

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

Decision No. [2023] NZEnvC 171

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14(1) of the
First Schedule of the Act

BETWEEN UNIVERSITY OF OTAGO

(ENV-2018-CHC-270)

Appellant

AND DUNEDIN CITY COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 14 August 2023

CONSENT ORDER

A: Under s279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed to the extent that Dunedin City Council is directed to amend the provisions of the proposed Dunedin City Second Generation District Plan as set out in Appendix 1, attached to and forming part of this order;
- (2) the part of the appeal by the University of Otago (DCC reference

UNIVERSITY OF OTAGO v DUNEDIN CITY COUNCIL – 2GP – CONSENT ORDER



- number 213 (in part)) is resolved; and
- (3) the appeal is otherwise dismissed.

B: Under s285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to the University of Otago appeal (DCC reference number 213 (in part)) on the proposed Second Generation Dunedin City District Plan ('2GP').

[2] The making of this order was contingent on the making of orders on an earlier consent memorandum dated 2 June 2023 relating to the hazardous substances bundle, filed with the court on 30 June 2023. A consent order has now been issued in relation to the hazardous substances bundle.

[3] I have read and considered the consent memorandum of the parties dated 9 August 2023 which proposes to resolve the appeal.

[4] I have also read and considered the affidavit of Peter Rawson affirmed 9 August 2023. Mr Rawson has satisfied me that the amendments proposed will achieve the objectives and associated policies of the 2GP, and there is no overlap between appeals that would prevent this consent order being issued.¹

Other relevant matters

[5] No person has given notice of an intention to become a party under s274

¹ Affidavit of Peter Rawson affirmed 9 August 2023, at [16].

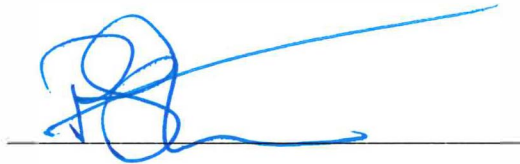
of the Act.

[6] The parties advise that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[7] The parties agree costs should lie where they fall and accordingly no order for costs is sought.

Outcome

[8] All parties to the proceeding have executed the memorandum requesting the orders. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.



P A Steven
Environment Judge



Appendix 1

Section 9 Public Health and Safety

9.1 Introduction

1. Amend the 5th paragraph of 9.1 Introduction, as follows:

~~Appendix A6.4 also applies to the Campus Zone.~~ No hazardous substance controls are applied in Industrial or Industrial Port zones outside hazard overlay zones or in the Port Zone, apart from residential activities or if located close to the National Grid.

Hazardous substances provisions also reference the Globally Harmonised System (GHS) for hazardous substances, which was adopted on 30 April 2021 under the Hazardous Substances and New Organisms Act 1996 (HSNO) and replaces the HSNO Classifications.

Rule 9.3.4 Hazardous Substances Quantity Limits and Storage Requirements

2. Amend Rule 9.3.4 Hazardous Substances Quantity Limits and Storage Requirements, as follows:

- ~~1.~~ The storage and use of hazardous substances with explosive or flammable properties must not be located in the National Grid Yard except as provided for in Rule 9.3.4.2. The storage and use of all other hazardous substances must comply with the quantity limits and storage requirements specified in Appendix A6, as follows:

Zones and activities		Appendix
a.	<ol style="list-style-type: none">i. Residential activities in all zonesii. All activities in the:<ol style="list-style-type: none">1. residential zones;2. Smith Street and York Place Zone (SSYP);3. Ashburn Clinic Zone;4. Mercy Hospital Zone;5. Wakari Hospital Zone; and6. Schools Zone.	A6.1
b.	<ol style="list-style-type: none">i. All activities except residential activities in the:<ol style="list-style-type: none">1. commercial and mixed use zones except SSYP;2. major facility zones except Ashburn Clinic, Campus, Mercy	A6.2

	<p>Hospital, Port, Wakari Hospital and Schools;</p> <p>3. rural zones;</p> <p>4. rural residential zones; and</p> <p>5. Recreation Zone.</p> <p>ii. All activities in any part of Industrial or Industrial Port zones except residential activities, where the storage or use of hazardous substances is located within 100m of the boundary of any other zone, except another industrial zone or the Port Zone; and:</p> <ol style="list-style-type: none"> 1. the activity is located within a hazard 2 (flood) or hazard 2 (land instability) overlay zone; or 2. the activity is located within a hazard 3 (flood, coastal or alluvial fan) overlay zone and involves the storage or use of class 8 corrosives (GHS category 1, 1A, 1B and 1C) or class 9 ecotoxics (GHS hazardous to the terrestrial environment and hazardous to the aquatic environment category 1, 2, 3 and 4) hazardous substances. 	
e.	Campus Zone	A6.4
d.	<p>i. All activities in any part of Industrial or Industrial Port zones, except residential activities, where the storage or use of hazardous substances is not located within 100m of the boundary of any other zone, other than another industrial zone or the Port Zone; and:</p> <ol style="list-style-type: none"> 1. the activity is located within a hazard 2 (flood).or hazard 2 (land instability) overlay zone; or 2. the activity is located within a hazard 3 (flood, coastal or alluvial fan) overlay zone and involves the storage or use of class 8 corrosives (GHS category 1, 1A, 1B and 1C) or class 9 ecotoxics (GHS hazardous to the terrestrial environment and hazardous to the 	A6.3

	aquatic environment category 1, 2, 3 and 4) hazardous substances.	
e.	<p>For the sake of clarity, there are no hazardous substances quantity limits and storage requirements except where Rule 9.3.4.1.a.i (residential activities) or Rule 9.3.4.2 (within National Grid Yard) applies:</p> <ul style="list-style-type: none"> i. in the Port Zone; or ii. in Industrial or Industrial Port zones, where located outside a hazard 2 and 3 (flood), or hazard 2 (land instability), hazard 3 (alluvial fan) or a hazard 3 (coastal) overlay zone; or iii. in Industrial or Industrial Port zones, where located within a hazard 3 (flood, coastal or alluvial fan) overlay zone and it does not involve the storage or use of class 8 corrosives (GHS category 1, 1A, 1B and 1C) or class 9 ecotoxics (GHS hazardous to the terrestrial environment and hazardous to the aquatic environment category 1, 2, 3 and 4) hazardous substances. 	

