

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2023] NZEnvC 169

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

Hearing: Judicial Telephone Conferences held 8 and 9 August 2023, and
on the papers

Last case event: 9 August 2023

Counsel: N Spier for Waikato Regional Council
J Gurnick for Rawhiti Environmental Park Limited

Date of Decision: 11 August 2023

Date of Issue: 11 August 2023

**DECISION OF THE ENVIRONMENT COURT ON APPLICATION TO
CHANGE INTERIM ENFORCEMENT ORDERS**

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

B: Costs are reserved.



REASONS

Introduction

[1] On 4 August 2023 the Court issued a decision granting an *ex parte* application for interim enforcement orders (**Orders**) in respect of the operation of a piggery at a property located at 242A Rawhiti Road, Te Aroha, Waikato (**the Property**).¹ On 8 August 2023, the Court issued a decision setting out the reasons for granting that application.²

[2] On 7 August 2023, Rawhiti Environmental Park Limited (**Rawhiti**) applied to change the Orders. On 9 August 2023, the Court issued a decision granting that application.³ The decision stated that reasons would follow. This decision sets out the reasoning.

Application to change interim enforcement orders

[3] Rawhiti filed an application pursuant to s 320(5) RMA, for a change to the Orders, in particular, an extension to the period in which compliance is required. A 10-day extension was sought.

[4] The application advised that counsel was served with the Court's decision on the *ex parte* application shortly after 5pm on Friday, 4 August 2023.

[5] Rawhiti states there are practical difficulties in complying with the Orders, including:

- (a) while acknowledging that the slaughter of pigs would reduce the amount of piggery effluent being produced, it is not practical or lawful to slaughter enough pigs within the timeframe provided by the Orders. There are approximately 5000 pigs. To have slaughtered enough pigs within the timeframe under the Orders would have caused a significant animal welfare

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

² *Waikato Regional Council v Rawhiti Environmental Park Limited* [2023] NZEnvC 164.

³ *Waikato Regional Council v Rawhiti Environmental Park Limited* [2023] NZEnvC 166.

event;

- (b) there has not been a legal alternative for it to dispose of effluent either in accordance with its existing consent or under the Orion consent; and
- (c) it has not been able to relocate piggery effluent to an alternative location other than the 50,000 litres it has been able to transport to Hamilton City Council (**HCC**) Wastewater Treatment Plan (**WWTP**). The Court was asked to note that HCC has previously refused to take effluent on occasion with very short notice.

[6] Rawhiti seeks a 10-day extension to the 7 August 2023 deadline for compliance with the Orders for the following reasons:

- (a) farm spreading under its consent, based on recent weather and forecasted dry conditions can resume. Very little spreading of effluent has been able to occur in accordance with its consent due to heavy rainfall; the land is sodden;
- (b) Rawhiti had arranged with Orion Haulage Limited (**Orion**) for Orion to obtain a variation to Orion's land spreading consent for Orion to spread the Respondent's piggery effluent. Orion filed its application with the Council on 8 March 2023. Following delays, the consent variation was granted. The Council has included a farm to the property register as late as 4 August 2023. Farm spreading in accordance with the Orion consent variation is expected to begin during the week of 7 August 2023;
- (c) Rawhiti will continue to transport 50,000 litres daily to HCC's WWTP; and
- (d) Rawhiti continues to negotiate with Matamata-Piako District Council to obtain approval to transport piggery effluent to its wastewater treatment facility.

[7] The application was supported by an affidavit of Richard William Stapel,

advisor to the shareholders of Rawhiti, dated 28 July 2023. The affidavit sets out that there is significant capital expenditure awaiting consent to ensure compliance, including:

- (a) installation of a solid separation system. Component parts are already on site and awaiting a further period without rain to be transported to the correct location on the farm; and
- (b) installation of an above ground tank system holding 9.7 million litres of effluent, which will allow the top storage pond to no longer have fresh effluent going into it:
 - (i) the system has been ordered and fabricated/imported. Fabricated parts are completed and were stored in Tauranga awaiting building consent to be issued. The consent was issued on 4 August 2023. Imported parts have already been delivered on site at the farm;
 - (ii) trees have been felled and earthworks will commence during the week beginning 7 August 2023; and
 - (iii) a meeting is scheduled for Wednesday, 9 August 2023 with the project manager, main contractor, and all relevant sub-contractors to ensure commissioning occurs as soon as possible.

