Waitai
Coastal-Burwood-Linwood Community Board
ATTACHMENTS - UNDER SEPARATE COVER

Date: Monday 12 May 2025
Time: 4.30 pm
Venue: Boardroom, Corner Beresford and Union Streets, New Brighton

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Memos

Christchurch City Council

Memo

Date: 8 April 2025
From: Mark Stevenson, Head of Planning and Consents
To: Council; Waitai Coastal Burwood Linwood Community Board
Cc: Enter name(s) and title(s)
Reference: 25/688147

Portlink update

1. Purpose of this Memo Te take o tēnei Pānui

1.1 The purpose of this memo is to provide an update on the Portlink site. The site has had significant elected member and local community interest.

1.2 The information in this memo is not confidential and can be made public.

2. Update He Pānui

Background

2.1 The Council interpreted its District Plan as meaning that container stacks are buildings and are subject to the building height limit of 11m within the Portlink industrial area. The landowner and occupier of Portlink disagreed with that interpretation.

2.2 In November 2023 the landowner and occupier sought to resolve the issue of whether the building height limit applied to containers by applying to the Council for a certificate of compliance[1] on the basis that the storage of containers on the site was a permitted activity. Independent Commissioners declined the certificate of compliance application. An enforcement officer then issued abatement notices requiring the container height to be reduced to the maximum permitted height for buildings. The applicants also appealed to the Environment Court in February 2024 against the certificate of compliance decision and against the abatement notices. With the Court's encouragement, the applicants sought a declaration from the Environment Court on interpretation of the District Plan instead of pursuing the appeals.

Environment Court declaration

2.3 The Portlink site landowner and operator sought Declarations from the Environment Court to resolve ambiguity in the District Plan of whether container storage is subject to the District Plan rules for buildings, including the maximum permitted height.

2.4 The Court issued an interim decision on 18 December and its final decision on 21 March 2025 (both are attached with the interim decision providing reasoning for the declaration).

2.5 The Court's decision is that the current activity on the site is not the storage of buildings. The effect of the Court's Declaration is that the temporary storage of containers on this site, in the manner currently undertaken, is not subject to the maximum height rule in the District Plan for "buildings" and is therefore a permitted activity regardless of the maximum height.

[1] A certificate of compliance is a document to confirm that an activity is permitted under the District Plan.

2.6 The crucial parts of the Court's reasoning in the Decision are:

1. Shipping containers on a site could be within the definition of building, depending on whether, and why, they are "fixed to the land" on the site

2. On the facts of the use of the Portlink site, the temporary storage of empty shipping containers, either individually or in a stack on the site in question is not a 'building' as defined in the Christchurch District Plan.

2.7 This is on a factual basis that the shipping containers being stored on this site:

a. are not tied or fixed to each other nor to the ground;

b. are transferrable around the site at short notice;

c. are articles of transport equipment specifically designed to facilitate the transport of goods;

d. are not stored permanently on the site and are part of a supply chain network awaiting the next assignment;

e. are changeable in their configuration and height, and in a constant state of flux;

f. are reshuffled and reordered several times while on site.

3. Shipping containers on the site in question are 'transitioning shipping containers' for the purpose of permitted activity rule 5.4.1.1 P16 of the District Plan.

a. Rule 5.4.1.1 provides for "Outdoor Storage of transiting shipping containers in commercial and industrial zones" as a permitted activity within the flood management area.

2.8 Parties can appeal the Environment Court decision only if the Court made an error of law. There is no legal error in how the Court came to its decision. Point 1 above was a legal point, and it agreed with the Council's position. Point 2 was a factual determination on applying the law to the facts. That cannot be appealed. On this basis, staff have determined that there is no basis for an appeal of the Court's judgement.

2.9 The Court has closed its file without awarding costs to applicants. That is because the parties acted reasonably in seeking a resolution of the issue.

2.10 The appeals and the abatement notices have now been withdrawn because the Declaration has determined the issues.

Resource consent compliance

2.11 In February 2024, the landowner obtained resource consents for a three-lot subdivision, earthworks and industrial activities on the site. The initial application sought to enable the stacking of shipping containers beyond the 11 m height limit. However, the applicant withdrew this aspect of the application on the basis that no consent was required for that activity.

2.12 The Council's Independent Commissioner who granted that resource consent nevertheless imposed various conditions relating to the shipping containers. Braeburn objected to these conditions on the basis that they were outside the scope of the application. Council subsequently appointed another Independent Commissioner to hear and decide on the Objection.

2.13 The Commissioner decided that no specific activities were included within the application that gave rise to noise, or height effects that required management through consent conditions, and that the conditions relating to height and noise therefore did not reasonably relate to the

activity for which consent was sought. The noise and height conditions were therefore deleted from the resource consent except for a noise management plan condition that the applicant offered (see attached the Resource consent conditions incl. those that were struck out).

2.14 The resource consent, as amended following the objection, has conditions pertaining to

a. Landscaping

b. Noise Management (through submitting a noise management plan)

c. A limit on the height of containers to 5.8m within the area defined for green space.

2.15 Staff are monitoring compliance with the resource consent conditions and note the following:

a. Acoustic fencing on the bund has been constructed with the fence to be painted recessive colours with a light reflectivity.

b. Landscaping cannot be established until a permit has been obtained from the Department of Conservation for the disturbance of lizard habitat (unless it is found that there is no lizards) and a Landscape plan has been submitted and approved by Council. Council has yet to receive the landscaping plan for approval.

2.16 Council staff are also progressing a change to the District Plan to better address issues that have arisen where industrial zones interface with residential zones. Updates on that process will be provided separately as it progresses.

Attachments Ngā Tāpirihanga

No.	Title	Reference
A	Resource consent conditions	25/688575
B	Interim decision of Environment Court 18 December 2024	25/698366
C	Final decision of Environment Court 21 March 2025	25/698367

Signatories Ngā Kaiwaitohu

Authors	Mark Stevenson - Acting Head of Planning & Consents Brent Pizzey - Senior Legal Counsel Francis White - Senior Planner Rachel Wilson - Senior Adaptation Advisor Craig Jorgensen - Team Leader RMA Compliance
Approved By	John Higgins - General Manager Strategy, Planning & Regulatory Services

Conditions for RMA 2022/3611 as amended by Objection RMA 2024/517:

Land Use conditions 6, 8-20 & 22 and Subdivision Conditions 2.3, 2.4, 4.2, 5.1, 5.3, 5.5, 7.1, 13.1, 16.1 are deleted (shown as ~~strikethrough~~) and/or amended (shown as **bold text**) as follows:

LAND USE CONSENT

1. The development shall proceed in accordance with the information and plans submitted with the application. The application document is referenced in Council records TRIM*23/1557447.* The stamped approved plans are referenced in Council records TRIM 23/2103395 (12 Pages).

2. All earthworks associated with the creation and formation of the subdivision shall be carried out in accordance with the conditions of subdivision consent.

Landscaping – Lot 1 – Northern Landscaping Area

3. Except where otherwise required by other conditions of this consent, the proposed landscaping shall be established in accordance with the landscape plans dated 22/09/2023, prepared by DCM Urban Design Limited, forming pages 2-11 in the Stamped Approved Plans.

4. Prior to landscaping works commencing onsite, a Landscape plan and an accompanying Design Report shall be submitted for acceptance to the Landscape Approval Team (Email:landscapeapproval@ccc.govt.nz). The purpose of the landscape plan is to achieve lizard friendly habitat and to fully screen the activity within Lot 1 along the northern bund.

   The detail of the landscaping shall include but not be limited to:

   - ...From the footpath expansion to the top of the bund, the rank grass shall be retained. Any woody species (including but not limited to gorse, broom, lupin, and blackberry) and Tasmanian Ngaio in this area shall be removed.
   - ...The 2.4 m high acoustic fence shall be established within Lot 1 and be finished in a recessive colour.
   - The planting strip within Lot 1 (from the acoustic fencing to the 2.4m high Chain Link Fence) shall include tree and shrub planting that reaches a mature height of approximately 16 metres and a canopy width that does not cause excessive shading over the acoustic fence or require excessive clearance over the existing chain link fence. The planting shall comprise locally eco-sourced indigenous trees, shrubs and plants reflect the Wet Plains: TŌTARA – bellbird – mataī, older plains ecosystem list from Christchurch Ecosystems (lucas-associates.co.nz).

   Note: The Landscape Approval Team will consult with Council waterways ecologist and herpetologist in the acceptance of the plan.

5. The landscape approvals team will either certify the landscape plan and design report as achieving the purposes of condition 4, or refuse to certify it, within 10 working days of receipt.

   Advice note: Should the Landscape Approvals Team refuse to certify the landscaping plan, then they shall provide a letter outlining why certification is refused based on the parameters contained in these conditions. In the case that the landscaping plan is refused, the subsequent certification process shall follow the same procedure and requirements as outlined in Condition 4.

Note: This process can align with the subdivision landscaping requirements outlined in Condition 8.

~~6. The proposed landscaping shall be established on site within the first planting season (extending from 1 April to 31 August) following the issue of the consent.~~

6. The proposed landscaping shall be established on site within the first planting season (extending from 1 April to 31 August) following the DOC permit approval.

7. All landscaping required for this consent shall be maintained. Any dead, diseased, or damaged landscaping shall be replaced by the consent holder within the following planting season (extending from 1 April to 31 August) with a similar species. Maintenance includes the removal of woody weeds.

~~**Noise & Operational Management Plan – Relevant to Yards 3 and 4 of the application site**~~

~~8. Except when the noise barrier is being changed in accordance with condition 11, the Consent Holder shall ensure that all activities on the site do not exceed the following noise limits at any point within a residential zone:~~

~~0700 – 2200 hours: 50 dB LAeq (5 min)~~

~~At all other times: 40 dB LAeq (5 min) and 65 dB LAFmax~~

~~9. No hoist or truck activities, or container repair / cleaning activity shall take place during night time hours as defined in the District Plan (2200-0700 hours).~~

~~10. A noise barrier shall be erected along the northern sealed edge of the site. The noise barrier shall comprise a continuous stack of containers adjacent to, but outside of, the Portlink Outline Development Plan Landscape and Stormwater Area (Green Space) for the length of the edge of the seal with space for access at the end of these lengths. The barrier shall be a minimum of four containers high except north-west of the central truck path where it shall be a minimum of three containers high. Gaps between containers in the noise barrier shall be no wider than 1 m.~~

~~Any containers behind the noise barrier must not be closer to the boundary than the ends of the noise barrier.~~


Bund & Acoustic fence location
Central Footpath
Edge of Jetty

11. The noise barrier shall be changed no more than five times in any calendar year. A change in the barrier includes any movement of a container located within the noise barrier. The consent holder is responsible for recording the number of times the noise barrier is altered and shall make the information available on Council's request. Records must be kept for a minimum of 12 months.

    When the noise barrier is changed, the barrier shall immediately be rebuilt (within the same day). Any moving of containers that are part of the barrier shall only occur between 0900 h and 1500 h Monday to Friday.

12. The consent holder shall establish a maintenance schedule for the acoustic fence (located within the Portlink Outline Development Plan Landscape and Stormwater Area (Green Space)) and sealed surfaces on the site to ensure that noise and vibration effects are managed.

13. A maximum of two hoists shall operate at any time to manage noise levels.

14. The activity shall be managed by a noise management plan (NMP) to achieve Condition 8-13 above.

15. The Consent Holder shall submit a Noise Management Plan (NMP) prepared by a suitably qualified and experienced acoustic engineer for certification by the Resource Consents Manager (via email to rcmon@ccc.govt.nz) within 3 months of the commencement of this consent. The NMP shall address the following as a minimum:
    a. Person responsible for NMP implementation.
    b. Training of staff regarding the relevant noise standards that apply.
    c. Education and training of staff and non staff/contractors to manage noise and vibration.
    d. Activity risk analysis for noise generation
    e. Method for recording and handling complaints.
    f. Maintenance schedules and reporting outlined in Conditions 11-12.
    g. Non-compliance contingency measures.

16. This NMP is to be assessed for certification by the Resource Consents Manager (or their nominee) as to whether it complies with Condition 15. If certified, the NMP will thereafter form part of the Approved Consent Document.

NOTE: The Resource Consents Manager will either certify, or state that the NMP does not comply with
condition 15, within 20 working days of receipt. Should the Resource Consents Manager consider that the
NMP does not comply with these conditions, then they shall provide a letter describing their assessment of
non compliance.

17. Should the Resource Consents Manager not certify the NMP, the Consent Holder shall submit a revised NMP to the Resource Consents Manager for certification within 20 working days. The certification process shall follow the same procedure and requirements as outlined in Conditions 15-16 including timing.

~~18. The NMP may be amended at any time by the Consent Holder. If the activity is altered on the site, an updated management plan shall be submitted to Council. Any amendments to the NMP shall be submitted by the consent holder to the Resource Consents Manager for certification as outlined in Conditions 15-17 including timing. Any amendments to the NMP shall be:~~

~~a) for the purposes of improving the measures outlined in the NMP for achieving the NMP purpose (see condition 15);~~

~~b) consistent with the conditions of this resource consent; and~~

~~c) prepared by an appropriately qualified and experienced acoustic engineer.~~

~~If the amended NMP is certified, it becomes the certified NMP for the purposes of Condition 15 and will thereafter form part of the Approved Consent Document.~~

~~19. A copy of the approved NMP shall be kept on the premises at all times.~~

~~20. Pursuant to Section 128 of the Resource Management Act 1991, the Council may serve notice on the consent holder of its intention to review, in whole or in part, conditions 1-19, in order to deal with any adverse effect on the environment which may arise from the exercise of this consent and which it is appropriate to deal with at a later time.~~

8. The consent holder shall request that Specialised Container Services Limited (the current lessee in the northern part of the site operating a shipping container depot) submit a noise management plan prepared by a suitably qualified and experienced acoustic engineer to Council that addresses:

- **a. Measures to manage noise on site.**
- **b. The person(s) responsible for implementation of the noise management plan.**
- **c. Training of staff regarding the relevant District Plan noise standards.**
- **d. Education and training of staff and non-staff/contractors to manage noise.**
- **e. Activity risk analysis for noise generation.**
- **f. The method for recording and handling complaints.**
- **g. The process for reviewing and amending the noise management plan.**

Advice Note:

For the avoidance of doubt, this condition has been provided on an Augier basis and further to s108AA(1)(a) of the RMA.

Containers within the Portlink Outline Development Plan Landscape and Stormwater Area (Green Space)

21. Any shipping containers and or buildings within the Portlink Outline Development Landscape and Stormwater Area (Green Space) shall be limited to a maximum height of 5.8 metres from the sealed ground level of the site.

~~22 - Any shipping containers and or buildings within the Portlink Outline Development Plan Area 11m height overlay shall be limited to 11m from the sealed ground level of site.~~

22. Building height shall be measured from the sealed ground level of the site within the '11m Building Height Limit Area' shown on the Portlink Industrial Park Outline Development Plan at Appendix 16.8.3i of the District Plan.

Note: the remainder of the site outside of areas described conditions 21 and 22 have no height restriction.

Water Supply for Firefighting – Activity

23. The consent holder shall provide evidence to Council (by email rcmon@ccc.govt.nz) that Fire and Emergency New Zealand has accepted the proposed firefighting water supply is in accordance with the alternative firefighting water sources provisions in SNZ PAS 4509:2008.

SUBDIVISION CONSENT

1.1 General Survey Plan
The survey plan, when submitted to Council for certification, is to be substantially in accordance with the stamped approved application plan.

1.2 Amalgamations
The following amalgamation condition has been approved by Land Information New Zealand. The condition is to be included in the digital Title Plan dataset.

That Lots 2 and 3 hereon be held in the same record of title.

See Request 1832545

1.3. Allotment to Vest Local Purpose (Esplanade) Reserve Lots
Lots 2 and 3 are to be vested as Local Purpose (Utility) Reserve.

Advice Note - A Local Purpose (Esplanade) Reserve, including any landscape improvements, shall hold no credits towards the final Reserve Development Contributions Assessment

Advice note - Any underground infrastructure across land to be vested as Reserve will require an easement application in compliance with s239, prior to the issuing of s224 certificate.

1.4 Service Easements
If any service easements are required to protect services crossing other lots shall be duly granted or reserved.

Easements over adjoining land or in favour of adjoining land are to be shown in a schedule on the Land Transfer Plan. A solicitor's undertaking will be required to ensure that the easements are created on deposit of the plan.

1.5 Easements over Reserves (Local Purpose Reserves)
Easements over land that is to vest in the Council as local purpose reserve are to be shown on the survey plan in a Schedule of Easements. A solicitors undertaking shall be provided to ensure that the easement is registered on the subject reserve at the time title is created. A section 223 certificate will not issue until such time as a section 239 certificate is obtained from Council.

Advice note: Council does not issue s239 approval for recreation reserves.

