

**BEFORE THE ENVIRONMENT COURT**

Environment Judge J A Smith (presiding)  
Environment Commissioner S J Watson  
Environment Commissioner D H Menzies

**HEARING** at **CHRISTCHURCH** on 29 September to 3 October, 13 to 17 October, and 3 to 5 and 7 November 2003

**APPEARANCES**

Mr T C Gould and Ms J M Appleyard for Transwaste Canterbury Limited (**Transwaste**)  
Mr A C Hughes-Johnson QC and K W Clay for Canterbury Too Good To Waste  
(**CTGTW**)

Mr D E J Currie for the Pegasus Bay Beach Users Association (**PBBUA**)

Ms M Perpick for the Canterbury Regional Council (**the Regional Council**)

Ms A C Dewar and Mr D C Caldwell for the Hurunui District Council (**the District Council**)

Mr P M James for Transit (section 271A party)

Ms F J Perriam for Hurunui SNA Group Incorporated (section 271A party)

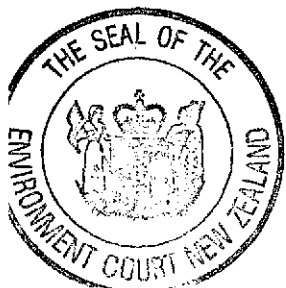
Dr C D Meurk for P J Bellingham and Urban Landscapes Group (section 271A party)

**DECISION****INTRODUCTION**

[1] Kate Valley lies in the coastal hills of northern Canterbury between the Waipara River plain and the Pegasus Bay coastline. Transwaste wish to establish a modern engineered municipal solid waste landfill in the valley. We attach and mark "A" a general plan of the area showing the site and the proposed landfill footprint.

[2] There is opposition to this proposal from community groups. Their concerns relate to a number of terrestrial ecological values and the integrity of the landfill.

[3] Transwaste sought and obtained a suite of some 25 consents for a landfill at Kate Valley before a joint committee of Commissioners established to hear the regional and district consent applications. This consisted of two consents from the District Council



and 23 from the Regional Council. PBBUA and CTGTW appealed the whole consent and Transwaste appealed 13 of the conditions imposed.

[4] Although the appeals were broadly worded, there has been a continuing refinement of the issues throughout the appeal process. The appeals against the grant of consent are now focussed around several significant grounds on which the appellants argue the consent should be refused. Alternatively, the appellants argue that if consent is to be granted, then a number of the conditions sought to be altered by Transwaste should be retained and some further conditions imposed. However, even the conditions in prospect in this appeal have been significantly focussed, with agreement being reached on a number of critical matters, both before and during the course of this hearing.

#### *Scope of the hearing*

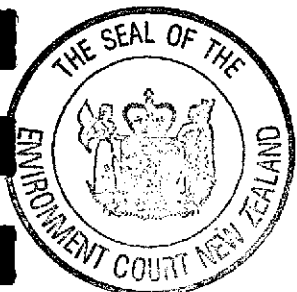
[5] Accordingly, although this case would appear to have many similarities with that of the Hampton Downs Landfill<sup>1</sup>, the scope of the matters heard before this Court was significantly constrained compared with that case. For example, the Court in the Hampton Downs case heard some 58 witnesses over 14 weeks compared with around 28 witnesses over three weeks in this case.

[6] More importantly, none of the parties to this case disputed the approach of the Environment Court in Hampton Downs and that case provides a very useful template for the general consideration of this application. It is fair to say that both the form of the proposal and the type of conditions imposed by the Commissioners in this case have a high degree of similarity with those imposed by the Environment Court in the Hampton Downs case.

[7] In summary, the issues in this case are, in a comparative sense, relatively straight-forward. However, in respect of the particular concerns of the appellants, the Court heard a significant range of technical argument. In respect of two critical aspects of this hearing:

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<sup>1</sup> *Land Air Water Association (and others) v Waikato Regional Council (and others)*: A110/01, 23 October 2001.



- (a) Site and landfill stability; and
- (b) Remnant A (ecological values)

the Court was called upon to resolve technical differences between experts.

