

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

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

**Decision [2023] NZEnvC 164**

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: 8 August 2023

Date of Issue: 8 August 2023

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

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A: The application for interim enforcement orders was granted for the reasons set  
out in this decision.



## REASONS

### Introduction

[1] On 4 August 2023 the Court issued a decision granting an *ex parte* application for interim enforcement orders in respect of the operation of a piggery at a property located at 242A Rawhiti Road, Te Aroha, Waikato (**the Property**).<sup>1</sup> The decision stated that reasons would follow. This decision sets out the reasoning.

[2] The orders were 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, 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

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<sup>1</sup> *Waikato Regional Council v Rawhiti Environmental Park Limited* [2023] NZEnvC 161.

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.

### **Application for *ex parte* interim enforcement orders**

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

[4] 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.

[5] 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.
- ...

[6] 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.

[7] The Applicant sought to have the application determined on an *ex parte* basis.

### **Background<sup>2</sup>**

#### ***Property description***

[8] REPL operates an industrial piggery situated at the Property. The piggery is understood to have capacity to hold 6,000 adult pigs or pig equivalent numbers and the piggery is currently holding no less than 4,300 pigs. The piggery is set on 810.45 hectares and is based up-hill on the Kaimai Ranges.

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<sup>2</sup> Affidavit of Patrick Gerard Lynch affirmed 4 August 2023, at [3.2]-[10.3].

[9] Poseidon Holdings Limited owns the Property and lease the piggery land and buildings to REPL.

[10] REPL has leased the land and buildings since 2011. It has changed company names on four occasions:

- (a) in 2011, to Kaimai Pork Limited;
- (b) in 2012, to NZ Pork Limited;
- (c) in June 2016, to Stamford Pork Limited;
- (d) in August 2016, to Rawhiti Pork Limited; and
- (e) in 2020, to Rawhiti Environmental Park Limited.

### ***Site layout and nature of the operation***

[11] The piggery building sits across a hilltop in the Kaimai Ranges. The waste drains (gravity fed) from the pits through a pipeline to enable the effluent to enter the effluent system. The initial flow enters two tanks situated directly below the piggery.

[12] The effluent then flows into the Covered Anaerobic Pond (**CAP**), then into the main storage pond, and finally, approximately four kilometres downhill, to the distribution pond.

### ***Resource consent***

[13] REPL operate the piggery subject to two different resource consents (134713 and 122593). The resource consents authorise the irrigation of treated piggery effluent to land and resulting discharge of odour to air. The maximum capacity for the amount of animals at the piggery is not in excess of 6,600 fifty kilogram pig equivalents.

### ***Site and compliance history***

[14] In 2016, Tonkin & Taylor Limited assessed the infrastructure of the effluent ponds on the Property. Various issues arose from its assessment, including issues of the main storage pond's embankment stability. This assessment was strictly related to the safety of the structure under the Building Act 2004. The potential impact classification assessment did not consider the effects on the environment from discharge of effluent.

[15] On 27 July 2022, the Council was contacted by an individual who raised concerns with the levels of effluent in the main storage pond. Council staff attended the site and inspected the main storage pond. The liner of the pond had been damaged with earth and the CAP had a grainy type of effluent. Further overflow was situated below the piggery shed.

[16] On 29 July 2022, the Council issued an Abatement Notice to cease unlawful discharge.

[17] On 10 December 2022, Council staff attended the site and observed the main storage pond had a significant tear in the pond liner. The effluent had leaked between the liner and the pond wall. The Council subsequently contact REPL in relation to the tear.

[18] On 31 January 2023, REPL contacted the Council in relation to pond capacity and impending weather events. It indicated overflow would be likely and irrigation improbable due to wet land and the confines of the resource consents.

[19] On 1 February 2023, Mr Richard Stapel, the REPL manager, self-reported to Palmerston North Call Centre, the afterhours call taker service for Waikato Regional Council, that both the CAP and main storage pond had discharged. The main storage pond had overflowed with the effluent flowing into a shallow stormwater drain adjacent to the main storage pond. The effluent had entered the waterway. The CAP had discharge flowing over the bank towards the main storage pond.

[20] On 2 February 2023, Council staff returned to the site where the main storage pond was full to capacity and overflowing into the stormwater drain from various locations.

