

- (h) Special condition 3 CRC 021919 Batter Slope Stability. An amended condition is proposed and agreed to by the Regional Council. Mr A P Kortegast, for Transwaste, and Dr Pyke, for CTGTW, also agreed that the amendment was appropriate. We did not understand this condition to be in dispute if consent was otherwise appropriate.
- (i) Special condition 4 CRC 021919 Surface Water Bypass Drains. There appears to be agreement between the parties that this condition could be deleted if consent is otherwise appropriate.

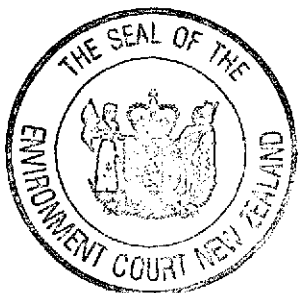
[43] In addition, Transwaste offered several new conditions during the course of hearing which are directly relevant to the landfill stability and groundwater issues. We shall address those issues later. There was also a suggested additional provision relating to seismic stability and landfill stability design factors. We therefore attach and mark "C" Transwaste's proposed conditions of consent (excepting special conditions), highlighting those provisions which parties sought to be deleted or amended.

THE PLANNING FRAMEWORK : OVERVIEW

Scope of hearing

[44] The applications are for consents which are all discretionary. Their discretionary status brings into consideration the provisions of section 104(1)(a)-(i) and Part II of the Act. Because the parties agreed to limit the hearing as we have described, the Court did not hear all of the evidence on all of the matters relevant to the application. That evidence was provided to the Court but, with the specific agreement of the parties, was not read by the Court.

[45] To that extent the parties agreed to limit the scope of the hearing, while recognising that the Court is required to make a general evaluation under section 104 and Part II of the Act. Section 120(1) of the Act provides:



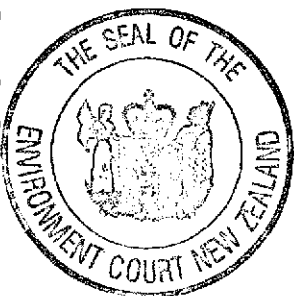
Any one or more of the following persons may appeal to the Environment Court in accordance with section 120(1) against the whole or any part of a decision of a consent authority ...

[46] It has long been accepted by the Environment Court that a limited appeal on part of a decision does not give rise to an evaluation (and prospective refusal) of an entire consent. Although there is no doubt that the parties could have put the applicant to proof on all matters to be established under section 104(1)(a), they have effectively accepted that the applicant has established certain grounds for the application generally in respect of the non-contested areas. Of course in this case PBBUA and CTGTW have sought that the consent be declined entirely on the bases of the several arguments advanced to the Court.

[47] The question then is whether section 120(1) contemplates that a party may seek that an entire consent be declined but then limit themselves to the grounds on which they argue that before the Court. We have concluded that the parties are able, by consent, to restrict the grounds on which an appeal against consent may be argued before the Environment Court.

[48] There are a number of reasons why the Court reaches the conclusion that parties are able to reduce the scope of an appeal before the Court in addition to the wording of section 120:

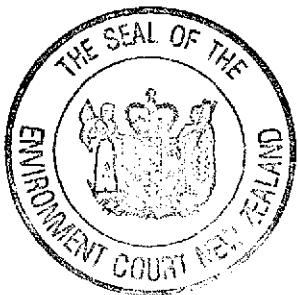
- (a) The Court has general powers to order its own proceedings (section 269(1)) and the powers of a District Court judge in civil jurisdiction (section 278). As such the Court has, as in this case, adopted procedures designed to reduce the issues between the parties and isolate the matters requiring specific determination by the Court. That process would be directly at odds with a requirement for the Court to consider all relevant matters under section 104 and Part II even where those matters are not in dispute between the parties.
- (b) The Court, as a matter of practice, generally constrains its enquiry to issues that are still at large between the parties. In this regard reference to Practice Note No. 35 is illustrative of the intent that parties need not



establish matters which are accepted between them. The Court need not be satisfied on matters that parties accept between them.