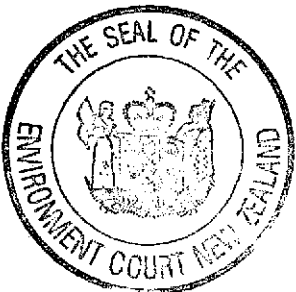
[8] If we are minded to grant consent, the Court will need to turn its mind to the various considerations bearing upon the appropriate conditions to be imposed, in which case broader issues of both law and evidence come to bear, along with the relevant provisions of the District and Regional Plans and the Act<sup>2</sup>.

[9] This decision can only address the evidence and arguments that were put before it in encapsulated form. The applicant's closing alone was over 60 pages long, together with several thousand pages of evidence and 1200 pages of cross-examination transcript. To some extent, the volume of the evidence has obscured some of the key issues on which we must make determinations. Accordingly, in forming our views, we have taken into account all of the evidence given to this Court even though we do not, except where essential to our conclusions, discuss particular witnesses' evidence.

### *History*

[10] The majority of territorial authorities in the Canterbury region and the two major waste companies operating in the region entered into an agreement to jointly develop a regional landfill. They set up relevant joint-venture companies and investigated alternatives.

[11] Canterbury Waste Services Limited (CWS) produced a "Background to the Canterbury Regional Landfill Project" report dated April 2002. This was produced by Transwaste but did not form part of the appeal application. In Chapter 1.3 of the document it states:



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All reference to the Act are references to the Act prior to its 2003 Amendment.

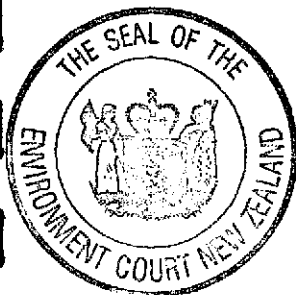
*The territorial local authorities involved envisage that, instead of each local authority working within its own boundaries to manage its own waste disposal as occurs at present, all or some Canterbury authorities could join together to develop one modern, high standard waste disposal facility to accommodate all Canterbury solid waste.*

[12] This regional waste concept was readily adopted by all the territorial local authorities involved. Later in that section the document notes:

*The Councils foresaw that taking a regional focus would encourage streamlining and co-ordination of the various recycling and re-use initiatives underway in different Canterbury communities, and allow co-operation and sharing of knowledge and resources between Councils, in a way that had not happened before.*

[13] The ten Canterbury territorial local authorities formed a standing committee known as the Canterbury Waste Joint Standing Committee (CWJSC). The task given to that committee was to investigate the potential for a regional solution for approximately 300,000 tonnes of solid waste annually then to be required to be disposed of in Canterbury and to report back with recommendations.

[14] Public consultation in February and March of 1997 endorsed a regional approach to building and operating a modern landfill and involved consultation on the question of inclusion of the private sector in such an approach. Subsequently CWJSC decided that the best way to attain its objectives was to have both Waste Management NZ Limited and Envirowaste Limited in a joint venture with the councils. Subsequently those two companies formed the joint venture known as CWS. In September 1998 six of the ten territorial authorities, being Christchurch City, Waimakariri District, Selwyn District, Ashburton District, Banks Peninsula District and Hurunui District, resolved to form a 50/50 public/private joint venture with CWS to develop and operate a regional landfill for residual waste from the six local authorities. That joint venture was subsequently known as Transwaste Canterbury Limited. We have encapsulated this summary from the section 42A report prepared for the Commissioners by Mr L Fietje and produced to



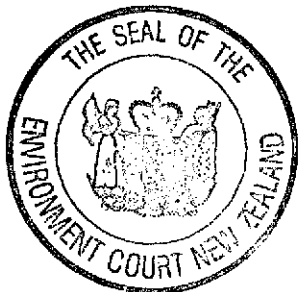
this Court by consent. We have cited from this report because it forms the basis upon which the Commissioners proceeded with their deliberations.

