

**IN THE ENVIRONMENT COURT  
CHRISTCHURCH REGISTRY**

**ENVC 2007-CHC-**

**IN THE MATTER of the Resource Management Act 1991**

**and**

**IN THE MATTER of Appeals pursuant to Clause 14 of the First  
Schedule of the Act**

**BETWEEN TRANSIT NEW ZEALAND C/- Regional Office,  
Christchurch**

**Appellant**

**AND ENVIRONMENT CANTERBURY**

**Respondent**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT**  
**November 2007**

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**TO: The Registrar  
Environment Court  
CHRISTCHURCH**

1. **TRANSIT NEW ZEALAND** (“Appellant”) appeals decisions of Environment Canterbury on the Proposed Canterbury Natural Resources Regional Plan Chapters 1 – 3.
2. Notice of the decisions were received by the Appellant on submissions and further submissions on Chapters 1 – 3 of the Proposed Canterbury Natural Resources Regional Plan on the 1<sup>st</sup> October 2007.
3. The Appeals were determined by a Panel appointed by the Respondent.
4. The decisions the Appellant are appealing are those relating to Chapter 1 – 3 of the Proposed Canterbury Natural Resources Regional Plan. Generally the nature and scope of the submissions focused on the Appellant’s activities associated with discharges to air including excavating road surfaces, maintaining roads and other structures in water bodies and on land. The Appellant’s concern was that some activities were not provided for to enable the Appellant to continue to carry out its business in a way that is socially and environmentally responsible, while practicable and workable.
5. The reasons for Transit New Zealand’s appeal are detailed in A-C below.

A **Industrial or trade premises and processes – Permitted status of discharges to air from road construction and maintenance**

- 5.1.1 Discharges to air from industrial or trade premises and processes are dealt with in Rules 38 – 57 of the Proposed Canterbury Natural Resources Regional Plan.
- 5.1.2 The Appellant has sought clarification on whether a construction site, i.e. for road construction or maintenance purposes is considered an industrial or trade premises, or industrial or trade process, for the purposes of interpreting whether rules would apply. It is the Appellant's position that road construction and maintenance is not covered.
- 5.1.3 In its submission the Appellant requested that either new rules were included to provide discharge to air from road construction and maintenance activities as a permitted activity or that Air Quality Rules 38 – 57 were amended to cover construction and maintenance activities.
- 5.1.4 The Respondent's officer's report prepared in 2004 for the hearing of submissions (officer report No. 9) clarifies that the intention was not to include construction sites within these rules and that it did not apply to road construction and maintenance. An earlier officer report also clarified that the reverse presumption applies to maintenance and construction activities, as they are not included in the definitions of "industrial and trade premises" or "industrial or trade processes". (See officer report No. 7)

5.1.5 Therefore additional rules providing for this activity (road construction and maintenance) were not required as the activity is already permitted and would be subject to the provisions of Section 17 of the Resource Management Act 1991.

5.1.6 The amendments in the decision do go some way to more clearly indicating that the rules do not apply to discharges from road construction and maintenance. However for robustness and a consistent interpretation over the life of the Regional Plan a statement needs to be included that road construction or maintenance is not included in the definition of 'industrial or trade premises and process' and that Rules 38-57 do not apply to road construction and maintenance and that such activities are permitted.

5.1.7 The remedy that the Appellant seeks is set out in the relief section in paragraph 6.1

**B Waste Management Processes – Exclusion of “Clean fill Sites” and “Stockpiling”**

5.1.8 The Appellant's day-to-day maintenance activities require the storage of chipseals and gravel, removal of soil and rock from the road verge as part of managing erosion, and removal of asphalt pavement on occasion as part of its road surface maintenance. Transit New Zealand sought clarification and amendments on how 'clean fill' and 'stockpiling' would be treated in relation to interpreting Rules 63 to 69 in regard to discharges to air from waste management processes, especially in regard to the

definition of existing terms in the Plan and the exclusion of terms.

