

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHĪ**

**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



BRAEBURN PROPERTY LIMITED & ORS v CHRISTCHURCH CITY COUNCIL

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## FINAL DECISION OF THE ENVIRONMENT COURT ON APPLICATION FOR DECLARATION

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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<sup>1</sup> (‘Site’) by SCS as a shipping container depot.

[2] This is the third decision.<sup>2</sup> The background to the application is traversed in detail by the interim decision.<sup>3</sup> 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.<sup>4</sup> 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

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<sup>1</sup> Located at 320A Cumnor, Terrace, Woolston, Christchurch.

<sup>2</sup> The first was *Braeburn Property Ltd v Christchurch City Council* [2024] NZEnvC 145 which dealt with service requirements for the application.

<sup>3</sup> *Braeburn Property Ltd v Christchurch City Council* [2024] NZEnvC 343 (‘interim decision’).

<sup>4</sup> Rule 16.4.4.2.1 of the CDP.

appealed.<sup>5</sup> Following this, the Council issued abatement notices to enforce compliance with the building height limit. These were also appealed by the applicants.<sup>6</sup> 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.<sup>7</sup>

### **Declarations sought**

[3] The declarations sought were summarised as follows:<sup>8</sup>

#### **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.

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<sup>5</sup> Proceeding number ENV-2024-CHC-012.

<sup>6</sup> Proceeding number ENV-2024-CHC-013.

<sup>7</sup> *Braeburn Property Ltd v Christchurch City Council* [2024] NZEnvC 46.

<sup>8</sup> 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.<sup>9</sup>

**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

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<sup>9</sup> 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.<sup>10</sup>

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

- (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:<sup>12</sup>

- (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

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<sup>10</sup> Joint memorandum at [9], referring to the interim decision at [112].

<sup>11</sup> Interim decision at [113]-[112].

<sup>12</sup> 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:<sup>13</sup>

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

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<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

[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.

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<sup>14</sup> At [137], [140].

<sup>15</sup> 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.<sup>16</sup>

[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).<sup>17</sup>

[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.<sup>18</sup>

[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<sup>19</sup> 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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<sup>16</sup> At [155].

<sup>17</sup> At [165].

<sup>18</sup> At [165].

<sup>19</sup> 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:<sup>20</sup>

- (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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<sup>20</sup> 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.



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**K G Reid**  
**Environment Judge**