[21] On 8 February 2023, Tonkin & Taylor undertook a desktop and site assessment at the site. The inspection concluded:

- (a) the pond was at full capacity with evidence of overflowing of the ponds walls in multiple locations including over the main embankment;
- (b) the pond liner has become compromised with sections of the top of the liner pulled out of the anchor trench and folded into the pond along a significant section of the embankment;
- (c) photo evidence indicates that at the highest point in the embankment the liner has been bypassed by the high storage level with water expected to be able to directly surcharge the embankment soils at full reservoir pressure; and
- (d) the embankment fill is likely to be, or to become, fully saturated in these conditions which will reduce its stability.

[22] Tonkin & Taylor concluded the “current state of the dam...poses an immediate risk of dam failure either through the embankment instability, or internal erosion of the embankment fill. Either mechanism could result in a rapid failure with little or no warning. Given the stored contents of the pond are effluent we expect that the immediate risk of dam failure would result in significant damage to the environment.”<sup>3</sup>

[23] An Abatement Notice (EAC9007) was issued on 13 February 2023. The notice was issued under s 322(1)(b)(ii) RMA.

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<sup>3</sup> Tonkin & Taylor Report dated 8 February 2023, attached to Affidavit of Patrick Gerard Lynch, at “PL8”, page 2.

[24] Council staff continued to visit the site. Cyclone Gabrielle added to the challenges, due to the significant rainfall that was forecast for the region from 13 February 2023.

[25] On 14 February 2023, Council staff conducted a site visit and found discharges from the main storage pond and the covered aerobic pond.

[26] On 15 February 2023, Council staff found a discharge from the distribution pond running overland for approximately 26 metres before entering the waterway. There was further discharge from the main storage pond and a small tear in the liner of the CAP pond.

[27] Communication between the Council and REPL was ongoing at this point, particularly in respect of the compliance date in the Abatement Notice due to the claimed impossibility of complying with the timeframe of 20 February 2023 as set out in the notice.

[28] REPL stated it had been exploring alternative methods of disposal available to it in order to comply with the various conditions of the Abatement Notice. The Council varied the notice and issued a new Abatement Notice requiring the pond to be emptied by 15 May 2023.

[29] On 14 May 2023, Council staff carried out an Abatement Notice inspection. No further discharges were found.

[30] On 29 March 2023, the Abatement Notice was cancelled due to the reduced risk of failure as a result of lowering pond levels.

### ***Further issues in June 2023***

[31] On 12 June 2023, the Council received a call reporting effluent overflow into a waterway. Council staff attended and observed a discharge at the Property.

[32] A subsequent Abatement Notice was served on REPL on 21 June 2023 under



s 15 RMA to cease unlawful discharge.

[33] A further Abatement Notice was served on 23 June 2023 under s 17 RMA to remedy or mitigate the unlawful discharge.

[34] REPL appealed these Abatement Notices on 31 July 2023 and applied for a stay on these notices. The Council has since decided to cancel these notices because this process has overtaken them.

### ***Immediate issues in August 2023***

[35] On 1 August 2023 the Council was notified of a tank discharging effluent below the pig sheds.

[36] The next day a site visit was conducted at the Property. A large discharge of effluent was observed discharging from the left concrete tank. It stopped temporarily before restarting, which indicated the tank had been continually discharging on and off. The effluent discharge was wide and powerful and much larger than previously has been observed on the site.

[37] The site is located near the Patuwhao Stream and Hotahika Stream.

[38] Samples of water were taken downstream. These samples were approximately 30 to 40 metres downstream from the mixing point (where two flows merged). The colour and odour of the samples appeared to reflect a strongly contaminated sample.

[39] Effluent appears to have reached at least two kilometres downstream from the pig sheds and entered the waterway. The stream was discoloured and a muddy grey colour consistent with being contaminated with effluent.

### ***Environmental effects***

[40] Piggery effluent is a contaminant and typically contains high concentrations of several important contaminants. In its undiluted form, the concentrations of several

of the contaminants would have severe adverse effects on aquatic ecosystems. In particular, concentrations of toxicant ammonia (ammoniacal-N), and the mixture of oxygen-depleting substances that contribute to carbonaceous biochemical oxygen demand (cBOD5).

[41] In general samples of untreated piggery effluent have shown that the expected values for these contaminants can be in the order of 300 times higher than relevant guideline values aimed at avoiding adverse effects on water bodies.

[42] The expected concentrations of faecal bacteria-faecal Coliforms and E. Coli are likely to be very high. When discharged into surface water bodies these can make the water unsuitable for drinking by stock and unsuitable for swimming or other forms of contact recreation.

