

*Off-site changes*

[121] It is necessary to improve Mt Cass Road by widening, sealing and improving the horizontal and vertical road alignments to enable trucks to access the site more readily. The majority of the land on both sides of the road is owned by the applicant or its associates and, at the hearing, no particular issue was taken with these road improvements. It is intended that there would be between 10,000 and 16,000 vehicle round trips per year (ie x 2 for movements), with approximately half that number for light vehicles. There does not appear to be a dispute as to the imposition of the maximum trip numbers imposed by the Commissioners. The Court accepts that there will be peak periods at which there will be more traffic than the average given.

**KEY ISSUE 1 - DEFINITIONS**

[122] The three issues with respect to definitions are:

- (a) source of waste;
- (b) definition of residual waste;
- (c) definition of special waste.

[123] Because these affect the ongoing approach of the Court, we deal with those now.

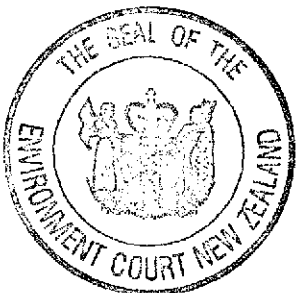
*The source of waste*

[124] The application was submitted as a series of Regional and District Council resource consent applications. In summary, the proposal is for:

*The development and operation of a modern, engineered regional landfill to dispose of municipal solid waste within the subject site. [Emphasis added]*

[125] Applications to both Councils include a further statement:

*A more detailed description of the proposal is included in the Assessment of Effects on the Environment attached as Volumes 2 to 30 and shown on the*



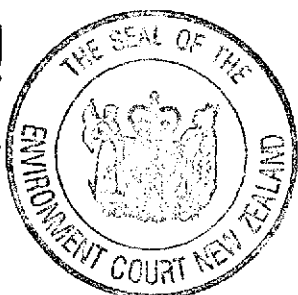
*drawings in Volumes 3 and 4, and including Proposed Resource Consent Conditions contained in Appendix A (Volume 5), all of which should be read as forming part of these Applications.*

[126] The issue before this Court on the appeal was whether Transwaste was able to source waste from outside the Canterbury region. No condition was imposed by the Commissioners, and a number of the appellants were concerned that the intention of Transwaste was to utilise the landfill for waste outside Canterbury. Transwaste went so far as to suggest that it was not within the jurisdiction of this Court to impose such a condition. Mr T Gould, for Transwaste, acknowledged that the resource consent is limited by the terms of the application. However, he considered that the controls over vehicle numbers, hours of operation, size of the landfill and noise levels affect the scale and intensity of the activity and thereby its effects. His submission was that the source of waste would have no additional effects and therefore it was not appropriate to control this issue.

[127] We have considered this issue carefully and disagree with Mr Gould for two reasons:

- (1) The scope of the application. We accept that the use of word *regional* to describe the landfill may not in itself be determinative. What, however, in our view is determinative are the accompanying documents which clearly disclose a course of action relating to the location and use of a regional landfill. They identify the various steps preceding the application. For example, in Volume 28, in the site selection report, Chapter 1, there is a description of the need for a regional approach to the problem of solid waste disposal by the Canterbury Waste Joint Standing Committee. Further, in Chapter 2.1 of Volume 28 the site selection process was staged, moving through the following steps:

- (1) consideration of the whole of the Canterbury region;
- (2) identification of a series of favourable localities.



Volume 20, which details community and consultation (Appendix M) notes the overview of consultation (4.1, page 28):

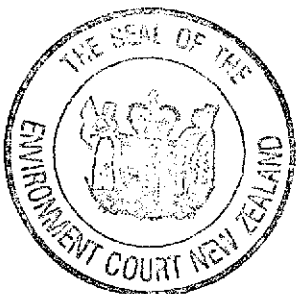
*Prior to the public announcement of Kate Valley as a site being investigated as a potential landfill for Canterbury, ...*

and later:

*Contact with these people has continued throughout the preliminary, and subsequent more detailed, investigation phases of the Kate Valley area for a regional landfill.*

Having regard to the totality of the documents in support of the application, there is no doubt in our minds that the intention was to find a waste management solution for the Canterbury region. None of the assessment of volumes of traffic or the like discusses the potential for other sources of waste or the ramifications of those.

