

minimisation steps are taken by Councils. The only ensuing issue is the rate at which it may be utilised.

(c) *Risk and multiple redundancy*

[233] This application constitutes multiple levels of redundancy. The matter was addressed in some detail in the decision of the Court in *Land Air Water Association v Waikato Regional Council*¹³. Any one or more components of the design may be sufficient to avoid adverse effects. However, the philosophy of this design is to have multiple safeguards in the event of failure. As we have already discussed it cannot realistically cover every form of risk no matter how remote (i.e. a meteor strike). The intention is to represent a robust design that would respond to most eventualities. The features that gives the Court particular confidence in this case is the underlying geology of the site and the topography of the valley with a fall towards the wetland area around a kilometre distant. The size of that valley means that it is likely that any catastrophic failure of the system would be captured on that plateau before moving through the stream gorge towards the sea.

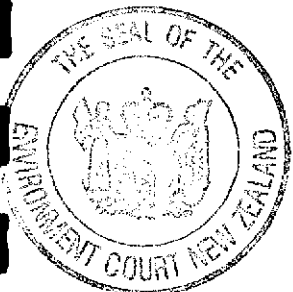
[234] As has previously been said¹⁴, the Resource Management Act is not a no-risk statute and the Court must give weight to the enabling provisions of the Act while adopting a cautious approach. The levels of redundancy in this case are conservative and comprehensive and give a commensurate level of confidence in the final design. That is a matter which we believe can properly be taken into account in the overall assessment under section 5.

KEY ISSUE 3 – THE CONDITIONS

[235] We have already discussed the conditions relating to source of waste and definitions of residual and special waste. We assume that these changes are incorporated within the conditions of consent now proposed by Transwaste (Annexure C) together with the suggested new conditions.

¹³ A110/01 at page 13 and 34-43.

¹⁴ *Shirley Primary School v Telecom Mobile* 1999 NZRMA 66 at para 106; *Contact Energy Limited v Waikato Regional Council* A4/2000 at para 305.



General condition 13

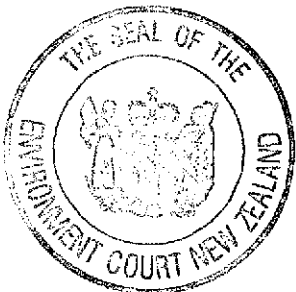
[236] Peer Review Panel. The consensus of the parties appeared to be that this condition was inappropriate and unsustainable. It imposes an obligation on the Peer Review Panel to alert the consent holder to hazards. We agree that it is excessive and unnecessary and should be deleted. It is also in our view entirely impractical in that it would impose an unduly onerous role on the Peer Review Panel which could be the subject of separate legal obligations. We agree that the review condition will suffice to ensure appropriate monitoring of the consent.

General condition 33(iii)

[237] This condition imposed an additional ability for a review. However, none of the witnesses were able to point to any adverse effect that would arise that would not also trigger a review under condition 33(i) (ii) or (iv). Mr D S Patterson for the Regional Council seemed to suggest that condition 33(iii) would enable the Regional Council to review the consent to require alteration of the waste processing techniques or adapt the kerb-side collection strategy. He suggested it may even give them the power to exclude certain types of waste from the landfill.

[238] We agree entirely with Transwaste that if this is the intent of the clause it goes well beyond a proper and reasonable control to be imposed on the grant of consent. Effectively this would give to the Regional Council the power to alter the consent "on the run", and effectively to alter the outcomes in terms of capital cost versus proposed return during the course of the consent. In our view it would impose a completely unrealistic obligation on parties to change the entire basis upon which they had obtained consent at some undetermined time. We can see no proper reason for the retention of clause 33(iii) and conclude that it should be deleted from the consent.

[239] We also have remaining concerns as to whether or not such a condition would meet the principles of *Newbury District Council v Secretary of State for the*



*Environment*¹⁵, in particular what its purpose would be in terms of the Resource Management Act.

Land Use Consent RC 020067

Condition 12 – Alignment reconstruction upgrading of Mt Cass Road

[240] This matter has been resolved in discussion between Transwaste and Transit and a memorandum to that effect is before the Court. This has now been incorporated within the proposed changes to Condition 12.