- (c) To that extent we have concluded that the *de novo* nature of a hearing must be subject to such a limitation. The parties in this case accepted that if the Court was nevertheless concerned that certain aspects of matters necessary for proof before it were to be addressed, then such agreement between the parties would necessarily need to give way to the priority of satisfying section 104 and Part II of the Act.
- (d) Not infrequently the Court may, during the course of a hearing, become alerted to a matter that has not been the subject of specific evidence by the parties or appeal. We conclude that in those circumstances the duties of the Court under the Act and particularly section 5, may require it to take those matters into account if they influence its decision under section 5. It is not necessary for us to determine this issue finally because in this case no such matters arose.
- (e) To the extent that the Court has a concern about the scope of the application (the source of waste) that was not raised specifically in an appeal, that issue must be before the Court as a jurisdictional issue in any event and is not dependent upon the wording of the appeal. It frames the subject of the consent rather than the appeal.
- (f) Finally such a restraint leads to procedural efficiency. It is clear that the Act is intended to provide an expeditious appeal process from the decisions of local authorities. Where the parties accept that many aspects of the appeal are not in dispute, it would seem counter-productive that the Court must undertake an exhaustive examination of matters where the parties are agreed on the outcome.

[49] Taking all these matters into account, we have concluded that the Court is entitled to take the matters that are not in dispute between the parties as being established in terms of section 104 and Part II of the Act. The consequence of this is that it is not necessary for the Court to undertake an exhaustive analysis of all of these matters prior to coming to a conclusion. We accept that it does require the Court in undertaking the integrated decision under section 5 to reach various conclusions as to the methods and strengths of various elements that go into the integrated decision. To



that extent again we consider that we are entitled to rely on the conclusions reached by the Commissioners on the matters that are not in contention on appeal. We therefore consider that having regard to the matters that are in contention, we are to make a decision as to whether this affects the conclusion reached by the Commissioners, such as to render a different conclusion appropriate. It was on this basis that the parties addressed the Court and on this basis that we proceed to consider the matters before us.

The District Plan

[50] It is useful to examine briefly the status of the activities under the operative District Plan (**the Plan**) and the provisions which bear upon the consideration of this application prior to dealing with the specific matters we have discussed.

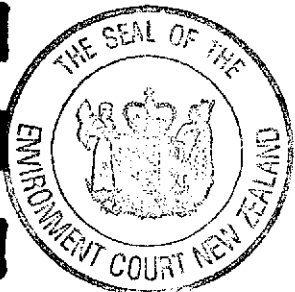
[51] Land use consents are for construction and operation of a landfill (RC 020069) which is a discretionary activity under the operative Hurunui District Plan (August 2003) and for the Mt Cass Road improvements (RC 020067) which are also a discretionary activity under the Plan.

[52] It is Transwaste's position that the removal of Remnant A is a permitted activity pursuant to the Plan and does not require a resource consent.

[53] The Plan recognises at issue 13 (page 104) that:

- (b) *Landfills within the District are important in providing facilities for the efficient and safe disposal of waste, and need to be operated effectively to avoid, remedy or mitigate potentially significant adverse environmental effects.*

[54] Landfills are listed as an unrestricted discretionary activity under Rule A 10.3(d) (page 310) of the Plan. A landfill is defined in the Plan as an area used for the disposal of solid waste into or onto land. Specific activities undertaken as part of the site preparation works and landfill operation are required to comply with district-wide rules relating to height, artificial light, noise limits, screening, earthworks and vehicle



movements. A copy of those is annexed hereto and marked "D" (Rules A1.2.7 and following from the evidence of Ms J M Batchelor at annexure 7). Forestry and proposed forestry planting are permitted activities under the Plan.

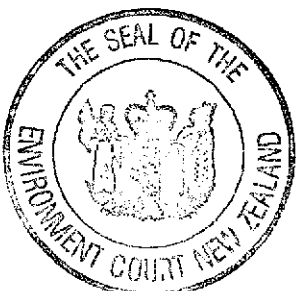
[55] The Council planner was of the view that the construction and operation of the landfill would breach the earthworks and vehicle movement rules. A breach of those rules makes the activity a discretionary activity.

[56] The criteria for assessing resource consent applications is set out at C1.2 of the Plan. The assessment criteria of C1.2.1, C1.2.2, C1.2.4 (potentially C1.2.5) and C1.2.6 are annexed and marked "E".

[57] Curiously considering the complexity of this matter, there was little or no discussion of these assessment criteria, notwithstanding that the Court and the Council must have regard to them and that they represent, in terms of a now operative plan, an approach relevant to this particular case. The Plan provisions represent the integration by the Council of its obligations under superior documents, including the regional plans and policy statements, and its obligations under the Act, including Part II.