- (2) This leads us to the second issue, being that there is simply no evidence as to what effects, if any, there would be from expansion of the waste received to that throughout the South Island or the whole of New Zealand or even internationally. At the closing of their case, Transwaste acknowledged that they would only accept waste from throughout the South Island. Questions immediately arise as to the transportation implications of this, including the following questions:
  - (a) how would the waste be transported to the site?
  - (b) what pre-sorting, compaction or other steps would be taken in respect of the waste?
  - (c) what would be the impacts of such further transportation? (For instance, anaerobic conditions from the longer time taken to reach the landfill).



- (d) what would be the implications for the waste minimisation plans of the region if other areas without such waste minimisation plans were able to use the landfill?
- (e) would there be any impact upon the life of the landfill, waste mix within the landfill, or other matters? For example, would this mean that other waste of a particular type, ie sewage sludge or organic waste, might be imported, thereby changing the overall concentrations of waste at the landfill?

[128] Essentially the Court is being asked to grant a consent to include an activity for which no assessment of effects has been provided. The evidence in respect of the waste to be received from the Canterbury region is very detailed. It involves significant background as to the waste generation in those areas, transfer stations, and type of trucks to be operated. We have concluded that on either of these bases the application is clearly limited to waste generated throughout the Canterbury region. Because Transwaste has now argued that that is not the case, it is important that if the Court is minded to grant consent, that it make this clear in the grant. In respect of all consents this could be achieved simply by adding to Land Use Consent RC 020069 the words:

*generated within the Canterbury region.*

[129] Land Use consent RC 020069 would now read:

*To carry out the construction, development, operation and rehabilitation and associated activities of a landfill designed to accept municipal solid waste generated within the Canterbury region.*

[130] One of the major concerns raised by the residents groups was that any waste minimisation advantages that were achieved in the region by virtue of current initiatives could be undermined by the importation of waste from other areas. A landfill that might last many generations could then become filled with waste from other regions, even if waste minimisation measures were successful in this region. The residents' concerns in this area, although understandable, are addressed directly by our findings to the scope of the consent applied for, and consequently, that which may be granted. On



this basis, any waste minimisation efforts achieved within the Canterbury region will have direct benefits in terms of the longevity of the landfill. Having said that, there are clearly capital costs involved and the residents are still concerned that the district councils will be seeking to maximise the economic return of the landfill by maximising waste which is placed in it.

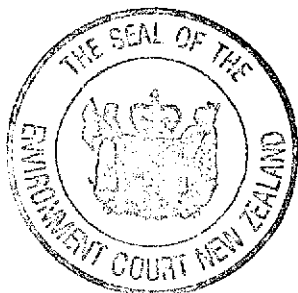
[131] This led on to the concerns by residents as to what is incorporated within residual waste and special waste.

### *Residual waste*

[132] The starting point is probably condition 3 of consent CRC 021913 as set by the Commissioners. This reads:

*No waste, other than residual Municipal Solid Waste (MSW), shall be accepted for disposal. The definition of MSW shall be any non-hazardous, solid waste from a combination of domestic, commercial and industrial sources. It includes putrescible waste, garden waste, uncontaminated biosolids, and clinical and related waste (including contaminated waste sterilised to a standard acceptable to the Ministry of Health). It may include a small proportion of hazardous waste from households, and small commercial premises that is not detectable using standard screening procedures at either transfer stations or other waste reception facilities. Such quantities are small – generally <200 ml/t, or <200 g/tonne. It also includes site-generated process sludges in comparatively small quantities (e.g. LCS condensate, evaporator sludges, sludges from leachate treatment and sediment control facilities), and non-hazardous sludge wastes (e.g. wastewater treatment plant sludges) consistent with maintaining workable sludge/waste ratios for operations and stability purposes. In terms of the above, “residual” shall mean that part of the municipal waste stream remaining, once all practicable and economic measures have been adopted to reduce, recover, reuse and or recycle material within the waste stream.*

[133] Transwaste seeks the deletion of this condition on the basis that it imposes requirements beyond its control. It is argued that such a provision sets a waste



minimisation policy which is the role of the councils rather than the consent holder. It is further argued that the condition requires Transwaste to adopt some direct control over third parties. Mr Gould, in his final submission, put the matter in this way:

*As has been emphasised by counsel for Transwaste throughout this case, matters of waste minimisation are the statutory responsibility of the relevant local authorities under the Local Government Act 1974. Subject to the condition proposed by Transwaste that will place some limits on the source of waste Transwaste can accept, it is submitted that it is not the role of this Court to require Transwaste, as a landfill operator, to ensure that waste minimisation goals are achieved. Despite this, certain draft conditions of consent will be proffered in a later section of this reply.*

[134] The approach proffered by Transwaste was that Transwaste only accept waste:

- *that meets the landfill's acceptance criteria; and*
- *that originates only from local authority areas in the South Island of New Zealand.*

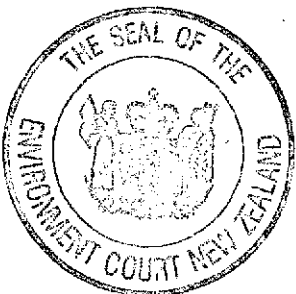
[135] The Court has already discussed the last of these proposals and would limit the area to those local authorities within Canterbury. With that exception, the condition offered by Transwaste is one which would see the deletion of the word *residual*, particularly the last sentence of condition 3 to CRC 021913 as follows:

*In terms of the above, "residual" shall mean that part of the municipal waste stream remaining, once all practicable and economic measures have been adopted to reduce, recover, reuse and or recycle material within the waste stream.*

and the insertion of a new 3A which would read:

*The consent holder shall only accept waste:*

- *that meets the landfill's acceptance criteria;*

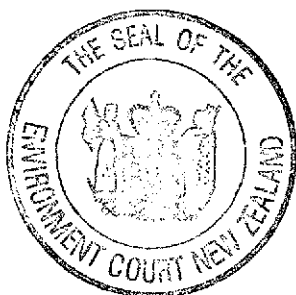


- *that originates from an area in which the relevant local authority has certified to Transwaste that it has adopted a Waste Management Plan in terms of s. 539(1)(a) of the Local Government Act 1974, which incorporates provision for the collection and reduction, reuse, recycling, recovery, treatment or disposal of waste in the district in terms of s. 539(2)(a) of the LGA.*

[136] We have considered this matter and have concluded that we agree substantially with what Transwaste is proposing. In principle we agree that it is not possible to impose a direct requirement that Transwaste ensure that third parties act in a particular way. On the other hand, Transwaste is able to require any party to certify that it has undertaken those steps before accepting it. This will have effect not only on waste received from transfer stations but also special waste, which we will discuss in a moment. We have concluded that the better approach is to retain the use of the word *residual*. We conclude that this indicates that the waste is subject to a process prior to being received. We would then define *residual* in the terms suggested by Transwaste with the alteration for clarification. Accordingly, for the purposes of this decision, we shall continue to use the phrase *residual* municipal solid waste and shall provide a working definition which, if consent is granted, could be included under condition 3 to CRC 021913 which would read:

*In terms of the above, residual shall mean waste:*

- *that meets the landfill acceptance criteria; and*
- *where the relevant local authority has certified to Transwaste that it has adopted a waste management plan in terms of section 539(1)(a) of the Local Government Act, which incorporates provision for the collection and reduction, reuse, recycling, recovery, treatment or disposal of waste in the district in terms of section 539(2)(a) of the Local Government Act; and that the waste meets such plan requirements; and*
- *originates from local authority areas within the Canterbury region of New Zealand.*



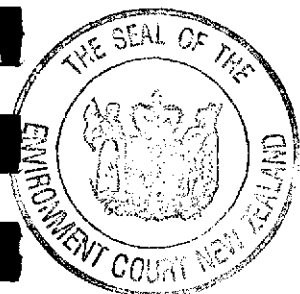
[137] The third bullet point refers to the new wording of Land Use Consent RC 020069, discussed above.

[138] There was much discussion about the Memorandum of Understanding of the Parties to the Joint Venture between the councils, Waste Management New Zealand and Canterbury Waste Services. The essence of this argument was that the MOU required all controlled volumes to be committed to the landfill. It was suggested that the distinction between controlled volumes and residual waste meant that waste minimisation procedures could not be undertaken. We have concluded that this argument does not sustain close examination for the following reasons:

- (a) there was clear evidence from Mr D O'Rourke, a member of the Joint Committee and Christchurch City councillor, that the concept of residual waste has been a late development in the planning of this landfill;
- (b) it is therefore quite possible to interpret controlled volumes in the same sense as residual volumes, without unduly straining the wording of the MOU.