Land Use Consent RC 020069

Condition 2 – All refuse to be compacted

[241] There appeared to be a consensus that compaction should take place where it made practical sense. There are clearly certain materials that do not benefit from compaction (i.e. seafood waste). Transwaste in its now proposed conditions of consent proposes a new Condition 2 to reflect the reality that compaction is not always practicable. It is now proposed that:

All refuse delivered to the site, with the exception of special waste or other waste that cannot reasonably or practicably be compacted, shall be compacted.

[242] We agree that this adopts a pragmatic approach to the issue.

Condition 4 – Hours of operation

[243] Again there has been further discussions between the parties and with the Court with a view to trying to resolve this condition. Transwaste now seeks that the earlier Conditions 4 and 4(a) be deleted as being unnecessary and a new Condition 4 be inserted. That is now incorporated within the conditions before the Court.

[244] This provision reads:

¹⁵ [1980] All ER 731.



Prior to the acceptance of first waste:

- (a) Heavy vehicles associated with construction work on the landfill site shall not have access to the site before 6.00 am or after 8.00 pm Monday to Friday inclusive or before 7.00 am or after 6.00 pm on Saturday, Sunday and Public Holidays;*
- (b) All construction work on the site shall comply with the requirements of NZS6803:1999 "acoustics-construction noise";*

Note – 'Heavy vehicle' is defined in condition 22.

[245] In our view this condition is clearer than the earlier condition and there is a reasonable balance between the needs of the constructing agency and those persons who may be affected by heavy traffic on the State Highway and/or Mt Cass Road.

Condition 5 – Noise levels

[246] Again there have been discussions between the parties to resolve this issue. The key change has been a move to measuring noise levels at the boundary to the site rather than at the nearest notional boundary. The proposed condition is:

The noise level (L_{10}) from landfill operations (including ongoing construction work not covered by condition 4) shall not exceed the following limits: Monday to Friday inclusive, 7.00 am to 7.00 pm, 50 dBA L_{10} Sunday and Public Holidays 7.30 am to 6.00 pm 45 dBA (L_{10}). At all other times 40 dBA L_{10} . As measured at the boundary of the site in accordance with the requirements of NZS6801:1991 and assessed in accordance with the requirements of NZS6802:1991.

[247] We consider that the measurement at the boundary of these levels is more than reasonable, and in accordance with the noise levels we would expect to see elsewhere in the district.



Condition 13 and Special Condition 8 – Remnant A

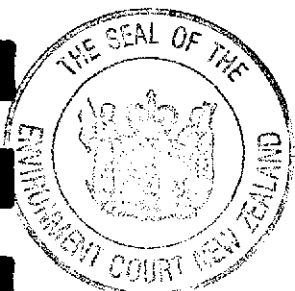
[248] The proposed condition is based upon Dr Norton's suggested conditions with the following amendments needing to be made:

- (1) The inclusion of the 50 hectares beyond the site and within zone 4;
- (2) The fencing of Remnant A within 2 months of consent being granted and limitation of worker access;
- (3) The preservation of Remnant A until needed for landfill development with a minimum period of five years from first acceptance of the waste;
- (4) Collection of seeds and material for propagation to commence in the first seed season after consent is granted;
- (5) Alter the timing to include a number of provisions prior to acceptance of first waste.

[249] Our reasoning for the addition is based on the following:

- (a) the extra 50 hectares has been offered by Transwaste and can be incorporated on that basis;
- (b) fencing of Remnant A will protect the Remnant over the five year period and avoid careless destruction or unnecessary access by workers;
- (c) the five year minimum period of protection will allow time for replacement areas to be established. If the landfill takes longer to establish or fills more slowly Remnant A is retained in the meantime;
- (d) the seed and natural propagation within the next seed season ensures the work is undertaken as soon as possible rather than when work starts on the landfill;
- (e) the actions prior to acceptance of waste make sure the conservation plan and steps are commenced sooner rather than later.

[250] In general terms we consider that this additional condition is appropriate with the following comments. It is our view that the obligations arising under this should be independent of any cashflow from the landfill. This restoration work should form part of the capital requirements for the project rather than being subject to the vagaries of the



financial success or otherwise of the landfill. To that end we consider that there should be incorporated within that condition a specific provision for the costs of that project to be funded directly by Transwaste. It may be that there should be incorporated some form of bond or financial contribution towards that.

