BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2020] NZEnvC 101

IN THE MATTER	of the Resource Management Act 1991
AND	of an application for interim enforcement orders under section 320 of the Act
BETWEEN	SOUTHLAND DISTRICT COUNCIL
	(ENV-2020-CHC-92)
	Applicant
AND	PETER DONALD CHARTRES AND CP TRUSTEES LIMITED
	Respondents

Court:	Environment Judge J R Jackson
Hearing:	In Chambers at Christchurch
Date of Decision:	7 July 2020
Date of Issue:	7 July 2020

INTERIM ENFORCEMENT ORDER

A: Under sections 314 and 320 of the Resource Management Act 1991 the Environment Court:

(1) Orders that the respondents Peter Donald Chartres and CP Trustees Limited must immediately cease any clearance, modification or removal of indigenous vegetation occurring at Te Anau Downs Station ('the Station') being the land legally described as:

(a) Section 1-5, Section 7-10 and Section 19-20 Survey Office Plan 11339 held in Record of Title SL10A/651;
(b) Part Pre-emptive Right Run 394 held in Record of Title SL233/27; and
(c) Section 4 Block III Eglinton Survey District held in Record of Title SL239/64.

THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND

(2) Prohibits the respondents from commencing any clearance, modification or removal of indigenous vegetation occurring at the Station except where it is permitted by Rule BIO.1.1, including where that rule allows:

(i) at BIO1.1(d), any clearance, modification or harvesting of indigenous vegetation which is required for the purpose of fencing areas of indigenous vegetation formally protected by the Conservation Act 1987;

(ii) at BIO1.1(f), the construction, maintenance or replacement of a fence or the maintenance of vehicle crossings and tracks with a maximum area of clearance of 8 metres for fencing;

(iii) at BIO1.4, the removal of wind thrown trees or dead standing trees which have died as a result of natural causes where this is necessary to avoid adverse effects on remaining treed or vegetation or to avoid risks to human life or property;

(iv) at BIO1.6(a), the clearance, modification or removal of indigenous vegetation which has grown naturally on land lawfully cleared since 2000, provided that clearance, modification or removal within 10 metres of a water body is limited to 20 linear metres in any 200 metre length of water body per property.

(3) Directs that these orders shall apply to any personal representatives, agents or employees, successors and assigns of the registered owners of the Station

B: Leave is reserved for the respondents to apply to change or cancel these orders.

C: Under section 320(6) of the Act these orders remain in force until further order of the court provided that the Southland District Council lodges an application seeking final enforcement orders by **14 August 2020**.

D: Costs are reserved.

REASONS

Introduction

[1] This proceeding relates to indigenous vegetation clearances that have been occurring on Te Anau Downs Station ("the Station") for a number of years. The Southland District Council ("the Council") believes these contravene the relevant rules of the Southland District Plan (and the subsequent abatement notice issued in 2015).

[2] The Station is legally described[1] as Sections 1-5, Sections 7-10 and Section 19-20 S011339 (Record of Title SL10Al651), Part Pre-emptive Right Run 394 (Record of Title 5L233/27), and Section 4 Blk II Eglinton Survey District (Record of Title 5L239/64). The Station is approximately 8,500 hectares in area and has a history of farming use.

[3] The Council has applied for interim enforcement orders under the Resource Management Act 1991 ("the RMA" or "the Act") which require Peter Donald Chartres and CP Trustees Limited ("Mr Chartres" or "the respondents") to cease, and be prohibited from commencing, any further indigenous vegetation clearance on the Station, where that clearance is not a permitted activity or authorised by resource consent.

[4] The application is supported by a memorandum of counsel dated 29 June 2020 and the following affidavits:

- of G A Davis (ecologist) dated 5 June 2020;
- of M J Roy (planner) dated 22 June 2020.

[5] The Council alleges that, despite endeavouring to work with Mr Chartres over the years, continued non-compliance and unlawful clearance has continued on the Station which risks irreparable environmental damage and substantial loss of significant indigenous vegetation.

