

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

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

**Decision [2023] NZEnvC 175**

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: On the papers  
Last case event: 14 August 2023

Counsel: N Spier, S P Farnell, C L Wilkinson for Waikato Regional  
Council  
J Gurnick and P Lang for Rawhiti Environmental Park Limited

Date of Decision: 14 August 2023

Date of Issue: 14 August 2023

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

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A: The second application to change the interim enforcement orders is granted.

The orders are as follows:



## Orders

1. Pursuant to ss 320(1) and 314(1)(a)(i) of the Resource Management Act 1991 (RMA), the Respondent is to immediately cease:
  - a. discharging 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, on the property legally described as:
    - i. Lot 5 Deposited Plan 7035, Section 31-32; and
    - ii. Part Section 30 Block V Aroha Survey District.  
**(the Property)**.
2. Pursuant to ss 320(1) and 314(1)(da) of the RMA, the Respondent is to carry out the following actions over the course of the next ten (10) days and starting immediately:
  - a. reduce stock numbers in the piggery by sending an additional 100 pigs per week to Wilson Hellaby (a 25% increase in the numbers being sent currently); and
  - b. reduce the level of pig effluent currently stored at the property by 1.5 million litres by:
    - i. transporting 50,000 litres per weekday to Hamilton City Council's Wastewater Treatment Plant;
    - ii. spreading 400,000 litres of effluent on Rawhiti Environmental Park Limited's farm (**the home farm**) as permitted by ground/weather conditions and nutrient loading rates; and
    - iii. installing and transferring effluent to a flexi tank which will hold one million litres.
3. Pursuant to ss 320(1) and 314(1)(da) of the RMA, the Respondent is to install two Kliptanks, observing the following timetable:
  - a. 10 August 2023 – 25 August 2023:
    - complete bulk earthworks and foundations for the Kliptanks
    - complete subterranean plumbing.

- b. 21 August 2023 – 25 August 2023:
  - verification of site works (required for code compliance certificate) to be done
  - Kliptanks to be delivered to site.
- c. 28 August 2023 – 24 September 2023 (four weeks allowed as maximum, including contingency):
  - Kliptanks to be installed and commissioned.
- d. 25 September 2023 – 27 September 2023 (or earlier if possible):
  - transfer four million to 4.5 million litres of treated piggery waste to the Kliptanks (this equates to approximately 1/3 of the total volume currently in the top storage pond).

### **Terms and conditions**

4. 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.
  - b. the respondents are to provide a daily report to Waikato Regional Council for the next ten (10) days. That report shall be sent to [IR@waikatoregion.govt.nz](mailto:IR@waikatoregion.govt.nz) by 12 p.m. each day and must provide an update under separate headings of each of the orders outlined above.

### **Service**

5. The orders should take effect from when they are served on the Respondent, via their counsel.

### **Costs**

6. 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**).<sup>1</sup> On 8 August 2023, the Court issued a decision setting out the reasons for granting that application.<sup>2</sup>

[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.<sup>3</sup> On 11 August 2023, the Court issued a decision setting out the reasons for changing the Orders.<sup>4</sup>

[3] In the decision issued 11 August 2023, I directed 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.

### Memorandum from Rawhiti – 11 August 2023

[4] The memorandum advised that the financier is reviewing the implications of the decision, but the finance is still available so far as it is aware. Funds have not yet been released.

[5] Late in the afternoon of 10 August 2023, Rawhiti was advised that the farm which had agreed to take the effluent under the Orion consent has now declined to take the effluent due to extremely wet ground conditions. This was not expected or foreshadowed.

[6] Rawhiti has arranged to purchase a further flexi tank which will hold one million litres. This will be installed and commissioned within ten days.

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

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

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

<sup>4</sup> *Waikato Regional Council v Rawhiti Environmental Park Limited* [2023] NZEnvC 169.

[7] The flexi tank solution (one million litres) is in substitution for the spreading which was due to take place under the Orion consent (750,000 litres).