1.6 Existing easements under reserve to vest
If the Council requires the retention of existing easements over land that is to vest in the Council as Local Purpose Reserve a certificate pursuant to Section 239(2) of the Resource Management Act 1991 will be required to be obtained.

Advice note: Council does not issue s239 approval for recreation reserves.

1.7 Public Utility Sites
Any public utility site and associated rights of way easements and/or service easements required by a network operator are approved provided that they are not within any reserves to vest in the Council.

1.8 Plans for Geodata
The surveyor is to forward a copy of the title plan and survey plan to the Subdivision Planner (that issued the consent), Resource Consents Unit as soon as the plan has been lodged (or earlier if possible) for checking at Land Information New Zealand for entering into the Council GIS system.

2. Quality Assurance

2.1 Asset Design and Construction

All infrastructure assets to be vested in the Council are to be designed and constructed in accordance with the Christchurch City Council's Infrastructure Design Standard (IDS) and the Construction Standard Specifications (CSS).

Advice note - Any underground infrastructure across land to be vested as future local purpose Utility Reserve will require an easement application in compliance with s239, prior to the issuing of s224 certificate.

2.2 Quality Assurance

The design and construction of all assets shall be subject to a project quality system in accordance with Part 3: Quality Assurance of the IDS.

Prior to the commencement of physical works on site, the Consent Holder shall submit to the Planning Team – Subdivision Engineers a Design Report, plans and Design Certificate complying with clause 3.3.2 of the IDS, for review and acceptance under clause 2.10 of the IDS 2022. The Design Report and engineering plans shall provide sufficient detail to confirm compliance with the requirements of the IDS and this consent, including compliance with Condition 2.1 Asset Design and Construction.

Prior to the commencement of physical works on site, the Consent Holder shall submit to the Planning Team – Subdivision Engineers a Contract Quality Plan and the Engineer's Review Certificate, complying with clause 3.3.3 of the IDS, for review and acceptance by Council under Clause 2.11 of the IDS 2022.

Prior to the issue of certification pursuant to section 224 of the Resource Management Act 1991 (as part of the future subdivision consenting stage), the Consent Holder shall submit to the Planning Team - Subdivision Engineers an Engineer's Report and an Engineer's Completion Certificate complying with clause 3.3.4 of the IDS, for review and acceptance under clause 2.12 of the IDS 2022. The Engineer's Report shall provide sufficient detail to confirm compliance with the requirements of the IDS and this consent, including compliance with consent conditions requiring mitigation measures with respect to any liquefaction and lateral spread hazards.

Advice note: Part 3 of the IDS sets out the Council's requirements for Quality Assurance. It provides a quality framework within which all assets must be designed and constructed. It also sets out the process for reporting to Council how the works are to be controlled, tested and inspected in order to prove compliance with the relevant standards. It is a requirement of this part of the IDS that the Consent Holder provides certification for design and construction as a prerequisite for the release of the section 224(c) certificate.

Any reference to 'Engineering Acceptance' under further conditions of consent refers to the process set out above.

All liquefaction hazard and lateral spread mitigation on site shall be designed in accordance with the recommendations in the Engeo Geotechnical Wetland Assessment, Reference 17065.000.000_09 dated 13 December 2021.

All infrastructural assets to be vested in the Council shall be designed and constructed in accordance with the Infrastructure Design Standard (IDS) 2022 and the Construction Standard Specifications (CSS).

Asset structures shall include but not be limited to gravity and pressure pipelines, manholes, chambers, valves, hydrants, stormwater treatment devices, culverts or any other physical asset to be vested in Council including road pavements. Bridges and pump stations shall be designed to importance level 3 (IL3) as defined in NZS 1170.

In addition to the above, to be considered suitable in terms of section 106(1A)(a) and (b) of the Resource Management Act, all proposed infrastructure shall be designed to resist the effects associated with earthquake induced liquefiable soils and lateral spread from a seismic event as defined in condition above.

To mitigate liquefaction (vertical settlement) hazards and lateral spread (horizontal displacement), any proposed asset structures shall be designed for a seismic event with a 25 year return period under the serviceability limit state (SLS) event and with a 500 year return period for the ultimate limit state (ULS) event as defined by NZS 1170.5:2004.

Beyond a SLS seismic event, it is recognised asset structures may become progressively less serviceable

Advice note: The quality assurance may need to be recertified against the future subdivision consent

~~2.3 Traffic Management~~

~~The proposed landscaping shall be established on site within the first planting season (extending from 1 April to 31 August) following the DOC permit approval.~~

2.4 Laterals for Lot 1

All private stormwater laterals (serving Lot 1) shall be installed under a single global Building Consent or Building Act Exemption by a Licensed Certifying Drain Layer and the compliance documents forwarded to Council's Subdivision Team as part of the Section 224c application.

If approved under a building consent, passed 252 (FS and SW drains) mandatory building inspections pursuant to the Building Code and the Code Compliance Certificate is required prior to the issue of the s224 Certificate.

If approved under a Building Act Exemption, a PS3 form and as-builts will be required to be provided and accepted prior to the issue of the s224 Certificate.

2.5 CCTV Inspections

Pipeline CCTV inspections are to be carried out on all gravity pipelines to be vested in compliance with the Council Standard Specifications (CSS): https://www.ccc.govt.nz/consents-and-licences/construction-requirements/construction-standard-specifications/pipeline-cctv-inspections/

2.6 Services As-Built Requirements

As-Built plans and data shall be provided for all above and below ground infrastructure and private work in compliance with the Infrastructure Design Standards (IDS): https://www.ccc.govt.nz/consents-and-licences/construction-requirements/infrastructure-design-standards/as-built-survey-and-data-requirements/

Advice Note: this includes RAMM and costing data (GST)

As-Built Plans are to be provided for any easements in gross over pipelines. The plans are to show the position of the pipelines relative to the easements and boundaries.

2.7 *As-Builts (Reserves and Street Trees)*

The Consent Holder shall submit As-Built plans for any landscape improvements on land to be vested as reserve and for any street trees, in accordance with IDS, Part 12 As-Builts records once the trees are planted.

Advice note: The as-builts can be supplied post s224 certifications on the provision of a 100% bond.

Earthworks

2.8.1 All filling and excavation (including vegetation clearance) work shall be carried out in accordance with Environmental Management Plan (EMP) which shall include an Erosion and Sediment Control Plan (ESCP). Unless approved as part of a separate ECan resource consent for stormwater discharge or ECan resource consent for excavation/filling the EMP will require formal acceptance by Christchurch City Council's Subdivision Engineer and three water quality assurance officer (via email to rcmon@ccc.govt.nz) prior to any work starting on site.

The EMP shall be designed by a suitably qualified person and a design certificate (Appendix IV in IDS Part 3) supplied with the EMP for acceptance at least 5 working days prior to the works commencing. The best practice principles, techniques, inspections and monitoring for erosion and sediment control shall be based on ECan's Erosion and Sediment Control Toolbox for Canterbury http://esccanterbury.co.nz/.

2.8.2 The EMP shall include (but is not limited to):

- The identification of environmental risks including erosion, sediment and dust control, spills, wastewater overflows, dewatering, and excavation and disposal of material from contaminated sites;
- A site description, i.e. topography, vegetation, soils, etc;
- Details of proposed activities;
- A locality map;
- Drawings showing the site, type and location of sediment control measures, on-site catchment boundaries and off-site sources of runoff;
- Mechanisms to avoid sedimentation, inappropriate run off and unauthorised discharge into the waterway
- Drawings and specifications showing the positions of all proposed mitigation areas with supporting calculations if appropriate;
- Stabilised entrance/exit and any haul roads;
- Site laydown and stockpile location(s) and controls;
- Drawings showing the protection of natural assets and habitats;
- A programme of works including a proposed timeframe and completion date;
- Emergency response and contingency management;
- Procedures for compliance with resource consents and permitted activities;
- Environmental monitoring and auditing, including frequency;
- Corrective action, reporting on solutions and update of the EMP;
- Procedures for training and supervising staff in relation to environmental issues;
- Contact details of key personnel responsible for environmental management and compliance.

Note: IDS clause 3.8.2 contains further detail on Environmental Management Plans.

Advice Note:
Any changes to the accepted EMP must be submitted to the Council in writing following consultation with the Council's Subdivision Engineer. The changes must be accepted by the Subdivision Engineer prior to implementation.

2.8.3 The accepted EMP referred to in condition 2.8.1 shall be implemented on site over the entire construction phase. No earthworks shall commence on site until:

a. All measures required by the EMP, including the associated ESCP, have been installed;

b. An Engineering Completion Certificate (Appendix VII in IDS Part 3), signed by an appropriately qualified and experienced engineer, has been submitted to the Council.

This is to certify that the erosion and sediment control measures have been properly installed in accordance with the accepted EMP;

c. The Council has been notified (via email to rcmon@ccc.govt.nz) no less than 3 working days prior to work commencing, of the earthworks start date and the name and details of the site supervisor.

d. The contractor has received a copy of all resource consents and relevant permitted activity rules controlling this work.

2.8.4 Run-off must be controlled to prevent muddy water flowing, or earth slipping, onto neighbouring properties, legal road (including kerb and channel), or into a river, stream, drain or wetland. Sediment, earth or debris must not fall or collect on land beyond the site or enter the Council's stormwater system. All muddy water must be treated, using at a minimum the erosion and sediment control measures detailed in the site specific Erosion and Sediment Control Plan, prior to discharge to the Council's stormwater system.

Note: For the purpose of this condition muddy water is defined as water with a total suspended solid (TSS) content greater than 50mg/L.

2.8.5 The ESCP measures shall be maintained over the period of the construction phase, until the site is stabilised (i.e. no longer producing dust or water-borne sediment). The ESCP shall be improved if initial and/or standard measures are found to be inadequate. All disturbed surfaces shall be adequately topsoiled **and** vegetated or otherwise stabilised as soon as possible to limit sediment mobilisation.

2.8.6 Dust emissions shall be appropriately managed within the boundary of the property in compliance with the *Regional Air Plan*. Dust mitigation measures such as water carts, sprinklers or polymers shall be used on any exposed areas. The roads to and from the site, and the site entrance and exit, must remain tidy and free of dust and dirt at all times.

2.8.7 Any fill and topsoil placed to the haul road, in the area shaded yellow in the Design Final Contours & Bund Plan Rev 1 (page 92 TRIM 22/1718272), shall be shaped to drain generally from the lot boundary to the river. This area shall not be generally filled to a level higher than that on the existing lot boundaries.

2.8.8 Crushed concrete shall not be placed in the proposed esplanade reserve outside of the northern bund.

2.8.9 The Northern bund shall be retained at a maximum fill batter angle of one vertical to two horizontal and shall be planted and all other filled areas shall not exceed a of one vertical to four horizontal. All planted areas on the bunds must be designed and constructed in association with the site and geotechnical conditions to ensure that the soil quality, volume, depth and drainage will be appropriate for successful tree/plant establishment and long term growth and development. Where insufficient soil is present imported first class unscreened topsoil shall be installed as specified in the CSS Part 1, clause 38 Topsoil, Part 2, clause 9 Topsoil Placement, Part 7, 6.6 Tree Pit, with a minimum of 300mm depth of topsoil at the edges of the bund where low planting is to be established.

2.8.10 All construction debris and rubbish shall be removed from the future and existing esplanade reserve.

2.8.11 Existing vegetation shall be protected during earthworks, in accordance with IDS, Part 10.4.2 Existing vegetation.

2.8.12 Any change in ground levels shall not cause a ponding or drainage nuisance to neighbouring properties.

2.8.13 At the completion of the work an Earthfill report, including an Engineer's Completion Certificate complying with clause 3.3.4 of the IDS, shall be submitted to the Council at rcmon@ccc.govt.nz so that the information can be placed on the property record. This report shall detail depths, materials, compaction test results and include as-built plans showing the location and finished surface level of the fill and bunds.

3. Geotechnical

3.1 Geotechnical and Low Pressure Sewer Design
Any ground remediation on the site, provided to geotechnically strengthen the land to withstand seismic events, shall be preserved intact for at least 2m from future wall alignments. The strengthening may include layers of geotextile fabric and geogrids integral to the foundation systems for any buildings requiring foundations. Any deep service trenches or pump unit installations, which require excavation through the strengthening, must be installed further than of 2m from any wall and on the road side of the building.

Advice Note: Condition 3.1 is an ongoing condition of Consent for which a consent notice pursuant to s221 of the Resource Management Act will be issued.

4. Water Supply

4.1 The Point of Supply for this site shall be the existing DN250 PE100 water main in Kennaway Road. The connection to Council's pressurized water supply network shall have a backflow prevention device which will be a high hazard device (reduced pressure zone device). The water connection will not be installed until the Council has received confirmation from the applicant that the approved backflow prevention device has been installed. The backflow prevention device is to be installed inside the boundary in private property at the point of supply as close as practical to the water meter.

Advice note: *Detailed information about Backflow prevention can be found on the Council website. To change the hazard rating, the property ownewr can request the Council review the hazard rating at their premises. Alternatively, the property owner may provide the Council with a report from a suitably qualified person advising of the risk category for the property. Water mains shall be extended along the full length of roads to vest and be terminated with temporary hydrants as per the requirements of the Infrastructure Design Standard.* r.

4.2 ~~The internal water network will be a private network designed as a full high pressure water reticulation network and in accordance with the NZ Fire Service Fire Fighting Water Supplies Code of Practice NZ4509: 2008 by a suitably qualified person using the supply pressures for the future Rocky Water Supply Zone as documented in "Christchurch City Council Water Supply Rezoning: Final WS Rezone Source and Sprinkler Design Pressures" and will be installed by a Licensed Certified Plumber under a Building Consent or Building Act Exemption.~~

Lot 1.

5. Sewer

5.1 **Lot 1** shall be serviced by a private Local Pressure Sewer Unit.

5.2 The Approved Sanitary Sewer Outfall for this site shall be the existing DN90 PE100 local pressure sewer main in Kennaway Road.

5.3 **Lot 1** shall have a Boundary Kit located within the Right of Way outside the boundary of the lot. The pressure lateral from the Boundary Kit is to extend at least 600mm into the net site of **lot 1**.

5.4 Properties in a Right of Way shall be serviced by a single private pressure main. An isolation valve shall be installed on the private pressure main at the boundary of the Right of Way and the public road. Private easements shall be created over Pressure Sewer Systems in private Rights of Way. The pressure system in the private Right of Way shall be installed by a trade-qualified drainlayer at building consent stage in accordance with the Requirements for Local Pressure Sewer Units specified under a Building Consent.

5.5 The following conditions shall be recorded pursuant to Section 221 of the RMA in a consent notice registered on the **title of Lot 1:**

▪ **Lot 1** shall be served by a local pressure sewer unit comprising a pump and storage chamber which
can accommodate at least 24 hours average dry weather flow to be supplied by Aquatec, EcoFlow or
similar.

▪ The property owner shall retain ownership of the local pressure sewer unit complete with pump,
chamber and control equipment. The property owner will be responsible for the operation and
maintenance of the complete system.

Advice Note: This is an on-going condition and a consent notice will be issued under section 221 of the Act at the time of section 224(c) certificate.

6. Access Construction Standards

6.1 The access formation shall be designed and constructed in accordance with the CCC Infrastructure Design Standard. Physical works shall not commence until a Council engineering officer confirms that the Design Report, Plans and Design Certificate complying with clause 3.3.1 of the IDS and the Contract Quality Plan and Engineer's Review Certificate complying with clause 3.3.2 has been received and accepted by Council.

~~7.1 Traffic Safety Audit~~

~~The applicant shall provide traffic safety audits undertaken by a suitable qualified independent traffic engineer at the works completion (post construction).~~

8. Greenspace

8.1 Reserve Landscape Plans

8.1.1 Landscape Plans and an accompanying Design Report for Reserves (Lots 2 and 3) are to be submitted to the Technical Design Services and CCC Ecologists (Landscape Architecture and Environment Team at landscape.approval@ccc.govt.nz) for acceptance.

Note: Council Ecologists will assist with the acceptance process of the landscaping plans.

8.1.2 The Landscape Plans and Design Report are to provide sufficient detail to confirm compliance with the requirements of the IDS, the CSS, and the WWDG (current versions).: All landscaping required by this condition is to be carried out in accordance with the accepted plan(s) at the Consent Holder’s expense, unless otherwise agreed. All

Landscaping shall be in general accordance with approved plans pages 2 to 11 and shall include requirements in conditions 9.

8.1.3 Prior to Council's practical completion inspection and acceptance, the consent holder shall submit (to the Landscape Architecture and Environment Team at landscape.approval@ccc.govt.nz) all required completion documentation in accordance with IDS 10.3.4 Engineer's Report and the Quality Assurance System, to provide evidence that the work is completed in accordance with the accepted plans, the IDS, CSS and WWDG (current versions), and the conditions of consent.

