

BEFORE THE CANTERBURY REGIONAL COUNCIL

In the matter of the Resource Management Act 1991

In the matter of applications by Central Plains Water Trust to:

Canterbury Regional Council for resource consents to take and use water from the Waimakariri and Rakaia Rivers for the Central Plains Water Enhancement Scheme and for associated consents required for the construction and operation of the Central Plains Water Enhancement Scheme

In the matter of applications by Central Plains Water Trust to:

Selwyn District Council for resource consents to construct and operate the Central Plains Water Enhancement Scheme

and

In the matter of a Notice of Requirement by Central Plains Water Limited to:

Selwyn District Council for the designation of land for works associated with the construction and operation of the Central Plains Water Enhancement Scheme

**SUBMISSIONS ON BEHALF ROAD METALS CO LIMITED, FULTON HOGAN,
ISAAC CONSTRUCTION CO LIMITED AND WINSTONE AGGREGATES**

Duncan Cotterill
Solicitor acting: E Chapman
PO Box 5, Christchurch

Phone +64 3 379 2430
Fax +64 3 379 7097
e.chapman@DuncanCotterill.com

Introduction

1. The Commissioners accept there will be an impact on the gravel extractors which will need to be managed through conditions.

2. The Commissioners outlined in Minute 15 at paragraph 25:

25.1 Gravel extractors west of Christchurch sought mitigation or compensation for the effects of rises in the water table which could limit gravel able to be extracted from currently consented pits. There will be an impact on the extractors which will need to be managed through conditions, although we were not convinced that the scale of the effect is as large as the extractors portray. By the time the CPW scheme is fully operational and water table rises are occurring, some of the existing gravel resource will have already been removed, and these pits will not be affected by the scheme. In passing we note that we do not see the issue of non derogation of grant as being relevant in this context. Our focus has been on the economic impact of the mounding which may occur.

25.2 We are satisfied that this is a matter which can be addressed by way of conditions and/or side agreements. It is not a matter which requires consents for the scheme to be declined, but it is a matter which we will need to further consider when finalising conditions. We encourage CPW and the gravel extractors to endeavour to reach agreement on how this issue will be addressed.

3. The Commissioners outlined in Minute 14 at paragraph 5.34:

5.34 Section 25 of our Minute 11 set out our preliminary views on this matter. We accept that there is a potential effect on gravel extractors and that the costs of dealing with such an effect if it arises and would not have occurred but for CPW, should not be borne by the gravel extractors. We concluded that this issue did not warrant declining the consent. We look forward to CPW's proposals in relation to monitoring and adaptive management of such effects.

4. The gravel extractors have taken these comments on board; focused on a constructive outcome; and framed a proposal which has been put to CPW but as at

the date of completing these submissions CPW has not come back with a response to the proposal.

Groundwater and Lowland Drainage Conditions

5. Having analysed the above consents, we consider that the proposed conditions put forward by CPW and the Canterbury Regional Council (“the Council”) do not adequately address the potential risk to the gravel extractors’ resource. The evidence of Kevin Bligh has attempted to quantify the value of potential losses to the Gravel Extractors’ Group (“GEG”) if groundwater levels rise as a result of the CPW scheme.
6. It is submitted the Administrative Conditions that deal with “Groundwater and Lowland Drainage” issues do not specifically recognise or address this issue. If the Commissioners reach the conclusion that this issue can be adequately addressed by conditions then the following amendments are proposed. Additions are shown as underlined and deletions are shown as ~~strike through~~.
7. Condition 19 needs to explicitly require the effects on the gravel pit operators to be avoided, remedied or mitigated:

Condition 19

“The consent holder shall avoid, remedy or mitigate adverse effects on groundwater, gravel pit operations and lowland drainage which occur as a result of the exercise of this consent.”

8. The conditions to address any rise in groundwater level rely on recommendations made by the Groundwater Technical Review Panel (GTRP). It is submitted the GEG should have the right to appoint a technical representative to the GRRP.
9. Condition 23(c) and (d) do not provide sufficient certainty to the GEG that the consent holder will adopt recommendations made by the GTRP as a result of a complaint referred to it in accordance with condition 28.
10. Condition 23(d) states the GTRP can “propose mitigation or remedial measures and determine the extent to which the consent holder must implement them, or contribute to the cost of implementing them, given the consent holder’s degree of contribution to the problem identified in accordance with condition 28(f)”.