[15] An earlier site identified as appropriate for a landfill was abandoned late in the process after evidence of a fault was found on the site. That site was to the west of Christchurch and was upstream (in groundwater terms) of the aquifers surrounding and serving Christchurch.

[16] Alternatives were re-investigated and the proposed Kate Valley site was chosen. The applicant prepared some 30 volumes of documents which were produced as part of the assessment of environment effects at the time of the application. This included documentation relating to the earlier investigations and the process by which the site was selected.

[17] The application for resource consent to the District and Regional Councils involved the following component parts:

- (1) the development and operation of a modern, engineered regional landfill for disposal of residual municipal solid waste within the subject site. This included:
  - formation of the base of the landfill, involving excavation and removal of material from the area under the landfill footprint, and associated stockpiling;
  - placement of natural and artificial components to form a liner for the landfill;
  - formation of access roads on the site;
  - formation and operation of drainage and sediment control measures;
  - water supply construction and operation;
  - leachate drainage, collection and removal system installation and operation;
  - landfill gas control system installation and operation;
  - construction of site infrastructure platform facilities;
  - landscape planting and construction of a wind protection bund;



- delivery of waste to the site and controlled placement of waste within the landfill;
  - cap placement and final surface rehabilitation;
  - ongoing monitoring;
  - after care.
- (2) the upgrading of Mt Cass Road and the construction of a new private access road from Mt Cass Road to the landfill, to provide access for waste transport and other vehicles associated with the construction and operation of the landfill (see Vol. 1 of application documents, page 2).

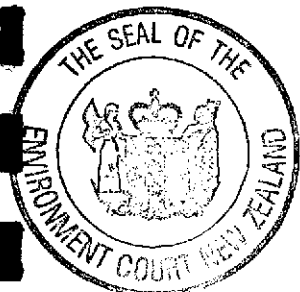
[18] Consent was granted subsequent to a decision issued by the Commissioners under the chair of Mr P Milne. The decision itself runs to some 159 pages followed by Annexure 1, being special conditions, and Annexure 2, being proposed conditions for Remnant B, and general conditions of some 48 pages. We include herewith marked "B" Annexures 1 and 2, but, due to their length, will not attach all of the general conditions.

#### *The appeals*

[19] The conditions imposed by the Commissioners were exhaustive and Transwaste has appealed a number of these as being too restrictive. The most significant of the conditions appealed by Transwaste was that relating to the retention of Remnant A which, in the applicant's view, would significantly restrict the potential of the landfill by reducing its capacity to some 30-40% of that which would be otherwise available.

[20] Of the other disputes as to conditions, two that appeared to relate to whether a grant of consent should be made at all were:

- (a) the source of waste and its relationship with overall volumes; and
- (b) the definition of waste, particularly residual waste and special waste.



[21] Both of these issues appear to have been live issues before the Commissioners and, at para 29.6 of their decision, the issue of source of waste was discussed by the Commissioners. They noted:

29.6.1 *The issue of accepting waste from outside the six participating authorities in the region was contentious. Several submitters urged us to prohibit waste being accepted at the landfill from outside the boundaries of the six contributing local authorities. The applicant strongly opposed such a restriction.*

29.6.2 *We considered imposing a geographic limit on the waste stream. We did not accept that it would be beyond our powers to impose such a condition, provided that it was for resource management reasons.*

and later 29.6.5:

29.6.5 *Ultimately we consider that it comes down to an efficiency issue. If greater volumes come from elsewhere, the landfill will have a shorter life. There are also issues of transport and fuel inefficiency in transporting waste from great distances. We have commented on these elsewhere.*

29.6.6 *We do have a residual concern that if the landfill was to accept significant volumes of waste from outside the region that this would increase the traffic volumes with consequent increased effects for those on or near the roads involved.*

29.6.7 *On balance, we consider that amenity and efficiency issues are adequately covered by a condition limiting the amount of green/organic waste received for disposal, by restricting the total number of vehicle movements involved.*

[22] The Commissioners also had before them issues as to what constituted special waste and residual waste.