8.1.4 The Consent Holder shall maintain all landscape assets on Reserve Lots 2 and 3 to the standards specified in the CSS (current version) for the **24 months** Establishment Period (Defects Liability), from the date of Council's practical completion acceptance until a final inspection and acceptance of the landscaping by Council. Acceptance shall be based upon the criteria outlined in the CSS, Part 7 Landscapes (current version).

8.1.5 The Consent Holder is to maintain an accurate and up-to-date monthly report on the condition of the landscape assets and the works undertaken during the Establishment Period. The report shall be submitted to the Landscape Architecture and Environment Team at landscape.approval@ccc.govt.nz) within five days of the end of each month during the Establishment Period. (Refer sample report: *Landscape Construction Monthly Establishment Report,* CSS, Part 7 Landscape (current version).

8.1.6 The Consent Holder shall enter into a separate bond with Council to the value of 50% of the cost to replace and establish all plants, trees and turf on reserves. The bond shall be held for the Establishment Period of a minimum of **24 months** and shall be extended by a further **12 - 24 months** for the replacement planting(s), as required. The bond shall be released after the landscape assets have been inspected and accepted by Council at final completion / handover.
Advice note: Where works have not obtained practical completion acceptance by Council prior to the issuing of the Section 224(c) certificate, the value of the bond will be 100% of the cost of all landscape improvements.

8.1.7 Any replacement plantings and extended establishment period required due to plants, trees and turf not being accepted are to be carried out at the Consent Holder's expense.

8.2 Final Completion / Handover (Reserves and Streetscapes)
Prior to Council's final completion inspection and acceptance of the assets at the end of the 24 month Establishment Period, the Consent Holder shall submit all required completion documentation in accordance with IDS Part 2:2.12 Completion of Land Development Works and the Quality Assurance System, to provide evidence that the work has been completed and maintained in accordance with the agreed standards and conditions of this consent.. Where it is not possible to determine the condition of the assets due to seasonal constraints (e.g. trees not being in full leaf) then the final inspection and final completion may be delayed until the condition of the assets can be accurately determined.

The final inspection shall include a site visit by Council Ecologists to provide confirmation of implementation of the approved landscaping plan.

9. Esplanade Reserve and Ecology

9.1 Except where otherwise required by other conditions of this consent, the proposed landscaping shall be established in general accordance with the landscape plans dated 22/09/2023, prepared by DCM Urban Design Limited, forming pages 2 to 11 in the Stamped Approved Plans.

9.2 The detailed design landscaping plans shall be submitted for acceptance in accordance with Condition 8. The detail of landscaping plan shall include but not limited to:

General Landscaping requirements

- Trees and plants shall be indigenous species and locally eco-sourced
- Any earthworked area in the esplanade reserve with exception to the northern area shall be shaped with a 2% slope from the edge of allotment to the top of the bank where possible;
- No planting or removal of plants shall occur within Council existing land (Secs 1,2,6,7,8 SO 20145) except in regard to the northern boundary. This shall ensure community planting already established shall not be removed/destroyed.
- The shared footpath shall be 2m wide and consist of crusher dust, constructed in accordance with CSS part 6, 8 Gritted Footpaths. The location shall be in accordance with the landscaping plan (Approved Plans pages 2 to 11) with exception to the northern section outlined below.
- Tree and Plant species shall reflect the Wet Plains: TŌTARA – bellbird – mataī, older plains ecosystem list from Christchurch Ecosystems (lucas-associates.co.nz).

Northern Section

- The footpath extension shall be located to where the existing path is established and widened to be two metres in width with a crush dust formation, constructed in accordance with CSS part 6, 8 Gritted Footpaths. Any existing indigenous species within this area shall be transplanted in a similar location or retained where possible.
- From the footpath expansion to the top of the bund, the rank grass shall be retained. Any woody species (including but not limited to gorse, broom, lupin, and blackberry) and Tasmania Ngaio in this area shall be removed
- The 2.4 m high acoustic fence shall be established within Lot 1 and be finished in a recessive grey/green or brown hue with a light reflectance value no higher than 15% LRV.
- The 2.4m high acoustic fence shall be maintained until s224 certification has occurred
  Note: This includes repainting if defacement either side of the fence has occurred.
- The planting strip within Lot 1 (from the acoustic fencing to the 2.4m high Chain Link Fence) shall include tree and shrub planting that reaches a mature height of approximately 16 metres and a canopy width that does not cause excessive shading over the acoustic fence or require excessive clearance over the existing chain link fence . The planting shall comprise locally eco-sourced indigenous trees, shrubs and plants reflect the Wet Plains: TŌTARA – bellbird – mataī, older plains ecosystem list from Christchurch Ecosystems (lucas-associates.co.nz).
- Species on top of the bund in Lot 2 shall be Lizard Friendly Tree and Shrub species and shall not cause excessive shading. These species shall assist in screening the proposed acoustic fence. This shall include but not be limited to:
  - Cordyline australis
  - Kunzea robusta
  - Leptospermum scoparium
  - Sophora microphylla

Western

- A new footpath is to be established western and southwestern areas and is setback from approximately four metres from western boundary of Lot 1. The new footpath shall connect the existing cycle way footpath along the haulage route in Lot 3.
- The existing footpath along the western and south western area shall remain and no works shall occur in this area.

- The man made channel adjacent to Lot 21 DP 525615 shall be filled in.
- The general enhancement planting shall consist of dense vegetation. The western area shall be primarily focused on the waterway margins and riparian habitats for waterfowl, swampbirds, herons.

South Western

- A new footpath is to be established western and southwestern areas and is setback from approximately four metres from western boundary of Lot 1. The new footpath shall connect the existing cycle way footpath along the haulage route in Lot 3.
- The existing footpath along the western and south western area shall remain and no works shall occur in this area.
- Existing trees (including dead trees which do not pose a health and safety risk) along the south western areas shall be retained where possible for bird habitat and roosting. Any works near existing trees shall be in accordance with IDS Part 10.4.2 Existing vegetation.
- The southern areas shall focus on general enhancement and may focus on plant species which can endure drier conditions (including but not limited to Coprosmas and Matagouri)

Note: Existing trees located on Council land are protected by the District Plan rules and the Tree Policy which must be adhered to for works within their vicinity.

9.3 The proposed landscaping shall be established on site within the first planting season (extending from 1 April to 31 August) following the DOC permit approval.

10. Lizards – Northern Portion of Lot 2

10.1 Prior to commencement of any physical works within areas identified as lizard habitat, the consent holder shall submit a copy of an approved DOC wildlife permit and attached lizard management plan to Council.

Advice notes: A site specific lizard management plan shall be prepared by a suitably qualified herpetologist as part of this application. The lizard management plan will identify any areas of lizard habitat to be impacted by construction/excavation works. This document will describe the measures that will be taken to mitigate the adverse effects of the modification on lizards and their habitat at the site. The lizard management plan will be sent to Te Hapū o Ngāti Wheke (Rapaki) once received by Council.

10.2 In any areas where lizard habitat will be detrimentally impacted (damaged, destroyed, removed), lizard salvage and relocation works will be required. This work is to be undertaken by a suitably qualified herpetologist.

10.3 Where possible all areas of identified lizard habitat shall be retained and protected from damage during construction works. Strategies such as the installation of a silt/sediment fence to form a partition between the construction site and areas of habitat that will not be affected by work, shall occur.

10.4 <u>Lizards found outside the northern portion of Lot 2 and Lot 3. – Accidental Discovery Protocol</u>

Any incidental discoveries of lizards while undertaking construction within the project footprint shall be documented and reported to the Councils herpetologist:

- Construction activities will stop/be restricted to beyond 10 meters of the place of discovery.
- Report to the herpetologist the location and a description of the lizard sighted (as much detail of the lizard as possible).
- If the lizard is in danger of being injured or killed, capture the lizard using both hands being careful not to grab it by the tail and place in a container with damp soil and some leaf litter. Ensure to create breathing holes in the container for the lizard.

- If the lizard appears uninjured, contact the herpetologist or Environmental manager for direction on where to relocate the lizard.
- If the lizard is injured, then contact the project herpetologist for advice on how to proceed.

11.…. Birds – South Western Esplanade Reserve

11.1.. Where possible, works (including vegetation clearance) shall avoid bird breeding seasons (of September to February (annually)) or June to February if cormorant (shag) species commence breeding). If works are undertaken they should comply with Condition 11.2.

..... *Advice note: Wetland birds are most sensitive to noise and vibration disturbance during the wetland bird breeding seasons (September to February inclusive).*

11.2.. If works commence in the period 1 September to 15 February, the consent holder should ensure:

a. A suitably qualified person inspects the proposed area of works, no earlier than 8 days before any works are carried out, and locates any breeding sites of protected native birds. A "suitably-qualified Bird surveyor" is defined as someone who has a minimum of 160 hours field experience locating and monitoring the nests of ground-nesting and tree-nesting riverine, coastal and estuarine birds.
b. The person carrying out the inspection should prepare a written report that identifies all the located bird-breeding or nesting sites. These should be made known to the consent holder and contractors working on site. The Report shall be submitted for acceptance to the Christchurch City Council's Resource Consents Unit (via email to rcmon@ccc.govt.nz) prior to any work starting on site.
c. If the person carrying out the inspection deems that any part of the works activity may be undertaken at a distance less than 100m to any nesting protected bird species, this must be clearly detailed on the report. Exclusion distances may differentiate between "episodic" disturbance (disturbance that occurs for less than ten minutes e.g. trucks driving past a nest situated near an accessway; or a person walking past undertaking an asset inspection or a making a quick maintenance pass) and "prolonged" disturbance (disturbance that occurs for more than 10 minutes at a time)
d. The name and qualifications of the person carrying out the inspection must be provided with the report.
e. Where work ceases for more than eight days, the site must be re-inspected for bird breeding and nesting sites in accordance with parts (a) to (d) of this condition.

Advice note: The recommended exclusion zone for activities resulting in "prolonged" disturbance is 50m for nests and broods of chicks; whereas for activities resulting in "episodic"
disturbance, or where nests or chicks are not in line of sight to the source of disturbance (e.g.
an island of screening vegetation is situated between the nest or chicks and the source of disturbance), the distance may be reduced to a minimum of 25m where provided for by the bird
survey report recommendation.

11.3 ....Vehicles and/or machinery shall not operate within 100 metres of protected native birds which are nesting or rearing their young.

11.4 ....All persons exercising the consent shall not bring dogs on site during the bird-nesting season.

12. Health of Land

12.1 Any soils removed from the site during the course of the activity must be disposed of to a facility authorised to accept the material. The consent holder shall submit evidence (i.e. weighbridge receipts or waste manifest) of the disposal of surplus soils from the site to an authorised facility to the Council, Attention: Team Leader Environmental Health by way of email to rcmon@ccc.govt.nz, no later than 20 working days following this disposal.

12.2 Any earthworks or removal of soil on the haulage road shall require testing to confirm that the soil is suitable to remain onsite.

Advice note: A RAP and/or site validation report may be required if testing shows the soils to be above recreational contamination levels.

12.3 In the event that soils are found to have visible staining, odours and/or other conditions that indicate soil contamination, then work must cease until a Suitably Qualified and Experienced Practitioner (SQEP) engaged by the consent holder has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils. The consent holder shall immediately notify the Council Attention: Team Leader Environmental Health, by way of email to rcmon@ccc.govt.nz. Any measures to manage the risk from potential soil contamination shall also be communicated to the Council prior to work re-commencing.

13. Telecommunications and Energy Supply

13.1 **Lot 1** shall be provided with the ability to connect to a telecommunications and electrical supply network at the boundary of the net area of each lot. Evidence shall be provided by the surveyor (in the form of as-builts and / or photos) that ducts or cables have been laid to the net area of each lot.

13.2 The consent holder is to provide a copy of the reticulation completion letter from the telecommunications network operator and the s224 clearance letter from the electrical energy network operator.

14. Cultural Values

14.1 Planting of indigenous species within the 30 metre setback from Ōpāwaho/Heathcote River is required to enhance the cultural landscape, increase indigenous habitat, filter sediment and sequester carbon.

14.2 The Lizard Management Plan must be submitted to Te Hapū o Ngāti Wheke (Rapaki) for approval prior to works commencing.

14.3 Untreated stormwater from the development must not discharge into Ōpāwaho/Heathcote River and must not enter the buffer zone (Esplanade reserve).

15. Accidental Discovery

15.1 In the event of the discovery/disturbance of any archaeological material or sites, including taonga (treasured artefacts) and koiwi tangata (human remains), the consent holder shall immediately:

a) Cease earthmoving operations in the affected area of the site; and
b) Advise the Council of the disturbance via email to rcmon@ccc.govt.nz
c) Advise appropriate agencies, including Heritage New Zealand Pouhere Taonga and the local Mana Whenua (Ngāi Tūāhuriri Rūnanga and Ngāti Wheke) of the disturbance.

Advice Note: Please be aware that an archaeological site may be any place that was associated with human activity in or after 1900, and provides or may be able to provide, through investigation by archaeological methods, significant evidence relating to the historical and cultural heritage of New Zealand.

15.2 In the event that soils are found to have visible staining, odours and/or other conditions that indicate soil contamination, then work must cease until a Suitably Qualified and Experienced Practitioner (SQEP) engaged by the consent holder has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils. The consent holder shall immediately notify the Council Attention: Team Leader Environmental Health, by way of email to EnvResourceMonitoring@ccc.govt.nz. Any measures to manage the risk from potential soil contamination shall also be communicated to the Council prior to work re-commencing.

16. Consent Notice

16.1 The following conditions shall be recorded pursuant to Section 221 of the RMA in a consent notice registered on the **title of Lot 1:**

Geotechnical and Low Pressure Sewer Design – Lot 1
Any ground remediation on the site, provided to geotechnically strengthen the land to withstand seismic events, shall be preserved intact for at least 2m from future wall alignments. The strengthening may include layers of geotextile fabric and geogrids integral to the foundation systems for any buildings requiring foundations. Any deep service trenches or pump unit installations, which require excavation through the strengthening, must be installed further than of 2m from any wall and on the road side of the building.

Sewer – Lot 1
Lot 1 shall be served by a local pressure sewer unit comprising a pump and storage chamber which can accommodate at least 24 hours average dry weather flow to be supplied by Aquatec, EcoFlow or similar.

The property owner shall retain ownership of the local pressure sewer unit complete with pump, chamber and control equipment. The property owner will be responsible for the operation and maintenance of the complete system.

17. Goods and Services Taxation Information

17.1 The subdivision will result in non-monetary contributions to Council in the form of land and/or other infrastructure that will vest in Council. Council's GST assessment form is to be completed to enable Council to issue a Buyer Created Tax Invoice.

Advice Note:

Pursuant to section 116 of the Resource Management Act 1991 the consent commences from the date of this decision or the resolution of any subsequent appeal. The lapse date of the consent is 5 years thereafter, unless a condition of approval limits the duration of the consent.

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2024] NZEnvC 343

IN THE MATTER	of the Resource Management Act 1991
AND	an application for declarations under s311 of the Act
BETWEEN	BRAEBURN PROPERTY LIMITED AND SPECIALISED CONTAINER SERVICES (CHRISTCHURCH) LIMITED
	(ENV-2024-CHC-20)
	Applicants
AND	CHRISTCHURCH CITY COUNCIL
	Respondent

Court:	Environment Judge K G Reid Sitting alone under s309 of the Act
Hearing:	at Christchurch on 23 September 2024
Appearances:	J Appleyard and L Forrester for the Braeburn Property Limited S de Groot for Specialised Container Services (Christchurch) Limited A Green and R Ashton for Christchurch City Council
Last case event:	23 September 2024
Date of Decision:	18 December 2024
Date of Issue:	18 December 2024

INTERIM DECISION OF THE ENVIRONMENT COURT

A: Directions are made for the parties to confer and file a joint memorandum, by 31 January 2025, proposing amended declarations addressing the matters set out at paragraph [165], and this judgement more generally.

REASONS

Background

[1] Braeburn Property Ltd ('Braeburn') is the owner of a 12ha industrial site at 320A Cumnor, Terrace, Woolston, Christchurch ('the site'). Since July 2022 Specialised Container Services (Christchurch) Ltd ('SCS') has been operating a shipping container depot from the site.[1] The site is located on the Christchurch side of the Port Hills in proximity to the Lyttleton tunnel and the Lyttleton seaport.

[2] The activities on the site involve the handling, assessment, maintenance and repair, and temporary storage of empty shipping containers. While being stored, the containers are currently stacked up to six containers high, which makes the stacks up to 23 m in height. Container stacks on the site are clearly visible from the surrounding area including from residences on Gould Crescent, a nearby residential area across the Heathcote River.

