IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2024] NZEnvC 145

IN THE MATTER	of the Resource Management Act 1991
AND	an application 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
Hearing:	On the papers
Submissions:	J Appleyard and L Forrester for Braeburn Property Limited S de Groot for Container Services (Christchurch) Limited R Ashton for Christchurch City Council
Last case event:	12 June 2024
Date of Decision:	25 June 2024
Date of Issue:	25 June 2024

DECISION OF THE ENVIRONMENT COURT

A: Service of the application for declarations on the Council is sufficient to satisfy the provisions of s312 of the RMA.

REASONS

Introduction

[1] This proceeding relates to an application for declarations filed by Braeburn Property Limited ('Braeburn') and Specialised Container Services (Christchurch) Limited ('SCS') on 5 April 2024.

[2] Braeburn and SCS applied for the following declarations:

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

(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.

(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.

(c) That the outdoor storage of other 'stacked' items (such as palletized 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.

1.2 In relation to other parts of the Plan:

(a) 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.

(b) In respect of Rule 16.4.1.1.a:

(i) 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

(ii) the activities listed in paragraphs 1.1(a)-(c) above are not

activities that involve "any development."

Background

[3] The application for declarations relates to 320A Cumnor Terrace, Woolston, Christchurch ('the Site'). The Site is zoned Industrial General (Portlink Industrial Park) zone in the Christchurch District Plan ('District Plan').

[4] SCS operates a shipping container depot facility from the Site and is the sub-lessee of the premises. Braeburn is the registered owner of the Site.

[5] SCS's operations include the receipt and temporary storage of empty shipping containers in transit between the port and either the origin or destination point for the container. The shipping containers are also assessed, and minor repairs are undertaken, if required. The shipping containers are then stored on the Site until the next consignment requires them.

The issue of service

[6] The issue has arisen between the parties as to whether the application for declarations should be served on the Christchurch City Council ('the Council') alone, or more widely on the neighbouring property owners. Braeburn and SCS maintain that service is not required beyond the Council. The Council's position is that the property owners surrounding the Site should be served.

Service Requirements

[7] Section 312 RMA states:

> **312 Notification of application**
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> (1) The applicant for a declaration shall serve notice of the application in the prescribed form on every person directly affected by the application.
>
> (2) Every notice required to be served under this section shall be served within 5 working days after the application is made to the court.

[8] The Resource Management Act 1991 ('RMA' or 'the Act) does not provide a definition or guidance as to when a person will be 'directly affected'.

The parties' submissions

[9] The Council submitted that it is mandatory for an applicant for a declaration to serve notice on every person directly affected by the application.

[10] In *Canterbury Regional Council v Department of Conservation*[1] the court considered the term "affected" in the context of s312 and determined that it meant an "appreciable effect more than minimal, one that differentiates the person from a generality in order to define the direct effect".

[11] In *Gertrude's Saddlery Ltd v Queenstown Lakes District Council*[2] the court held that:

> [10] The meaning of 'directly affected' in s312 is somewhat imprecise. However, I find it to convey the legislature's intention that applicants seeking declarations that can be perceived to impact in a personal or direct way on another person should serve that person. It is intended as a provision that directs the applicant to do the right thing, proactively, in those circumstances.

[12] The Council's position is that the owners and occupiers of the properties within the visual catchment of the Site are persons directly affected by the application for declarations.

[13] The Council's position is that the owners and occupiers of these properties are directly affected because, while the application for declarations relates to a legal interpretive issue, the determination of that issue will result in a substantive resource management outcome on the Site, for example, whether or not SCS can

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[1] C*anterbury Regional Council v Department of Conservation* NZEnvC Christchurch C81/2004, 22 June 2004; citing the High Court in *BP Oil Ltd v Taupo District Council* HC Hamilton M300/85, 31 January 1989.

[2] *Gertrude's Saddlery Ltd v Queenstown Lakes District Council* [2023] NZEnvC 147.

stack shipping containers in excess of 11m up to 8-9 containers high without the need for resource consent.

[14] Braeburn and SCS's position is that there are no other persons directly affected by the application, beyond the Council. This is because:

(a) the application for declarations relates to legal issues of interpretation and the application of the District Plan and does not concern site-specific matters; and

(b) while the declarations sought might give rise to a point of law that is of interest to a range of people, including the parties the Council says should be served, they will not be 'directly affected' by the application.

