

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

Decision No. [2024] NZEnvC 46

IN THE MATTER of the Resource Management Act 1991

AND an appeal under s325 of the Act

BETWEEN BRAEBURN PROPERTY LIMITED
AND SPECIALISED CONTAINER
SERVICES (CHRISTCHURCH)
LIMITED

(ENV-2024-CHC-13)

Appellants

AND CHRISTCHURCH CITY COUNCIL

Respondent

Court: Environment Judge K G Reid

Hearing: In chambers, on the papers

Last case event: 8 March 2024

Date of Decision: 19 March 2024

Date of Issue: 19 March 2024

DECISION OF THE ENVIRONMENT COURT

A: Under s325(3D) of the Resource Management Act 1991, the Environment Court grants a stay of the abatement notices dated 7 February 2024 on the condition that Specialised Container Services (Christchurch) Limited undertakes the actions set out in paragraph [17] herein within 14 days, by 2 April 2024.



BRAEBURN PROPERTY LIMITED & ORS v CHRISTCHURCH CITY COUNCIL

- B: The stay in respect of each abatement notice is to remain in place until 14 days after the appeal is determined/withdrawn or by order of the court, whichever occurs first.
- C: Leave is reserved for any party to come back to the court if any issue arises as to the wording of the conditions, particularly 17(b).
- D: Costs are reserved.

REASONS

Background

[1] Specialised Container Services (Christchurch) Limited ('SCS') operates a shipping container depot at 320A Cumnor Terrace, Portlink Industrial Park, Woolston, Christchurch ('Site') on land owned by Braeburn Property Limited ('Braeburn') (together the 'appellants').

[2] On 7 February 2024 the Christchurch City Council ('the Council') served abatement notices on each of the appellants requiring that they each take the following action:

- (a) Remove, and do not recommence placing, any buildings – including shipping container stacks – that are higher than 11m within the 11m Building Height Limit Area of the Portlink Industrial Park Outline Development Plan (ODP) in the Christchurch District Plan.

[3] The abatement notices required compliance by 5 pm on 23 February 2024. On 16 February 2024, the Council extended the date for compliance to 22 March 2024.

[4] The abatement notices state that the reason the notices have been issued is that stacks of containers at the Site breach area-specific rules of the Christchurch District Plan (part 16.4.4) relating to the Site. These rules provide, in summary,

that the maximum height limit of any building with the “11m Building Height Limit Area”... “shall be 11 metres”.

The appeal and application for stay

[5] On 19 February 2024 the appellants filed an appeal against the abatement notices. The appeal challenges the basis for the abatement notices and states amongst other matters, that the 11m high limit does not apply to the stacking of containers on the Site. The appeal was accompanied by an application for a stay of the abatement notices.

[6] The appellants have filed three affidavits in support of the stay application. These affidavits propose that a stay be granted with various conditions that the appellants describe as an ‘interim solution’.

[7] The terms of the interim solution as set out in the affidavit of Mr Compton-Moen dated 19 February 2024, involve reducing the shipping container stacks on the Site on a staggered basis from the Tunnel Road and Heathcote River/greenspace boundary as follows:

- (a) reducing the height of containers stacked within the 11m Building Height Limit Area to four containers high, or a maximum height of 11.6m (for high-cube containers) from the following locations:
 - (i) from the internal Portlink Industrial Park ODP greenspace boundary (along the north-western Site boundary) to a distance of 19.8m; and
 - (ii) from the Tunnel Road Site boundary, 2m from the boundary to 43.5m.
- (b) behind this, reducing the height of the stacked containers to five containers high, to a maximum height of 14.5m (for high-cube containers) to mitigate potential additional adverse effects in the following locations:
 - (i) from the ODP greenspace boundary (along the north-western

- Site boundary), from 19.8m to 40.2m; and
- (ii) from the Tunnel Road Site boundary, from 43.5m to 85.1m.
- (c) only stacking containers to a maximum of six containers high to a maximum height of 17.4m (for high-cube containers), in the following locations:
 - (i) from the ODP greenspace boundary (along the north-western Site boundary), from 40.2m for the balance of the Site; and
 - (ii) from the Tunnel Road Site boundary, from 85.1m for the balance of the Site.

[8] The interim solution is proposed to be implemented by 2 April 2024.