[3] The site is zoned Industrial General (Port Link Industrial Park) under the Christchurch District Plan ('CDP'). An area of this zone, which includes part of the site, is subject to rule 16.4.4.2.1 of the CDP. Under this rule "buildings" are subject to an 11 m height limit ('the building hight limit'). Outside the area covered by the building height limit, buildings within the site are unregulated as to height. The area within the building height limit is the nearest part of the site to the residential areas. It is also the area where the containers are stored.

[4] The Christchurch City Council ('the Council') maintains that the container

1 Braeburn and SCS are joint applicants in these proceedings and are referred to in this decision together as "the applicants".

stacks are buildings and are subject to the building height limit. If this is so, containers would only be able to be stacked three or four high (depending on the type of container being stacked) within the area subject to the building height limit. This would significantly limit the number of containers that could be stored on the site, to the extent that SCS maintains its operation would cease to be commercially viable.[2]

[5] In November 2013 the applicants sought to resolve the issue of whether the building height limit applied to the containers by making an application for a certificate of compliance to the Council on the basis that the storage of containers on the site was a permitted activity. The certificate of compliance application was declined by independent hearing commissioners appointed by the Council.[3] This decision was then appealed to the Environment Court.[4]

[6] Following the outcome of the certificate of compliance application, the Council issued abatement notices to the applicants to enforce compliance with the building height limit rule. These abatement notices were appealed by the applicants.[5] The abatement notices are currently the subject of a stay issued by this court.[6]

[7] These two related proceedings (the appeals against the abatement notices and the appeal against the decline of the certificates of compliance) are currently on hold awaiting the outcome of this proceeding. The parties intend that the current proceeding will be determinative of the core issue in dispute in these related proceedings.

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2 Affidavit of Grant Tregurtha sworn 8 April 2024 at [31].

3 Commissioner Paul Rogers and Commissioner David Caldwell *Decision on Applications for Certificate of Compliance* (20 January 2024).

4 Notice of Appeal against the Council's decision on application for certificates of compliance dated 19 February 2024.

5 Notice of Appeal against abatement notices dated 19 February 2024.

6 *Braeburn Property Ltd v Christchurch City Council* [2024] NZEnvC 46.

Application for declarations and orders sought

[8] The declarations are sought under s311 Resource Management Act 1991 ('RMA'). I have summarised the declarations sought as follows:

Declaration 1:
In relation to the definition of 'building' (the Definition) in the Christchurch District Plan (the Plan):

Declaration 1(a):
That an empty shipping container that is part of the supply chain network and is placed on a site temporarily is not a building for the purposes of the Definition.

Declaration 1(b):
That a stack of empty shipping containers (being more than one shipping container stacked on top of the other) that are part of the supply chain network and are placed on a site temporarily are not a building for the purposes of the Definition.

Declaration 1(c):
That the outdoor storage of other 'stacked' items (such as palletised goods, baled scrap metal, dismantled/crushed car bodies, haybales, garden supplies, metal, timber, concrete, other raw materials or manufactured products used in construction and civil works, and bundled waste or recycled materials) that are placed on a site temporarily until such time as they are required is not a building for the purposes of the Definition.

Declaration 2:
That an empty shipping container, or a stack of empty shipping containers, that are part of the supply chain network and are placed on a site temporarily are "transiting shipping containers" for the purposes of rule 5.4.1.1 P16 of the Plan.

Declaration 3:
In respect of rule 16.4.1.1.a:

Declaration 3(a):
The rule applies to activities in the Industrial General Zone (Portlink Industrial Park) in sub-chapter 16.4.4 (and the other Industrial General Zones with area-specific rules); and

Declaration 3(b):
The activities listed in paragraphs 1.1(a)-(c) above are not activities that involve "any development".

[9] The declarations are framed as being of general application and are not tied specifically to the activities of the applicants on the site. The applicants say that the reason for this is that the core issue is of wide application and significance. Regardless of the way the application is framed, the applicants accept that the declarations cannot be considered in a vacuum and there needs to be a real issue before the court and an appropriate evidential context.[7] That real issue and evidential context is the dispute regarding the site.

[10] In declarations 1(a), (b) and (c) the applicants are addressing the issue of whether the shipping containers either individually or together as stacks, are a "building" under the CDP, which is the main issue between the parties. The submissions and evidence before me are primarily focused on this issue.

[11] Declaration 2 addresses whether the containers are "transiting shipping containers" under rule 5.4.1.1 of Chapter 5: Natural Hazards of the CDP. This rule imposes a minimum floor level on new buildings within the Flood Management Area identified in the CDP, but "Transiting shipping containers" are specifically exempt from this requirement. The site is located within the Flood Management Area.

[12] Declarations 3(a) and (b) address an alternative argument whereby the applicants seek to avoid the effect of the built form rules in part 16 of the CDP (including the building height limit). Under rule 16.1.1 of the Industrial General Zone ('IGZ') the built form rules only apply to a "development". If what is occurring on the site is not a "development" the container stacks will not need to comply with the building height limit regardless of whether they are "buildings".

7 Application by Christchurch City Council [1995] NZRMA 129 (PT) at 135.

Evidence of activities on the site

[13] Grant Tregurtha is the co-founder and Chief Executive of SCS. He provided a detailed affidavit outlining the background to SCS and a description of its operations on the site.[8] His factual evidence was not disputed. I summarise the relevant evidence as follows:[9]

(a) the site is 12 ha in area and is located near the Lyttleton seaport with well-established arterial road links. From the site the Lyttleton tunnel and the Lyttleton seaport are easily accessible by road. There are other sites in the locality operating container depot service operations, including Lyttleton Port Company's City Depot;

(b) upon leasing the site, SCS understood that it could stack containers up to a maximum of eight containers high should they choose to do so. Current operations on the site however do not involve stacking containers more than six containers high;

(c) there are industry standard specifications for containers. These specifications include the dimensions, corner fittings, material and quality. The types of containers at the site are standard shipping containers (6.1 m or 12.2 m long, 2.44 m wide and 2.6 m high); and high–cube containers (6.1 m or 12.2 m long, 2.44 m wide and 2.9 m high);[10]

(d) with these standard measurements an 8-container stack of high cube containers would be a maximum height of 23.2 m. A stack of more than 3 high cube containers or more than 4 standard containers would exceed the 11 m building height limit. Stacking containers to 8 high is standard practice at other SCS locations in New Zealand. At the

8 Affidavit of Grant Tregurtha sworn 8 April 2024.

9 As an aside I was informed that the commissioners considering the applicants' certificate of compliance application did not have the benefit of the information contained in Mr Tregurtha's affidavit or equivalent. *Decision on Applications for Certificate of Compliance* (20 January 2024).

10 At [19].

site containers are only stacked 6 high and there are no plans to change this;[11]

(e) SCS operates the site as an "inland container depot". The primary function of the depot is to support international supply chains by receiving, storing, assessing, and repairing (if required) empty shipping containers that are in transit between the Lyttleton port and either a point of origin or a destination for a consignment of goods or services. SCS does not accept containers for storage that contain any goods – they are always empty;

(f) SCS receives shipping containers at the depot from shipping companies, importers and freight forwarders. The primary customers are shipping companies. Containers are transported to the site on trucks where they are removed using mechanical hauling equipment ('MHE'). Once the containers arrive on the site they are surveyed to assess their condition. Damaged or substandard containers may be repaired or upgraded as necessary and as required by the client;

(g) once the containers are assessed, and if necessary repaired, they are transported (using MHE) to another part of the site to be stacked with other similar containers that are available for supply;

(h) containers are moved around the site using MHE specifically designed for moving shipping containers. The containers cannot be easily moved by an individual person, however the movement and placement of containers using MHE takes place easily and at short notice if required;

(i) while containers are stacked for the purpose of temporary storage, a single container may be moved several times around the site while it is in storage; for example, to undertake assessments or repairs. There are other reasons why containers may be moved within the site, including the need to reconfigure the site in response to fluctuations in site capacity and container demand, or for efficiency purposes to

11 At [16].

minimise travel distances of machinery;

(j) in terms of the numbers of movements, SCS's model for forecasting movements and volume is premised on a standard three inbound movements per container (i.e. for arrival, assessment and repair, and storage), and one outbound movement per container (i.e. from storage onto a transport truck to be taken offsite);

(k) containers are stored temporarily on the site. The average number of shipping containers stored on the site per month between 1 April 2023 and 31 March 2024 was 2,226 containers. However, the monthly average is variable and subject to the demands of customers and industries;

(l) the average dwell time of a container at the site per month between 1 April 2023 and 31 March 2024 was 25.18 days. Again, the average dwell time is variable and subject to customer demand. Mr Tregurtha's affidavit produced a chart depicting that average dwell time.[12]. During this period average dwell times varied between a low of approximately 17 days per container (August 2023) and a high of approximately 37 days per container (October 2023);[13]

(m) the containers are held down only by gravity. The corner fittings are designed to "nest" on top of each other and provide a stable base for storage, but they are not tied to or fixed to one another in a stack, nor secured to the land or embedded in any way. There are no foundations, support structures, or services, or components fixed to the containers that hold or retain them in place or that enables them to function as anything other than empty shipping containers. Containers are designed to be mobile and are easily moved around and off the site;

(n) Mr Tregurtha produced a copy of an excerpt of the International Maritime Organisation's International Convention of Safe Containers

12 Between 1 April 2023 and 31 March 2024.

13 Affidavit of Grant Tregurtha sworn 8 April 2024, attached exhibit B.

1972 ('CSC') which defines a definition of 'container' as "an article of transport equipment" which is:

1. of a permanent character and accordingly strong enough to be suitable for repeated use;
2. specially designed to facilitate the transport of goods, by one or more modes of transport, without immediate reloading;
3. designed to be secured and/or readily handled, having corner fittings for these purposes;
4. and of a size such that the area enclosed by the four outer bottom corners is either
   (1) at least 14m² (150 sq ft); or
   (2) at least 7m² (75 sq ft) if it is fitted with a top corner fittings.[14]

(o) the size and shape of the designated areas where different activities are undertaken on the site including assessing, repairing, and storage of shipping containers is variable and subject to change;

(p) the layout and height of shipping container stacks is dynamic and ever-changing. The number of shipping containers and the configuration and height of shipping container stacks across the site is in a constant state of flux. What the site "looks like" varies significantly over time;

(q) there are always stacks of containers on the site and the arrangement and height of the container stacks and the length of time that any one container or any one stack is located on the site changes regularly.

[14] Mr Jorgensen provided an affidavit on behalf of the respondent. He is the team leader, RMA monitoring compliance at the Council. His evidence was in summary that:[15]

(a) he was tasked with compliance monitoring in September 2022. Since that time, he has visited the site regularly;

[14] Affidavit of Grant Tregurtha sworn 8 April 2024, attached exhibit D.
[15] Affidavit of Craig Jorgensen affirmed 3 July 2024.

(b) from his observations his evidence was that the containers that make up the stacks change from time to time, however the container stacks are a constant feature of the site and essentially are in the same or similar configuration. Throughout the period of his observations the container stacks have ranged in height from 10.3 m in height to 15.5 m;

(c) he produced a selection of photographs of container stacks on the site from various positions in the surrounding area.

[15] One of the residents living in Gould Crescent, Ms Good-Geels, provided an affidavit setting out her observations of the site. Her evidence was in summary that:[16]

(a) prior to containers being stacked six high on the site she was able to see unobstructed views of Castlerock and the entire crater rim of the Port Hills from her property. She produced photographs taken before and after the placement of the containers showing that the containers obscure the view of the Port Hills from Ms Good-Geels' deck and living room when they are stacked six high;

(b) while the height of the stacks changes from time to time her view is almost always impacted because of the container stacks;

(c) before purchasing her property in Gould Crescent, she had researched the neighbouring IGZ and noted the 11 m height restriction.

[16] Counsel for the respondent Messrs Green and Ashton, described Mr Tregurtha's evidence that the site is "in a constant state of flux" as an overstatement, given the photographic evidence of Mr Jorgensen showing consistent stacks on the site perimeter over extended periods.[17] However, given Mr Tregurtha's detailed evidence as summarised above, I find that "a constant state

16 Affidavit of Ezra Good-Geels, affirmed 4 July 2024.

17 Respondent's synopsis of legal submissions dated 16 September 2024 at [3.1](g).

of flux" is a fair description.

[17] Mr Jorgensen's evidence was limited to his observations on the occasions when he visited the site and surrounding area, and the conclusions he draws from these observations. Ms Good-Geels' evidence of the activities on the site was from her observations from her property. Mr Tregurtha's evidence was about the detail of the operations on the site, in the context of SCS' wider commercial operations. None of these witnesses were cross-examined. I do not see the statements made by Mr Jorgensen and Ms Good-Geels as conflicting in any significant way with the evidence of Mr Tregurtha. Any difference in emphasis is not material to the outcome.

Principles for interpreting planning provisions

[18] All the proposed declarations before the court turn on the interpretation of various provisions of the CDP. I turn now to the principles applicable to interpreting plan provisions.

[19] The interpretation of rules in district plans is governed by the Legislation Act 2019.[18] Section 10(1) of that Act requires that the meaning of legislation is to be "ascertained from its text and in the light of its purpose and its context".

[20] The principles of plan interpretation were discussed by the High Court in *Powell v Dunedin City Council* ('*Powell*').[19] This case has been cited as the leading authority on interpretation of planning instruments.[20] In *Powell* the court considered it was necessary when interpreting plan provisions to take into account the following:[21]

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18 *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128 at [11].

19 *Powell v Dunedin City Council* [2004] NZRMA 49 (HC); affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA).

20 Applicants' synopsis of submissions dated 9 September 2024 at [23] and fn 11.

21 *Powell v Dunedin City Council* [2004] NZRMA 49 (HC) at [35] affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA) at [12].

(a) the words of a plan are to be given their plain and ordinary meaning unless this is clearly contrary to statutory purpose or the social policy behind the plan and rules, or otherwise produces some injustice, absurdity, anomaly, or contradiction;

(b) the planning document should only affect common law rights where there is an express provision to this and/or it follows as a matter of necessary implication (this factor was not argued to be relevant in the present case);

(c) there is a need for certainty in the description of permitted activities and the operative parts of the plan. But the language used in the plan is to be given its plain and ordinary meaning, the test being "what would an ordinary, reasonable member of the public, examining the plan, have taken from the planning document"?

(d) the interpretation should not prevent the plan from achieving its purpose; and

(e) if there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

[21] In the Court of Appeal, the appellant in *Powell* sought to argue that where there is no ambiguity, a rule should be interpreted without looking beyond the rule to the objectives and policies in the plan. The Court of Appeal disagreed and made the following comment:[22]

> while we accept it is appropriate to seek the plain meaning of a rule from the words themselves, it is not appropriate to undertake that exercise in a vacuum. As this court made clear in *Rattray,* regard must be had to the immediate context (which in this case would include the objectives and policies and methods set out in section 20) and, where any obscurity or ambiguity arises, it may be necessary to refer to other sections of the plan and the objectives and policies of the plan itself. Interpreting a rule by the rigid adherence to the wording of the particular rule itself would not, in our view, be consistent with a judgement of this Court in *Rattray* or

[22] At [35].

with the requirements of the Interpretation Act.

[22] *Powell* has been applied by the Environment Court in numerous cases. Counsel for the respondent referred to *Auckland Council v Teddy and Friends Limited*,[23] where the Environment Court described the interpretive exercise as an integrated approach to ascertain the meaning of legislation from its text and in light of its purpose and context:[24]

> The purposive light in which text is to be read and understood cannot be separated from it and so text and purpose must be comprehended together in a unified way rather than treated as dull requirements for a cross-check. Further, the current legislative requirement includes the context of the text, that is, what is with the text. In law, context is everything. All three elements of meaning [text, purpose and context] combine to promote a wholistic purposive approach to the interpretation of legislation.

[23] In *Teddy and Friends* the court did not accept the submission that objectives and policies are of little assistance. The court said:[25]

> I am cautious about inferring a policy objective for a rule from the text of the rule itself. Some rules may be written in such a way that they express both their policy and their regulatory effect, but the framework for planning documents under the RMA is clearly intended to require that those functions are exercised distinctly.

[24] I accept counsel for the respondent's submission that in the light of these authorities the context of a rule will include not only its immediate context in the plan but also any relevant objectives, policies and other methods, and where any ambiguity arises may include other parts of the plan. However, it should be borne in mind that the main interpretive issue before me relates to the meaning of the definition of a term (building) contained in the "Abbreviations and Definitions" section of the plan. "Building" is widely used throughout the CDP in a variety of

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[23] *Auckland Council v Teddy and Friends Ltd* [2022] NZEnvC 128.
[24] At [27].
[25] At [28].

contexts, including many different rules in different sections of the plan, with different applicable objectives, policies, and other methods. I come to the significance of this point later in this decision.

[25] Counsel for the applicants referred to the Environment Court case *Calveley v Kaipara District Council*,[26] where in applying *Powell* the court noted that the proper focus is how particular plan provisions fit within their immediate plan context, which is not to be confused with the particular factual context.[27] I accept that this is the appropriate focus.

