IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TAMAKI MAKAURAU

Decision No. [2024] NZEnvC 012

IN THE MATTER OF	an appeal against an abatement notice regarding cessation of discharging wastewater to land under expired resource consent permit at 49 Forestry Road, Riverhead, Auckland
BETWEEN	KUMEU INDUSTRIAL PARK ASSOCIATION INCORPORATED (ENV-2024-AKL-009) Appellant
AND	AUCKLAND COUNCIL Respondent

Court:	Judge J A Smith
Last case event:	1 February 2024
Appearances:	J Brabant for Kumeu Industrial Park Association Incorporated R Russ and C J Brown for Auckland Council
Date of Decision:	12 February 2024
Date of Issue:	12 February 2024

DECISION ON STAY APPLICATION AND DIRECTIONS OF THE ENVIRONMENT COURT

A: The Court orders a stay of the abatement notice with a substantive new resource consent to be applied for by 29 March 2024. Application to vary or cancel the stay may be made on notice.

B: Conditions and fortnightly monitoring reports are ordered to address mitigating adverse effects from the existing system, with the first to be filed by 16 February 2024.

REASONS

Introduction

[1] On 11 December 2023, the Auckland Council issued an abatement notice to Kumeu Industrial Park Association Incorporated (**KIPA**), regarding discharge of wastewater at 49 Forestry Road Riverhead. The notice required compliance by 2 February 2024.

[2] KIPA subsequently filed an appeal against the abatement notice on 23 January 2024.

Application for stay of abatement notice

[3] On 23 January 2024, KIPA filed an application for stay of the abatement notice. The application was supported by two affidavits from Dylan Christopher Walton and Richard James Gibbs affirmed 19 and 24 January 2024 respectively.

[4] Mr Walton is a civil engineer at GWE engaged for this matter to provide an expert opinion on the safety and efficacy of the wastewater plant. Both he and Mr Gibbs maintain it is in a stable working order, however, agree it is discharging more than what is accepted per the current consent. Mr Walton believes effects to the environment are no more than minor.

[5] The main issues detailed in the abatement notice concern discharge volumes frequently exceeding the consented volume, and the disposal field being in a poor state. Mr Walton maintains run off is limited to one area and is likely to occur mainly during wet weather. GWE consulting is in the process of investigating and designing options to mitigate the risk of run off into ponds, which may have ecological impacts.

[6] There are a number of short-term measures being implemented to address any risk of run off, that being a bund, punching holes, and temporary surface replacement, as well as a drainage contractor engaged to fix points of infiltration and desludging on an as needed basis.

[7] Mr Gibbs and Mr Walton submit that it would be unreasonable to require compliance with the abatement notice before the appeal is determined. They also consider that compliance was not possible by 2 February 2024 and voice the intent to seek a new substantive resource consent, via an improved wastewater system which addresses the infiltration issues, treated wastewater quality and improved disposal via a rehabilitated field.

Judicial Conference - 1 February 2024

[8] A judicial conference was convened on 1 February 2024 to discuss the application for stay of the abatement notice and how to further progress the appeal.

[9] Parties agreed that the stay is a temporary measure while they seek a new resource consent in as soon a timeframe as possible and while minimising effect.

Evaluation on stay application

[10] Section 325(3D) of the RMA requires me to consider:

(a) what the likely effect of granting a stay would be on the environment;

(b) whether it is unreasonable for the person to comply with the abatement notice pending the decision on the appeal;

(c) whether to hear from the parties; and

(d) other matters as the Judge thinks fit.

[11] The parties have agreed the stay application can be granted. I am satisfied at this stage that environmental considerations will not be of concern in granting the

application for stay, so long as it is managed in the interim with appropriate conditions.

[12] Further I am satisfied that, at this time, it would be unreasonable to require compliance with the abatement notices pending the possible resolution of the appeal via granting of a new resource consent.

[13] I have also heard from the parties, and they have an agreed position. I think it fit to impose conditions requiring scientific input and regular reporting and milestones, to ensure the applicant complies with said conditions while the application for consent is progressed. The applicant needs to understand that in periods of high rainfall alternative disposal systems need to be provided until the ground is able to recover.

[14] Accordingly, the Court orders a stay of the abatement notices until 13 April 2024 or until further order of the Court. KIPA are to maintain and improve the system in the interim with as minimal effect as possible, avoiding serious health effects, while progressing a substantive replacement consent. Conditions and fortnightly monitoring reports are ordered to address mitigating adverse effects from the existing system. Application to vary or cancel the stay may be made on notice.

[15] Application to vary or cancel the stay may be made on notice.

Further directions

[16] Mr Walton of GWE is to file a scientific report by **16 February 2024**. This is to address the telemetered volume of discharge, the rainfall volume from a comparable site and also provide observational data as to groundwater flow. A progress update of mitigatory options concerning infiltration mentioned at paragraphs [24] and [30] of his affidavit dated 19 January 2024, should also be addressed.

[17] These include whether a bund could contain the disposal within the field, whether punching in some areas might reduce the pressure on the ponding, the temporary replacement of subsurface fields and a timeline of any recommendations

and their implementation. The report should also address contingency plans for portaloos and alternative waste disposal systems in high rainfall and note what sort of notice needs to be given to the tenants and businesses at the park, and if a hiring contract is in place.

[18] Regular reporting on monitoring data is to occur every two weeks following the first report on **16 February 2024.**

[19] Parties agree to regular inspections from the Council.

[20] A draft application for the new consent is to be filed by **29 March 2024**.

[21] A further judicial conference is to be held mid-April 2024 to assess progress of the matter.

[22] Agreed conditions for a consent order on a stay:

J A Smith
Environment Judge