The application

[6] The Council has applied for orders that:

1 Affidavit of M J Roy at Para 7.

(a) Require the cessation of any clearance, modification or removal of indigenous vegetation occurring on the Station; and

(b) Prohibit any clearance, modification or removal of indigenous vegetation on the Station;

Except where that clearance, modification or removal of indigenous vegetation on the Station:

(c) Is permitted by Rule BIO.1.1, including where that rule allows:

(i) At BIO1.1(d), any clearance, modification or harvesting of indigenous vegetation which is required for the purpose of fencing areas of indigenous vegetation formally protected by the Conservation Act 1987;

(ii) At BIO1.1(f), the construction, maintenance or replacement of a fence or the maintenance of vehicle crossings and tracks with a maximum area of clearance of 8 metres for fencing;

(iii) At BIO1.4, the removal of wind thrown trees or dead standing trees which have died as a result of natural causes where this is necessary to avoid adverse effects on remaining treed or vegetation or to avoid risks to human life or property;

(iv) At BIO1.6(a), the clearance, modification or removal of indigenous vegetation which has grown naturally on land lawfully cleared since 2000, provided that clearance, modification or removal within 10 metres of a water body is limited to 20 linear metres in any 200 metre length of water body per property;

(d) Is authorised by resource consent.

[7] The first of the orders sought require the immediate halt of any unauthorised clearance of indigenous vegetation on the Station. This is to ensure the environment is protected in line with the Southland District Plan Rules until such time as a claim for existing use rights is made or a substantive application for enforcement orders is lodged and determined.

[8] Mr Davis is an ecologist who was engaged by the Council in 2018 to undertake an ecological assessment of the indigenous vegetation clearance on the Station (and on another site). His assessment is annexed to his affidavit and sets out the ecological values that have been disturbed and subsequent review of the effects. He referred to the main areas of disturbance on the station as "Te Anau Downs West" and says it covers 145 hectares. He reported that[2]:

> [The site] has had a long history of disturbance from fire and pastoral activity however, the review of aerial photographs and the tree ring analysis provides evidence that the majority of the area has not been disturbed for over 30 years. The ecological values and effects of the

2 Te Anau Downs and 170H Te Anau Milford Highway Vegetation Clearance Ecological Assessment dated November 2018 on Page 36 – Conclusions.

> clearance are considered to be high based on the removal of threatened flora and fauna habitat, the removal of the buffering effect on wetlands that were excluded from the clearance and the opportunity for the natural succession of the vegetation toward a beech forest community. The ecological investigation has found clearance of the mature manuka-bog pine shrubland would not have been permitted under the operative district plan or the previous district plan. The younger bracken fern-manuka-bog pine community may have been permitted under Rule HER.3 of the previous district plan but not under Rule BI0.1 of the operative district plan.

[9] In respect of a smaller site on the Station he concluded[3]:

> The Te Anau Downs East clearance covers an area of approximately 25 ha and appears to have had limited disturbance for over 100 years. The bog pine dominated frost flat community is a nationally threatened ecosystem pursuant to Williams et. al. (2007). Given the age of the bog pine within this area, the clearance of indigenous vegetation would not have been permitted under the operative district plan or the previous district plan.

[10] Mr Roy is employed by the Council as a Team Leader – Resource Management and oversees policy development, resource consent processing and compliance, monitoring and enforcement. In his affidavit he usefully sets out[4] the relevant rules of the Southland District Plan 2018 and Proposed Southland Regional Policy Statement ("PRPS"). He believes[5] that Mr Chartres is sufficiently aware of the objectives, policies and rules restricting the clearance and modification of indigenous vegetation due to his involvement in the biodiversity chapter of the PRPS proceedings. I am also advised by the Registrar that Mr Chartres has an active appeal[6] against the Proposed Southland Water and Land Plan proceedings currently before the court.

[11] Mr Roy also sets out at some length the history of the activities on the Station. He has completed an analysis of clearances at the Station where the following patterns were observed:[7]

(a) A pattern of small scale vegetation clearance occurring prior to 2003;
(b) A significant change in the scale of vegetation clearance between 2005 and 2014 (approximately 2,351 ha);

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3 Te Anau Downs and 170H Te Anau Milford Highway Vegetation Clearance Ecological Assessment dated November 2018 on Page 36 – Conclusions.
4 Affidavit of M J Roy dated 22 June 2020 at paras 10-20.
5 Affidavit of M J Roy dated 22 June 2020 at para 20.
6 *Chartres v Southland Regional Council* ENV-2018-CHC-48.
7 Affidavit of M J Roy dated 22 June 2020 at para 33.