[26] Both counsel referred to *Nanden v Wellington City Council*[28] ('*Nanden*') where the High Court held that fundamental issues of policy require the interpretive exercise to be undertaken in a manner that:[29]

(a) avoids absurdity or anomalous outcomes;
(b) is consistent with the expectations of property owners; and
(c) is consistent with the practical administration of the plan.

[27] Counsel for the applicants, Mses Appleyard and Forrester, referred to the Environment Court's decision in *Archibald v Christchurch City Council*[30] ('*Archibald*'). This case concerned an appeal against a decision of the Christchurch City Council to decline a resource consent application to establish guest accommodation within an existing dwelling which the applicant had been renting through Airbnb. The question involved interpretation of a provision in the CDP restricting non-residential activities in a residential zone. The court made the following comment:[31]

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26 *Calveley v Kaipara District Council* [2014] NZEnvC 182.
27 Applicant's synopsis of submissions dated 9 September 2024 at [24], referring to *Calveley v Kaipara District Council* at [143].
28 *Nanden v Wellington City Council* [2000] NZRMA 562 at [48].
29 At [48].
30 *Archibald v Christchurch City Council* [2019] NZEnvC 207.
31 At [51].

> A precedent upon which others would seek to rely may well be created based on the court's interpretation. The issue for the City Council, however, is not that a precedent is created but that the use of existing dwellings for guest accommodation, including accommodation marketed through Airbnb, was not identified in the proposed plan as being a significant resource issue for the district. Consequently, the plan provisions may not adequately respond to the demand for this activity. Rather than applying a strained application of plan provisions, the City Council may consider front-footing the issue meeting the demand through initiating a plan change that responds directly to the issue created by the same.

[28] Ms Appleyard argued that these comments are equally applicable in the present case. She submitted that the Council is seeking to manipulate the district plan to address complaints from neighbouring property owners about the use of the site. She argued that the Council is inappropriately trying to resolve this issue by adopting a strained and manufactured interpretation of the definition of "building" to address a factual situation that was never raised or considered at the time the CDP was drafted.

[29] I come to the relevance of *Archibald* to the current factual and legal context in due course.

Declaration 1(a), (b) and (c)

[30] Rule 16.4.4.2.1 is one of a small number of area-specific built form rules applicable to the Industrial General Zone (Portlink Industrial Park) (IGZ-PIP). The rule provides that:

> a. the maximum height of any building within the '11 m building height limit area' defined on the development plan and appendix 16.8.3 shall be 11 m.

[31] The area-specific rules of the IGZ-PIP are stated to be in addition to the built form rules for the wider IGZ. Within these rules, rule 16.4.2.1 provides for a building height limit of 15 m within 20 m of any residential zone. This rule does not apply to the applicants' site because it is not within 20 m of a residential zone.

The nearest residential zone is further away across the Heathcote River.

[32] Other than rules 16.4.2.1 and 16.4.4.2.1 there are no height limits for buildings within the IGZ. Outside of the limited areas covered by these rules, buildings within the IGZ are uncontrolled as to height.

The definition of "building" in the CDP

[33] The Abbreviations and Definitions chapter of the CDP starts with a statement that the listed definitions apply where identified in the "ePlan, dotted underline with hyperlinking". In all other instances "words and phrases are best defined using their ordinary dictionary meaning".

[34] The term "building" in rule 16.4.4.2.1 is hyperlinked so that the definition in the interpretation section applies. The definition is as follows:

> **Building**
> means as the context requires:
> a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or
> b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and
> c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but
>
> excludes:
>
> d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;
> e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;
> f. retaining walls which are both less than 6m^2 in area and less than 1.8 metres in height;
> g. structures which are both less than 6m^2 in area and less than 1.8 metres in height;

h. utility cabinets;

i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;

k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, excludes:

l. any dam that retains not more than 3 metres depth, and not more than 20,000 m^3 volume of water, and any stopbank or culvert;

m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:

  i. not exceeding 25,000 litres capacity and supported directly by the ground; or

  ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and

n. stockyards up to 1.8 metres in height.

Advice note:

1. This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

[35] There are two issues before me arising out of this definition:

(a) first, whether the items listed in subclause (c) (one of which is "shipping containers") that are not "used onsite as a residential unit or place of business or storage", nevertheless fall to be assessed under the definition of building in subclauses (a) and/or (b) (**the interpretation question**),

(b) second, if shipping containers on the site fall to be assessed under (a) and/or (b) are they "fixed to land" thereby making them a structure

and therefore a building under these subclasses (**the application question**).

Meaning of the definition of "building" in the CDP – the interpretation question

[36] On the interpretation question the applicants' position is that the specific reference to shipping container in subclause (c) should be interpreted so as to exclude consideration of shipping containers under subclauses (a) and (b).

[37] The respondents' position is that both subclauses (a) and (b) in the definition of "building" apply to "any structure" that falls within those clauses. The reference in subclause (c) to shipping containers for particular uses does not exclude other configurations or uses of containers from falling within the broader categories in (a) and (b).

[38] I summarise the parties' respective submissions as follows:

Applicants' submissions

[39] The applicants submit that the plain and ordinary meaning of the text of the definition is that shipping containers that are not used onsite as a residential unit, place of business or for storage (so not covered under subclause (c)) cannot be buildings under (a) and/or (b).

[40] The applicants point particularly to the use of the conjunctions "and/or" between (a) and (b) whereas the conjunction "and" is used for subclause (c). The contrast in connections means that (c) is only additional to (a) and (b) and not an alternative to those subclauses. The applicants submit that the starting point for interpretation in this case is the interpretative principle "specific provisions must

override general ones" (*specialia generalibus derogant*).[32]

[41] Counsel submits that to interpret subclause (c) any other way would render the subclause "nugatory", as any item listed in subclause (c) could be deemed a building under subclause (a) and (b) irrespective of whether it was being used onsite as a residential unit, place of business, or place of storage.

[42] Counsel submitted that the respondent's position (that the more general subclauses (a) and (b) may also be applicable to the items listed in subclause (c)) would result in absurd outcomes. These were submitted to include the potential for vehicles, trailers and tents within camping grounds, rental car/campervans at depots and cars on sale at car sales yards being deemed as "buildings" under the CDP (on the basis that those items might also be "structures" under the broad definition provided by the RMA).[33] Absurd or anomalous outcomes should be avoided in interpreting plan provisions on the authority of *Mount Field Limited v Queenstown Lakes District Council*.[34]

[43] In support of the submissions that the specific overrides the general in the context of plan provisions, the applicants referred to the Supreme Court in *Environmental Defence Society Inc v New Zealand King Salmon Company Limited*,[35] *Transpower New Zealand Ltd v Auckland Council*,[36] and *Tauranga Environmental Protection Society Inc v Tauranga City Council.*[37] These cases are all situations where the higher courts have referred to the interpretive principle in the context of interpreting policies and objectives contained in various planning instruments.

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32 Applicants' synopsis of submissions dated 9 September 2024 at [34].

33 Affidavit of Jeremy Phillips affirmed 8 April 2024, attached Exhibit D.

34 *Mount Field Ltd v Queenstown-Lakes District Council*, HC Invercargill CIV-2007-425-700, 31 October 2008 at [36], relying on *Nanden* at [48].

35 *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd*, [2014] 1 NZLR 593, [2014] NZSC 38 at [80].

36 *Transpower New Zealand Ltd v Auckland Council* [2017] NZHC 281 at [78].

37 *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201, [2021] NZRMA 492 at [115] and [125].

[44] Counsel cited and distinguished *Vortac NZ Ltd v Western Bay of Plenty District Council*[38] ('*Vortac*') where the Environment Court considered whether the inclusion in the definition of "building" of a "fence or wall exceeding 2 m in height" precluded a fence or wall of less than 2 m also being considered as a building (and structure) under the wide plain and ordinary meaning of those terms. Counsel submitted that the court's comments in *Vortac* were obiter, made in a different factual and planning context and in any event, not a binding precedent (being a decision of the Environment Court).[39]

[45] Turning to context. Counsel for the applicant acknowledged that in *Powell* it was appropriate to consider the particular rule in question in the context of the objectives and policies which the rule is intended to implement. Counsel argued that the current context is different. The interpretation question relates to a definition with broad application across the entire district plan. The definition has application across a range of objectives, policies, and rules from a range of different chapters and zones. In this context the approach in *Powell* is submitted to be less relevant.[40]

[46] If reference is required to objectives and policies (the applicants submit it is not), all objectives and policies in zones where the term "building" is used should be considered. Neither of the planning witnesses had carried out a planning review on this scale.

[47] The applicants submitted however that the broader strategic objectives contained in the plan (which are applicable to all zones) are relevant. In particular, objective 3.3.2 which provides:

> **3.3.2 Objective – Clarity of language and efficiency**
>
> a. The District Plan, through its preparation, change, interpretation and

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38 *Vortac New Zealand Limited v Western Bay of Plenty District Council* [2022] NZEnvC 176, (2022) 24 ELRNZ 239.

39 Applicants' synopsis of submissions dated 9 September 2024 at [42].

40 Applicants' synopsis of submissions dated 9 September 2024 at [54].

implementation:

i. Minimises:
   A. transaction costs and reliance on resource consent processes; and
   B. the number, extent, and prescriptiveness of development controls and design standards in the rules, in order to encourage innovation and choice; and
   C. the requirements for notification and written approval; and
ii. Sets objectives and policies that clearly state the outcomes intended; and
iii Uses clear, concise language so that the District Plan is easy to understand and use.

[48] The applicants submitted that its interpretation is in line with this objective, in that its interpretation reflects a plain and ordinary meaning which minimises transaction costs and the reliance on resource consent processes.

[49] Mr Phillips gave expert planning evidence for the applicants. In his evidence he sought to identify the implications for the applicants if shipping container(s) are a "building" and also constitute "development" (under rule 16.4.1.1.a). The height limit rule would not be the only issue. The containers would be subject to the Industrial General Zone built form standards (rules) for buildings and other rules in the wider plan. Mr Phillips identified the following rules that would trigger consent requirements:

(a) rule 16.4.4.2.1 – prescribing a maximum height for any building of 11 m within the building height limit area;
(b) rule 16.4.2.9 – requiring provision for sufficient water supply and access to water supplies for firefighting for all buildings;
(c) rule 7.4.3.2 – requiring cycle parking facilities at a rate of one visitor space/1000m² gross floor area (GFA) and one staff space/500m² GFA of buildings;
(d) rule 7.4.3.3 – which requires loading facilities at a rate of one heavy vehicle bay per 1000/m² GFA;

(e) rule 7.4.3.1 – which requires a minimum number of mobility parking spaces where the activity contains buildings of a total GFA of more than 2500m².[41]

[50] The non-compliance with these rules would necessitate a resource consent application and approval. Mr Phillips said that it would be impracticable to assess compliance with the rules which require assessment on a per GFA basis because the number of containers, and therefore the total GFA, fluctuates on a daily basis.

[51] In addition to assessing the implications for the applicants, Mr Phillips assessed the wider implications of defining shipping containers as "buildings", in other contexts within Christchurch. He gave the examples set out in paragraph [42] above and produced photographs of potential examples. His evidence was that if these types of items are regarded as buildings and "development" they would be subject to built form standards requiring reticulated water supply for firefighting, and built form standards requiring cycle parking, loading and mobility parking based on floor area.[42]

[52] Additionally, for some industrial and commercial zones, Mr Phillips said that the identified sites would be subject to any relevant building height limits, building height to boundary limits, building setbacks and in some cases building coverage limits.[43]

[53] Mr Phillips said that the application of rules in this way would impose unreasonable constraints on activities involving transitory objects requiring the activities to be authorised by resource consent. This outcome would be illogical and supported the view that the items listed in (c) (including shipping containers)

41 This list is not exhaustive and other district-wide provisions may also trigger consent requirements.
42 Affidavit of Jeremy Phillips affirmed 8 April 2024 at [46]-[47].
43 Affidavit of Jeremy Phillips affirmed 8 April 2024 at [48].

of the definition of "building" were not intended to be treated by the plan as buildings.[44]

Respondent's submissions

[54] The respondent's counsel submits that the applicants' approach conflicts with the well-established case law on plan interpretation as it attempts to elevate the interpretive principle that the specific overrides the general to an inflexible rule.[45] Referring to the Court of Appeal's comments in *R v Pora*,[46] counsel emphasises the importance of context and that care should be taken in the application of that principle.

[55] The RMA cases cited by the applicants for the application of the principle concerned the interpretation of policy statements which contain potentially conflicting directives. In the present case there is no need to reconcile any tension or conflict between subclauses (a), (b), and (c) of the definition of "building". Subclause (c) can and should be read as an addition to the general and overarching subclauses (a) and (b).

[56] Counsel submits that *Vortac* is directly applicable and should be followed in this case.

[57] Counsel submits that the applicants' approach, of seeking to show how the respondent's interpretation might produce anomalies and absurdities in other factual circumstances to which the definition might apply, was designed to divorce the interpretation of the definition of building from the actual plan context in which the dispute between the parties arises.[47]

[58] The respondent submitted that the planning purpose and context do not

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44 Affidavit of Jeremy Phillips affirmed 8 April 2024, at [50].
45 Respondent's synopsis of legal submissions dated 16 September 2024 at [6.3].
46 *R v Pora* [2001] 2 NZLR 37.
47 Respondent's synopsis of legal submissions dated 16 September 2024 at [6.15].

support the applicants' interpretation that the activity on the site should be unregulated as to height, and is contrary to the expectations of landowners in nearby residential area in terms of *Nanden*.[48]

[59] Mr Francis White gave expert planning evidence for the respondent. His evidence was that, according to the Council's interpretation, stacked shipping containers on the site are considered buildings based on their size, degree of permanence, and the degree of affixation to the ground. Consequently, other stacks of material in different zones within Christchurch may also be classified as buildings, depending on a site and context-specific assessment of their size, permanence, and degree of affixation.[49]

[60] Mr White agreed with Mr Phillips that if the shipping containers are subject to the built form standards in rule 16.4.2 of the Industrial General Zone, these rules would need to be complied with unless a resource consent was obtained to depart from the standards.[50]

[61] The container stacks would be subject to requirements as to cycle parking, car parking, mobility parking, and loading space requirements assessed on a GFA basis. However, he did not consider any of these requirements onerous or anomalous or as representing an absurd outcome. Mr White did not consider that the assessment relating to transport standards was impractical. This could be done (for example) on a monthly average volume of the shipping containers basis (about which evidence was given by Mr Tregurtha).[51]

[62] Mr White noted that in all cases where standards are not met and a resource consent is required, the Council's discretion is limited. In relation to the minimum

[48] Respondent's synopsis of legal submissions dated 16 September 2024 at [6.16]-[6.19].
[49] Affidavit of Francis White sworn 8 April 2024 at [11.12].
[50] Affidavit of Francis White sworn 8 April 2024 at [10.14].
[51] Affidavit of Francis White sworn 8 April 2024 at [10.46]-[10.47].

number of cycle parking facilities, the Council's discretion is limited to matters including:[52]

> whether the number of cycle parking spaces and end of trip facilities provided are sufficient considering the nature of the activity on the site and the anticipated demand for cycling.

[63] There are similar directions as to the exercise of the Council's discretion in granting consent in relation to mobility parking spaces and the minimum number of loading spaces required.[53]

[64] Mr White pointed out that breaching a standard does not signal whether an activity is appropriate or not, but rather provides an opportunity to assess the effects of an activity in terms of assessment criteria and the plan objectives and policies, if relevant. He noted that in some cases, such as the requirement to provide cycle parking facilities on a GFA basis, the Council's interpretation may mean that the district plan requirements may exceed what is necessary in relation to the activity undertaken on the site. In such a case, demonstrating that the required standard exceeds what is required might be straightforward.

[65] Mr White acknowledged that applying for resource consent is likely to add complexity, but again did not consider this an absurd or anomalous outcome in the context of the plan seeking to manage effects. His view was that while the outcome of any particular resource consent application cannot be predetermined, if the proposal does not result in adverse environmental effects and is not contrary to the relevant policy framework, obtaining a resource consent is likely to be straightforward.[54]

[66] Mr White's evidence overall was that the Council's approach may result in additional consenting requirements for some activities, in circumstances where the

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52 Affidavit of Francis White sworn 8 April 2024 at [10.53](b).
53 Affidavit of Francis White sworn 8 April 2024 at [11.50].
54 Affidavit of Francis White sworn 8 April 2024 at [11.75]-[11.77].

application of standards may not be entirely apt. These additional consent requirements are not considered to be absurd or anomalous outcomes given the environmental effects and values that are sought to be managed. In general terms, the relevant policy and assessment framework that would apply to such applications are directed at a balance between enabling industrial and commercial activities and managing potential effects on the environment and community.[55]

[67] Mr White discussed the objectives of the Industrial General Zone and considered that these favoured the respondent's interpretation of the definition.

