

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2022] NZEnvC 180

IN THE MATTER OF

an application under s 321 of the
Resource Management Act 1991

BETWEEN

WAIKATO REGIONAL COUNCIL

(ENV-2022-AKL-000175)

Appellant

AND

POLLOCK FARMS (2011) LIMITED

DAWSON CRAIG POLLOCK

Respondents

Court: Chief Environment Court Judge D A Kirkpatrick

Hearing: On the papers

Last Case Event: 1 September 2022

Date of Decision: 28 September 2022

Date of Issue: 28 September 2022

DETERMINATION OF THE ENVIRONMENT COURT

A: By consent, the enforcement order made on 4 March 2019 is cancelled

B: There is no order as to costs.



REASONS

Introduction

[1] On 4 March 2019 Judge Harland (as Her Honour then was) in the District Court issued an enforcement order under s 339(5)(a) of the Resource Management Act 1991 in the context of a prosecution to require, by consent, an upgrade to the effluent system at a dairy farm situated at 660 Victoria Road Cambridge, to address the risk of further effluent discharge offending.¹ The persons against whom the order was made are Pollock Farms (2011) Limited and Dawson Craig Pollock.

Application for cancellation

[2] The Waikato Regional Council have applied to cancel the enforcement order made on 4 March 2019.

[3] The grounds for this application are:

- (a) a report dated 6 July 2022 was provided to the Waikato Regional Council by an accredited dairy effluent system designer, Mr Foley at the company Yardmaster (**the Yardmaster report**);
- (b) the Yardmaster report confirms current compliance with the requirements of the enforcement order to upgrade the effluent system;
- (c) condition 7.3 of the enforcement order provided that if the respondents complied with the terms of the enforcement order, the Waikato Regional Council would file a memorandum with the

¹ *Waikato Regional Council v Pollock Farms (2011) Limited* [2019] NZDC 2204 at Attachment "C".

Environment Court to seek cancellation of the order; and

(d) the application is consented to by the respondents.

[4] The Yardmaster report states:

... the system is fully compliant within the Waikato Regional council rules that require all farm dairy effluent to be contained and directed to sealed storage for application to land. The total area that can be covered is 50 hectares.

[5] The application was supported by an affidavit of Stephen John Hudson affirmed on 23 August 2022. Mr Hudson deposes:²

I have reviewed the content of the Yardmaster report and am of the opinion that the respondents are now in compliance with the requirements of the enforcement order in terms of the upgrade, albeit later than was required.

Respondent's position

[6] By an email message dated 1 September 2022, counsel confirmed the respondents support the application and there are no other issues arising.

Cancellation of an enforcement order

[7] Section 321 of the RMA provides:

321 Change or cancellation of enforcement order

(1) Without limiting section 320(5), any person directly affected by an enforcement order may at any time apply to the Environment Court in the prescribed form to change or cancel the order.

² Affidavit of Stephen John Hudson affirmed on 23 August 2022 at [7].

(2) Sections 317 to 319 (which relate to notification, hearing, and decision) apply to every application under subsection (1) as if it were an application for an enforcement order.

[8] The power contained in s 321 of the RMA to change or cancel an enforcement order is expressed in wide and unfettered terms.³ It extends to enforcement orders made by the District Court under s 339(5) of the RMA as well as those made by the Environment Court under s 319.⁴ Section 321 does not specify the criteria which the Court is required to take into account when determining whether to change or cancel an enforcement order. The provision reflects an intention to ensure that enforcement orders remain appropriate in all circumstances.⁵

Consideration

[9] Having considered the application, the affidavit of Mr Hudson in support and the message from counsel for the respondents, I agree that the enforcement order should be cancelled. The basis on which the enforcement order was made included its cancellation once it had been complied with. The requirements of the enforcement order have been met. The respondents do not oppose the application. There is no continuing need for the enforcement orders to be kept in force.

Outcome

[10] By consent, the enforcement order made on 4 March 2019 is cancelled.

[11] There is no order as to costs

³ *Gill v Nelson City Council* [2011] NZEnvC 95 at [17].

⁴ *Vortac New Zealand Limited v Western Bay of Plenty District Council* [2022] NZEnvC 027

⁵ *Christchurch City Council v Hampton* C115/2002.

D Kirkpatrick

D A Kirkpatrick
Chief Environment Court Judge