2. The following storage and use of hazardous substances are exempt from Rule 9.3.4.1:

- a. storage of substances in or on vehicles being used in transit on public roads;
- b. the conveyance, storage and use of substances for network utilities;
- c. the storage and use of fuel and other substances that are contained in the fuel system, electrical system or control system of motor vehicles, boats, aircraft and small engines;
- d. storage at fire stations and on emergency response appliances of specialist hazardous substances for firefighting including compressed air, oxidising gas (medical oxygen), and foam (excluding within the Hazard 1 and 2 (flood) Overlay Zone and **groundwater protection mapped area**);
- e. the storage of hazardous substances at retail outlets such as supermarkets, trade suppliers, and pharmacies selling to customers of a residential activity (for home heating, cooking, cleaning and gardening)

- f. the storage and use of hazardous substances as part of a residential activity (for home heating, cooking, cleaning and gardening), including LPG up to a maximum full weight of 300kg where:
 - i. the hazardous substance(s) is part of a consumer product intended for residential use; and
 - ii. the product is stored in the container or packaging in which it was sold and used in accordance with the manufacturer's instructions;
 - g. the temporary storage, handling and distribution of national or international cargo containers; and
 - h. hazardous substances of HSNO and GHS sub-classes 1.4 or 1.6 unless other hazard classifications apply.
3. The following storage and use of hazardous substances where located outside the National Grid Yard are exempt from Rule 9.3.4.1:

a. – m ...

Y. in the Campus Zone:

- i. the storage and use of hazardous substances undertaken in laboratories and medical facilities as part of Campus, Hospital or Registered Health Practitioners activities, which comply with the requirements under the Health and Safety at Work (Hazardous Substances) Regulations 2017 and the Code of Practice for CRI and University Exempt Laboratories and any other associated codes of practice and guidance;
- ii. the storage of a maximum of 10,000 Litres of Subclass 3.1A, 3.1B, 3.1C, or 3.1D (flammable liquids) in any Type D (4 hour fire rated) storage facility- (this limit applies per storage facility), as required by AS1940 under the Health and Safety at Work Act (Hazardous Substances) Regulations 2017;
- iii. where 50m or more from the Campus Zone boundary, the ancillary storage in a hazardous sub-facility of any other hazardous substances (not Subclass 3.1A, 3.1B, 3.1C or 3.1D (flammable liquids) which comply with clause ii above), which:
 - 1. are located outside a laboratory or medical facility used as part of Campus, Hospital or Registered Health Practitioner activities; and
 - 2. comply with the requirements under the Health and Safety at Work (Hazardous Substances) Regulations 2017 and the Code of Practice for CRI and University Exempt Laboratories and any other associated codes of practice and guidance; and
- iv. where within 50m of the Campus Zone boundary, the ancillary storage in a hazardous sub-facility of any other hazardous substances (not Subclass 3.1A, 3.1B, 3.1C or 3.1D (flammable liquids) which comply with clause ii above), which:
 - 1. are located outside a laboratory or medical facility used as part of Campus, Hospital or Registered Health Practitioner activities;
 - 2. have a total combined maximum, of volume for liquids in litres and weight for gases and solids in kilograms, of 10,000;

3. have a maximum container size of each hazardous substance, within the hazardous sub-facility, of 250 Litres for liquids and 250kg for gases and solids; and
 4. is within a Type C (2 hour fire rated) hazardous sub-facility, as required by AS1940 under the Health and Safety at Work Act (Hazardous Substances) Regulations 2017.
4. The storage and use of hazardous substances that contravenes this performance standard is a restricted discretionary activity, except:
- a. the storage and use of hazardous substances with explosive or flammable properties within the National Grid Yard that does not meet the requirements for exemption under Rule 9.3.4.2 is a non-complying activity.

Section F Appendices

A6. Hazardous Substances Quantity Limits

3. Amend Appendix A6. Hazardous Substances Quantity Limits, A6.2 Group B, clause 1, as follows:
 1. Tables A6.2.1 - A6.2.9 specify the hazardous substances quantity limits for the activities and areas set out in Rule 9.3.4.1.b, which are:
 - a. all activities except residential activities in:
 1. commercial and mixed use zones (except SSYP);
 2. major facility zones (except Ashburn Clinic, ~~Campus~~, Mercy Hospital, Port, Wakari Hospital and Schools);
 3. ...;
4. Amend Appendix A6. Hazardous Substances Quantity Limits, A6.2 Group B, clause 4, as follows:
 4. The permitted quantity limits apply per site, except for in the commercial and mixed use, Campus, and Industrial or Industrial Port zones, where the permitted quantity limits apply per hazardous sub-facility. Each hazardous sub-facility must be separated from any other hazardous sub-facility on the same site and meet the following locational requirements:
 - a. ...
5. Amend Appendix A6. Hazardous Substances Quantity Limits, by deleting the entirety of Appendix A6.4 Campus Zone.

General

6. Make any consequential changes to plan numbering as required as a result of the above amendments. Minor referencing and style changes may also be made for consistency with the 2GP formatting.