Discussion

[68] I deal first with the text and immediate context of the definition of "building".[56] The definition is made up of two sections:

(a) the first part ((a), (b) and (c)) are circumstances that are expressly *included* within the definition;
(b) the second part ((d)-(k)) is a list of items that are expressly *excluded* from the definition, whether or not those items would otherwise be included within (a), (b) and (c).

[69] Within the first part of the definition, subclauses (a) and (b) both apply to "any structure". Subclause (a) relates to physical structures, whereas (b) concerns changes to structures and activities related to changing structures. Subclauses (a) and (b) are framed on a wide and inclusive basis.

[70] There is no definition of "structure" in the district plan and the definition requires reference to the RMA. The RMA defines "structure" as:

> any building, equipment, device, or other facility made by people and which is

55 Affidavit of Francis White sworn 8 April 2024 at [5.6].
56 The definition is quoted at [34].

fixed to land; and includes any raft.

[71] Again, the definition is wide and inclusive. Each of the items listed in the words "any building, equipment, device, or other facility", represents a broad category of items which are included within the definition if they are "made by people" and "fixed to the land".

[72] In determining whether an item is a structure, the issue that often arises is whether the item in question is "fixed to the land". Resolving this question involves a case-by-case assessment of the facts focused on the degree of annexation to the land and the object or purpose of annexation in each case.

[73] Turning to subclause (c) of the definition. The first thing I note is that the list of items in (c) (any vehicle, trailer, tent, marquee, shipping container, caravan, or boat whether fixed or movable) are items that would not usually be buildings or structures in that they would not usually be "fixed to the land".

[74] Subclause (c) in effect extends the application of subclauses (a) and (b) to items that are generally not fixed to land. On the face of it, subclause (c) has wide application – for example to a vehicle (such as a truck) that is temporarily on a property and is being used as a place of storage. By virtue of (c) the concept of a building is extended to include the items in (c) in the specific circumstances set out in the subclause – when the items are used as a residential unit, as a place of business or for storage.

[75] Subclauses (a) and (b) are separated by the conjunction "and/or" whereas the applicable conjunction for (c) is "and". The applicants submit that this means first that (c) is additional to (a) and (b) and second, if the specific list of items is not used in the way set out in the clause, they are not to be treated as falling within (a) and/or (b). The contrast between "and/or" and "and" means that (c) is to be treated as *only* additional, and not an alternative to (a) and (b).

[76] It was also submitted that subclause (c) overrides subclauses (a) and (b) on

the basis of the interpretive principle "specific overrides the general".[57] As discussed, it was submitted by the applicants that because subclause (c) is more specific it will "prevail" over subclauses (a) and (b).[58]

[77] The effect of the applicants' arguments based on the wording of the conjunctions between the subclauses and the interpretive principle, is that subclause (c) operates to *exclude* the listed items from the definition of building *unless* they fall within the circumstances set out in that clause.

[78] I do not read subclause (c) as an exclusion. To read subclause (c) as an exclusion would be contrary to the inclusive framing of the subclause. It would also be inconsistent with the structure of the overall definition which contains inclusionary provisions of which (c) is one, and a specific list of excluded items in (d)-(k).

[79] In my view, the plain and ordinary meaning of the first three subclauses of the definition is that they overlap. They are partly co-extensive so that a particular circumstance may fall into one or more of the categories. Subclause (c) is partly co-extensive with (a) and (b) because there may be circumstances in which a "vehicle, trailer, tent, marquee, shipping container, caravan or boat" is "fixed to the land" (so as to be covered by (a)) but not used as a residence or a place of business or for storage (so not covered by (c)). One example would be shipping containers securely fixed to the land as part of a permanent or semi-permanent structure providing protection from rock falls (as were placed around Christchurch after the 2011 earthquakes).

[80] I find the applicants' resort to the interpretive principle that specific overrides the general to be unhelpful and unnecessary. I agree with the respondent that the use to which the principle is normally put in an RMA context, is to assist in resolving a conflict between competing policy provisions. In my view, in this

57 Applicants' synopsis of submissions dated 9 September 2024 at [34].
58 Applicants' synopsis of submissions dated 9 September 2024 at [37]-[38].

case the words of the definition do not call for an application of the principle. Subclauses (a), (b) and (c) can and should be read together in such a way that they do not conflict.

[81] Further, I agree with the respondent that the applicants' approach seeks to elevate the interpretive principle that specific overrides the general into an inflexible rule. Indeed, as I see it, it is reference to the principle that creates rather than resolves, the purported conflict between subclauses (a) and (b), and subclause (c).

[82] The Environment Court in *Vortac* considered the definition of building in the Western Bay of Plenty District Plan and addressed a similar argument to that presently advanced by the applicants. The argument was that the specific inclusion of a fence or wall exceeding 2 m in height excluded the general definition of "building/structure" under the plan definition. The court said:[59]

> the definition of building/structure specifically includes a fence or wall exceeding 2 m in height. On the principle of interpretation that the expression of one thing excludes its alternative, by implication that inclusion in the definition might exclude a fence or wall below that height from being a building. The specific inclusion is, however, expressed to be in addition to the ordinary and usual meaning of building\structure. Those two words have very broad ordinary and usual meanings and, like other words of the broad meaning and common usage, normally take their particular sense from the purpose for which and the context in which they are used. In this case that sense must be considered in terms of the objectives and policies of section 8 of the district plan.

[83] The definition of "building" in *Vortac* is rather different to the definition of building that I am considering. Notably, under the *Vortac* definition, the words "building/structure" were to be given their "ordinary and usual meaning". However, I consider the court's comments as they relate to the usefulness of the

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59 *Vortac New Zealand Limited v Western Bay of Plenty District Council* [2022] NZEnvC 176, (2022) 24 ELRNZ 239 at [40].

interpretive principle (specific overrides the general) equally apt in the present case. In this case the specific inclusion of the words "shipping container" in limb (c) does not exclude a shipping container from being a building under limbs (a) and/or (b) where one or other of those limbs also apply.

[84] Further, I do not find the applicants' reliance on *Archibald* helpful. In that case the court found that marketing accommodation through Airbnb was not identified in the proposed plan as a significant resource management issue for the district. The court held it was not appropriate to adopt a strained interpretation to cover the unanticipated factual circumstances it was considering. In the present case I do not agree with the respondent's interpretation of the plan as "strained". That is so, even though shipping containers being stored within Christchurch were not identified as a significant resource management issue for the district.

[85] I also note the remarks in *Archibald* upon which the applicants rely, are at the end of the decision under the heading "outcome". The interpretive analysis itself, found at paragraphs [33]-[45] of the decision, is a conventional application of *Powell* and does not appear to refer to and place weight on whether the factual circumstances arising had been in the contemplation of the plan writers.

[86] I have a clear view as to the correct interpretation of subclauses (a), (b) and (c) in the definition of "building". I have come to this view based on the text of these subclauses in the context of the overall definition. In accordance with *Powell*, words are to be given their plain and ordinary meaning, unless this is clearly contrary to statutory purpose or social policy behind the plan and rules, or what otherwise produces some injustice, absurdity, anomaly, or contradiction. As noted in *Powell*, the interpretive exercise does not occur in a vacuum. I now consider that in the wider context.

[87] The parties' positions differed on the weight and relevance of the IGZ's objectives and policies in interpreting the definition of "building". The respondent proceeded on the basis that these objectives and policies were highly relevant. The

applicants considered they were less relevant, or not relevant at all, because the definition is widely used throughout the plan and should have a consistent meaning. The applicants therefore consider the IGZ's objectives and policies are no more relevant than other objectives and policies in chapters of the plan where the term "building" appears.

[88] I accept that the term "building" as it is used in the definition section of the CDP, is intended to have a common and consistent meaning throughout the plan. The plan explicitly states how definitions are to be used. The definitions list starts with the following statement on how definitions apply:

> This part of the district plan explains the extended meaning of words and phrases developed specifically for, and used in the context of, it. The definitions herein replace the ordinary dictionary meaning of the subject word or phrase.
> Definitions only apply where identified via the following means:
> 1. In some cases, a qualifier in the definition (i.e. "X in relation to why, means…"); and
> 2. in the eplan, dotted underline with hyperlinking.
>
> In all other instances words and phrases used in the district plan are best defined using the ordinary dictionary meaning.

[89] The specific and mandatory identification of when the expanded definitions in the interpretation section are to be used (when hyperlinked) is in my view a clear indication that the defined words have a common and consistent meaning across the plan.

[90] That approach to interpretation is also consistent with objective 3.3.2.[60] This objective applies throughout the plan and (together with objective 3.3.1) has priority over all other objectives and policies.[61] This objective is unusual and comes out of the specific circumstances and statutory planning context in which the CDP was developed; namely recovery after the Canterbury earthquakes.[62]

[91] Objective 3.3.2 is headed 'clarity of language and efficiency', and states that the plan through its "preparation, change, interpretation and implementation" … "uses clear, concise language so that the district plan is easy to understand and use". Common and consistent definitions achieve this objective.

[92] The definition of "building" commences with the words "means as the context requires". This contrasts with almost all the other definitions in the interpretation section, which simply state what the word "means". The respondent argued these words dictate that the meaning of "building" is to be ascertained from the context as it appears in the plan, in this case the objectives and policies of the IGZ.

[93] In my judgment these words should not be interpreted as indicating that the "building" is to have a variable meaning depending on the context of the word in the plan. That approach would be contrary to the clear overall intent to the interpretation section as I have discussed. In my view, the words are intended to indicate that depending on the context, one or other of the subclauses in the definition may be more applicable.

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60 Cited at [47].

61 See CDP, policy 3.3 – Interpretation which states "For the purposes of preparing, changing, interpreting and implementing this District Plan … All other objectives within this Chapter are to be expressed and achieved in a manner consistent with objectives 3.3.1 and 3.3.2; and …The objectives and policies in all other Chapters of the District Plan are to be expressed and achieved in a manner consistent with the objectives in this Chapter.

62 Section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury (Christchurch Replacement District Plan) Order 2014. The particular circumstances of CDP are discussed in full in chapter 3: 3.2 Context.

[94] The objectives and policies of the IGZ are in my judgement of lesser relevance in this case. In *Vortac* and *Teddy*, the Environment Court considered the interpretation of definitions which had potential application outside of the particular rural context being considered. In the case of *Vortac* the definition of "building" was at issue, while in *Teddy* it was the interpretation of "animal day care" at issue. The term to be interpreted had a much more limited application in *Teddy* than that in *Vortac*. The approach to interpretation adopted in each of these cases focused on the objective and policy framework relevant to the rule in question. As I have indicated in this case, the plan prioritises common and consistent meanings for defined words. I place weight on objective 3.3.2 and the overall structure of the definition section of the plan, which is the specific plan context within which the definition appears.

[95] In any event in the particular circumstance of this case, it is unnecessary for me to engage in a detailed review of the objectives and policies of the IGZ because I have reached the view that the shipping containers on the site are not "fixed to the land" and are therefore neither "structures" nor "buildings". On that basis neither interpretation on the definition of "building" effects the substantive outcome and neither interpretation better achieves the policy direction of the objectives and policies of the IGZ.

[96] I consider that the consequences that Mr Phillips identifies of interpreting the rule in the way argued for by the respondent, are overstated. He identified vehicles, trailers and tents within camping grounds, rental car/campervans at depots and cars on sale at car sales yards being deemed as "buildings" if the respondent's interpretation were to be adopted.

[97] The wider impact of adopting the respondent's interpretation, as I have done, is likely to be limited. Before one of the items listed in (c) can fall within (a) or (b), it still needs to be "fixed to the land". This factor would rule out most of the situations Mr Phillips refers to. It is difficult to envisage a case where caravans or boats in a sales yard (for example) would ever be "fixed to the land" in terms

of the criteria I go on to discuss.

[98] Mr White's evidence was that where an object is determined to be "fixed to land" so as to be a building under (a) and/or (b) triggering a consent requirement, the plan sets out appropriate and flexible assessment criteria. Mr White did not consider any of the possible consent requirements onerous or anomalous or as representing an absurd outcome. I agree with Mr White in general terms, although in this case my finding below is that the containers on the site do not trigger any consent requirement.

[99] For completeness I record that the parties made submissions about the status of containers within the Specific Purpose (Lyttleton Port) Zone. However, as Ms Appleyard explained this zone is subject to a different plan preparation process to the rest of the CDP. The definition of "building" in the wider CDP does not appear to apply as it is not hyperlinked. I have therefore not found it helpful to consider these zone provisions.

Are the shipping containers "fixed to land"? – the application question

[100] On the basis of the interpretation, I adopt above, shipping containers (or stacks of shipping containers) on the site are a "building" if they are:

(a) any structure or part of a structure, whether permanent, movable or immovable; and/or
(b) any erections, reconstruction, placement, alteration or demolition of any structure or any part of any structure within, on, under or over the land …

[101] The term "structure" is not defined in the CDP, but the RMA defines the term as "any man-made building, equipment, device, or other facility that is fixed to the land, including rafts".

[102] Both parties agreed that shipping containers on the site are to be considered

"equipment" and/or "a device" made by people, therefore the only question arising under the definition of "structure" is whether the shipping containers are "fixed to land".

[103] The respondent submitted that the stacks of shipping containers are "fixed to the land" in such a way as to be "structures", while the applicants submitted that single shipping containers and stacks of empty shipping containers that form part of a supply chain network and are temporarily stored on the site, are not "fixed to the land" and not structures as defined by the RMA.

[104] Four Environment Court authorities were referred to by both parties in *Ohawini Bay Ltd v Whangarei District Council*[63] (where a sea wall was considered); *Antoun v Hutt City Council*,[64] *Beachen v Auckland Council*,[65] and *Tasman District Council v Schaeffner*[66] (each concerning tiny homes). Those cases dealt with the issue of what constitutes being "fixed to the land" in the definition of structure.

[105] On the basis of these authorities, the parties agree that the court should approach the issue of whether the shipping containers are fixed to the land by considering:

(a) first, the degree of annexation to the land, noting that in some cases something can be fixed to the land simply by gravity; and
(b) second, the object or intent, of the annexation to the land.

Applicants' submissions

[106] The applicants emphasise various aspects of the transitory and short-term nature of the storage of the shipping containers and their presence on the site in the context of the wider supply chain, rather than any purpose that implies a level

63 *Ohawini Bay Ltd v Whangarei District Council* ENC Auckland A068/06, 31 May 2006.
64 *Antoun v Hutt City Council* [2020] NZEnvC 6.
65 *Beachen v Auckland Council* [2023] NZEnvC 159.
66 *Tasman District Council v Schaeffner* [2024] NZEnvC 180.

of permanence. The stacks of shipping containers were submitted to be distinguishable from the other Environment Court cases: *Ohawini* involved a sea wall specifically designed to be permanent and embedded in the ground (so not easily moved), the tiny homes cases all involved permanent occupation with connection to services (or intended connection to services in the case of *Antoun*), with significant practical and legal difficulties in moving the tiny homes.[67]

[107] The applicants contended that the respondent's submissions confuse the shipping containers or stacks of shipping containers themselves, which are temporary and transitory with the *activity* on the site, namely container storage.[68]

Respondent's submissions

[108] The respondent focused exclusively on whether the *stacks* of shipping containers were fixed to land (as distinct from the shipping containers themselves).

[109] In terms of the degree of annexation, the respondent submitted that the stacks are placed in designated places, and as shipping containers are designed to be uniform and standardised, they fit together seamlessly in various configurations and onsite are interlocked in stacks. Due to the weight of the shipping containers they cannot easily be moved and require MHE such as a crane, forklift, straddle, carrier to shift them. The respondent considers the stacks are a permanent feature of and presence in, the environment held firmly in place by gravity.

[110] The stacks of shipping containers can be seen as having a high degree of annexation in the sense that, while their constituent parts change from time to time, the stacks themselves are in effect a permanent feature of the environment.[69]

[111] The object of the annexation is storage and repair/maintenance. The

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67 Applicants' synopsis of submissions dated 9 September 2024 at [58]-[60].
68 NOE p 147 l 6-19.
69 Respondent's synopsis of legal submissions dated 16 September 2024 at [5.11]-[5.16].

intention is to stack the shipping containers up to a maximum of 23.2 m (eight containers high). Thousands of shipping containers are stored on the site. The shipping containers may be stored on the site for an indefinite period depending upon consumer demand. In any event, "the facility or container storage activity" is intended to be long-term or permanent, rather than temporary or transitory.[70]

Discussion

[112] In line with the Environment Court authorities where the definition of "structure" has been considered, I analyse the facts on the basis of the two factors borrowed from property law: *the degree of annexation* of the shipping containers (and stacks of containers) to the land, and the *object of annexation* – that is the intent of the annexation.[71]

[113] Dealing first with the degree of annexation, there are no foundations, attachments or other support structures which fix the shipping containers in place.

