

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2018] NZEnvC 184

IN THE MATTER of the Resource Management Act 1991
AND of applications for stay of abatement notices
pursuant to s325(3B) of the Act
BETWEEN TIMBERGROW LIMITED
(ENV-2018-WLG-111)
ERNSLAW ONE LIMITED
(ENV-2018-WLG-112 and
ENV-2018-WLG-113)
Applicants
AND GISBORNE DISTRICT COUNCIL
Respondent

Court: Environment Judge J J M Hassan
Hearing: In Chambers at Christchurch
Appearances: L Burkhardt for Timbergrow Ltd and Ernslaw One Ltd
A Hopkinson for Gisborne District Council
Date of Decision: 27 September 2018
Date of Issue: 28 September 2018

**RECORD OF REASONS FOR GRANTING STAY OF
ABATEMENT NOTICES ON CONDITIONS**

- A: Stays granted on conditions specified at [2].
- B: There will be no order as to costs on the applications.

REASONS



Introduction

[1] Gisborne District Council ('Council') issued abatement notices against the following parties ('applicants') each of whom has appealed the notices and seek stays pending determination of the appeals:

- (a) Ernslaw One Limited, in respect of Abatement Notices 2018/A007, 2018/A008 and 2018/A009; and
- (b) Timbergrow Limited, in respect of Abatement Notice 2018/A010.

[2] During a telephone hearing on 27 September 2018, having heard counsel, I made the following decision:

The applications for stay of the abatement notices by Ernslaw and Timbergrow are granted subject to the following conditions:

1. The applicants are to confer with the respondent and ensure the filing of a memorandum of counsel (preferably jointly with the respondent) reporting on progress, by Friday 30 October 2018.
2. The applicants are to ensure counsel is available at short notice for a teleconference to be arranged for shortly thereafter (probably in the week commencing 5 November 2018) for the purposes of determining whether the stays are to remain in force or cancelled or amended and for evidence timetabling and other arrangements for hearing if required to be made.

[3] The abatement notices pertain to the applicants' forestry harvesting and earthworks activities in forests in the Gisborne district. The notices each allege contraventions of specified resource consent conditions. Broadly, the conditions pertain to matters such as stabilisation treatment of roads and landings, runoff management, culvert and cut-off installations for management of discharges and runoff, and protection of watercourses (including slash, log end and other debris removal).

[4] The appeals each allege lack of clarity in the relevant conditions and seek amendment to the specified timeframes for compliance.

[5] Each stay application, pursuant to s325(3A) RMA, is accompanied by affidavits by Mr McInnes, Regional Manager for Ernslaw One Ltd and manager responsible for Timbergrow's operations. These attest to Mr McInnes' position as to the lack of clarity in relevant conditions, unsuccessful endeavours to resolve this in discussion with Council officers, and "good progress" by each applicant in undertaking actions towards



compliance with the conditions.

[6] Judge Dwyer issued directions for the Council to respond to the stay applications. He also made standard track directions.

[7] The Council responded to the stay applications by memorandum of counsel dated 25 September 2018. On the basis of inspections undertaken by Council staff, the memorandum acknowledges significant progress has been made in compliance with the abatement notices for two forests, namely Uawa and West Ho. It accepts the applicants' assurances that similar progress has been made at the other relevant forest. It also accepts that more time is required by the applicants to complete necessary remedial work required by the notices.

[8] On that basis, the memorandum reports that the respondent consents to the abatement notices being stayed "until 5 November 2018". It reports that the Council will be undertaking a further inspection of the forests in October 2018 to confirm whether the remaining necessary remedial work has been carried out to comply with the notices.

Statutory provisions

[9] The relevant provisions are in s325(3A) and (3C) – (3G) and are as follows:

(3A) Any person who appeals under subsection (1) may also apply to an Environment Judge for a stay of the abatement notice pending the Environment Court's decision on the appeal.

...

(3C) Where a person applies for a stay under subsection (3A), an Environment Judge must consider the application for a stay as soon as practicable after the application has been lodged.

(3D) Before granting a stay, an Environment Judge must consider—

- (a) what the likely effect of granting a stay would be on the environment; and
- (b) whether it is unreasonable for the person to comply with the abatement notice pending the decision on the appeal; and
- (c) whether to hear—
 - (i) the applicant;
 - (ii) the local authority or consent authority whose abatement notice is appealed against; and
- (d) such other matters as the Judge thinks fit.

(3E) An Environment Judge may grant or refuse a stay and may impose any terms and conditions the Judge thinks fit.



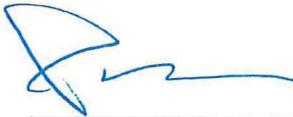
- (3F) Any person to whom a stay is granted under subsection (3E) must serve a copy of it on the local authority or consent authority whose abatement notice is appealed against; and no such stay has legal effect until so served.
- (3G) Any stay granted under subsection (3E) remains in force until an order is made otherwise by the Environment Court.

Discussion

[10] While I understand the rationale for the Council seeking a 5 November expiry of any stay, I find a tidier approach in accordance with the above-noted provisions is to grant the stay on the basis of the specified conditions. In essence, this avoids unnecessary premature lapse of the stay, while still ensuring close scrutiny of the applicants' intended response to the abatement notice. While it is not a matter of dispute that a stay can be granted in accordance with the above-noted considerations, I confirm I am satisfied on the evidence before me that, on the specified conditions, the stay granted is reasonable and appropriate in terms of the interests of the environment, the community and the parties.

[11] In the circumstances, it is appropriate that costs lie where they fall. Hence, there will be no order as to costs on the applications.

[12] The standard track directions previously made are therefore vacated pending further directions at the intended teleconference. It is noted that Mr Hopkinson is unavailable, due to prior court commitments, on 5 November 2018.



J J M Hassan
Environment Judge

