

David Carter's OIA Release

Summary and extracts from documents released under the Official Information Act (OIA) to Forest and Bird - April 2010

OIA docs mostly contains briefings from the Ministers Advisors and minutes of meetings distributed to Ministers of Agriculture (David Carter), Economic Development (Gerry Brownlee) and the Prime Minister (John Key). Documents are from 4 September 2009 to February 2010.

Aide Memoire 4/9/09: Water Storage and Irrigation Infrastructure

From: Ministers Gerry Brownlee and David Carter

To: Prime Minister John Key

Discusses proposals involving 'significant water storage for irrigation and electricity in Canterbury – Hurunui Water Project and Trust Power proposal using water from Lake Coleridge. Trust Power proposition at concept stage. 100,000 ha of new land could be irrigated with improved reliability and security for existing users. Notes Water Conservation Orders impact on both propositions.

Discusses Government options for accelerating progress on both proposals

Pg 3 To use Lake Coleridge would conflict with Rakaia WCO (1988). The proposal cannot succeed with Rakaia WCO in current form.

Pg 4 Draft CWMS identified Lake Coleridge as storage potential. Zonal committees could accelerate progress. Risks are that it could take too long.

To accelerate the Trust power Lake Coleridge proposal applications could be made to MfE to amend or revoke existing Rakaia WCO. Appoint a Special Tribunal.

Pg 5. Options for accelerating progress

- a) Support timely implementation – Canterbury Water Management Strategy (CWMS).
- b) Hurunui Water project – facilitate development of Zonal Committee.
- c) Trust Power Lake Coleridge proposal – develop approach and then progress (through legislative amendment) a Special Exemption from the provisions of the Rakaia WCO to allow Zonal Committees as proposed in CWMS to develop an integrated Mid Canterbury option which includes the Trust Power Lake Coleridge concept.

Also notes 'we have the option' of amending Part 9 RMA to provide better balance between economic development and amenity and intrinsic values in the consideration of future WCO applications.

20/11/09 email (Pg 11). Sender and recipient details deleted.

Four options set out.

Option 1. Review WCO processes. The Flows project in New Start For Fresh Water is identifying options for streamlining regulatory processes associated with *making and varying* WCOs. RMA Infrastructure Bill (requested by Smith for late 2010) would provide earliest opportunity to effect statutory amendment to these processes. Would not explicitly deal with Rakaia WCO and proposed Hurunui WCO but may assist in 'preventing new WCO applications being used to block future irrigation development'.

Option 2. Address the Rakaia and Hurunui WCOs through the CWMS

Moratorium on current Hurunui WCO process. Accelerating Zonal committees in

both catchments. This would deal with the issue within an already agreed process (CWMS) but not a quick process.

Option 3. Address the Rakaia and Hurunui WCOs immediately. Legislative process to halt the Hurunui process and vary existing Rakaia WCO. 6 – 12 months required. Approach would ‘disempower community process behind CWMS and would likely polarise debate’.

Option 4. Review of WCO purposes. Review would need longer timeframe and not explicitly deal with Rakaia and Hurunui WCOs.

4/12/09 Aide-Memoire (Pg 13) to David Carter: A Variation to the Rakaia Water Conservation Order - Facilitating Irrigation development in Mid Canterbury.

Note refers to following Carter’s meeting with John Key and Gerry Brownlee – his advisors are ‘working to identify how to give effect to a variation to the Rakaia WCO’. Working with MAF Legal and Ministry of Economic Development. Trustpower have provided detailed briefing of work to date and currently underway. Notes understanding of potential timeframes – includes a fast track option.

4/12/09 Pg 16 Briefing on CWMS to Minister David Carter

Background notes and talking points prior to a meeting with Bede O`Malley and Geoff Henley to be held 26/12/09.

Notes an official endorsement of the CWMS may not be possible while the Ecan Review is still on. MAF support for working with the Mayoral Forum on further development of infrastructure. Consult with Nick Smith on the situation with regard to WCOs.

Pg 19 Mayor O`Malley will stress the significance of undermining CWMS process if other aspects of the CWMS are not addressed.

Pg 20 Governance and Framework for CWMS. Framework envisages three committee structures including Zonal Committee, Regional Committee and Appointments and Approvals Committee.

Management Framework The Water Executive will be a semi-autonomous directorate of Ecan, accountable to the Mayoral Forum, reporting to the Regional Council CEO. Water Executive will provide support for the Committees.

Discussion on Water Conservation Orders. Progressing any Variation to the WCOs would be contentious and is likely to be vigorously contested by a wide range of fishing, recreational, iwi and environmental interests.

21/12/09 Briefing to Minister Carter on Facilitating Irrigation Development in Canterbury – Ministers Brownlee and Smith to note.

Pg 23 CWMS is too slow to take advantage of current impetus in scheme investigation and development in the Canterbury region. Successful intervention to accelerate delivery for potential development will need to address three key blockages

- Inadequate and uncertain planning framework
- Controls set by existing and proposed WCOs
- Conditions attached to existing resource consents

Pg 24 Further advice on two broad options are for the Government to legislate:

- to grant itself the power to establish a Review panel with power to recommend changes to the Rakaia WCO, halt the current process on Hurunui WCO and bolster RMA water management planning framework for the Rakaia and Hurunui catchments
- to enhance existing intervention powers of the Minister for the Environment to enable appointment of commissioners to take over planning functions of the Rakaia and Hurunui catchments and require preparation of new plans within a 9 month period and to recommend changes to Rakaia WCO.

Options for intervention note that current statutory processes will not achieve the objective of unlocking the potential of irrigation in the Rakaia and Hurunui catchments.

