

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2023] NZEnvC 178

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 Teleconference held 21 August 2023 and on the papers
Last case event: 22 August 2023

Counsel: C L Wilkinson for Waikato Regional Council
J Gurnick for Rawhiti Environmental Park Limited

Date of Decision: 23 August 2023

Date of Issue: 23 August 2023

**DECISION OF THE ENVIRONMENT COURT AMENDING INTERIM
ENFORCEMENT ORDERS**

A: The orders are amended as follows:

Orders

1. Pursuant to ss 320(1) and 314(1)(a)(i) of the Resource Management Act 1991 (RMA), the Respondent is prohibited from commencing the:
 - a. discharge of any 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 (where applicable) starting immediately:
 - a. reduce stock numbers in the piggery by sending an additional 100 pigs each week commencing 28 August 2023; 11 September 2023 and 25 September 2023, being 300 additional pigs in total to Wilson Hellaby; and
 - b. reduce the level of pig effluent currently stored at the property by:
 - i. transporting 50,000 litres per weekday to Hamilton City Council's Wastewater Treatment Plant or (if available) spreading the equivalent effluent in accordance with any resource consent (maximum required under this condition being 250,000 litres per week);
 - 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 – 1 September 2023:
 - complete bulk earthworks and foundations for the Kliptanks
 - complete subterranean plumbing.

 - b. 21 August 2023 – 1 September 2023:
 - verification of site works (required for code compliance certificate) to be done
 - Kliptanks to be delivered to site.

- c. 28 August 2023 – 1 October 2023 (four weeks allowed as maximum, including contingency):
 - Kliptanks to be installed and commissioned.
- d. 25 September 2023 – 4 October 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 until 4 October 2023. That report shall be sent to IR@waikatoregion.govt.nz by 12 p.m. each working 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 in respect of the operation of a piggery at a property located at 242A Rawhiti Road, Te Aroha, Waikato.¹ On 8 August 2023, the Court

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

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 On 11 August 2023, the Court issued a decision setting out the reasons for changing the Orders.⁴

[3] On 11 August 2023, Rawhiti applied to change the 9 August 2023 orders. On 14 August 2023, the Court issued a decision granting the application.⁵

[4] In the decision dated 11 August 2023, I directed the parties to return to the Court on 21 August 2023 for a judicial conference to discuss next steps and if adjustments to the amended orders are needed.

Memorandum from Council – 21 August 2023

[5] Counsel for the Council filed a memorandum to update the Court ahead of the judicial teleconference.

[6] The Council confirmed Rawhiti has reported as required by the orders. The Council, having reviewed those reports, made the following observations:

- (a) 50,000 litres of effluent has been transferred daily to Hamilton City Council;
- (b) there has been no irrigation on the home farm on any day; and
- (c) with the exception of the daily reporting notes, there is no evidence of the reduction in pig numbers.

[7] Attached to the memorandum was a schedule outlining Council staff observations from site visits in relation to the effluent. The memorandum records that

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

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

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

⁵ *Waikato Regional Council v Rawhiti Environmental Park Limited* [2023] NZEnvC 175.

at the last site visit, no active discharge was observed, however what appeared to be a recent discharge was observed.

[8] The Council remained concerned that an event such as the one giving rise to the application will be repeated. It sought assurance in the form of short-term (as opposed to immediate) orders to prevent this from occurring again.

[9] Once the Kliptanks have been installed, the Council invites Rawhiti to commission a long-term solution to ensure that no further discharge occur. Part of this long-term solution will be an effective disposal solution of the stored effluent.

Judicial Teleconference – 21 August 2023

[10] Mr Gurnick did not accept that a discharge had occurred on 17 August 2023. This was not consistent with the daily reporting. Rawhiti has instructed him that no effluent has been discharged, and particularly none had discharged to a waterway. Rawhiti suggested that what might have been seen was rainwater that had pooled on the top of tanks dripping down.

[11] Mr Gurnick advised:

- (a) 225,000 litres had been moved off the farm to a flexi tank on Saturday. The flexi tank was located offsite;
- (b) a million litres will be moved offsite into flexi tanks this week (21 August 2023);
- (c) no spreading had occurred on the home farm due to weather conditions;
- (d) there will continue to be transport of effluent to the Hamilton City Council Wastewater Treatment Plan (**HCC WWTP**); and
- (e) while there had been a week's delay in the installation of Kliptanks, Rawhiti is making progress; and

- (f) 100 additional pigs will be sent to slaughter in each of the weeks 28 August, 11 September and 25 September 2023.

[12] Mr Gurnick noted that the transport of effluent to the HCC WWTP is expensive. He requested that orders be amended to reflect some level of discretion as to where effluent is disposed of, whether that be through spreading or to the HCC WWTP. Mr Gurnick advised that further farms are likely to come online under the Orion consent.

[13] Ms Wilkinson confirmed that the Council is now satisfied the discharge observed on 17 August 2023 is a historical discharge and no further discharges have occurred.

[14] Ms Wilkinson requested evidence as to the reduction of pig numbers, such as invoices or the like. Mr Gurnick will address this with the Council.

[15] The parties and Court agreed there is a continued need to work together. The parties agreed to discuss proposed wording for changes to the orders, particularly in relation to the timetable for installation of Kliptanks (to be pushed out a week), further reducing stock numbers as proposed, to allow for some flexibility in how effluent is disposed of whether through HCC WWTP or spreading, and to provide for transfer of further effluent to flexi tanks this week.

Joint memorandum – 22 August 2023

[16] The parties filed a joint memorandum on 22 August 2023. The parties sought the orders now be amended in accordance with the proposed draft orders attached to the memorandum.

Evaluation

[17] I am pleased with the progress to date, volumes of effluent on site have been reducing and it appears Rawhiti is getting on top of the issues. I appreciate that the weather has created some difficulties with meeting certain of the deadlines.

[18] I accept that the orders should be amended to address the situation as it has advanced. I accept that further flexibility in the orders is appropriate to give Rawhiti options while also ensuring effluent is being appropriately disposed of.

Orders

[19] For the above reasons, the orders are amended. The orders are as set out at the beginning of this decision.

[20] In terms of times for compliance the 'clock restarts', and these orders now encapsulate what is to either continue or occur from now. To that end some amendments have been made to the draft orders provided, by:

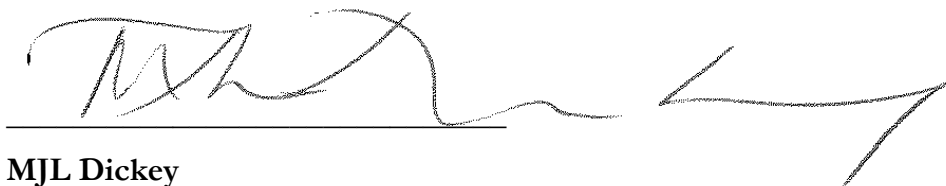
- (a) amending the order from 'immediately ceasing discharge of any contaminant' to 'prohibiting commencing the discharge of any contaminant';
- (b) removing the ten-day timeframes; and
- (c) extending reporting requirements to 4 October 2023.

[21] Costs are reserved.

Directions

[22] It is open to the parties to come back to the Court if further directions are required.

[23] The Court will schedule a further judicial telephone conference in due course to check on progress.



MJL Dickey
Environment Judge