Condition 47 and Special Condition 9 – Financial contribution

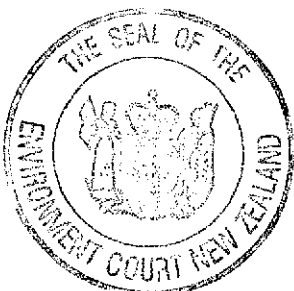
[251] Transwaste and Hurunui District Council have reached an agreement on the reworded Condition 47 which is now included in the proposed conditions.

Discharge Permit CRC 021913

Conditions 3, 7 and 8 and Special Condition 10 – Separation of waste

[252] The question of separation of waste is connected with our decision on the scope of the application and the definition of residual waste. Just as the Commissioners considered that the controls over hazardous and green waste in Conditions 3, 7 and 8 met the appropriate balance in terms of volume and the like, we consider that the implications on the source of waste and the definition of 'residual waste' are essential to our determination as to whether separation of waste is required. On the basis of our conclusion on those issues we are of the view that the appropriate balance is met without the need to impose further restraints. Thus with the adoption of the changes to Conditions 3 and 3(a) which we have already discussed. We have concluded that no further controls by way of Conditions 7 and 8 are necessary and therefore should be deleted.

[253] The applicant now proposes that former Condition 7(a) becomes 7, and that former Condition 8(a) becomes 8. That deletion in our view is appropriate only if the control over source, i.e. from Canterbury, and a certification as to residual waste is incorporated. In those circumstances we are satisfied that the conditions now proposed would adequately meet the Court's concerns.



Discharge Permit CRC 021919

Special Condition 3 – Rock mass stability

[254] Mr Kortegast for Transwaste has suggested a reworded condition which reads:

Prior to construction of the siltation control dam an investigation of the slopes adjoining the dam embankment footprint and the pond area shall be carried out to assess the long term stability of these matters. This investigation work shall take into account the results of the required detailed investigation of the proposed siltation dam and its foundations.

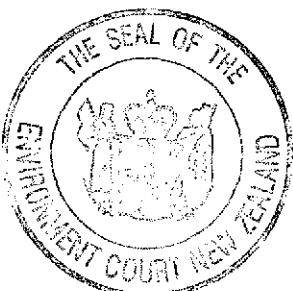
The permanent slopes around the siltation pond and embankment shall be designed with appropriate factors of safety for design groundwater and seismic loadings. Where natural slopes exhibit potential mass or shallow instability the slope shall be stabilised by soil removal, buttressing, drainage or such other measures as determined to be necessary.

The design engineer shall prepare a report addressing the design of these slopes that shall be provided to the Peer Review Panel and to the Regional Council prior to construction.

[255] That replacement provision appears to have met with general agreement and we consider it is a more appropriate approach to a specified design solution. In our view this will ensure that the best practicable option is adopted for the rock mass stability issues.

Special condition 4 – Surface water bypass drains

[256] Transwaste sought that this condition be deleted on the basis that it was unnecessary. The Regional Council agrees with that, and this was endorsed by Dr Pyke. We are of the view that the condition is unnecessary and can be deleted.



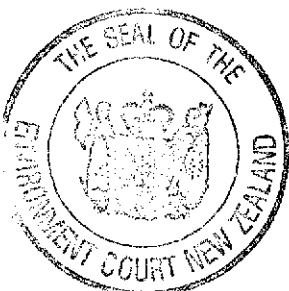
New conditions

[257] There was a recommendation from Dr Kavazanjian that we add a requirement for under-drainage to Condition 3 of RC 021914. The condition has now been added with a new (c) clause and under-drainage systems sized and specified to ensure effective sub-liner drainage, with a separate collection sump from the leachate collection system. In light of discussions between the parties on the encapsulation of the geosynthetic clay liner it is now proposed that Condition 4 be altered as follows:

Leachate and containment (lining) system for the landfill shall consist of the following, from bottom to top:

- (a) *500 millimetres of in situ compacted soils with a permeability co-efficient of not more than 1×10^{-7} metres per second;*
- (b) *An encapsulated geosynthetic clay liner comprising:*
 - *A 0.5 mm textured HDPE layer with welded seams;*
 - *A geosynthetic clay liner (GCL);*
 - *A 1.5 mm textured HDPE layer with welded seams;*
- (c) *A geotextile geocushion layer;*
- (d) *A 500 mm liner protection layer or gravel leachate drainage layer as indicated in drawing C24 of the Assessment of Environmental Effects (AEE).*

[258] Other liner design systems may be adopted provided equivalent or better performance is demonstrated by the consent holder. Although this provision does specify a design solution rather than an outcome, this is the basis upon which the case was advanced to this Court. However, we consider that the proviso that other liner designs can be used if they provide equivalent or better performance would put a significant onus on Transwaste to establish that all the features met by the current design would be equaled or better. To that extent we agree that such a new condition is appropriate in the circumstances of this case.



Landfill stability - CRC 021914

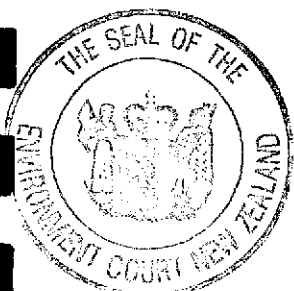
[259] It is now proposed that Table 5.1 of Volume 7, Landfill Engineering Report is incorporated in the condition. We have discussed this table previously relating to factors of safety and this is incorporated in the draft designs which are attached. In our view this sets out a design parameter rather than specifying a design. We agree that this is an appropriate approach and will ensure that the best possible design is adopted, meeting these parameters as minimum requirements. Accordingly this condition is approved by the Court.

*Part II matters**Sections 5, 6 and 7*

[260] In considering the particular issues raised on appeal against the grant of consent, we have reached the conclusion that overall we prefer the applicant's evidence on these issues.

[261] We now consider Part II of the Act as an overall check on the intermediate steps we have reached. There is the danger, particularly in large cases, of the Court becoming overly focussed on the individual issues before it without taking an holistic overview of whether the application advances the core purpose of the Act and sustainable management as that term is defined under section 5. We have therefore concluded that we should now stand back from the case and look at how all of these intermediate decisions integrate into a final decision. In other words, will the application as now framed advance sustainable management as that term is defined in the Act? In that regard there are various community interests which must be represented and enabled while sections 5(2)(a), (b) and (c) are appropriately met.

[262] All of these issues require qualitative judgements to be made by the Court. We have concluded, for example, that this application will safeguard the life-supporting capacity of the air, water, soil and ecosystems provided the various conditions and limitations we have discussed are met. Similarly we consider that a reasonable balance has been met by the applicant in avoiding, remedying or mitigating potential adverse



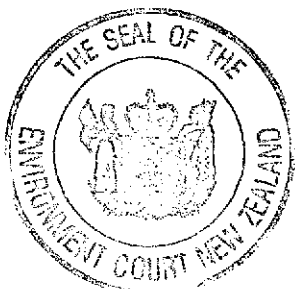
effects on the environment. We are convinced that with the levels of multiple redundancy and conditions imposed, the adverse effects of the landfill will be minimal. Furthermore, looking at the significant benefits in terms of site improvements, we have concluded that overall the effect of allowing this activity would be one of significant benefit to the community in terms of providing a community resource and rehabilitation of indigenous vegetation.

[263] We recognise the concerns of some of the appellants that the site could constitute a "black hole" and may undermine waste minimisation efforts within the region. We are not convinced of this argument because of the particular constraints that are imposed upon the conduct of this activity. It is our conclusion that there are minimal effects of this activity and would assume that alternatives would need to show benefits in environmental terms to warrant differential in cost. It appears to us that these concerns of the appellants are misfounded. They are based on an assumption that a landfill will necessarily create significant adverse effects on the environment. We have concluded that, having regard to the conditions of consent in this case, such effects will not occur.

[264] When we look at matters such as section 6(d) (access to rivers), section 7(c) (maintenance and enhancement and amenity values), and section 7(f) (maintenance and enhancement of the quality of the environment), we have concluded that the conservation management area and in fact the overall integrated development of the site has significant potential for benefits, not only to the immediate area but to the wider region.

[265] We have already discussed in some detail the provisions of section 6(c). The provisions of sections 6(d), 7(aa), 7(b), 7(c), 7(d) and 7(f) all come into consideration in this application. We recognise that there would be some enhancement of public access to and along the river and potentially the coastal marine area, depending on the level of development. Having regard to the uncertainty of the nature of that development for public use however, we cannot give any particular weight to this issue.

[266] In terms of section 7(aa) we note that the provision of the 400 hectare conservation area is likely to advance the stewardship of this area together with the wider public interest in the area and its ecosystems. To that end we must conclude that

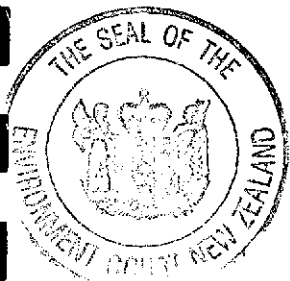


there are advantages in this application for the maintenance and enhancement of the amenity values of this area, particularly by the restoration project and conservation management area. Further we are satisfied that the conditions imposed would avoid, remedy or mitigate any potential effects of the landfill operation on the amenity of the area. It is our view that the intrinsic values of the ecosystems would at least be maintained and, in all probability, significantly enhanced as a result of the restoration project and conservation management area. Although we recognise that Remnant A would be removed, that is a matter where the adverse effect is already permitted and forms part of the permitted baseline.

[267] Overall we consider that the quality of the environment in this area is likely to be significantly enhanced in the long term as the conservation management area is retired from pastoral farming and allowed to return to its more natural ecological state.

[268] The Act has a single purpose of sustainable management where all the matters we have discussed must be integrated to reach a final decision. There is no evidence to convince us that a landfill is not required in the region and we have concluded, that the evidence in favour of this site is overwhelming. With the limitations imposed by the conditions we consider that this application represents an effective integration of the various matters provided for sustainable management.

[269] The object of the Act is to promote sustainable management which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety. We have concluded that the granting of this application would enable the Canterbury region to provide for all of these matters by providing a properly designed landfill. In the end we are not satisfied that the other groups, the Hurunui SNA, Urban Landscapes Group, PBBUA and the CTGTW are not enabled by the granting of this application. We were given no evidence by them regarding social, economic or cultural effects. The only evidence given on potential contamination of the marine environment (health and safety) was not sustained on the evidence. We are satisfied that the natural and physical resources will be maintained by this application to meet the foreseeable needs of future generations. In particular we see the enhancement of the natural elements of the area as a considerable benefit to the local and regional community. Further, we see this application as safeguarding and to a large extent



enhancing the life-supporting capacity of the water, soil and ecosystems in the medium to long term.

[270] Finally we consider that the effects that have been identified can be adequately avoided, remedied or mitigated by appropriate conditions. Accordingly, subject to finalisation of the conditions applicable, we have concluded that a grant is appropriate.

OVERALL OUTCOME

[271] This Court confirms the grant of consent to Transwaste for the proposal as outlined before this Court and largely contained within the various volumes produced with the application. There have however been a number of substantial changes as a result of this case and we have concluded that the design is significantly better, both from a technical and social impact point of view.

[272] We consider that the cases in opposition to this application have been advanced appropriately and with supporting evidence. All the parties constrained the range of their arguments by agreement and evidence advanced was pertinent to the points before the Court. Transwaste has made a number of changes to conditions which we consider deliver a considerably better outcome for the region.

[273] We were aware both prior to this hearing and through the course of the hearing of a sense of frustration by counsel for Transwaste at what was perceived as being unreasonable delays in the processing of the application. Although we do not preclude any applications for costs, we would suggest, in the circumstances, the process has achieved the outcome desired in terms of the Resource Management Act, namely:

- (a) it has been public and participatory. The parties have had a full opportunity to address their concerns before the Court, supported by appropriate expert evidence.
- (b) the majority of the time in this case was occupied with the case for Transwaste and the Councils. There can be no suggestion of inappropriate conduct by counsel in the conduct of their cases or the cross-examination of other witness.