Memorandum from the Council – 8 August 2023

[8] On 8 August 2023, Mr Spier filed a memorandum advising that his instructions are to oppose Rawhiti's application to change the Orders. The Council states that failure to comply with the Orders is yet another example of Rawhiti's relaxed attitude to environmental compliance.

[9] The Council asserts that there are a number of options available to Rawhiti to comply with the Orders that do not require slaughter of 'enough' pigs. The Council suggested other options available to Rawhiti include increasing effluent storage on

site, disposal off site, and maintenance and repair of infrastructure.

[10] Of particular concern to the Council is what was observed on site on 7 August 2023. In response to a complaint regarding effluent in the Patuwhao Stream a Council officer visited the property and confirmed overflow from the tanks.

Judicial Telephone Conference – 8 August 2023

[11] A Judicial Telephone Conference (**JTC**) was convened on 8 August 2023 to discuss the application to change the Orders.

[12] Having reviewed the application, I advised the parties that they need to be realistic about what can be achieved to address the ongoing adverse environmental effects. There have been serious discharges to land which have entered water. I advised that I was tentatively of the view that the request for extension was appropriate but would need to see immediate steps taken. I also advised the parties that the Court would continue to monitor this matter to ensure that intermediate and long-term steps were put in place as the situation has been ongoing for some time and cannot be allowed to continue.

[13] Mr Gurnick highlighted the lengths that Rawhiti has gone to, to try to ensure unlawful discharges do not occur, including applying for a variation to the Orion consent and transporting effluent to the HCC WWTP. He noted some of the problems with these measures, including processing delays by the Council and that HCC WWTP withdrew its consent at short notice. He advised that some of the measures suggested by the Council are not feasible, including that putting a cover on the pond would require significant engineering work and that the pigs cannot be put to paddocks as they would not survive.

[14] Mr Gurnick confirmed that Rawhiti does not want discharges to continue. He reported that Rawhiti is optimistic that with implementation of the variation to the Orion consent and with HCC WWTP agreeing to take 50,000 litres per week day, in the short-term further discharge/s will not occur. Mr Gurnick also advised that Rawhiti was working on long-term measures to deal with the issues.

[15] Mr Spier asserted that the company was ill equipped to deal with the effluent it has. He highlighted the site visit on 7 August 2023, stating it was evidence of effluent being discharged to the stream at levels not previously seen. Mr Spier agreed that it is important to find a way forward in the short-term while the wider infrastructure issues are addressed but wanted to ensure that the Council's position was clear, the Council does not endorse discharges while the infrastructure comes online.

[16] It was agreed that the parties would discuss short-term steps and a timetable for those, to ensure further discharges do not occur. Following that, a timetable would also need to be discussed for long-term measures. The JTC was adjourned until 9 August 2023.

Judicial Telephone Conference – 9 August 2023

[17] A JTC was convened on the morning of 9 August 2023 to discuss whether progress had been made on agreeing changes to the Orders.

[18] Mr Spier and Mr Gurnick had discussed changes. The changes include:

- (a) a reduction of 100 pigs per week for two weeks by taking them to the works;
- (b) taking 50,000 litres per day to the HCC WWTP;
- (c) spreading of up to 100,000 litres per day over the next 10 days under the Orion consent variation; and
- (d) spreading of up to 50,000 litres per day for the next 10 days on the home farm.

[19] Mr Spier advised that the Council has reservations as to whether Rawhiti could comply with the suggested actions. It has concerns about financial capacity and whether effluent spreading over the home farm could occur given the ground conditions. He said the Council does not wish to set the company up to fail.