Pg 27 Background and Analysis

Realising the potential of water storage from Lake Coleridge is **key** to unlocking potential of irrigation and economic growth in Central Canterbury.

Realising this potential will require a variation to the controls established by the existing Rakaia WCO and a co-ordinated and strategic approach among the competing irrigation interests for the stored use of water.

Trust Power has an “in concept” proposal for combined irrigation/hydro development downstream of Lake Coleridge. A canal would deliver water to the top of the Plains at or about Highbank. From this point water would be distributed through existing and proposed irrigation infrastructure i.e. RDR, and Barrhill Chertsey and proposed ACWT, Central Plains Water, Ngai Tahu Properties and Te Pirita Irrigation Ltd. This would be a staged development, over 10yrs to provide irrigation for up to 150,000ha. (See Pg 35 Appendix 1 for map of Location of Trust Power Lake Coleridge proposal).

The Rakaia WCO (1988) sets min flow limits and restrictive flow regimes that have prevented potential users from proposing alternative uses of river water. Trust Power has a significant amount of work before submitting resource consent applications. If the Rakaia WCO is varied and consents obtained in a timely manner construction could be completed for 2014/15 irrigation season.

Pg 28 Hurunui Water Project

The HWP is not necessarily the best option for development – other options may be identified by the CWMS. The current application for a WCO on the Hurunui has significant implications for the HWP proposal.

Pg 29 Interdependencies

Two key work programmes will have a direct influence on future development in the Hurunui and Rakaia catchments....

- Canterbury Mayoral Forum’s CWMS
- Minister for the Environment and Minister of Local Govt’s investigations into Ecan’s performance.

Options anticipate an early intervention to stop hearings on the proposed Hurunui WCO, the first hearing date set down for 15 Feb 2010, and substantive hearings scheduled for May 2010.

Page 32 Discusses options

Officials consider that an aggressive but achievable timeframe for the review panel to recommend changes to the three components to the Rakaia planning context would be 9 months from enacting the empowering legislation.

Under this option Govt. would be legislating to give itself new and direct intervention powers under the RMA. Although resource consents are not real or personal property, legislation that gives Govt. direct power over existing consented takes from the Rakaia are likely to be contentious.

This option would be more clearly consistent with any decision – following investigations into Ecan’s performance – to replace the council with another resource management entity and/or governance body.

Option 2 would enhance the existing intervention powers of the Minister for the Environment to enable the Minister to

- appoint commissioner(s) to take over the planning functions for the Rakaia catchment and require preparation of a new plan within a 9 mth period.
- give the commissioners power to recommend changes to the WCO(Modified purpose for the Rakaia WCO would be to promote sustainable management rather than conservation)
- give the commissioners powers to review conditions on existing consents
- limit appeal rights on Commissioners’ decisions to appeals to High Court on points of law only.

Under this option the Govt. ‘kicks off’ the intervention but does not have the final decision making role.

Pg 33 Options for facilitating irrigation in the Hurunui catchment

Options set out as per the Rakaia can also be applied to the Hurunui catchment. Need to address current appeal to the Environment Court.

The Govt. has two general options for addressing the proposed Hurunui WCO.

- intervene to ‘stop’ the WCO and then ‘kick off’ one of the two options for the Rakaia.
- wait for the Environment Court to hear appeals and intervene if the outcome does not suit the objective of facilitating irrigation in the Hurunui catchment.

Intervening early would avoid participants spending time and money on a WCO that will become quickly irrelevant if govt chooses to intervene. Intervening early would preserve greater flexibility.

Ngai Tahu needs to be actively engaged – need to address the rights and interests of Ngai Tahu in water governance and decision making.

The commercial power of water storage and irrigation interests needs to be comprehensively considered – intervention would need to be designed to address long term implications on access to water (water charging) and perceptions of privatisation of water rights.

Pg 36 Appendix 2 Timeline for Trust Power Lake Coleridge Proposal

Pg 41 Principles for Intervention

Intervention should also be designed to:

- complement NSFW programme and Land and Water Forum
- support effective evolution of CWMS
- align with any action related to Ecan as a consequence of current investigation.

Co-ordinate with iwi interests will also be the key.

Decision making that is transparent and based on full information

Trust Power is not likely to lodge robust resource consent applications until late 2010 or early 2011. Similarly Hurunui Water Project is at an early stage of development. Uncertainties around planning framework introduces several risks.

Some degree of public participation will increase understanding of the options. Public participation would also go some way to moderating public opposition to any proposal to intervene in these catchments.

Officials recommend that government intervene to establish a process – one that can be both rapid and tightly controlled.

Pg 48 Aide Memoire – Water Storage Meeting 10 Feb 2010

To assist discussion at meeting with PM John Key and Ministers English, Brownlee, Smith, Joyce and Wilkinson.

Discuss two options for intervention, both requiring amendments to the RMA.

Either – Govt legislates to provide powers to establish a review panel with the power to review and recommend changes to the Rakaia Conservation Order

Or - Govt legislates to enhance existing intervention powers of the MfE to enable the Minister to appoint commissioners to take over planning functions for the Rakaia and Hurunui and require preparation of new water management plans. Further intervention would be required to halt the Hurunui WCO.

Pg 49 Land Water Forum

Cabinet has determined not to make new national level water policy decisions prior to the report back from the Land and Water Forum in July 2010 **with the exception of specific decisions to advance regional and local issues if required**. Noted that the more WCOs can be ring fenced to particular issues the less likely any initiative is to affect the workings of the Forum.

Pg 51 Direct, Officials to develop detailed advice for Cabinet consideration as a priority and no later than 22 March 2010.