

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2023] NZEnvC 161

IN THE MATTER OF

an application pursuant to s 320 of the
Resource Management Act 1991

BETWEEN

WAIKATO REGIONAL COUNCIL

(ENV-2023-AKL-000139)

Applicant

AND

RAWHITI ENVIRONMENTAL
PARK LIMITED

Respondent

Court: Environment Judge MJL Dickey sitting alone under ss 309(2) and
320 of the RMA

Hearing: On the papers

Last case event: 4 August 2023

Counsel: N Spier for Waikato Regional Council

Date of Decision: 4 August 2023

Date of Issue: 4 August 2023

**DECISION OF THE ENVIRONMENT COURT ON *EX PARTE*
APPLICATION FOR INTERIM ENFORCEMENT ORDERS**

A: The application for interim enforcement orders is granted and the orders are as follows:

Location

1. The location for which the interim enforcement orders are granted is 242A Rawhiti Road, Te Aroha, legally described as Lot 5 Deposited Plan 7035,

Waikato Regional Council v Rawhiti Environmental Park Limited



Section 31-32, and Part Section 30 Block V Aroha Survey District (the **property**).

Orders

2. Pursuant to ss 320(1) and 314(1)(a)(i) of the RMA, the Respondent is required by 7 August 2023 to cease contravening the Act, specifically s 15(1)(b), by discharging a contaminant, namely pig effluent, onto land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; and
3. Pursuant to ss 320(1) and 314(1)(da) of the RMA, the Respondent is required by 7 August 2023 to do the following which, in the opinion of the Court, is necessary in order to avoid, remedy, or mitigate an actual or likely adverse effect on the environment:
 - a. reduce stock numbers in the piggery; and/or
 - b. reduce the level of pig effluent currently stored; and
 - c. relocate excess pig effluent to off-site lawful storage facilities as required.

Respondent address

4. The name and address of the person against whom the orders are granted is:

Rawhiti Environmental Park Limited
c/- Vosper Law
66 Alpha Street
Cambridge
3434

Terms and Conditions

5. Pursuant to s 314(3) of the RMA, the Respondent is required to adhere to the following terms and conditions:
 - a. the orders apply to the personal representatives, successors and assigns of the Respondent to the same extent as they apply to the Respondent.

Service

6. The orders should take effect from when they are served on the Respondent.
7. Service is to be completed in accordance with s 352 of the RMA.

Costs

8. Costs are reserved.

B: If the Respondent wishes to address the Court and seek a change to or cancellation of the orders, then under s 320(5) it has the right to be heard.

C: Reasons for making the orders will follow.

REASONS

Introduction

[1] On 4 August 2023 Waikato Regional Council applied *ex parte* for interim enforcement orders against Rawhiti Environmental Park Limited.

[2] The application was supported by:

- (a) an affidavit of Patrick Gerard Lynch, Regional Compliance Manager at Waikato Regional Council, affirmed 4 August 2023; and
- (b) video file taken by the Applicant on 2 August 2023, and referred to in Mr Lynch's affidavit.

[3] The orders sought were as follows:

Location

The location for which the interim enforcement orders are sought is 242A Rawhiti Road, Te Aroha, legally legally described as Lot 5 Deposited Plan 7035, Section 31-32, and Part Section 30 Block V Aroha Survey District (the **property**).

Orders sought

Pursuant to ss 320(1) and 314(1)(a)(i) of the RMA, the Respondent is required to immediately (and within seven days) cease contravening the Act, specifically s 15(1)(b), by discharging a contaminant, namely pig effluent, onto land in

circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; and

Pursuant to ss 320(1) and 314(1)(da) of the RMA, the Respondent is required to immediately (and within seven days) do the following which, in the opinion of the court, is necessary in order to avoid, remedy, or mitigate an actual or likely adverse effect on the environment:

- a. Reduce stock numbers in the piggery; and/or
- b. Reduce the level of pig effluent currently stored; and
- c. Relocate excess pig effluent to off-site lawful storage facilities as required.

[4] The application for the orders describes the grounds:

Basis for the order

The interim enforcement orders above are sought on the basis that they are necessary to avoid, remedy or mitigate actual or likely adverse effects on the environment, including:

- a. the immediate environmental risks arising from a discharge to land in circumstances that are likely to result in a contaminant, namely pig effluent, entering into the Patuwahao stream and Waihou river.

[5] The Applicant sought to have this interim enforcement order application determined on an *ex parte* basis.

Making an interim enforcement order

[6] The Court's authority to make an interim enforcement order is conferred by s 320 of the RMA.

[7] Under s 320(2) of the RMA, an application for an interim enforcement order may be made without notice to the person against whom it is sought and without holding a hearing. These provisions allow for the possibility that the need for action to deal with the contravention of the Act may be so urgent that the usual requirements for notice and a hearing could result in greater environmental damage. The issue is whether such risk outweighs the general desirability of adherence to the usual procedure of the Court and the principles of natural justice, including in particular hearing both sides to a case before making an order affecting the rights and interests of a party.

[8] In terms of s 320(3) I am obliged to consider what the effect of not making the order would be on the environment; whether the applicant has given an appropriate undertaking as to damages; whether I should hear from the applicant or any person against whom the orders are sought; and such other matters as I think fit. That broad provision must be employed on a principled basis and the Environment Court has adopted, in general, the approach of the civil courts of New Zealand to the granting of interim injunctions: the Court will normally require the applicant to demonstrate that they have at least an arguable case on a serious questions, that the balance of convenience is in favour of making the order sought rather than not making it, and that the overall interests of justice require an order to be made.¹

Evaluation

[9] A Judicial Telephone Conference was convened on 4 August 2023 with Mr N Spier, counsel for Waikato Regional Council. Mr Spier advised following the Judicial Telephone Conference that the time for compliance referred to in orders two and three is to be amended to 7 August 2023.

[10] I am satisfied that it is necessary to make interim enforcement orders as amended. A decision with full reasons is to follow next week.

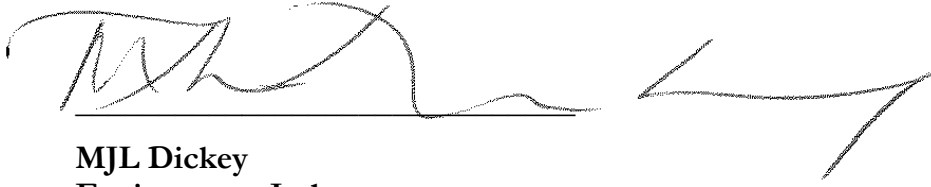
[11] With the discretion conferred by s 319 RMA and in consideration of all the relevant matters set out in ss 314 – 320 RMA, under s 320 RMA I make the interim enforcement orders set out at the beginning of this decision against the Respondent.

[12] As required by s 320(4) RMA, I direct Waikato Regional Council to serve the Respondents and direct that the orders shall take effect from when they are served. Service of the orders is to be completed in accordance with s 352 RMA.

[13] If the Respondent wishes to address the Court and seek a change to or cancellation of the orders, then under s 320(5) it has the right to be heard.

¹ *Berhampore Residents Assn Inc v Wellington City Council* (1992) 1 NZRMA 41; *Gulf District Plan Assn Inc v Arraw Properties Ltd* Decision No. A 129/02; *Friends of Sherwood v Auckland Council* [2018] NZEnvC 178.

[14] Costs are reserved.



MJL Dickey
Environment Judge