11. It is submitted there are no mitigation or remedial measures which can address the effect a rise in groundwater levels will have on the gravel resource in the vicinity of Miners Road. Any spike in groundwater levels is likely to be caused by seepage from the canals and ongoing irrigation. The lag time at Miners Road will mean there is no instantaneous control option available to CPW. Condition 23(d) needs to specifically provide for those effects, including the loss of gravel, which cannot be addressed by mitigation or remedial measures to be addressed by way of financial compensation.
12. Condition 23(d) states that the GTRP can “determine the extent to which the consent holder must implement” mitigation and remedial measures. *[my emphasis]* If the consent holder does not accept the recommendations, the GTRP can advise the Council if there are grounds to review conditions of consent. The problem with this is that no party has been able to identify how the rise in groundwater, which may result in a loss to the gravel resource can be mitigated or remedied, so it is difficult to envisage how a review of conditions will provide a solution.
13. Under condition 25 the consent holder is required to develop a Groundwater and Drainage Plan (GDP).
14. Condition 25(a)(iii) should be amended to explicitly identify the risk to the gravel extractors.

Condition 25(a) (iii)

Raised groundwater levels both beneath and downstream from the Scheme area, including any effects on gravel pit operations.

15. Condition 25(c)(iii) should require a monitoring bore to be located in the vicinity of the Miners Road gravel pits:

F At least one groundwater level monitoring bore should be located in the area of the Miners Road gravel extraction pits.

16. Condition 25(c)(iv) provides that the GDP shall include a description of the mitigation measures that may be implemented to address potential adverse effects related to the groundwater level. The conditions provide no direction as to what extent any effects need to be mitigated or a mechanism by which the Council can require the consent holder to include additional mitigation measures to address potential adverse effects.

17. Condition 25(g) requires the consent holder to “identify specific groundwater levels that shall trigger a response from the consent holder to avoid, mitigate or remedy any adverse effects related to increased groundwater levels...” The trigger levels are to be submitted to the GTRP for their review and agreement. The level at which trigger levels are set will determine whether CPW is required under condition 25(h) to undertake measures to avoid, mitigate or remedy any adverse effects related to groundwater rises. Given this fact it is vital that the GEG has the right to appoint a technical representative to the GTRP.
18. Condition 25(h) identifies mitigation measures which can be implemented and includes financial compensation in lieu of remedial works. It is submitted that on CPW’s own evidence and that of Mr Callander there are no remedial works that will address the loss of the gravel resource and financial compensation is the only form of mitigation available to address the potential effect on the GEG. An additional mitigation measure as set out below should be included to make it clear that financial compensation is envisaged:

(xiv) financial compensation for the loss of the gravel resource in the vicinity of Miners Road.

19. Condition 28(d) should be amended to recognise that as a result of a rise in groundwater levels an agreement to pay compensation for a loss in the gravel resource may follow. We agree with the Council that the suggested wording of (d) needs to be re-worded as requiring an agreement for the consent holder to pay costs to be registered on the title of the respective property is inappropriate.

(d) The consent holder may, instead of undertaking any remedial work or completing the assessment process, with the agreement of the complainant choose to negotiate with the complainant to undertake or pay the cost of those remedial works directly to the complainant, or agree to provide financial compensation to the complainant for losses, or otherwise reach agreement with the complainant in respect of any damage. ~~Any agreement for the consent holder to pay costs directly to the landowner shall be registered on the title of the subject property/ies.~~

(e) Any agreement for the consent holder to pay costs directly to the landowner shall include a written undertaking from the property owner, that on the sale of the property, the property owner will advise the purchaser that the holder

of this consent is no longer liable for any effects associated with the use of water that may occur on that property. [as suggested by the Council]

20. It is submitted a condition should be imposed which requires CPW to work with the GEG prior to the commencement of irrigation under these consents to find and implement a solution to provide security to the gravel resource in the vicinity of Miners Road. It is envisaged this would involve resource consent applications or applications for plan changes to ensure that if the groundwater level does rise as a direct result of CPW extraction that the resource management processes above would allow for continued extraction of the resource once the water has subsided.

Conclusion

21. The GEG maintains its position that it is inappropriate to grant consent to the CPW scheme when CPW has not found a way to remedy or mitigate the potential cost the scheme will impose on another industry.

22. It is accepted that the Commissioners' view is that the consents can be granted and any potential effect can be dealt with by way of conditions, however, the proposed conditions do not adequately address the concern that the groundwater level may spike with an immediate loss of the gravel resource over the GEG's land. The GEG's planning structure involves long term planning processes to secure its resource for the benefit of the region. It is submitted GEG is entitled to have some degree of security that its planning processes are not "overridden" by CPW's consent unless there is a mechanism for redress in the CPW conditions.