[58] Therefore it is most perplexing to us that none of the planners saw fit to address the application of the Plan provisions to this consent. The Plan provisions, as expected, reflect the same type of assessment matters that the planners have identified as being relevant to this application, namely:

- traffic
- noise
- ecology
- landscape amenity
- odour and dust
- litter
- vermin control
- perception/image
- pollution and contamination.



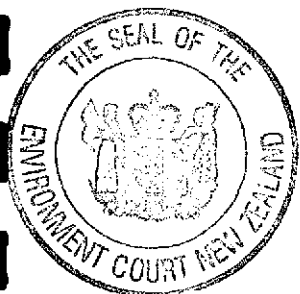
[59] However the criteria from C1.2 reflect the relative importance of these matters from the Council's perception. For example, the Plan (see C1.2.6) examines amenity including improvements to on-site amenity, retention of vegetation or open space, screening or shading, preservation of privacy to the improvement of public views. It is explicit within the Plan that consideration needs to be given to any on site amenity improvements. That is a significant issue in this case because of the area in excess of 400 hectares which is intended to be set aside as a conservation area.

[60] Similarly, under clause C1.2.6(g) decision makers are required to consider whether there are special environmental considerations including noxious, dangerous, offensive or objectionable land uses in close proximity to the site, an unusually located building on an adjacent site, preservation of the natural character of the area or the enhancement of the neighbourhood environmental quality. Although this is indirect, again it seems to show a linkage between potential for improvement of the natural character or amenity of the site and also a relationship between offensive or objectionable activities and their proximity to other uses.

[61] There are also some Coastal Policy Statement issues relevant to the coast some three kilometres from the landfill site and also a number of regional policy statement issues which touch upon the application. Again all of these appear to be captured within the terms of the District Plan, which represents the community's interpretation and application of those documents. The Coastal Policy Statement is general in nature, and its provisions are incorporated (perhaps subsumed) within the District Plan provisions.

[62] In terms of the District Plan and its superior documents, the issues relating to seismic and landfill stability arise both in terms of avoiding, remedying and mitigating adverse effects and also in respect of natural hazards.

[63] In respect of leachate, under the District Plan the issue arises not only in respect of avoiding, mitigating and remedying adverse effects, but also in the particular provisions relating to protection of the coastline and tangata whenua values.



[64] In respect of alternatives, this arises in relation to the policies of the District Plan for waste minimisation.

Regional Plans

[65] There are certain provisions of the Canterbury Regional Council Regional Policy Statement (**the Policy Statement**) which bear upon this application, although they are general in nature. The Proposed Canterbury Natural Resources Regional Plan, Chapter 3 – Air Quality, also has provisions relevant to discharge to air. There are certain other provisions which make up the Transitional Canterbury Regional Plan, being largely general authorisations and bylaws of both the Canterbury Regional Council and its predecessors. A copy of those are annexed hereto and marked “F”.

[66] In respect of the Policy Statement, there is a specific issue, objective and policies relating the solid and hazardous waste management contained in Chapter 18 (Objective 1) namely:

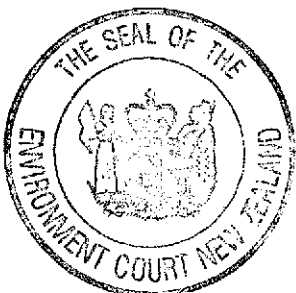
Avoid, remedy or mitigate the adverse effects on the environment from past, present and future solid and hazardous waste management practices.

[67] Policy 1 of Chapter 18 of the Policy Statement relates to implementation of clean production, waste reduction, re-use, recycling and resource recovery.

[68] Policy 2 seeks the implementation of a co-ordinated approach to waste management in Canterbury.

[69] Policy 4 refers to the need to ensure the cost of waste generation and disposal, including the environmental cost, is borne by those who cause the need for disposal.

[70] Policy 3 is the most relevant and reads:



Solid and hazardous waste disposal sites, including sites which are no longer used for waste disposal, should be managed and located to avoid, remedy or mitigate any adverse effects on the environment.

[71] The methods to achieve this include regional plans and resource consents.

[72] The environmental results anticipated (18.4) note:

The implementation of the above policies and methods is expected to have the following environmental results:

- (1) Reduced adverse effects of solid and hazardous wastes on the environment;*
- (2) Better utilisation of existing solid and hazardous waste management facilities;*
- (3) Reductions in the amount of solid and hazardous wastes produced and requiring disposal.*

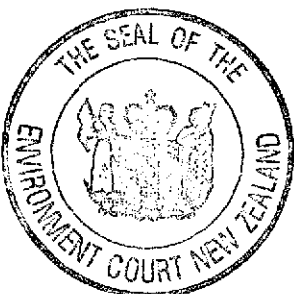
[73] There are other provisions in respect of soil quality, erosion, land degradation and sedimentation in Chapter 7.