(c) Between 2014 and January 2018 a reduction in clearance again; and

(d) After the District Plan becoming operative in January 2018, a significant change in scale has occurred again for example with clearances of approximately 835 ha in 2018-2019.

[12] Finally, Mr Roy notes[8] that Mr Chartres has previously indicated that he considers he has an existing use right to support his clearances. While the Court does not need to consider this substantive issue, if Mr Chartres proposes to raise that as a defence in any substantive proceeding he would need to provide the Court with full evidence in support of that position. However, that is all getting ahead of events since the Council has yet to apply for a substantive enforcement order. I will give a direction about that.

Respondent's position

[13] The Council has served[9] its application and supporting affidavits on the respondents. Mr Chartres has been aware of the Council's position and was provided with a draft copy of the application and Mr Roy's affidavit some time ago but "...has made no concrete efforts to further substantiate or provide evidence to Council to demonstrate his claim of existing use rights"[10].

Consideration

[14] This is only an application for interim enforcement orders. Accordingly, it is not my place to make any substantive findings as to the facts or merits of the case (beyond finding that there is a serious issue to be resolved). The matters to be considered under section 320(3) of the RMA are:

(a) what the effect of not making the order would be on the environment; and

(b) whether the applicant has given an appropriate undertaking as to damages; and

(c) whether the Judge should hear the applicant or any person against whom the interim order is sought; and

(d) such other matters as the Judge thinks fit.

I consider each of these matters in turn.

8 Affidavit of M J Roy dated 22 June 2020 at para 83.
9 Para 27 of the supporting memorandum dated 29 March 2020.
10 Para 30 of the supporting memorandum dated 29 March 2020.

What would be the effect of not making an order on the environment?

[15] The affidavit evidence of Mr Roy and Mr Davis confirm that the indigenous vegetation present on Te Anau Downs Station is significant[11] indigenous vegetation and its protection is a matter of national importance[12]. There appears to be a pattern/history of non-compliance and the clearance over the past two winters alone has allegedly caused irreparable damage to approximately 800 hectares of significant flora and fauna[13].

[16] The Council claims that Mr Chartres has ignored numerous requests to cease activities and has made it clear that he intends[14] to continue clearing indigenous vegetation on the Station. That illustrates a high risk of ongoing and irreparable environmental damage if interim orders are not made.

Has the applicant given an undertaking as to damages?

[17] As the Council is seeking to enforce the rules of its District Plan and the abatement notice, counsel has confirmed[15] that it is not required to provide any undertaking as to damages as it is simply undertaking a public law function pursuant to section 30 of the RMA.

Should the respondents be heard?

[18] Counsel for the Council submits[16] that the details of the interim orders are not unduly contentious, and therefore a hearing is not necessary nor is it necessary for the respondents to be provided an opportunity to make submissions or file evidence.

[19] Given the history of the discussions and complaints as set out in Mr Roy's affidavit[17], and the fact that Mr Chartres has been aware of this application (in draft) and the Council's position for quite some time (and no applications for resource consent or an existing use certificate have been filed) I am inclined to agree with counsel. I find that there are serious issues to be decided.

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11 under the criteria outlined in the Southland Regional Policy Statement.
12 under section 6(c) of the RMA.
13 Affidavit of M J Roy dated 22 June 2020 at para 36.
14 Affidavit of M J Roy dated 22 June 2020 at para 135.
15 Para 39 of the supporting memorandum dated 29 March 2020
16 Para 29 of the supporting memorandum dated 29 March 2020
17 Affidavit of M J Roy dated 22 June 2020 at paras 38 onwards.

[20] The respondents will have an opportunity to be heard once a substantive application for enforcement orders is lodged and I agree with the Council that the key focus should be to prevent further loss of indigenous vegetation.

Any other matters

[21] There are no other relevant matters at this stage.

Outcome

[22] For the reasons given above, the application for interim enforcement orders should be granted, with some amendment to the wording of the orders to comply better with the requirements of sections 314 and 320 RMA.

[23] The Council is directed under section 320(5) RMA to serve this Interim Enforcement Order on the respondents. The Order will then take effect from the date of service on the first of the respondents to be served.

[24] Costs will be reserved.

J R Jackson
Environment Judge