applicant's proposed activities (after mitigation by suggested conditions) would cause an unacceptable increase in cumulative adverse effects on the biodiversity of the Central Canterbury Plains.

6. After reviewing Mr Tippler's and Mr Glasson's evidence, we have seen nothing new to change our mind, or to address environmental concerns raised. Forest and Bird submits that the panel cannot grant these consents in the absence of any landscape and rehabilitation plan to address Section 6c matters. The applicant has had ample time to produce such a plan and has still not done so.

#### Outline of submissions

7. I will comment on Mr Tippler's conditions, which suggest dealing with construction effects (on indigenous vegetation) by a Landscape and Rehabilitation Plan. I cannot comment on the planned mitigation as we have yet to see the landscape plan.
8. I will comment on conditions intended to deal with cumulative effects from intensified agriculture, through Farm Plans.
9. I will comment on the visual evidence produced by Mr Glasson.
10. Most resource consents are to be subject to the conditions listed in Mr Tippler's Schedule 1: General Conditions, and Schedule 2: Administrative Conditions, as well as any specific conditions listed under each consent.

#### Canterbury Regional Council consents

11. Mr Tippler's brief of evidence dated 4 July 2008, Schedule 1, General Conditions, at para 3, refers to the Environmental Construction Management Plan (ECMP) which CPW will submit to Ecan a month before construction begins. This is intended to be the overarching document for environmental compliance, containing sub-plans to address specific issues.
12. Forest & Bird is particularly interested in (3g) the Landscape and Rehabilitation Management Plan. It is surprising to us that details are not available now, rather than well after the hearing, when we are unable to say anything about what is proposed. We do not see that consents can be granted in the absence of a landscape and rehabilitation plan.
13. Forest & Bird is therefore not particularly interested in the Environment Management Fund at Schedule 2 of Mr Tippler's evidence, as this is not designed to cover the bulk of environmental mitigation. Adverse effects on significant indigenous vegetation are apparently going to be governed by

Farm Management Plans (cumulative effects) or by Landscape and Rehabilitation Plans (construction effects).

14. We do not have much confidence in the former, and we have not yet seen the latter.

#### Farm plans

15. Mr Tippler's Schedule 2 at para 9, (page 126) details the Farm Management Plans. We believe the Farm Plan is a good idea, but that it must link back to separate, general conditions of consent which do not change as versions of Farm Plans come and go.
16. The Farm Plan is currently the only document governing farm practice as a condition for water use. It is no use having a condition that says 'water users must act in accordance with their Farm Plan', when the Farm Plan itself lacks detail. We believe that general conditions must state what is required in the Farm Plan, rather than leaving it up to individual Farm Plans to invent their own conditions.

#### Non-compliance

17. As previously stated, the Trust will be relying on CPWL to advise it when there is a problem. This will not work. We believe it is unwise to have an Environmental Construction Management Plan that relies on individual Farm Plans for conditions, and on Water-User Agreements to enforce them. Both of these are beyond the reach of the consent authority.
18. We prefer the approach to non-compliance that we have seen in other conditions, such as the following: *Prior to exercise of these consents and the commissioning of the XXXXXXXX Irrigation Scheme (the Scheme), the consent holder shall prepare and submit to the Canterbury Regional Council a Scheme Management Plan. The Scheme Management Plan shall, as a minimum, include the following matters:*
19. (g) **Compliance monitoring and enforcement procedures** for water users, *including the circumstances under which the provision of water to any property is not initially provided, or is restricted or supply ceased, as a result of any individual non-compliance with the implementation requirements of the individual Farm Management Plan for that property. The enforcement procedures shall specify how the following shall be implemented:*

20. (i) *That water from the Scheme not be provided by the consent holder, unless a Farm Management Plan has been prepared and the matters specified in Condition XXXXXX, and Condition XXXXX from the Farm Management Plan Template have been undertaken for the property to receive the water;*
21. (ii) *For minor non-compliance with no or minor short term actual adverse environmental effect, routine personal contact with the water user with follow-up written notification from the consent holder requiring compliance by water user with relevant provisions of the Farm Management Plan;*
22. (iii) *For significant non-compliance, or repeated minor non-compliance, with moderate actual or potential adverse environmental effect, immediate action from the consent holder requiring immediate compliance by water user with relevant provisions of Farm Management Plan including notification of water supply restriction within 10 days if non-compliance is not remedied;*
23. (iv) *For major and/or persistent non-compliance with serious or persistent actual or potential adverse environmental effects, immediate action from consent holder requiring immediate compliance by the water user with relevant provisions of Farm Management Plan including notification of water supply being ceased within 10 days if non-compliance is not remedied.*
24. As far as we know, CPWT plans to bury compliance conditions in the agreements that CPWL has with its water users, so that the consent authority is removed from the whole process. Important conditions could simply be removed from subsequent versions of the water user agreement or Farm Plan template.