[74] Relevant transport issues are addressed in Chapter 14 (Policy 2), Chapter 12 (Policy 1), and Chapter 15 (Objective 2). These essentially seek to achieve efficient transportation patterns to reduce adverse effects including emissions.

[75] Chapter 9 (Objective 3) of the Policy Statement relates to the importance of safeguarding water quality, Policy 11 promoting:

...land use practices which maintain and where appropriate enhance water quality.

[76] Policy 12 of Chapter 9 refers to the need for adequate precautionary measures to avoid contamination from the release of hazardous substances.



[77] Chapter 10 of the Policy Statement, relating to beds of rivers, seeks protection and, where appropriate, enhancement of the values of the beds and margins of rivers (Objective 1). Policy 3 recognises the need to retain and promote the establishment of riparian vegetation, particularly indigenous vegetation, along the margins of rivers and lakes to reduce the adverse effects of land use on water quality.

[78] The 23 Regional Council consents consist of consents to disturb the beds of the Omihi Creek, Kate Creek and Wash Creek and permits to discharge landfill gas, exhaust gases, dust, odour and other contaminants; consents to discharge to land, particularly the waste itself; water and sediment discharges in circumstances that may result in discharge to Wash Creek, Kate Creek and their tributaries; discharge of leachate and other site-generated liquids in circumstances that may result in contaminants entering groundwater.

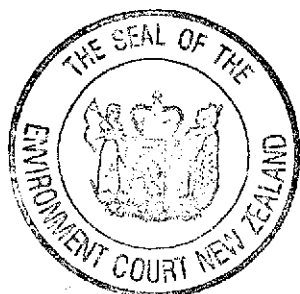
Regional permits to discharge:

(i) To water

[79] These consents concern the discharge of groundwater and treated stormwater; discharge of waters from the storage dam and water from a weir into Kate Creek; discharge of water and sediment to land in circumstances that may result in a discharge to Wash Creek, Kate Creek and their tributaries, and finally water permits to take and use surface water, to take groundwater and to divert and dam water and stormwater.

[80] With the possible exception of the burning of the landfill gas, all other activities are not controlled by any Proposed or Transitional Plan. They therefore fall to be considered as innominate activities in the same way as a discretionary activity.

[81] Section 418(1A) of the Act and section 418(1C) of the Act mean that a resource consent under section 15(1) is required for any new application for a landfill after 1991 unless the discharge is expressly allowed by a rule in a proposed regional plan.



[82] The position in respect of the burning of landfill gas appears to be covered in terms of the Proposed Canterbury Natural Resources Regional Plan, Chapter 3, Air Quality Rule AQL27, which provides:

Except where prohibited by Rule AQL 12, the discharge of contaminants into air from burning, outside the Christchurch Clean Air Zones 1 and 2, any fuel in any large scale fuel burning device ...is a discretionary activity.

[83] Rule AQL37 provides:

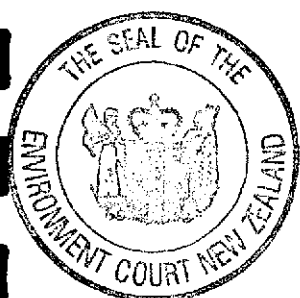
Discharge of contaminants into air from outdoor burning any materials within a landfill site, waste transfer station or waste recovery area, is a prohibited activity for which no resource consent shall be granted.

[84] Provision AQL37 may not cover the outdoor burning of gas in a single combustion chamber or waste incineration device. In any event, it appears to be agreed that this application was made prior to the promulgation of the Proposed Canterbury Natural Resources Regional Plan and therefore must be progressed in accordance with section 88A(1) of the Act. This provides, in part:

... the application continues to be processed and completed as an application for the type of activity specified in the plan or proposed plan existing at the time the application was made.

[85] At the time of the application the activity was innominate and therefore discretionary and on the plain wording of the subsection would therefore continue to be processed as a discretionary activity.