[139] Further, the MOU could not require councils to take actions that were in breach of their statutory responsibilities under the Local Government Act, particularly section 539. Mr O'Rourke repeatedly made it clear that his understanding of the obligation was that final, or residual, waste was to be disposed of in the landfill. In our view it would be an undue straining of the language of the MOU to suggest that it obliged parties to create or maintain waste in contradiction to waste minimisation policies.

[140] We accept that there will be different approaches between councils to waste minimisation. Some councils, particularly the Christchurch City Council, are very active in this area; other councils have less developed policies. In the end, the extent of those policies and their implementation is a matter for each council. We do not consider that the MOU interferes with those obligations, particularly in light of the retention of the residual waste definition which we have discussed. We also accept that there is no mandatory requirement on councils to provide all waste to the landfill in terms of the MOU, but the intention in respect of controlled volumes, final volumes and now residual volumes is the same in intent, namely those volumes that remain after the



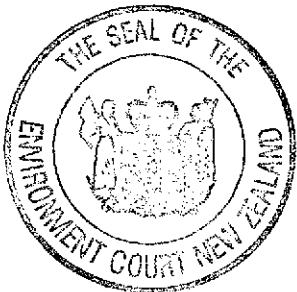
council has undertaken whatever minimisation, reuse, recycling, recovery, pre-treatment it considers to be necessary.

*Special waste*

[141] The exception to the general requirement that waste must be processed through a waste transfer station or equivalent within local authority areas is the provision for special waste. The concern of the objectors, which we share, is the potential for the special waste category to be significantly expanded, and thus avoid the minimisation techniques of the local authorities. Our concern that this special waste category could increase is overcome by the proposed approach suggested by Transwaste, and our decision to continue to define waste to be received at the landfill as residual municipal solid waste. This will mean that even special waste requires certification by the relevant council. In certifying

- (a) waste minimisation policies;
- (b) the material is suitable for the landfill;
- (c) is sourced within Canterbury;

the relevant council's attention is at least drawn to the special waste that is intended to be delivered. This should avoid the potential for an increasing quantity of waste which has not undergone any minimisation procedures to be forwarded to the landfill. Disposal of special waste also requires the consent of the landfill operator. It is difficult to see the landfill operator granting such consent if it is merely a method of avoiding local authority control. There are many circumstances in which we accept that delivery directly to the site is appropriate, and we understand that the current tonnage involved is in the order of 10,000 to 20,000 tonnes per year. This would include such waste as building materials, seafood waste products and the like. We are satisfied on reflection that with the controls suggested the potential for the special waste category to supplant control through transfer stations is minimal, particularly with the residual requirement remaining. We will discuss this issue again as it applies to particular conditions in due course. For current purposes, however, discussion of these matters sets the scene for the scope of the application and our consideration of the particular issues.



[142] It is now our intention to deal with each of the categories set out in section 104(1). This may involve, at least in respect of indigenous vegetation, a discussion of section 6(c) during the course of discussing the effects of the activity. We will however also discuss Part II of the Act before dealing with the particular conditions that are also in dispute if the Court is minded to grant consent.

**KEY ISSUE 2 : EFFECTS OF THE PROPOSAL**

[143] As can be expected with an activity of this scale, there are a number of effects to be addressed. In this case, a number of those effects are no longer in contention. These include Maori cultural issues, impacts on air quality, health, birds and vermin, litter, property values, sewage and waste water, traffic, visual and landscape impacts, and effects on the national roading network. These are all matters which were not at issue before this Court. This is not to say they are not matters of importance. Rather, all parties accept in light of the evidence and the conditions of consent, that if the Court is otherwise minded to grant consent, these matters are appropriately addressed through the conditions of consent recommended by the Commissioners and supported by Transwaste before this Court.

[144] Certain other issues (for example, potential impact on the wine growing area, and social impacts) derive from the concerns of the objectors to issues such as groundwater and seismic faulting. Although these were significant concerns before the Commissioners, in this case no particular evidence was advanced. Although evidence (particularly from the Goulds who live at nearby Mt Cass Station) had been pre-circulated prior to the trial, the objection of that party and the evidence was withdrawn at the commencement of the hearing.

[145] Similarly, effects on traffic, although raised and addressed in the evidence of Transit, had been resolved by agreement with the applicant by the commencement of the case.

[146] Attempting to undertake some synthesis of the very disparate and sometimes confusing evidence of the experts, we have decided to analyse effects under the following topics:

