

Application Reference RC 050268

Applicant Transwaste Canterbury Ltd

Description of Proposal To cancel/change condition 22 of RC020069 which relates to the number of traffic movements to and from the Canterbury Regional Landfill site.

Hearing Monday 19th June, Tuesday 20th June, and Wednesday 21st June 2006, Council Chambers, Amberley

**Decision of Hurunui District Council by Independent Commissioner Milne
(Decision issued on 13 October 2006)**

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PART I: DECISION

Introduction

1. I have been appointed as an independent sole commissioner to make a decision on behalf of the Hurunui District Council. I chaired the original hearing which granted consent for the Canterbury Regional Landfill at Kate Valley. That decision was subsequently confirmed by the Environment Court which made some minor modifications to the conditions of consent. I am a partner in the Wellington law firm of Simpson Grierson practicing environmental law.
2. I apologise to the parties for the delay in issuing this decision. A combination of temporary ill health and other commitments has meant that the decision is some months later than I hoped for. I also note that the process of reviewing the evidence and in particular the original evidence has been very time consuming.
3. I also regret that this decision is lengthy. That is in large part because of the necessity to traverse the rather confusing evidence regarding truck numbers and engage in calculations based on that. I have not attempted to summarise all the evidence before me since that would lead to an even lengthier document. Rather, I will refer to key evidence and submissions where relevant. In adopting this approach I emphasise that I have considered all of the information and submissions put before me and the relevant plan provisions (which I do not discuss here because they do not provide any assistance). I have also turned my mind to the relevant Part II RMA matters but these do not need to be traversed.
4. I appreciate that many readers will not be interested in the legal debate or my reasoning. Accordingly to make their task easier, I have set out my decision starting at page 5 of this report and the reasoning follows. I have also put some material into appendices including at (**Appendix 1**) a chronology and detailed discussion of the evidence relating to truck numbers.

Background

5. In March 2004 a decision by the Environment Court confirmed the grant of resource consents to Transwaste Canterbury Limited to establish a regional landfill at Kate Valley subject to a number of conditions. Two of the consents were from Hurunui District Council (RC 020067 and RC 020069). These consents were in large part identical to those granted by the independent panel except for the modification of a few conditions. There has been a subsequent decision of the Court issuing a declaration relating to the bond requirements. This is not relevant.
6. Consent RC 020067 relates to the upgrading of Mt Cass Road and includes a number of conditions in relation to engineering standards for the road. RC 020069 relates to the establishment and ongoing operation of the landfill. Condition 22 of RC 020069 requires that:

The total number of vehicle movements to or from the site in any seven day period shall not exceed 1090, of which no more than 600 shall be heavy vehicles.

For the purpose of this condition heavy vehicle means a motor vehicle (other than a motor car that is not used, kept or available for the carriage of passengers for hire or reward) in which the gross laden weight exceeds 3500kg but does not include an emergency response vehicle designed solely for that purpose.

This condition was not appealed by Transwaste nor was it the subject of debate at the Environment Court.

7. Transwaste maintains that the condition allows up to 600 HV return movements or 1200 one way trips. It relies upon legal advice to the effect that a literal and grammatical interpretation of the condition means that it allows either 600 HV *movements to or* 600 HV movements *from the site in any seven day period*. Additionally, it relies upon its original evidence at first instance, to endeavour to demonstrate that this interpretation is consistent with what it intended and to suggest that this must have been what the panel intended.
8. The HDC Council officer's interpretation of the condition is that it allows up to 300 return movements of heavy vehicles or 600 one way movements (300 to and 300 from the landfill). In September 2005 it became apparent that there were more than 600 HV movements to or from the landfill. A peak of 310 refuse vehicles per week has occurred and gravel truck movements (up to 145 per week) and leachate and other vehicles take this peak higher. Accordingly, Council officers were of the view that unless the condition was amended, they would be required to take enforcement action. That, and the fact that Transwaste now wishes to increase the number to 700 return movements of refuse vehicles (1400 movements) has led to this application.
9. Normally a dispute as to the meaning of a condition would be resolved by the Environment Court by way of a declaration, or in the course of enforcement proceedings. I have no power to make a binding ruling as to the meaning of the existing condition. However, in this instance the applicant desires that the condition be amended in any event and wishes to use this process as a way of at the same time ending up with a clear condition. It accepts that in order to determine the existing baseline I must endeavour to interpret the existing condition, albeit my views on that will not be authoritative.
10. I note that the applicant's assessment of effects has to some degree proceeded by considering the effects of an additional 100 return movements per week (700-600) rather than 400 return movements (700-300). In contrast, the officers have made their comparison based on a difference of 400 return trips plus additional trips by gravel trucks.

The application

11. The application seeks to change or cancel condition 22. The application indicates that the change or cancellation is required because the site requires additional heavy trips to allow for:
 - Heavy vehicles carrying crushed river metal to the landfill for the liner protection layer.
 - Heavy vehicles carrying waste to the site to service the Canterbury area due to the increasing volumes of waste being generated.
 - Heavy vehicles removing leachate from the site.
12. The applicant's preference is to cancel the condition, however as an alternative, it sought that the condition be amended to read:

"The total number of waste haul vehicles travelling to the site per year shall not exceed 20,350, with no more than 700 per seven day period."

When proffering this condition in closing Transwaste indicated that it would prefer not to have an annual limit, but that if there was such a limit it should allow for a revised worst case waste volume scenario of **406,000** tonnes per year. (Up from the **240,000** most likely scenario the condition was based upon and the 360,000 tonnes referred to in the current application).

13. I note that the annual maximum of 20,350 is well beyond the worst case scenario of 14,618 return trips per year by refuse vehicles as set out in the original application. That is a matter of concern to me, however, for reasons I will come to, I do not consider that this gives rise to a jurisdictional issue.

Officers' recommendations

14. By the close of the hearing, the position of the Council officers was that they opposed the cancellation of the condition but considered that an amendment along the lines proposed by the applicant was acceptable subject to two qualifications. Firstly Ms Batchelor suggested the insertion of a separate condition relating to the hours of operation of gravel trucks (this is opposed by the applicant). Secondly, the officers sought a condition requiring that the additional maintenance costs in respect of Mt Cass Road, associated with the increase in truck numbers be paid by Transwaste. The applicant opposed both of these additions. It argued that the financial contribution was neither necessary nor lawful.

DECISION

15. I am satisfied that a traffic engineer or lay person would understand Condition 22 to refer to *"the total number (the sum of) vehicle movements whether to or from the site"*.
16. This is based on a combination of a literal and grammatical interpretation of the condition, the technical meaning of the terms used and what I think the Commissioners would have understood and intended as a result of the evidence before them. The latter is based on my own analysis of the relevant evidence at the original hearing. (This is discussed later in this decision and set out more fully in Appendix 1.)
17. The consequence of this interpretation is that the condition imposes a limit of 300 return trips a week on heavy vehicles visiting the landfill. For the purposes of my assessment I have proceeded upon the basis that I should compare the effects of what I understand to have been authorised with what is now proposed. That is; the comparison will be between a maximum of 300 return trips by heavy vehicles per week and a maximum of 700 return trips by waste haul vehicles per week.
18. I have concluded that the condition was imposed for the purpose of addressing amenity and potential safety effects of heavy vehicle movements to and from the landfill. I reject the suggestion that the condition was intended to provide a restriction on waste volumes so as to encourage waste minimisation.
19. I have found that it would be inappropriate to cancel the condition. The applicant has not demonstrated that the condition serves no purpose in terms of mitigating adverse environmental or safety effects. The condition was considered by the original Commissioners to be an important mitigation measure, there is no evidential basis on which it should be cancelled.