[43] The Council is also aware of several surface water takes for domestic water supply immediately downstream of the site. The discharge of effluent, for example, has flowed into the Patuwahao Stream. The Patuwahao Stream is within the Waihou River catchment, which meets the water classification for Waikato Surface Water and Fishery Classes.

[44] Sampling of the stream had been taken on 2 August 2023. Given the immediate nature of the application, the Council had not yet received the results.

### ***Orders necessary***

[45] It was Mr Lynch's opinion that the interim enforcement order sought by the Council was necessary to:

- (a) ensure that REPL complies with the RMA and other applicable regulations and standards (including Rule 3.5.5.3 of the Waikato Regional Plan); and
- (b) address the immediate threat to the environment and the identified risks to human health.

[46] In light of his dealings with REPL over the past twelve months, Mr Lynch was of the opinion that REPL will not willingly meet its legal obligations to comply with the RMA and that REPL must be compelled to do so.

### **Making an interim enforcement order**

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

[48] 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.

[49] 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.<sup>4</sup>

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<sup>4</sup> *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.

## Evaluation

[50] I was satisfied that it was necessary to make interim enforcement orders. I accept the evidence provided was sufficient to demonstrate a strong arguable case that the piggery is operating in a manner that contravenes the Regional Plan and the RMA, and has adverse environmental and human health effects. I was satisfied that there is a threat to the environment that requires urgent attention. The effects of effluent on aquatic systems, drinking water (human and stock) and recreation are all well known.

[51] The evidence indicates significant previous compliance problems, and a history of intervention by the Council. The Council has been in regular dialogue with REPL and the problem continues to get worse. Given the ongoing nature of the issues which have suddenly worsened, as evidenced by the tank overflowing and spilling a significant amount of wastewater to the ground, I was satisfied that it was appropriate to make orders that will prevent further non-compliance, limiting the risks associated with the piggery and at least containing the extent of adverse effects on the environment.

[52] Considered against the effects of making interim orders, I was of the view that the balance was in favour of avoiding, remedying or mitigating effects by making the orders sought.

[53] I was satisfied the orders sought responded directly to the enforcement issues apparent from the evidence, and that the orders sought were generally framed in appropriate terms. After a brief discussion in the Judicial Telephone Conference held on 4 August 2023 with Mr N Spier, counsel for Waikato Regional Council, it was agreed that it would be better to specify a date for compliance. Mr Spier advised following the Judicial Telephone Conference that the time for compliance referred to in orders two and three was to be amended to 7 August 2023.

[54] It is reasonably well settled that an undertaking as to damages may not be necessary where the applicant is:

- (a) protecting public, rather than private, interests;

(b) a consent authority performing a regulatory role; or

(c) unquestionably financially capable of meeting any award of damages.

[55] I accept that the Council is a consent authority performing a regulatory role and is protecting public interests. No undertaking as to damages is required.

[56] I was satisfied that proceeding on an *ex parte* basis was appropriate in the circumstances of this case. There has been a long history of compliance concerns and intervention by Council, the parties have been in communication over a period of time, and the environmental effects are such that immediate action is required. I also note that the application was filed late on a Friday and there was limited time to address the application. I consider these to be strong grounds for not waiting to hear from the Respondent. The orders issued did note that if the Respondent wishes to address the Court and seek a change to or cancellation of the orders, then under s 320(5) RMA it has the right to be heard.

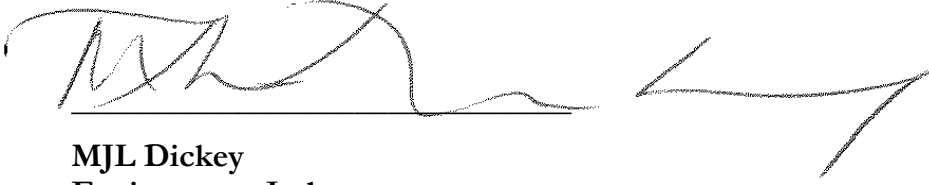
### **Decision**

[57] For the above reasons, within 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 made the interim enforcement orders set out at the beginning of this decision against the Respondent.

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

[59] I note that an application to change the interim enforcement orders was received by the Court on 7 August 2023. This will be addressed separately.

[60] Costs are reserved.



**MJL Dickey**  
**Environment Judge**

