

Under	the Resource Management Act 1991 (RMA)
In the matter of	An appeal under clause 14(1) of the First Schedule of the Act in relation to the Proposed Second Generation Dunedin City District Plan (2GP)
Between	Ravensdown Limited Appellant
And	Dunedin City Council Respondent

Notice of appeal

19 December 2018

Counsel:

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION
ON PROPOSED POLICY STATEMENT OR PLAN**
Clause 14(1) of First Schedule, Resource Management Act 1991

TO: The Registrar
Environment Court
Christchurch

- 1 Ravensdown Limited (**Ravensdown**) appeals against parts of a decision of
- 2 Dunedin City Council (**Respondent**) on the Proposed Second Generation
- 3 Dunedin City District Plan (**2GP**).
- 4 Ravensdown made submissions and further submissions on the 2GP.
- 5 Ravensdown is not a trade competitor for the purposes of section 308D of the
- 6 Act.
- 7 Ravensdown received notice of the decision on 7 November 2018.
- 8 The decision was made by the Respondent.
- 9 The parts of the decision Ravensdown is appealing relate to:
 - (a) Policy 2.2.6.2 - a Strategic Direction policy relating to **the storage and use of hazardous substances**.
 - (b) Chapter 9 Public Health and Safety – provisions relating to **the storage and use of hazardous substances**. The particular parts of Chapter 9 Public Health and Safety being appealed are:
 - (i) 9.1 Introduction
 - (ii) Policy 9.2.2.11
 - (iii) Rule 9.3.4
 - (c) Rule 19.3.4.19 (which concerns **the storage and use of hazardous substances in the Industrial Zone within a Hazard Overlay Zone**)

POLICY 2.2.6.2

- 7 Ravensdown appeals the decision to include Policy 2.2.6.2 in the 2GP as follows:

Manage the risk posed by the storage and use of hazardous substances so that it is no more than low, including through rules that: {PHS cl.16}

- a. *limit the quantity of different hazardous substances that may be used in different environments (zones); and {PHS cl.16}*
- b. *restrict sensitive activities from locating within a hazard facility mapped area. {PHS 906.1}*

Reasons for the appeal

- 8 As background, Policy 2.2.6.2, as well as Objective 2.2.6 and Policy 2.2.6.1, were not included in the notified version of the 2GP due a technical error, or

oversight by Council whereby these provisions were drafted but were mistakenly not included. These provisions have been included in the decision version 2GP as a minor and inconsequential amendment in accordance with Clause 16(2) of Schedule 1 of the RMA as the inclusion of these provisions is said to be of minor effect as there are more specific objective and policies in Chapter 9 and management zone chapters of the 2GP¹. Ravensdown therefore did not have an opportunity to submit on Policy 2.2.6.2.

- 9 As outlined in subsequent appeal points, Ravensdown seeks that the default position be that the storage and use of hazardous substances within the Industrial Zone should be permitted, and regulation of these activities should be left with HSNO and associated regulations.
- 10 Given this position, the fact that Chapter 9 Public Health and Safety contains specific policies (Policies 9.2.2.11 and 9.2.2.15) that reflect the same aim of Policy 2.2.6.2 and Ravensdown's appeal point in relation to Policy 9.2.2.11 (paragraphs 20 to 24), Ravensdown considers that Policy 2.2.6.2, as a Strategic Direction policy, is unnecessary.

Relief sought

- 11 Ravensdown seeks the deletion of Policy 2.2.6.2.
- 12 Ravensdown seeks such additional or alternative relief as the Court considers appropriate to address its concerns.

CHAPTER 9 PUBLIC HEALTH AND SAFETY – 9.1 INTRODUCTION

- 13 Ravensdown appeals the decision to word paragraph 4 of Chapter 9.1 Introduction as follows:

Hazardous substances are necessary for the operation of many commercial and other activities and need to be provided for. However, if not appropriately managed, and {PHS 634.55} their storage and use are potential threats to the health and safety of Dunedin's people and natural environment. ~~Activities which involve hazardous substances also pose a risk to the economic wellbeing of the city's people and businesses. {PHS 634.55}~~ Hazardous substances encompass those identified in the Hazardous Substances and New Organisms Act 1996 (HSNO) and may include substances such as industrial, agricultural, horticultural and household chemicals, medical wastes, petroleum products including LPG and lubricating oils, and radioactive substances. HSNO and associated

¹ Section 5 of Decision Report PHS.

~~regulations set {PHS 634.55} controls minimum performance standards {PHS 1090.22} for the management of these substances. The RMA enables plans to include additional land use controls for the prevention or mitigation of the {PHS 634.55} adverse effects of {PHS 1090.22} storage, use, disposal and transport of hazardous substances {PHS 634.55} where this is necessary to address a clear resource management issue {PHS 1090.22}. Such controls may relate to matters such as the location of hazardous {PHS 634.55} facilities substances {PHS 1090.22} and their potential impacts on other land uses and the natural environment. Given the risks that the storage and use of hazardous substances pose to the health and safety of people, these must be managed to ensure that these substances are able to be used in a safe and secure manner. {PHS 634.55}~~

Reason for the appeal

- 14 Ravensdown made a further submission² in support of a submission by Horticulture New Zealand³ (**Hort NZ**). The Hort NZ submission requested that the last sentence of paragraph 4 read:

HSNO places controls on hazardous substances that ensure that they are appropriately stored and used. The HSNO controls will manage the risks that may occur in Dunedin City. Additional controls are included in this Plan where there is a clear resource management issue that the District Plan needs to address.