#### Sustainability Protocol

25. We find the Sustainability Protocol to be well-meaning but ineffective. For example, it has this to say about water user compliance. (Appendix 1 to Mulcock evidence):
26. **7.1 Promoting water user compliance** *CPWL will use educational programmes, technical assistance, reduction in audit requirements for good performance and other methods to promote, support and **encourage** compliance by water users with sustainable irrigated land use requirements. Issues of possible non-compliance will be dealt with by establishing procedures for responding to such matters and ensuring that these are implemented when necessary.*
27. **7.3 Water user non-compliance** *CPWL will respond to breaches by following through an established protocol e.g*

- . • *Notification of breach or alleged breach – phone call, warning letters, notice of violation, inspections (e.g. notice and order to comply within 10 working days)*
- *Entering discussions and providing advice to those out of compliance in order to develop a programme to achieve compliance*
- *Action, where necessary: To compel compliance; To impose consequences for violations (e.g. fines/charges, water restricted/cut off); To correct damages; Penalties should take into account:• the seriousness of the non-compliance ('penalty points'); recovery of the economic benefit a violator may have gained by non-compliance;• degree of co-operation; history of non-compliance.*

28. **7.4 Compliance committee** *CPWL will set up a compliance committee to deal with breaches that cannot be resolved through discussion and advice, or may have incurred costs to CPWL or others. This committee would have the power to:*

- *Impose a penalty charge upon a water user for breach of their agreement with CPWL for supply of water; Convene a hearing so that disputes or issues can be presented; Restrict or cut off water.*

*The committee would have a membership of three:*

- *Two members appointed by the Board of directors of CPWL*
- *An independent Chairperson, appointed by the Board of CPWT, after consultation with CPWL, to ensure that the committee has a balanced representation that includes both farming and environmental management expertise*

29. We do not think a compliance committee of this sort will be very effective. In addition, Mr Tippler's Schedule 2 at paragraph 13 describes the Community Liaison Group, which will have the important role of reviewing and commenting on Farm Management Plan Templates, but there is no suggestion that the consent holder is obliged to act on their comments.

#### Selwyn District Council consents

30. Mr Tippler's brief of evidence dated 4 July 2008, at page 142, refers to the Environmental Construction Management Plan (ECMP) which CPWT will submit to the Selwyn District Council a month before construction begins. This is intended to be the overarching document for environmental compliance, containing sub-plans to address specific issues.

31. Forest & Bird is particularly interested in 1.5.1(g), the Landscape and Rehabilitation Management Plan.

32. Currently no landscape and rehabilitation management plan has been produced. We do not see that consent can be granted in advance of such a fundamental piece of the proposal.
33. Obviously Forest and Bird is interested in how the applicant intends to deal with the removal of large amounts of topsoil, the stripping of indigenous vegetation, the replanting of these areas after construction of the distribution canals, and the planting of new areas to offset removal of existing vegetation. Forest and Bird cannot understand why such a plan has not been produced.
34. Section 5, at page 150 of Mr Tippler's evidence discusses the sub-plan, Landscape and Rehabilitation, which, pursuant to the Environmental Construction Management Plan for the Selwyn DC consents: *'shall be lodged with the Selwyn District Council prior to the commencement of construction works.'* No time stipulated.
35. This Section 5 under the Selwyn DC consent conditions is the closest we have seen to a Landscape and Rehabilitation Plan for this proposal. It amounts to a one page list of generic requirements for a landscape plan. The most we can gather is that *'All water race embankments shall be re-grassed.'*
36. This plan will apply to all areas of construction for the proposed distribution races, but outside of those areas of riverbed which are under the control of the Canterbury Regional Council. (Those areas are the subject of resource consents administered by the Regional Council. See above)
37. We also note that according to the applicant, the requiring authority status of CPWL is sufficiently wide to enable it to apply for a designation over the distribution network at some time in the future.
38. At Section 8 of Mr Tippler's Selwyn DC conditions, there is reference to a significant Indigenous Vegetation Protection Plan.
39. 8.1 Significant Indigenous Vegetation Protection Plan 8.1.1 *Prior to any construction occurring, the consent holder shall, in consultation with Selwyn District Council, produce a Significant Indigenous Vegetation Protection Plan and adhere to this on an ongoing basis. This plan shall (a) identify and map any significant indigenous vegetation that has the potential to be destroyed or adversely affected by construction activities (b) determine appropriate methods of protecting the plants from damage, or if that is not possible, mitigating the effects of the loss of plants by methods such as transplanting, or re-seeding nearby areas.*