[20] Mr Gurnick advised that Rawhiti is set to draw down some lending this week however the lender wants to see the Court and Council endorse what is proposed before it proceeds. He confirmed that without the lending the proposal cannot be implemented. On effluent disposals he advised that if there is a shortfall in the amount spread on the home farm, further spreading can occur under the Orion consent variation.

[21] There was discussion around concerns that the HCC WWTP may not agree to take the effluent, or the works may reject some of the pigs. Mr Gurnick considered that the combination of actions being undertaken would address that. He advised that HCC WWTP has agreed to take the 50,000 litres of effluent per weekday and that Hellaby's has agreed to take 100 pigs per week for the next two weeks.

[22] Rawhiti is optimistic that if what has been proposed can be achieved there will not be a further discharge. Mr Gurnick emphasised that if changes are not made to the Orders, there are no other practical alternatives that can be lawfully implemented. He asked that the Court endorse the proposal as it is the best effort that can be taken to ensure there are no further discharges.

[23] Mr Gurnick submitted that after 10 days there should be enough wiggle room within the system to ensure compliance while permanent fixes are made. Building consent for the Klip tanks has been granted and construction should be completed in six weeks, spring is on the way which should lead to better weather and therefore ground conditions, the Orion consent variation has come online, and the home farm is likely to be able to be used. Mr Spier suggested a further short-term action that could be undertaken would be storage of effluent in tanks, tankers or bladders on site. Mr Gurnick said that is not feasible.

[24] It was agreed that the changes discussed are practical ways forward in the short-term. I want to see milestone monitoring included in the amended orders, particularly regarding whether the works were taking pigs, whether the HCC WWTP was taking 50,000 litres per day, and the amount being spread on the home farm and under the Orion consent. Further, I wish to be satisfied that the foreshadowed

financing is in place.

[25] It was agreed that a further JTC will be convened after two weeks to discuss next steps.

Evaluation

[26] Following the JTC, draft amended interim enforcement orders were provided to the Court on 9 August 2023.

[27] I was satisfied that the Orders should be changed. The Court and parties understand that there is not going to be a quick fix to the issues. The Court's focus is on finding the best way to achieve immediate cessation of the unlawful discharges of effluent and outline a practical way forward. The history of the matter, as outlined in the interim enforcement order decision,⁴ is a reason for promoting a staged outcome to achieving compliance. This clearly is not a situation that has developed overnight. Issues with effluent disposal were identified over a year ago and the Council and Rawhiti have been working towards a solution – regrettably one that has not eventuated and led to a worsening of the situation culminating in the orders issued on 4 August 2023.

[28] I find that the risk of not amending the Orders is that the situation on the property remains the same, and there would be continued non-compliance and poor environmental outcomes.

Orders

[29] For the above reasons, the application to change the interim enforcement orders was granted.

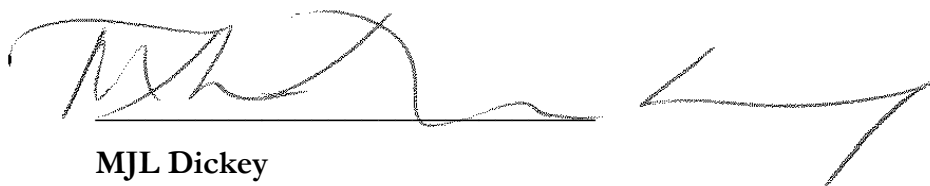
[30] Costs are reserved.

⁴ *Waikato Regional Council v Rawhiti Environmental Park Limited* [2023] NZEnvC 164.

Directions

[31] I direct that Rawhiti advise the Court by **midday on 11 August 2023** whether the finance necessary to fund the works required in the amended orders has been released.

[32] I direct the parties return to the Court on **21 August 2023 at 9:30am** to discuss next steps and if adjustments to the amended orders are needed.



MJL Dickey
Environment Judge