### Clean fill

5.1.9 The decision under the definition 'waste management' confirms that 'clean fill' is a 'solid waste', therefore falls under the definition of 'landfill'. As such 'clean fill' will be captured by Rule AQL63. Rule AQL63, through condition 2, requires consents for any increase in scale, intensity, frequency or duration of contaminant discharge to air when compared to that activity at notification of the Proposed NRRP. By implication, new spoil sites and increase in spoil site size is a consentable activity.

5.1.10 'Clean fill' activity will be affected by Rules 63 – 69. The Appellant is concerned that this will add significant delay and cost to the Appellant's day-to-day operations. The Appellant's relief in its original submission was that 'clean fills' be excluded from 'waste management' definition and hence Rules 63 – 69. This relief is still requested, however the Appellant consider as an alternative to achieve the same outcome that an exclusion from Condition 2 could also satisfy its original request that 'clean fills' are a permitted activity.

### Stockpiling

5.1.11 The decision concludes that a 'stockpile' of material that is intended to be used (such as that used in road construction) is not 'waste' in terms of the definition, nor would the definition of 'landfill' include

temporary stockpiles of material where the holder has no intention of discarding that material (except where the surplus material is disposed of, then it would be considered a 'landfill'). As such it is assumed Rule 63-69 would not capture 'stockpiling'.

5.1.12 The clarification in the decision goes some way to more clearly indicating that the rules do not apply to 'stockpiling'. However for robustness and a consistent interpretation over the life of the Regional Plan a statement needs to be included that a stockpile of material that is intended to be used for road construction and maintenance is not 'waste'.

5.1.13 The remedy that the Appellant seeks is set out in the relief section in paragraph 6.2

C **Water Blasting and Spraying Structures (Air Quality Rule 51 and 53)**

5.1.14 The Appellant raised in its submission that some conditions in regard to these rules will restrict the maintenance of bridges as many of the rivers adjoin public reserves or amenity areas. Some conditions were not considered reasonable or practicable especially where a bridge or structure is being sprayed or water blasted next to or above a sensitive area. Bridges often share a common boundary with esplanade reserves or public areas. It is the Appellant's position that the Respondent was wrong in its decision as follows: -

### Rule 51 – Water Blasting

5.1.15 As part of regular maintenance work the Appellant often water blasts structures as part of routine maintenance and has introduced water blasting of road surfaces as an alternative to seal burning. Rule 51 provides for the discharge of contaminants from water blasting subject to several conditions being complied with.

5.1.16 While the proposed Rule 51 is supported, the Appellant raised the issue of practicality in complying with Condition 1 under Rule 51 due to the nature of water blasting as a method of removing contaminants.

5.1.17 The Appellant sought the deletion of Conditions 1 under Rule Air Quality 51 which reads:

***“Water Blasting – Permitted Activity***

***1. There shall be no discharge of blast water containing contaminants into surface waters”***

5.1.18 The officer’s report on submissions in August 2004 recommended a change to Condition 1 that excluded blasting of bridges and other fixed structures situated over waterways. The Appellant supported this recommendation in their submissions, however this recommendation has not been carried forward in the decision.

5.1.19 The Appellant seeks the remedy set out in the relief section in paragraph 6.3.1.

### Rule 53 – Small Scale Spray Coating

5.1.20 The Appellant sprays structures as part of routine maintenance. Rule 53 provides for the discharge of contaminants from spray application of paint subject to several conditions being complied with. While the intent of proposed Rule 53 is supported, it is unreasonable to comply with Condition 2 due to the nature of spray coating as a method of removing contaminants and for the reasons identified in paragraph 5.1.4.

