

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

**Decision No. [2018] NZEnvC 62**

IN THE MATTER of the Resource Management Act 1991  
AND of an appeal pursuant to s 120 of the Act  
BETWEEN CAR DISTRIBUTION GROUP LIMITED  
(ENV-2018-CHC-11)  
Appellant  
AND CHRISTCHURCH CITY COUNCIL  
Respondent

Court: Environment Judge J E Borthwick

Hearing: In Chambers at Christchurch

Date of Decision: 9 May 2018

Date of Issue: 9 May 2018

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**SECTION 116 DETERMINATION**

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A: Under s 116 of the Resource Management Act 1991, the Environment Court determines that resource consent RMA 2017/765, issued by Christchurch City Council to Car Distribution Group Limited, may commence on the date that this determination is issued.

B: Costs are reserved.

**REASONS**

**Introduction**

[1] This proceeding concerns an appeal against conditions by Car Distribution Group



Limited against part of a decision by Christchurch City Council granting it consent<sup>1</sup> to construct and operate a distribution and storage base for vehicles.

[2] The appellant has now filed an application for early commencement of the resource consent under s 116 of the Resource Management Act dated 19 April 2018 and accompanying affidavit in support of Mr M Tibbs.

### **Section 116 application**

[3] CDGL's application is made on the following grounds:<sup>2</sup>

- (a) the appeal relates to operational conditions, namely hours of operation and access routes for light vehicles;
- (b) the conditions under appeal do not relate to earthworks and other establishment activities;
- (c) the site remediation works, earthworks, landscaping and other establishment activities will take many months;
- (d) the applicant wishes to proceed with these works as soon as possible;
- (e) there are no appeals against the grant of consent;
- (f) the activity can establish and operate within the conditions of the existing consent; and
- (g) no other parties will be prejudiced.

### **Position of other parties**

[4] Any party wishing to oppose the s 116 application was directed to file a notice of opposition and affidavit in support.<sup>3</sup> The Council has advised that it does not oppose the application for early commencement.<sup>4</sup> No response has been received from the s 274 parties.<sup>5</sup>

### **Consideration**

[5] Section 116 of the Resource Management Act 1991 provides (relevantly):

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<sup>1</sup> RMA 2017/765.

<sup>2</sup> Application for early commencement date for resource consent dated 19 April 2018.

<sup>3</sup> Minute to parties dated 20 April 2018.

<sup>4</sup> Email to the Registry dated 1 May 2018.

<sup>5</sup> Hilary and Tony Pheloung; Orion Limited.



**116 When a resource consent commences**

- (1) ... every resource consent that has been granted commences –
- (a) when the time for lodging appeals against the grant of the consent expires and no appeals have been lodged; or
  - (b) when the Environment Court determines the appeals or all appellants withdraw their appeals –

unless the resource consent states a later date or a determination of the Environment Court states otherwise.

[6] When considering whether to grant an application under s 116 the court must determine:<sup>6</sup>

- (a) whether early commencement will serve the purpose of the Act as stated in s 5, which is to promote the sustainable management of natural and physical resources; and
- (b) whether prejudice would arise from allowing or disallowing early commencement of the application.

[7] I am assisted by the Council decision, which evaluated the application against the relevant provisions of the Christchurch District Plan and concluded that the proposal was consistent (subject to conditions) with those provisions. The hearing commissioner considered that the principal adverse effect would be noise and disturbance generated by additional heavy traffic movements but that this could be avoided with appropriate conditions.<sup>7</sup>

[8] The provisions under appeal relate to operational conditions; they do not relate to earthworks and other establishment activities. Further, the appellant accepts that in proceeding with the development it will be bound by the existing conditions of the resource consent.<sup>8</sup> If early commencement is granted this will not impede the appellant meeting the relevant policies and objectives in the District Plan and given this, I am satisfied the purpose of the Act will be promoted.

<sup>6</sup> *Walker v Manukau City Council* C106/99.

<sup>7</sup> Decision of Independent Hearing Commissioner on publicly notified Resource Consent Application RMA 2017/765 dated 22 February 2018 at [223].

<sup>8</sup> Affidavit of Michael Tibbs dated 17 April 2018 at [3].



**Prejudice**

[9] No party opposes the immediate commencement of consent. The appeal is on conditions only and no-one has appealed against the grant of consent so I am satisfied there is no prejudice in allowing the consent to commence earlier.

**Outcome**

[10] Accordingly, the s 116 application for early commencement of resource consent RMA 2017/765 is granted and may commence on the date that this determination is issued. I will reserve costs.

  
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**J E Borthwick**  
**Environment Judge**