[114] The respondent submitted that the shipping containers "interlock" while stacked. I took this to mean that they are connected to each other by some coupling mechanism. However, there is no evidence to that effect. Mr Tregurtha's evidence was that the shipping containers nest on each other only by gravity; they are not tied or fixed to each other nor to the ground while in stacks. That is also what the photographs show.[72] I therefore find that the shipping containers both individually and when stacked, are held in place only by gravity.[73]

[115] The case law indicates that the word "fixed" does not exclude objects that are held down solely by gravity.[74] Of the cases that were referred to me, the only

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70 Respondent's synopsis of legal submissions dated 16 September 2024 at [5.18].

71 In the following discussion I leave to one side *TDC v Schaeffner* as at the time of issuing this decision it was the subject of an appeal to the High Court. I place no reliance on the facts and outcome in that case.

72 NOE, pp 104 l 21-105 l 20.

73 Affidavit of Grant Tregurtha sworn 8 April 2024 at [18](e).

74 *Ohawini* at [24].

one where the object in question was simply resting on the ground without being embedded or having some other physical attachment or connection to the ground, was *Antoun*.[75] In *Antoun* the tiny home was held in place solely by its obvious weight and bulk. These factors meant that it could not easily be moved. In the present case the containers are heavy, the stacks of containers even more so. Whether this makes the containers difficult to move needs to be seen in context. The individual shipping containers (and the stacks of containers) on the site are (by design) easily transportable around the site, and on and off the site, at short notice with specialist equipment that is readily available (MHE).

[116] The length of time the object in question has been in place has been relevant to the degree of annexation in other cases.[76] In this case the length of time the shipping containers are on the site in one locations is (on average) in my judgement, extremely short. The dwell time on the site averaged 25.18 days over the course of the 2024 financial year. Within that average, individual shipping containers will be onsite for longer and shorter periods.

[117] This average dwell time does not account for internal reshuffling and reordering of containers within the site. Mr Tregurtha's evidence was to the effect that SCS's internal model allows for an average of four movements per container.

[118] The time the individual shipping containers are stationary in one place on the site bears no comparison to the other cases. The seawall in *Ohawini* was a permanent feature, the partly completed tiny home in *Antoun* had been in place for 18 months, and the tiny home in *Beachen* had been present without movement, for three years.

[119] The respondent places emphasis on the degree of permanence of the stacks, in contrast to the individual shipping containers. I have already set out the detail

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75 *Antoun* at [54]. In *Beachen* (at [45]) the court found that the tiny home was embedded in the land, physically connected to services and was integrated into the site. In *Ohawini* the seawall was partly buried in the ground.

76 For example, *Beachen* at [45].

of Mr Tregurtha's evidence about the movement of the containers in and out of and within the site, and his evidence about the stacks of containers within the site. I have accepted Mr Tregurtha's evidence that the configuration and height of the container stacks across the site is in a "constant state of flux". In my view therefore the stacks are not permanent, they are highly changeable.[77]

[120] The respondents submitted that even though the constituent parts of the stacks change from time to time, the stacks themselves "are in effect a permanent feature of the environment".[78] If I understand the submission correctly, the respondent is emphasising the purported appearance of permanence over the physical reality on the site.

[121] In line with all the cases to which I was referred, the issue of the degree of annexation involves a careful consideration of the physical qualities of the object in question and its association with the ground. To regard the appearance of the permanence of the stack as relevant in assessing the degree of annexation, as distinct from the reality (which is that the stacks are impermanent), would in my view be a fiction.

[122] These factors lead me to the conclusion that the degree of annexation of the containers both individually and when stored in stacks is low.

[123] Turning to the object or intent of annexation. The purpose of the containers and the stacks of containers on the site is temporary storage.

[124] The respondent submits that the container storage activity is intended to be long-term or permanent. I accept the applicants' submission that this confuses the question of whether the shipping containers or the stacks of shipping containers are a structure with the *activity* of storage on the site. The applicants' activity of operating a container storage depot which includes the stacking of

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77 Applicants' synopsis of submissions dated 9 September 2020 at [60.2].

78 Respondent's synopsis of submissions dated 16 September 2024 at [5.16].

shipping containers, is no doubt intended to be continuing and long term. That is quite a different issue to whether shipping containers that are on the site at any given time, or the stacks of shipping containers, are in one place permanently or for the long term.

[125] The activity of storage on the site is subject to separate controls in the IGZ. These controls include requirements as to setback and screening.[79] In my judgement the rules in the plan concerning outdoor storage are the appropriate place for controls on the outdoor storage of shipping containers. If the provisions in the CDP, dealing with outdoor storage in the IGZ are inadequate, that is a matter that the Council can only address via a plan change.

[126] In determining the object or intent of annexation, it is in my view significant that the shipping containers on the site retain their character as shipping containers. They remain, in the words of the CSC convention, "articles of transport equipment" specifically designed to "facilitate the transport of goods". Each container on the site is being stored temporarily awaiting the next assignment. As the applicants put it, they are part of a "supply chain network"[80] and remain part of this network while on the site.

[127] This is not a situation where the shipping containers have been converted to a different use to that for which they were originally designed. They have not, for example, been used for a wall to protect against rock fall or used as part of the structural elements of a building. Rather, the reason for having the shipping containers temporarily on the site is as part of their intended purpose and function as articles of transport equipment.

[128] For these reasons I find that the shipping containers stored on the site, whether individually or in stacks, in the manner that has been described in the

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79 See 16.4.2.2 Minimum building setback from road boundaries/railway corridor, 16.4.2.3 Minimum building setback from the boundary with a residential zone and 16.4.2.7 Visual amenity and screening.

80 Applicants' synopsis of submissions dated 9 September 2024.

evidence before me, are not fixed to the land and are therefore not structures under the RMA nor buildings under the CDP.

Declaration 2

Rule 5.4.1.1 – are the shipping containers "transiting shipping containers"?

[129] The applicants seek a declaration to the effect that empty shipping containers (that are part of a supply chain network) are transiting shipping containers for the purposes of rule 5.4.1.1, P16 of the CDP. This rule provides for "Outdoor Storage of transiting shipping containers in commercial and industrial zones" as a permitted activity within the flood management area.

[130] Rule 5.4.1.1 applies in the context of minimum floor level requirements within flood management areas as identified in planning maps. The applicants' submit, and I agree, that the purpose of the rules in chapter 5 is to avoid activities that increase the risks associated with natural hazards to people, property and infrastructure.[81]

[131] Rule 5.4.1.1 indicates that the district plan anticipates that shipping containers that are not transiting may require compliance with minimum floor levels in circumstances where the containers are otherwise a "building" under the definition in the district plan. As I have found it, that is in circumstances where the container is affixed to the land so as to be a structure (under (a) and/or (b) of the definition of building) or being used as a residence, place of business, or for storage (in terms of (c)).[82]

[132] The CDP does not define the term "transiting". The introduction to the

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81 Applicants' synopsis of submissions dated 9 September 2024 at [81].

82 As an aside I have considered whether rule 5.4.1.1, which I'm told is the only provision referring to "transiting shipping containers" in the CDP, assists with the interpretation of the definition of building. The exemption and rule 5.4.1.1 P16 is equally consistent with limb (c) being exclusive of limbs (a) and (b) as it is inclusive.

definitions list in chapter 2 "Abbreviations and Definitions" states that undefined definitions are "best defined using their ordinary dictionary meaning". The applicants rely on the following dictionary definitions of 'Transit(ing)':[83]

> **Cambridge dictionary**
> To pass through or cross a place, an area, or a country on a way to somewhere else.
>
> **Merriam-Webster dictionary**
> to pass over or through

[133] The applicants rely on the shipping containers being on the site temporarily as part of a supply chain network. Each container passing over/across the site, "transiting while on a journey" in terms of the dictionary definitions set out above. The placement of the containers on the site is temporary, and just one stop on its way to its destination(s).[84]

[134] As an aside, I record that shipping containers that are in transit would unlikely be classified as a "building" under the district plan definition, as shipping containers of that nature would not be "fixed to land".

[135] The respondent refers to dictionary definitions as follows:[85]

> **Transit**
> The action of passing across or through; passage or journey from one place or point to another.
> A way for passing; a river crossing.
> The passage or carriage of people or goods from one place to another; public transport.
> …

83 Applicants' synopsis of submissions dated 9 September 2024 at [78].
84 Applicants' synopsis of submissions dated 9 September 2024 at [85].
85 Respondent's synopsis of legal submissions dated 16 September 2024 at [9.3].

Transit:

(1) Conveyance of persons or things from one place to another.

(2) Usually local transportation especially of people by public conveyance

An act, process, or instance of passing through or over.

Transiting:

As in traversing; to make one's way through, across or over.

[respondent's emphasis]

[136] The respondent submits that the shipping containers on the site are not "transiting" because:[86]

(a) they are not conveying goods. Reference is made to the Australian Federal Court case *NEC Australia Pty Ltd v Gamif Pty Ltd* ('*NEC*')[87] where the court held that goods in that case "ceased to be in transit … once they had been unloaded and stacked in the … depot";

(b) they are no longer on a journey from origin to destination. Instead, they have reached their destination and are being stored until they are required for the next journey.

[137] Having considered the submissions, I conclude that the site is being used for the storage of transiting shipping containers. I discount reliance on the *NEC* case as it concerned an insurance contract that only covered goods that were "in transit". Quite different considerations apply here.

[138] The respondent focuses on the term "transiting". However, this word does not occur in isolation. Rule 5.4.1.1 expressly contemplates that transiting shipping containers may be stored. The respondent's interpretation makes no sense as it adopts the interpretation of the term "transiting" which excludes the possibility of transiting shipping containers being stored.

86 Respondent's synopsis of legal submissions dated 16 September 2024 at [9.7].

87 *NEC Australia Pty Ltd v Gamif Pty Ltd* FC, 31 May 1993.

[139] Neither party provided a detailed contextual and purposive analysis of rule 5.4.1.1. From my review of the objectives and policies of Chapter 5: Natural Hazards, I discern that the purpose of the rule is to introduce additional floor level requirements so as to protect people from harm, and property and infrastructure from damage. Requiring higher floor levels on temporarily stored shipping containers such as those on the site, would not serve this purpose in any way.

[140] For these reasons, I find that the activity on the site falls within the definition of the *outdoor storage of transiting shipping containers* under rule 5.4.1.1 of the CDP.

Declaration 3(a) and (b)

Are the activities on the site a "development" under rule 16.4.1.1 of the CDP?

[141] The built form rules of the IGZ (including the 11 m height limit) only apply to the "development" of the site. The applicants seek a declaration to the effect that the shipping containers and stacks of shipping containers are not a "development". The argument upon which this declaration is based is an alternative to declaration 1, and is relevant only if the shipping containers on the site are structures and buildings. I have found in this case that the shipping containers on the site are neither structures nor buildings. I go on to address the arguments that have been put to me as to the application of the definition of "building".

[142] Chapter 16 provides for industrial and other compatible activities to be undertaken within three industrial zones including IGZ. Part 16.4.1 is within the IGZ and contains a series of rules and associated tables specifying the activity status (permitted, controlled, restricted discretionary, discretionary, and non-complying) of various activities.

[143] Rule 16.4.1.1a. provides:

> The activities listed below are permitted activities in the Industrial General Zone if they meet the activity specific standards set out in this table and the built form standards in Rule 16.4.2. Note, the built form standards do not apply to an activity that does not involve any development.
>
> [court's emphasis]

[144] The IGZ's built form standards are set out in 16.4.2 of the CDP as referenced in rule 16.4.1.1.a.

[145] The applicants argue that, for the industrial zones, the built form standards do not apply to an activity that does not involve any "development".[88]

[146] The term "development" is not defined in the CDP nor in the RMA. As mentioned above, the introduction to the definitions list in chapter 2 instructs the use of the terms "ordinary dictionary meaning" when that term is not specifically defined (and hyperlinked). The applicants and the respondent each referred to, and relied solely upon a number of dictionary definitions. Neither the applicants nor the respondent provided a contextual or purposive interpretation of the definition of "development".

[147] The applicants provided definitions from Collins dictionary, Cambridge dictionary, and Miriam Webster dictionary and submit that it is clear from these definitions that "development" requires an aspect of building (used as a verb) or construction of something on land that would be considered an improvement that would increase the underlying capital of that land. On this basis, the applicants argue that the activities undertaken on the site do not involve the "development" of land for the purposes of rule 16.4.1.1.a.[89]

[148] The applicants argued that the placement of shipping containers on the site

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88 Applicants' synopsis of submissions dated 9 September 2024 at [94].

89 Applicants' synopsis of submissions dated 9 September 2024 at [91]-[100].

was in itself not an improvement; the containers do not represent a feature of the site that adds value.

[149] The respondent referred to the following dictionary definitions of "development" as follows:[90]

Collins English Law Dictionary New Zealand Edition

- an area or tract of land that has been developed;
- Develop: to improve the value or change the use of land, as by building.

Cambridge Dictionary

- an area on which new buildings are built in order to make a profit
- The process of growing and changing and becoming more advanced.

Merriam Webster Dictionary

- the state of being developed;
- a tract of land that has been made available or usable: a developed tract of land *especially*: one with houses built on it.

Black's Law Dictionary Ninth Edition Bryan A. Garner

- … 1. A substantial human-created change to improved or unimproved real estate, including the construction of buildings or other structures;
- An activity, action, or alteration that changes underdeveloped property into developed property.

Lexis Advance Fourth Edition Words and Phrases Legally Defined Volume 1 A-K Development of property

- "… development means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land". - (Town Country Planning Act 1990).

[150] A number of the definitions refer to "building" and "structures". It is clear

90 Respondent's synopsis of legal submissions dated 16 September 2024 at [10.3].

to me that had I determined that the shipping containers or the stacks of shipping containers on the site were "structures" or "buildings" then the activity of placing them on the site would have been a "development". However, I also consider that the concept of "development" goes beyond the placement of buildings and structures.

[151] In my view of the dictionary definitions set out above, the one offered by Black's most closely reflects the way that "development" would be commonly understood in the context of an industrial site as, "an activity, action, or alteration" that "changes" undeveloped property into developed property.

[152] I hesitate to add to the already long list of dictionary definitions cited by the parties. However, the Concise Oxford English dictionary's definition of "develop", to which the definition of "development" refers, seems to me to also encompass what would generally be understood in this context. The definition as far as relevant is:

a. construct new buildings on (land);
b. convert (land) to a new purpose so as to use its resources more fully.

[153] In this definition the distinction between a confined interpretation (as argued for by the applicants) and the broader interpretation (as argued for by the respondent) is represented in the alternatives a. and b. I consider the second part of the definition set out above is most relevant.

[154] The concept of "development" is a broad term which encompasses activity, action or alteration that results in a "change" to the undeveloped site. Equally, the "conversion" of land to a new purpose, encompasses what is involved and the "development" of land for the purposes of the CDP.

[155] In this case the use of the site for shipping container storage in my view involves an alteration and a change to the property. Various physical changes to the site have been undertaken, which have enabled the storage to occur, including

the development of hard stand and ancillary components of the container storage depot.

[156] In February 2024 Braeburn (the landowner) obtained resource consents for a three-lot fee simple subdivision, earthworks and industrial activities on the site. When the consent was originally applied for, it sought to enable the stacking of shipping containers beyond the 11 m height limit. However, this aspect of the application was withdrawn on the basis that no consent was required for that activity.

[157] The consent nevertheless imposed various conditions relating to the shipping containers (and other matters for which consent was not sought). Braeburn objected to these conditions on the basis that they were outside the scope of conditions that could lawfully be imposed. The court was provided with a copy of the decision of the hearing commissioner appointed to determine the objection.[91]

[158] In the objection decision the commissioner finds that no specific activities were included within the application that gave rise to noise, or height effects that required management through consent conditions, and that the conditions relating to height therefore did not reasonably relate to the activity for which consent was sought. The noise and height conditions were therefore deleted from the resource consent as issued.

[159] The placement of shipping containers on the site has nevertheless proceeded.

[160] Ms Appleyard submitted that the consent and objection process showed that any physical developments that have taken place on the site were generic, could be used for multiple other activities and were unrelated to the storage of

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91 The court's understanding of the consent and objection process, as set out herein, is from a reading of this decision.

shipping containers.[92]

[161] I do not accept this argument. It is clear to me from the objection decision that various activities have been undertaken on the site, some of which required resource consent and some of which did not. These activities have included the creation of a hard stand area that would be necessary for container storage. The hard stand area might well be able to be used for other alternative activities (rather than container storage) but I find that it is nevertheless part of the activity established on the site.

[162] Overall, I find that the conversion and change of the site to a container storage depot which has involved physical changes to the site, such as the hard stand area, and the storage of shipping containers on the site, is a development for the purposes of rule 16.4.1.1a.