[15] In support of their position Braeburn and SCS referred to:

(a) *North* Shore *City v Auckland Regional Council.*[3] In this case the court considered s312, and noted:[4]

> Section 312 requires that an application for a declaration is to be served on every person directly affected by the application. In that regard I accept Mr Cooper's submission and hold that every person who lodged a submission on Chapter 4 of the proposed regional policy statement, and every person who has an interest in land in the vicinity of the proposed metropolitan limits, is not thereby directly affected by the application. It is to be remembered that what the Tribunal is being asked to do by this application is to declare what the law is. The Tribunal is not being asked to express any opinion about what the Regional Council's metropolitan urban limits policy should be. If anyone's interests are directly affected by the law as the Tribunal declares it to be, that does not mean that that person is directly affected by the application, even though he or she may have an interest in the application. Any person having an interest in the proceedings greater than the public generally would be entitled to be heard on them,

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[3] *North Shore City v Auckland Regional Council* [1994] NZRMA 521.

[4] *North Shore City v Auckland Regional Council* [1994] NZRMA 521, at p 8.

having given the notice required by section 274.

(b) *Gertrude's Saddlery Ltd v Queenstown Lakes District Council*.[5] In this case, the application for declaration related to process and jurisdiction, and the party seeking to be served was only indirectly affected. The court found that the party did not qualify as being "directly affected", but that they may consider being "a person who has an interest in the proceedings that is greater than the interest that the general public has" under s274(1)(d).

[16] For the reasons given above, Braeburn and SCS maintain that service should not go more widely than the Council. However, if service beyond the Council is required they question whether a wider public notification (by way of a public notice in the New Zealand Herald and the Christchurch Press) would be more appropriate.

[17] Braeburn and SCS referred to *Tūpuna Maunga o Tāmaki Makaurau Authority v Auckland Council*[6] to support the argument for wider service. In that case the court acknowledged the difficulty in identifying all parties who may be directly affected (which was all those whose properties fell within the specific areas and those who may have current or future development aspirations). The court ordered service by way of a public notice in newspapers of high circulation and on the Council's website.

[18] In response to the suggestion that service would need to be on the wider public, the Council noted that it does not consider it appropriate to notify beyond the properties it considers are directly affected.

Outcome

[19] Having considered the parties' submissions and the application for

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[5] *Gertrude's Saddlery Ltd v Queenstown Lakes District Council* [2023] NZEnvC 147.

[6] *Tūpuna Maunga o Tāmaki Makaurau Authority v Auckland Council* [2018] NZEnvC 206.

declarations. I determine as follows:

(a) at the JTC on 14 June 2024 I canvased the scope of the declaration as framed by the applicants. The decision to frame the application in generic terms, going beyond the specific circumstances of the Site, is deliberate;
(b) the declarations as sought are intended by the applicants to provide clarity on the interpretation and application of the District Plan in respect of a particular type of activity and particular rules in the District Plan;
(c) because the declarations are generic in nature, for future application to a range of scenarios, they do not invite an assessment of the effects of activities at the Site;
(d) while the landowners and occupiers neighbouring the Site may be interested in the application for declarations, that does not mean that they are 'directly affected' by the application;
(e) parties that are interested in the application for declarations may choose to join the proceeding under s274(1)(d) RMA.

[20] I find in the circumstances that service of the application for declarations on the Council is sufficient to satisfy the provisions of s312 RMA in this case.

Timetable

[21] The parties proposed two alternative timetables depending on the outcome of the service issue. I make the proposed timetabling orders which make no allowance for service on parties other than the Council, with minor adjustments to allow for Matariki:

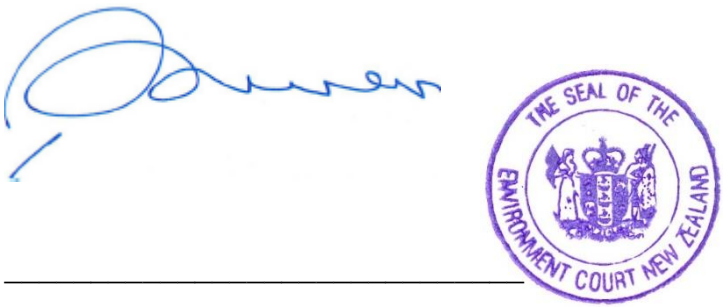
(a) affidavit evidence by the Council to be filed and served by **Friday 5 July 2024**;
(b) affidavit evidence in reply by the applicants to be filed and served by **Monday 22 July 2024**;

(c) legal submissions on behalf of the applicants to be filed and served at least **10 working days** prior to the hearing of the matter;

(d) applicants to prepare, in conjunction with the parties, two hard copies of the evidence bundle (paginated and labelled as EB), and two hard copies of a common bundle (paginated and labelled as CB), and an electronic copy of the bundles in corresponding files at least **10 working days** prior to the hearing of the matter;

(e) legal submissions on behalf of the respondent to be filed and served at least **5 working days** prior to the hearing of the matter; and

(f) a two-day fixture to be set down as a matter of priority at the first available opportunity **after 23 September 2024**.



K G Reid
Environment Judge