[9] The affidavits filed in support of the application also set out why the appellants consider it is unreasonable for them to comply with the abatement notices. The evidence for the appellants in summary is as follows:

- (a) a standard shipping container is 2.6m tall, and a high-cube container is 2.9m tall. Therefore, to meet an 11m height limit a stack of containers would need to comprise no more than three high-cube containers (to a maximum height of 8.7m) or four standard containers (to a maximum height of 10.4m as measured from the current ground level);
- (b) containers on the Site are currently stacked up to six containers high. Meeting an 11m height limit would result in a reduction in capacity at the Site. This would create further flow-on effects for the appellants' business and wider industry as there is a lack of container yard capacity in the Christchurch region.

[10] The Council consents to the application for a stay on the basis of the interim solution. On this basis, the parties have requested that the application for stay is determined on the papers.

Section 325(3D)

[11] The court’s jurisdiction to grant a stay of an abatement notice is set out in s325(3D) RMA, which provides:

325 Appeals

...

(3A) Any person who appeals under subsection (1) may also apply to an Environment Judge for a stay of the abatement notice pending the Environment Court’s decision on the appeal

...

(3D) Before granting a stay, an Environment Judge must consider—

- (a) what the likely effect of granting a stay would be on the environment; and
- (b) whether it is unreasonable for the person to comply with the abatement notice pending the decision on the appeal; and
- (c) whether to hear—
 - (i) the applicant;
 - (ii) the relevant authority whose abatement notice is appealed against; and
- (d) such other matters as the Judge thinks fit.

(3E) An Environment Judge may grant or refuse a stay and may impose any terms and conditions the Judge thinks fit.

Discussion

[12] Mr Compton-Moen gives expert evidence concerning the visual amenity and landscape effects of the activity continuing on the Site on the basis of the condition proposed as part of the interim solution. In his evidence Mr Compton-Moen presents visual representations and modelling showing the proposed configuration of container stacks on the Site and resulting sightlines and visualisations from viewpoints where he has identified the effects as being greatest. The visualisations show the staggering of container heights away from visual sensitive areas. Mr Compton-Moen deposes that in his assessment the “interim solution will ensure that the visual amenity and landscape effects are no more than

minor”.¹

[13] Based on the uncontested evidence before me I am satisfied that the granting of a stay on the basis of the interim solution conditions will reduce the current visual amenity and landscape effects of the container stacks on the Site. Visual amenity and landscape effects are those the evidence identifies as being of concern.

[14] I am satisfied, that the effects of permitting stacks of containers greater than 11m to remain on the Site (with reduced heights in the more sensitive locations) will be acceptable on a temporary basis.

[15] I am also satisfied that requiring the appellants to comply with the abatement notice pending a decision on the appeal would be disruptive to the appellants’ businesses and that of third parties. On this basis I accept that it would be unreasonable for the appellants to comply with the abatement notice pending any decision on the appeal.

[16] Having reviewed the wording of the proposed conditions of the interim solution I have made some modifications to assist with clarity, particularly regarding condition 17(b) below. The words “behind this” in the proposed condition were unclear. Additionally, reference to the purpose of the height limit, (to assist with mitigating additional adverse effects) is unnecessary and could cause confusion. I will reserve leave to come back to the court if any issues arise.

Outcome

[17] Under s325(3D) RMA, I grant a stay of the abatement notices dated 7 February 2024 served by the Council on the appellants. The conditions of the stay are that SCS undertakes the following actions on the Site within 14 days, by

¹ Affidavit of David Compton-Moen dated 19 February 2024, at [32].

2 April 2024:

- (a) reducing the height of containers stacked within the 11m Building Height Limit Area to four containers high, or a maximum height of 11.6m (for high-cube containers) from the following locations:
 - (i) from the internal Portlink Industrial Park ODP greenspace boundary (along the north-western Site boundary) to a distance of 19.8m; and
 - (ii) from the Tunnel Road Site boundary, 2m from the boundary to 43.5m.
- (b) behind the containers identified in (a), reducing the height of the stacked containers to five containers high, to a maximum height of 14.5m (for high-cube containers);
- (c) containers may only be stacked to a maximum of six containers high, and to a maximum height of 17.4m (for high-cube containers), in the following locations:
 - (i) from the ODP greenspace boundary (along the north-western Site boundary), from 40.2m for the balance of the Site; and
 - (ii) from the Tunnel Road Site boundary, from 85.1m for the balance of the Site.

[18] The stay in respect of each abatement notice is to remain in place until either:

- (a) 14 days after a decision on the appeal against the abatement notices is determined or the appeal is withdrawn; or
- (b) by order of the court.

[19] Leave is reserved for any party to come back to the court if any issue arises as to the wording of these conditions, particularly 17(b).



K G Reid
Environment Judge