[8] The memorandum advised the time frame for installation of two Kliptanks is as follows, which will allow the transfer of 4.5 million litres from the ponds to the secure tanks:

- (a) 10 August – 25 August: bulk earthworks and foundations for Kliptank, and subterranean plumbing;
- (b) 21 August – 25 August: verification of site works (required for code compliance certificate), and Kliptank delivered to site;
- (c) 28 August – 24 September (4 weeks allowed as maximum, including contingency): Kliptank installation and commissioning; and
- (d) 25 September – 27 September (or earlier if possible): transfer 4 million to 4.5 million litres of treated piggery waste to Kliptanks – this equates to approximately 1/3 of the total volume currently in the top storage pond.

[9] Rawhiti accordingly seeks a change to the 9 August 2023 orders to require the Respondent to undertake the actions described in paragraphs [6], [7] and [8] above in substitution for the actions required under paragraph 2.b.iii. of the current orders.

### **Memorandum from the Council – 14 August 2023**

[10] Counsel for the Council filed a memorandum in response on 14 August 2023.

[11] As has been raised previously, the Council's main concern is to prevent any further discharge of piggery effluent which the Council reiterates it does not endorse while Rawhiti's infrastructure is put in place. Subject to this, the Council agrees with an amendment to the orders that would allow for an immediate flexi tank solution to be put in place.

[12] The Council sought further information from Rawhiti on compliance, and in particular:

- (a) confirmation and updated reporting from Rawhiti of its compliance with the remaining three orders; and
- (b) confirmation that no further animals are brought onto the property and if further animals are being born, confirmation as to how Rawhiti proposes to deal with the increase in pig numbers in accordance with orders to destock and otherwise reduce the number of pigs.

### **Further memorandum from Rawhiti – 14 August 2023**

[13] Counsel's instructions are that the amended enforcement orders requiring reduction of pig numbers, taking of effluent to the Hamilton City Council Wastewater Treatment Plan, and spreading of effluent on the home farm have been complied with and are continuing to be complied with, with the home farm spreading due to commence as soon as ground and weather conditions permit.

[14] It was confirmed that the proposed storage in a flexible storage tank is intended in substitution for the land spreading under the Orion consent and that the other interim enforcement orders shall remain in place.

[15] In relation to the finance, Rawhiti's solicitor advised that the financier's representative has indicated the solicitor can expect the settlement of the advance in the next day or two.

[16] The memorandum advised that further negotiations are under way with owners of other farms so that those farms can be included in the Orion effluent spreading consent. Rawhiti welcomed any assistance from the Council in adopting a fast track process to amend the Orion consent to include those additional farms.

## Evaluation

[17] I am satisfied the 9 August 2023 orders should be changed. The parties agree to the orders being changed. As stated in my previous decisions, the focus of the Court and the parties has been on finding the best way to achieve immediate cessation of the unlawful discharges of effluent and a practical and realistic way forward. Rawhiti has identified a problem and proposed a reasonable solution. The risk of not amending the orders remains that the effluent is not dealt with in a compliant manner and there are continued poor environmental outcomes.

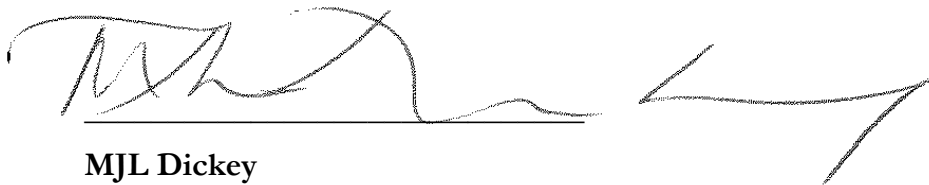
## Orders

[18] For the above reasons, the second application to change the 9 August 2023 orders is granted. The orders are as set out at the beginning of this decision.

[19] Costs are reserved.

## Directions

[20] Rawhiti has responded in part to the Council's request for further information. I direct that Rawhiti provide the information regarding whether further animals are being brought to or born on the property and, if so, how that is being dealt with by **5pm Tuesday, 15 August 2023.**



**MJL Dickey**  
Environment Judge