[86] The Regional Council did not discuss the decision of the Environment Court in *Canterbury Regional Council v Christchurch City Council*³. That decision appears to relate to provisions of a proposed plan which had subsequently become operative. Here the activity is discretionary under the Transitional Plan, which status does not change



³ C25/01 and C78/2001.

when the Proposed Plan is introduced. We therefore consider that the matter is adequately addressed by the requirement under section 88A(2) to have regard to the provisions of the Proposed Plan in considering the application. In any event, we are not certain that Rule AQL37 does apply to flare burning or power generation on a landfill site. As the parties appear to have agreed that flare burning or power generation can be considered as a discretionary activity, we have not explored the matter further on this basis.

[87] The criteria of section 104 generally apply to the regional consents and in addition to those under subsection 1, subsection 3, which applies to all discharge permits, and reads:

... the consent authority shall, in having regard to the actual and potential effects on the environment of allowing the activity, have regard to –

- (a) The nature of the discharge and sensitivity of the proposed receiving environment to adverse effects and the applicant's reasons for making the proposed choice; and*
- (b) Any possible alternative methods of discharge, including discharge into any other receiving environment.*

[88] In respect to the regional consents, the discharge permits relate not only to discharges of water, leachate and contaminants but to the discharge of the waste itself into the landfill. Thus the Court must consider alternatives in respect of the discharge consents, particularly CRC 021913.

Coastal provisions

[89] The relevance of the New Zealand Coastal Policy Statement and the regional coastal provisions of the Regional Policy Statement and Plan only come into focus if there is potential for adverse effects from the discharge of leachate to the coastal environment.



[90] It was axiomatic to the application of Transwaste that there will be no adverse effect from discharge of leachate on the coastal environment. If we found that in fact there is an adverse effect, namely discharge of leachate to the coastal environment, it appears appropriate that the Court should refuse consent.

[91] We have concluded that it is unnecessary to discuss the national and regional policy documents on the basis that there must be no adverse effect on the coastal environment. That there was no adverse effect on the coastal environment was asserted both by Ms S M Dawson, the planner called for Transwaste, and Mr A K Brough, an environmental engineer also called for Transwaste. As the coast is some three kilometres distant from the landfill, the issue therefore turns on whether we are satisfied that there is no prospect of an adverse effect from the landfill operation on that coastal environment.

(ii) *To air*

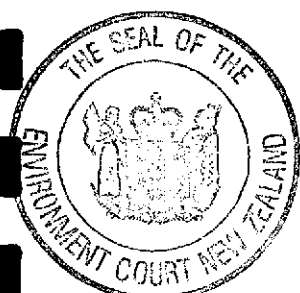
[92] Chapter 13 (Policy 5) of the Policy Statement specifically seeks that activities that:

(a) discharge contaminants into air should be encouraged to locate away from residential dwellings, educational facilities, hospitals, shops and other similar public buildings unless adverse effects can be avoided or mitigated.

[93] Chapter 13 of the Policy Statement also includes some comment forming the basis for the proposed air quality plan. Chapter 13 (Policy 6) reads:

Practices which reduce the adverse effects of the discharge to air of methane and other contaminants from waste management activities should be adopted. For landfill management, regard should be had to the Ministry for the Environment Landfill Guidelines (November 1992) with respect to discharges to air.

[94] We note that Objective 3 of the same chapter states:



(a) *Reduce emissions of greenhouse gases.*

[95] There is a series of provisions in the Proposed Canterbury Natural Resources Regional Plan Chapter 3: Air Quality. We have already mentioned the rules applicable. The policies in AQL1 are generally applicable. This refers to the prohibition of combustion of specified materials. The associated methods include the use of facilities to dispose of waste that shall no longer be burnt in the open, as well as the waste management strategy AQL1(b). AQL4, as we have discussed, limits outdoor burning and AQL5 seeks to avoid odour nuisance, while AQL6 takes the same approach to avoid dust nuisance.

The Planning Framework : summary

[96] Having regard to the various provisions of the Regional Plan that we have discussed, we consider that the matters can properly be addressed under both the Regional and the District Plans in a single assessment of the relevant provisions under section 104(1). It is also necessary to overlay the particular requirements under section 104(3) as they apply to the discharge consents. We intend to discuss the various provisions of the District Plan as they arise in respect of each of the issues that are identified or otherwise under our examination of the district provisions under section 104(1)(d).

[97] However we have identified the regional planning considerations at this stage because the essential assessment of the applications in respect of the great majority of applications is conducted in terms of the Act alone. Before addressing the key issues and various criteria under section 104, it is important to describe the proposal.