5.1.21 In its submissions the Appellant sought the deletion of Condition 2 under Rule Air Quality 53, which reads:

*“2. The discharge shall occur at least 10 metres from any sensitive activity beyond the boundary of the property where the discharge originates”*

5.1.22 The Appellant seeks the remedy set out in the relief section in paragraph 6.3.2.

## **6. The Appellant seeks the following relief: -**

### **6.1 Remedy in relation to Industrial or trade premises and processes – Permitted status of discharges to air from road construction and maintenance**

It is submitted that the following statement be inserted into Section 3.5.9.4 (Explanations and principal reasons for methods – Regional rules for discharges to air from industrial or trade premises and industrial or trade processes): -

*“It is the intention of Air Quality Rules 38 to 57 that they apply only to activities on industrial or trade premises or involving industrial or trade processes. The rules do not apply to road construction and maintenance given the temporary nature of emissions. Roading activities therefore do not require consent, but are subject to the provisions of Section 17 of the Resource Management Act.”*

6.2 Remedy in relation to Waste Management Processes – in regard to the treatment of “clean fill sites” and “Stockpiling”

Clean fill

Either:

Amend the Plan as per the Appellant’s submission and amend the definition of “waste management” to exclude ‘clean fill’ sites; OR

Amend Rule AQL63 by amending condition 2 as follows:

2. *“Except where associated with the storing of clean fill associated with road maintenance and construction activities, there shall be no..... NRRP”*

Stockpiling

It is submitted that the following statement should be inserted into Section 3.5.9.6 (Explanations and principal reasons for methods – Regional rules for discharges of contaminants into air from waste management processes): -

*“A stockpile of material that is intended to be used (such as that used in road construction and maintenance) is not waste. In circumstances where sorted material is surplus and is then to be disposed of then it is appropriate that the material is considered to be waste and such a disposal site would be classified as a ‘landfill’. Stockpiles of material for further use is not considered to be waste”*

6.3 Remedy in relation to Water Blasting and Spraying Structures (Rules Air Quality 51 and 53)

6.3.1 The Appellant seeks that Condition 1 of Rule 51 be deleted or that the wording recommended in Officer Report No. 9 for Condition 1 in August 2004 be adopted as follows: -

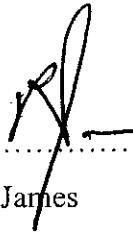
*“Excluding blasting of bridges and other fixed structures situated over waterways, there shall be no discharge of blast water containing contaminants into surface waterways”*

6.3.2 In relation to small-scale spray coating, the Appellant seeks that Condition 2 of Rule 53 be deleted or that it is amended as follows:

*“Excluding spraying of bridges and other fixed structures situated over waterways, the discharge shall occur at least 10 metres from any sensitive activity beyond the boundary of the property where the discharge originates”*

7. The Appellant seeks the following dispensations from the Court: -

- 7.1 That a copy of Appellant's submission does need not be served with the notice of appeal.
- 7.2 That a copy of the decision does not need to be served unless requested by any party served with the notice of appeal.
- 7.3 Attached is a list of names of persons who filed submissions. There are over 2,000 submitters which do not include further submitters. The Appellant seeks a dispensation from the Court of service of the notice on all parties and seeks directions as to which parties should be served. The Appellant seeks a dispensation so that only those submitters who submitted on the Rules subject to this Appeal be served.



.....  
P M James

Signed for the Appellant

Date: 9/11/07.....

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## **Advice to Recipients of Copy of Notice of Appeal**

### *How to become a party to proceedings:*

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court. You may apply to the Environment Court under s 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission, or the decision appealed or the list of persons to be served with this appeal. These documents may be obtained, on request, from the appellant.

### *Advice:*

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.

### **Contact details of Environment Court for lodging documents**

Documents may be lodged with the Environment Court by lodging them with the Registrar.

### **The Christchurch address of the Environment Court is:-**

83 Armagh Street (Corner Durham Street)  
Christchurch

Its postal address is:-  
PO Box 2069  
Christchurch

### **And its telephone and fax numbers are:-**

Telephone: (03) 962 4170  
Fax: (03) 962 4171