20. Given my conclusion that the condition is necessary and appropriate, the fact that it may be inconvenient to the applicant or may even possibly limit the applicant's ability to accept all waste from within the Canterbury region, does not provide a basis for cancelling it. The focus of my inquiry must be on what is required in terms of mitigation, not on what Transwaste thinks it may need in the future.
21. What is proposed in terms of annual waste haul vehicle movements past a point on the route is a substantial increase on what was in the original application as a worst case (was 29,236 now proposed as 40,700) (see Appendix 1). The proposed increase in the peak weekly figures to 1400 movements is also a substantial increase over what was **consented** (slightly less than 600 refuse vehicles) and **proposed** (700 refuse vehicles).
22. In this context I certainly understand and share submitters' concerns, that what is now being advanced is at odds with what they understood in 2002 and at odds with what was presented by Transwaste to the Commissioners and in the Environment Court. Notwithstanding that, I have concluded for the reasons discussed later, that the proposed variation is within the scope of section 127. In particular the variation would not result in a fundamentally different activity than what was originally consented, nor would it expand or extend the consented activity or result in materially different adverse effects (at least within the limits which I intend to include in the condition).
23. I am concerned that Transwaste originally presented a case at first instance, which described waste volumes of up to 300,000 tonnes per year as very unlikely, yet within a few years is suggesting that waste volumes of up to 496,000 tonnes per year are possible. While I have no evidence that Transwaste intended to mislead the community, it does at least seem careless for it to have expressed its evidence in such unequivocal terms, if the estimates were as unreliable as they have proven to be. I accept however that this may be the wisdom of hindsight.
24. The fact that the proposed change is outside the scope of what was originally applied for does not give rise to a jurisdictional barrier. Nor is the fact that Transwaste's predictions were significantly wrong, of itself directly relevant. While that is a matter of concern, this is not an application under section 314(1)(e) of the Act which relates to "*material inaccuracies*".
25. I am satisfied that the only environmental effects of relevance (or at least of any potential consequence) arising from the proposed change of condition, are those relating to the effects of heavy vehicles and in particular refuse vehicles.
26. The increased waste volumes now proposed will certainly increase the average number of trucks, the frequency of those and the frequency at which peaks are approached. It is the effects of these changes rather than the changes in waste volumes which are relevant.
27. I have concluded that the increased frequency of the truck movements from that originally proposed and that consented, has the **potential** to cause adverse amenity effects along Mt Cass Road and to a lesser degree along State Highway 1. In the absence of clear evidence to the contrary, I am not able to conclude that those effects are such that they should not be mitigated (no mitigation was proposed by Transwaste).
28. There is also at least a potential for adverse safety effects along the hill stretch of Mt Cass Road leading to the landfill.

29. I have decided that if the weekly peak is to rise from 300 heavy vehicles to a significantly higher number, then it is appropriate to add in a restriction on either average daily return movements or total annual return movements (which are two sides of the same coin). Although the original panel did not consider such a restriction to be necessary, that was in the context of significantly lower weekly peak movements.
30. In practice, in terms of normal day to day amenity, safety and road maintenance issues it is the annual volume and therefore the daily average and average frequency, which is more relevant than the peak.
31. A peak weekly and/or daily figure provides a limit on waste truck numbers and therefore frequency in unusual circumstances but does not address the day to day or average situation. An annual maximum controls the frequency at which peaks (weekly or daily) will be approached. Accordingly, in my view both are desirable unless there is certainty that the averages will not give rise to adverse effects. I am not satisfied that is the case.
32. I have insufficient evidence before me to conclude that the combined amenity, safety and road maintenance effects of the proposed increase in annual refuse truck numbers from an expected 12,000 (or the already occurring 15,000) to 20,350 will be no more than minor. Nor do I have sufficient evidence to show that the proposed peak of 700 return trips (1400 movements) per week is necessary. Firstly, as discussed later, the basis for that number has not been justified. Secondly the waste volumes which it is apparently based upon are not expected to occur until after 2030 if waste minimisation occurs as is intended.
33. I have concluded that an increase in numbers, from an expected peak of 11,415 per year (actual peak of 15,000 in 2004/2005) to 17,500 is unlikely to result in a more than minor increase in the existing adverse amenity effects or cause more than minor safety concerns. This is an increase in average return movements per week from an expected 220 (actual in 2004/2005 = 288) to 336. This will result in average truck movement frequency along Mt Cass Road increasing from the expected, one every 12 minutes (actual 1 every 9 minutes) to one every 7.7 minutes by the time the limit is reached (note that this ignores the difference between the hours of operation on weekdays and weekends). I accept that my rationale for adopting 17,500 as an appropriate limit is fairly arbitrary. However, I am not satisfied that the 20,350 limit proposed by the applicant is appropriate.
34. So far as the peak weekly limit is concerned, I have concluded that the appropriate peak consistent with 17,500 refuse trucks per year should be 450 return trips or 900 movements. This is based upon an average of 336 plus a one third (33%) allowance on top of that (which is the approach which was adopted by the applicant at page 3 of the AEE) plus another 3 on top of that. I note that the basis for this 1/3 allowance was not made clear to me. It may well be on the generous side (as noted earlier the assessment for 240,000 and for 300,000 tonnes had the peak 21% higher than the average whereas I have allowed for 34% over the average).
35. I have based the annual figure upon a waste volume of 350,000 tonnes. This is more than Tonkin and Taylor's estimated highest volume up until 2025 (*upper bound with waste minimisation*). If waste volumes exceed this prior to 2025, or if the addition of Timaru waste appears likely to cause an increase beyond 350,000; then Transwaste will need to apply for a further variation. If this is necessary (and it may not be) this will provide an opportunity for the overall amenity effects and other effects of landfill traffic to be reconsidered. It will incidentally provide an opportunity for Transwaste, Canterbury Waste Services, the community and the Council to