40. Again, this is merely a statement of intent. Forest and Bird put considerable effort and expense into providing evidence at the hearing (Dr Colin Meurk) on the effects of the applicant's proposal on significant indigenous vegetation. Water races and the replanting thereof were discussed at length and we would like to hear concrete proposals from the applicant as to their landscape plan for this (distribution network) part of the proposal.
41. Nonetheless, we note the commitment to identify and map significant indigenous vegetation in the affected area, albeit with no deadline. There is also some ambiguity as the wording *in consultation with Selwyn District Council*. We hope this does not mean that the applicant is going to rely on the Selwyn District Council to produce the plan. We would be very pleased to be consulted about this exercise.
42. We think this is a core piece of evidence which needed to be available at the hearing, even in rudimentary form. It was left to Forest & Bird to try and assess what indigenous vegetation would be affected by construction activities. Report writers (Mark Davis and others) noted the absence of information about existing areas of significant indigenous vegetation.
43. We submit that Mr Tippler's section 8.1.1(b) above, goes to the heart of Section 6 RMA matters, and that without having this information, the panel simply cannot grant the consents sought.
44. From Forest and Bird's perspective, this information is what we need, and the hearing can only go so far without it.

#### Proposed conditions for Selwyn District Council designations

45. This brings us to the last group of proposed conditions in Mr Tippler's evidence, at page 162. These are related to the Notice of Requirement by Central Plains Water Limited (CPWL) to the Selwyn District Council, seeking that various areas be designated for the purpose of building and operating diversion channels, bypasses, canals, dam and reservoir for the scheme.
46. An Outline Plan must be submitted to the Selwyn District Council pursuant to S176A of the RMA. The important thing here is that if the panel chooses to grant these applications, and in particular the Notice of Requirement, once the land is designated, the provisions of the Selwyn District Plan no longer apply to the designated area, and the Council must apply to the Environment Court, if it does not like the (CPWL) Outline Plan.

47. Forest and Bird is concerned that the largest earthworks and the most serious environmental effects are in the areas which the Requiring Authority ( CPWL) seeks to designate, thereby placing them outside of even the usual District Plan rules. These include the fill areas, canal embankments, the face of the Waianiwaniwa Dam, sediment traps, construction storage areas and the construction zone generally.
48. Needless to say Forest & Bird is very concerned that we have heard nothing about how the effects of these huge earthworks will be mitigated. How can the panel grant consents when the protection of significant indigenous vegetation has not even been addressed. All we have to go on are the applicant's photo simulations showing a magical greening after 5 to 7 years.
49. Section 5 at page 162 Tippler evidence states that the Requiring Authority shall prepare a Landscape and Rehabilitation Management Plan, to be lodged with the Selwyn District Council when the Outline Plan is submitted. This (at 5.1.3) is very similar to the Selwyn District Council land use conditions. There is also the intent to submit an Indigenous Vegetation Plan, but again there is no detail we can comment on.

Protection of indigenous vegetation, Section 6c

50. The applicant has not shown how they will achieve the protection of significant indigenous vegetation. All the applicant has provided is the stated intention to produce Landscape and Rehabilitation Plans at some future time. We do not see how the panel can find that the applicant's proposal is sustainable when they have heard no evidence about avoiding, remedying or mitigating the Section 6c matters we raised in our earlier submissions.
51. Consents cannot be granted on the promise to provide a landscape plan at some future time. We do not believe it is possible to protect this regionally scarce vegetation, but we have not even heard any suggestion as to how off-sets might be used, or indeed any mitigation plan such as was found acceptable in the Forest and Bird v Buller District Council case.
52. We suggested that adverse effects from removal of indigenous vegetation and habitats during construction could be partially offset by extensive re-planting. Perhaps there are possibilities to create a wildlife corridor in the proposed designation area.

53. Cumulative effects as a result of irrigation (such as removal of indigenous vegetation and shelter belts) could be addressed by linking progressive biodiversity thresholds to conditions for water users. Each water-user could be required to restore a certain amount of biodiversity on their property. Farming could essentially become non-complying unless certain minimum biodiversity thresholds are met. The applicant has made no suggestions.

#### Visual evidence

54. We have not found the visual evidence provided by Mr Glasson particularly helpful. The main problem we have with the images is that they are very small when downloaded from the website, and there are no instructions as to how best to print and use them.

55. It has become the commonly accepted practice to use photographs taken with a 50mm lens as the basis for photo simulations, however this has more recently been superseded by much better composite, computer-corrected images that represent what the human eye sees, not what a 50mm camera lens sees. These generally come with instructions about field of view, correct print size and the viewing distance needed for accurate visual assessment.

56. We do not know if Mr Glasson's images are accurate as he does not indicate the field of view they represent, or the viewing distance needed for accurate visual assessment. We do not agree with his paragraph 3 that a 50mm camera lens closely matches that of the human eye. Photographs taken with a 28mm lens represent a far greater portion of the human field of view.

#### Conclusion

57. The applicant has not suggested how it which will achieve protection of significant indigenous vegetation and habitats in the footprint of the scheme, and in the wider irrigated area. The cost of restoration has not been factored in as a part of the scheme. We have seen no planting plans. We do not see how consents can be granted on this basis.

Fiona Mackenzie

Lawyer for Forest & Bird

14 August, 2008