Form of declaration

[163] The declarations sought in this application were summarised at [8]. The declarations as framed are broad and general in nature. The applicants' request that declarations be made that determine the application of the relevant rules broadly throughout the area covered by the CDP. I am not prepared to make declarations on this basis. My consideration of plan rules in this case has been confined to the context of the facts and affidavit evidence before me.

[164] It is appropriate that I make declarations to resolve the real issues between the parties. Before I can do so, appropriate declarations need to be drafted on a more confined basis.

[165] At the conclusion of the hearing, I indicated to the parties that if I determined it was appropriate to make declarations, I would give them the opportunity to discuss and, hopefully agree on the final form of those declarations.

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92 Applicants' synopsis of submissions dated 9 September 2024 at [102]-[107].

Directions are made to that effect. To assist the parties in their drafting exercise, I record the following observations:

(a) Declarations 1(a) and 1(b) should be combined so that a single empty shipping container and a stack of empty shipping containers is covered by one declaration. That rephrased declaration should be worded to make clear that the declaration is specific to the circumstances of the applicants' site by referencing the location, and briefly describing the factual circumstances that have led to this determination. I note my view that if there is a significant change in the manner the shipping containers are dealt with on the site (e.g. permanently storing the shipping containers in the same place on the site), the court's view may well differ on the question of whether the shipping containers are "fixed to land";

(b) I am not prepared to make the generalised declaration sought as Declaration 1(c);

(c) similar to Declaration 1(a) and (b), Declaration 2 should be rephrased to make it clear that the declaration to be made is specific to the circumstances of the applicants' site rather than having general application;

(d) Declaration 3(a) sought to clarify the application of rule 16.4.1.1a to activities in the IGZ-PIP and the other IGZ zones with area-specific rules. I have found that the activities on the site do constitute "a development". Given my findings in relation to declaration 1(a) and (b), that determination does not affect the outcome for these parties. I doubt there is any utility in making the declaration sought as 3(b), however the parties, in particular the respondent, can address me on that issue if there is a view that some form of declaration should be made;

(e) during the hearing Ms Appleyard indicated Declaration 3(c) was not needed, accordingly, I am not prepared to make that declaration and have not addressed it in this decision.

Outcome and directions

[166] I direct the parties to confer and file a joint memorandum, by 31 January 2025, proposing amended declarations addressing the matters set out in paragraph [165], and this judgement more generally.

[167] The court will then proceed to issue a final decision on the amended declarations in due course.

K G Reid
Environment Judge

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2025] NZEnvC 85

IN THE MATTER	of the Resource Management Act 1991
AND	an application for declaration under s311 of the Act
BETWEEN	BRAEBURN PROPERTY LIMITED AND SPECIALISED CONTAINER SERVICES (CHRISTCHURCH) LIMITED
	(ENV-2024-CHC-20)
	Applicant
AND	CHRISTCHURCH CITY COUNCIL
	Respondent

Court:	Environment Judge K G Reid Sitting alone under s309 of the Act
Hearing:	at Christchurch on 23 September 2024
Appearances:	J Appleyard and L Forrester for the Braeburn Property Limited S de Groot for Specialised Container Services (Christchurch) Limited A Green and R Ashton for Christchurch City Council
Last case event:	5 February 2025
Date of Decision:	21 March 2025
Date of Issue:	21 March 2025

FINAL DECISION OF THE ENVIRONMENT COURT ON APPLICATION FOR DECLARATION

A: Under s313 Resource Management Act 1991, the court makes the declarations sought that:

Declaration 1:

The temporary storage of empty shipping containers, either individually or in a stack, on the Site at 320A Cumnor Terrace, Woolston (being Lot 302 DP 473298 and Lot 305 DP 525615), undertaken in the manner listed below, is not a 'building' as defined in the Christchurch District Plan or a 'structure' as defined in the Resource Management Act 1991:

(a) the shipping containers, both individually and when stacked, are held in place only by gravity; they are not tied or fixed to each other nor to the ground;
(b) the shipping containers are transportable around the Site, and on and off the Site, at short notice with specialist equipment (mechanical hauling equipment) that is readily available;
(c) the shipping containers are articles of transport equipment specifically designed to facilitate the transport of goods and have not been converted to a different use to that for which they were originally designed;
(d) the shipping containers are not stored permanently on the Site – they are part of a supply chain network and are stored temporarily awaiting the next assignment;
(e) the configuration and height of shipping container stacks across the Site is changeable and in a constant state of flux; and
(f) the shipping containers are reshuffled and reordered several times while on Site.

Declaration 2:

Shipping containers that are stored on the Site at 320A Cumnor Terrace, Woolston (being Lot 302 DP 473298 and Lot 305 DP 525615), in the manner described in Declaration 1 above, are 'transiting shipping containers' for the purposes of rule 5.4.1.1 P16 of the Christchurch District Plan.

B: Costs are reserved.

REASONS

[1] This proceeding concerns an application for declaration by Braeburn Property Ltd ('Braeburn') and Specialised Container Services (Christchurch) Ltd ('SCS') (together, 'the applicants'), for declarations related to the use of Braeburn's 12 ha industrial site[1] ('Site') by SCS as a shipping container depot.

[2] This is the third decision.[2] The background to the application is traversed in detail by the interim decision.[3] In short, the Site is zoned Industrial General (Port Link Industrial Park) ('IGZ-PIP') under the Christchurch District Plan ('CDP'), with part of it subject to an 11 m building height limit.[4] The Christchurch City Council ('the Council') considers the stacks of shipping containers stored on the Site are "buildings" for the purpose of the CDP, making them subject to the height limit. Those limits would restrict container stacking and impact the commercial viability of SCS's operation. In 2023 the applicants sought to resolve the issue of whether the building height limit applied to the containers by making an application for a certificate of compliance on the basis that the storage of containers on the Site was a permitted activity. That application was declined and

1 Located at 320A Cumnor, Terrace, Woolston, Christchurch.
2 The first was *Braeburn Property Ltd v Christchurch City Council* [2024] NZEnvC 145 which dealt with service requirements for the application.
3 *Braeburn Property Ltd v Christchurch City Council* [2024] NZEnvC 343 ('interim decision').
4 Rule 16.4.4.2.1 of the CDP.

appealed.[5] Following this, the Council issued abatement notices to enforce compliance with the building height limit. These were also appealed by the applicants.[6] Both appeals are on hold pending the outcome of the current proceeding, and the abatement notices are currently the subject of a stay issued by this court.[7]

Declarations sought

[3] The declarations sought were summarised as follows:[8]

> **Declaration 1:**
> In relation to the definition of 'building' (the Definition) in the Christchurch District Plan (the Plan).
>
> **Declaration 1(a):**
> That an empty shipping container that is part of the supply chain network and is placed on a site temporarily is not a building for the purposes of the Definition.
>
> **Declaration 1(b):**
> That a stack of empty shipping containers (being more than one shipping container stacked on top of the other) that are part of the supply chain network and are placed on a site temporarily are not a building for the purposes of the Definition.
>
> **Declaration 1(c):**
> That the outdoor storage of other 'stacked' items (such as palletised goods, baled scrap metal, dismantled/crushed car bodies, haybales, garden supplies, metal, timber, concrete, other raw materials or manufactured products used in construction and civil works, and bundled waste or recycled materials) that are placed on a site temporarily until such time as they are required is not a building for the purposes of the Definition.

5 Proceeding number ENV-2024-CHC-012.
6 Proceeding number ENV-2024-CHC-013.
7 *Braeburn Property Ltd v Christchurch City Council* [2024] NZEnvC 46.
8 At [8].

Declaration 2:
That an empty shipping container, or a stack of empty shipping containers, that are part of the supply chain network and are placed on a site temporarily are "transiting shipping containers" for the purposes of rule 5.4.1.1 P16 of the Plan.

Declaration 3:
In respect of rule 16.4.1.1.a:

Declaration 3(a):
The rule applies to activities in the Industrial General Zone (Portlink Industrial Park) in sub-chapter 16.4.4 (and the other Industrial General Zones with area-specific rules); and

Declaration 3(b):
The activities listed in paragraphs 1.1(a)-(c) above are not activities that involve "any development".

[4] The interim decision records it is appropriate that declarations be made to resolve the real issues between the parties. However, the declarations needed to be drafted on a more confined basis. The parties were directed to confer and file a joint memorandum proposing amended declarations addressing the matters set out by the court's judgment.[9]

The amended declarations

[5] The parties filed a joint memorandum dated 5 February 2025 setting out the amendments to the declarations agreed between them.

Declaration 1

[6] The central question in Declaration 1 is whether the shipping containers and stacks of shipping containers on the Site should be considered "buildings" when interpreting the CDP. The court found that the shipping containers stored on the Site, whether individually or in stacks, are not fixed to the land and are

9 At [164].

therefore not structures under the RMA nor buildings under the District Plan. Two factors influence that finding, being the degree of annexation of the shipping containers (and stacks of shipping containers) to the land; and the object of annexation, i.e. the intent of annexation.[10]

[7] The shipping containers on the Site have a low degree of annexation for several reasons:[11]

(a) there are no foundations or support structures fixing the containers in place;
(b) the containers are held in place only by gravity and are not tied or fixed to each other or the ground;
(c) the containers are easily transportable around and off the Site with readily available specialist equipment;
(d) the containers' stay on the Site is very short, averaging 25.18 days, with some staying longer or shorter periods;
(e) the containers are frequently reshuffled and reordered while on the Site; and
(f) the configuration and height of the container stacks are constantly changing, making them non-permanent and highly changeable.

[8] Regarding the object of annexation, the purpose of the containers and stacks of containers on the Site is for temporary storage. The following were important factors in that finding:[12]

(a) the shipping container storage depot's operation is intended to be long-term, but individual containers or stacks are not permanently in one place;
(b) rather than having been repurposed, the shipping containers retain

10 Joint memorandum at [9], referring to the interim decision at [112].
11 Interim decision at [113]-[112].
12 Joint memorandum at [10], referring to interim decision at [113]-[121].

their original purpose as transport equipment;

(c) each shipping container is stored temporarily, awaiting its next assignment as part of a supply chain network.

[9] The court recorded the following observation regarding the wording of Declaration 1:[13]

> Declarations 1(a) and 1(b) should be combined so that a single empty shipping container and a stack of empty shipping containers is covered by one declaration. That rephrased declaration should be worded to make clear that the declaration is specific to the circumstances of the applicants' site by referencing the location, and briefly describing the factual circumstances that have led to this determination. I note my view that if there is a significant change in the manner the shipping containers are dealt with on the site (e.g. permanently storing the shipping containers in the same place on the site), the court's view may well differ on the question of whether the shipping containers are "fixed to land";
>
> I am not prepared to make the generalised declaration sought as Declaration 1(c);

[10] The parties now jointly propose the following amended wording for Declaration 1:

> **Declaration 1:** The temporary storage of empty shipping containers, either individually or in a stack, on the Site at 320A Cumnor Terrace, Woolston (being Lot 302 DP 473298 and Lot 305 DP 525615), undertaken in the manner listed below, is not a 'building' as defined in the Christchurch District Plan or a 'structure' as defined in the Resource Management Act 1991:
>
> (a) the shipping containers, both individually and when stacked, are held in place only by gravity; they are not tied or fixed to each other nor to the ground;
>
> (b) the shipping containers are transportable around the Site, and on and off the site, at short notice with specialist equipment (mechanical hauling equipment) that is readily available;
>
> (c) the shipping containers are articles of transport equipment specifically

13 At [165].

designed to facilitate the transport of goods and have not been converted to a different use to that for which they were originally designed;

(d) the shipping containers are not stored permanently on the Site – they are part of a supply chain network and are stored temporarily awaiting the next assignment;

(e) the configuration and height of shipping container stacks across the Site is changeable and in a constant state of flux; and

(f) the shipping containers are reshuffled and reordered several times while on Site.

Declaration 2

[11] The applicants requested a declaration stating that the shipping containers on the Site are 'transiting shipping containers'. They argued that rule 5.4.1.1 P16, which allows for the outdoor storage of such containers in commercial and industrial zones within the flood management area, should apply.

[12] The interim decision determined that the Site is used for storing transiting shipping containers and that this activity qualifies as "outdoor storage of transiting shipping containers" under rule 5.4.1.1 of the District Plan.[14] Additionally, the court noted that Declaration 2, like Declarations 1(a) and 1(b), should be rephrased to specify that the declaration applies to the specific circumstances of the applicants' site rather than having a general application.[15]

[13] The parties now jointly propose the following amended wording for Declaration 2:

> **Declaration 2:** Shipping containers that are stored on the Site at 320A Cumnor Terrace, Woolston (being Lot 302 DP 473298 and Lot 305 DP 525615), in the manner described in Declaration 1 above, are 'transiting shipping containers' for the purposes of rule 5.4.1.1 P16 of the Christchurch District Plan.

14 At [137], [140].
15 At [165].

Declaration 3

[14] The argument raised by the applicants in respect of Declaration 3 was an alternative to Declaration 1. During the hearing the applicants indicated that if the court was inclined to make Declarations 3(a) and 3(b), then some changes to the wording of those declarations should be made for clarity. However, in the interim decision, the court determined that the conversion and change of the Site to a container storage depot constitutes "a development" because the use of the Site for shipping container storage involves an alteration and a change to the property, as physical changes to the Site have been undertaken to enable this activity to occur.[16]

[15] The court observed Declaration 3(a) aimed to clarify the application of rule 16.4.1.1a to activities in the IGZ-PIP and other Industrial General zones with area-specific rules. The court found that the activities on the Site do constitute 'a development', but this determination does not affect the outcome for the parties based on findings in Declarations 1(a) and (b).[17]

[16] Further, I considered there was no utility in making Declaration 3(b) and afforded leave to the parties, especially the respondent, to address this issue if needed. During the hearing, Ms Appleyard indicated that Declaration 3(c) was not necessary, so the Court did not make or address that declaration.[18]

[17] The joint memorandum records, given the Court's finding in respect of Declarations 1 and 2, and the clarification provided in the interim decision[19] as to the meaning of "development" in the District Plan, the parties agree with the Court that there is no utility in making the declaration sought as 3(b) (or 3(a)) in relation to the factual circumstances of the Site.

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16 At [155].
17 At [165].
18 At [165].
19 At [141]-[162] of the interim decision.

Evaluation

[18] The Environment Court has no inherent declaratory powers. The court's powers to make a declaration are found in ss 310-313 of the RMA, its declaratory powers being limited to the matters listed at s310(a)-(h). Section 310(h) is a catch-all to fill gaps arising from the more specific provisions (s310(a)-(g)). It empowers the Environment Court to declare any issue or matter relating to the interpretation, administration, and enforcement of the RMA. Declarations are therefore often used as a tool to clarify the interpretation of planning documents within the context of a particular issue.

[19] Within the limits set by s310, and after hearing the matter, the court may:[20]

(a) make the declaration sought by an application under s311, with or without modification; or
(b) make any other declaration that it considers necessary or desirable; or
(c) decline to make a declaration.

[20] Having read and considered the explanations provided by the parties' joint memorandum I am satisfied that the amended declarations appropriately address the concerns expressed in the first interim decision. I therefore consider it is appropriate to make amended Declarations 1 and 2 as sought.

[21] Under s313 RMA, the court hereby makes the following declarations:

> **Declaration 1:** The temporary storage of empty shipping containers, either individually or in a stack, on the Site at 320A Cumnor Terrace, Woolston (being Lot 302 DP 473298 and Lot 305 DP 525615), undertaken in the manner listed below, is not a 'building' as defined in the Christchurch District Plan or a 'structure' as defined in the Resource Management Act 1991:

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20 Section 313.

(a) the shipping containers, both individually and when stacked, are held in place only by gravity; they are not tied or fixed to each other nor to the ground;

(b) the shipping containers are transportable around the Site, and on and off the site, at short notice with specialist equipment (mechanical hauling equipment) that is readily available;

(c) the shipping containers are articles of transport equipment specifically designed to facilitate the transport of goods and have not been converted to a different use to that for which they were originally designed;

(d) the shipping containers are not stored permanently on the Site – they are part of a supply chain network and are stored temporarily awaiting the next assignment;

(e) the configuration and height of shipping container stacks across the Site is changeable and in a constant state of flux; and

(f) the shipping containers are reshuffled and reordered several times while on Site.

Declaration 2: Shipping containers that are stored on the Site at 320A Cumnor Terrace, Woolston (being Lot 302 DP 473298 and Lot 305 DP 525615), in the manner described in Declaration 1 above, are 'transiting shipping containers' for the purposes of rule 5.4.1.1 P16 of the Christchurch District Plan.

Costs

[22] The parties do not mention the issue of costs in the joint memorandum. I discourage any application. It seems to me the parties responsibly sought clarification from the court on matters of interpretation that were genuinely in doubt, and about which there was a degree of public interest. If there is an application it should be made within 14 days, any response is due 7 days thereafter.

K G Reid
Environment Judge