- 15 The decision version of paragraph 4 of Chapter 9.1 Introduction includes reference to the location of hazardous substances as a matter that may require controls in addition to those required by HSNO and associated regulations. This approach then appears to support the imposition of controls which mean the storage of hazardous substances at Ravensdown's Ravensbourne site will require a resource consent even though the storage is in the Industrial Zone and complies with HSNO and associated regulations.
- 16 Ravensdown seeks that the default position be that the storage and use of hazardous substances within the Industrial Zone should be permitted, and regulation of these activities should be left with HSNO and associated regulations, other than in exceptional circumstances where it is demonstrated that additional controls on the storage and use of hazardous substances are necessary for a legitimate resource management purpose.

² FS2481.23

³ OS1090.22

- 17 The location of the storage of hazardous substances at Ravensdown's Ravensbourne site within the Hazard 3 (Coastal Overlay) Zone does not of itself constitute a circumstance that justifies the activity requiring a resource consent in addition to compliance with HSNO and associated regulations.

Relief sought

- 18 Ravensdown seeks that the end of paragraph 4 of Chapter 9.1 Introduction be changed to read:

HSNO places controls on hazardous substances that ensure that they are appropriately stored and used. The HSNO controls will manage the risks that may occur in Dunedin City. Additional controls are included in this Plan where there is a clear resource management issue that the District Plan needs to address.

- 19 Ravensdown seeks such additional or alternative relief as the Court considers appropriate to address its concerns.

POLICY 9.2.2.11

- 20 Ravensdown appeals the decision to word Policy 9.2.2.11 as follows:

Require hazardous substances to be stored and used in a way that avoids risk of adverse effects on the health and safety of people on the site or surrounding sites or, if avoidance is not ~~possible~~ practicable, ensures any adverse effects is are no more than low ~~would be insignificant~~.

Reasons for the appeal

- 21 The approach taken in the 2GP to the storage and use of hazardous substances should recognise that HSNO and associated regulations generally provide for appropriate management of the resource management effects of these land uses. Additional regulation via resource consent requirements in the 2GP should be limited to exceptional circumstances.

- 22 Ravensdown made a further submission⁴ in support of a submission by Hort NZ⁵ that sought an addition to Policy 9.2.2.11 that recognised the policy outcome would be achieved through compliance with HSNO requirements.

Relief sought

- 23 Ravensdown seeks that Policy 9.2.2.11 be amended to read:

Require hazardous substances to be stored and used in a way that avoids risk of adverse effects on the health and safety of people on the site or surrounding sites or, if avoidance is not practicable, ensures any adverse effects are no more than low through meeting controls placed on hazardous substances through the HSNO provisions.

- 24 Ravensdown seeks such additional or alternative relief as the Court considers appropriate to address its concerns.

RULE 9.3.4

- 25 Ravensdown appeals the decision to make the storage and use of hazardous substances in quantities above those specified in Appendix A6.2 in Industrial Zones within a Hazard 2 and 3 (Flood), Hazard 2 (Land Instability), Hazard 3 (Alluvial Fan) or Hazard 3 (Coastal) Overlay Zone a restricted discretionary activity⁶.

Reasons for the appeal

- 26 Ravensdown's Ravensbourne site is in an Industrial Zone within the Hazard 3 (Coastal) Overlay Zone.
- 27 The quantities of hazardous substances stored and used on site exceed the limits specified in Appendix A6.2.
- 28 Hazardous substances on site are stored and used in compliance with the requirements of HSNO and associated regulations.
- 29 There is no proper resource management purpose served by requiring an additional layer of control via a restricted discretionary resource consent simply

⁴ FS2481.24

⁵ OS1090.23

⁶ Rule 9.3.4(1)(e) and 9.3.4(4)

on account of the site being located within the Hazard 3 (Coastal) Overlay Zone.

Relief sought

- 30 Ravensdown seeks the deletion of Rule 9.3.4(1)(e).
- 31 Ravensdown seeks such additional or alternative relief as the Court considers appropriate to address its concerns.

RULE 19.3.4.19

- 32 Ravensdown appeals the decision to make the storage and use of hazardous substances a permitted activity in Industrial Zones only where the hazardous substances quantity limits and storage requirements as set out in (inter alia) Appendix A6.2 are met.

Reasons for the appeal

- 33 Ravensdown stores and uses hazardous substances at its Ravensbourne site in quantities that exceed those specified in Appendix A6.2. Ravensdown's storage and use of hazardous substances complies with HSNO and associated regulations and would be a permitted activity under the 2GP but for the site's location within the Hazard 3 (Coastal) Overlay Zone.
- 34 Requiring a resource consent for the storage and use of hazardous substances in quantities that exceed the limits contained in Appendix A6.2 solely on account of the location of the storage and use within the Hazard 3 (Coastal) Overlay Zone is not justified and serves no proper resource management purpose.

Relief sought

- 35 Ravensdown seeks the deletion of the reference to the hazardous substances quantity limits and storage requirements as performance standard (i) of Rule 19.3.4.19.
- 36 Ravensdown seeks such additional or alternative relief as the Court considers appropriate to address its concerns.

Dated 19 December 2018



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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see [form 38](#)).

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

RAVENSDOWN 2GP APPEAL - NAME AND ADDRESS OF PERSONS TO BE SERVED WITH A COPY OF THIS NOTICE

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Federated Farmers of New Zealand	PO Box 5242 Moray Place Dunedin 9058 Attn: Caroline Ryder and Kim Reilly	cryder@fedfarm.org.nz kreilly@fedfarm.org.nz
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LPG Association of NZ Inc.	PO Box 1776 Wellington 6140 Attn: Peter Gilbert	peter@lpga.org.nz
Mercy Dunedin Hospital Limited	C/o Mitchell Daysh PO Box 489 Dunedin 9054 Attn: Louise Taylor	louise.taylor@mitchelldaysh.co.nz
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