

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

Decision No. [2018] NZEnvC 123

IN THE MATTER of the Resource Management Act 1991
AND of an application for enforcement orders
under s 316 of the Act
BETWEEN TARARUA DISTRICT COUNCIL
(ENV-2018-WLG-000031)
Applicant
AND CAPITAL ALL SIGNS HOLDINGS
LIMITED
First Respondent
DARREN DAVID EASTON
Second Respondent

Court: Environment Judge B P Dwyer sitting alone under s 309 of the Act
Hearing: 27 July 2018 at Palmerston North
Appearances: L Wansbrough for the Applicant
D Easton for the Respondents
Date of Decision: 27 July 2018
Date of Issue: 2 August 2018

ORAL JUDGMENT OF THE ENVIRONMENT COURT

[1] This is my decision in this matter. As with any oral decision I reserve the right to amend the written record to correct any errors or misdescriptions which do not affect the rationale for or outcome of the decision.

[2] Tararua District Council (the Council) has applied for enforcement orders against Capital All Signs Holdings Limited (Capital) and Darren David Easton (jointly



- the Respondents) relating to activities on a property at 23 Fraser Collin Crescent, Dannevirke (the Property).

[3] Orders are sought on the following terms:

1. **The enforcement orders sought pursuant to section 316 of the Act and to be heard by the Environment Court at such time as the Court directs, are:**
 - 1.1 An order under section 314(1)(a)(i) of the Act requiring the respondents to immediately cease the storage of any shipping containers on 23 Fraser-Collin Crescent, Dannevirke, legally described as Lot 2 on Deposited Plan 379189 (the **Property**), which in the absence of a resource consent contravenes Rule 4.2.5.1(a) of the District Plan.
 - 1.2 An order under section 314(1)(b)(i) of the Act requiring the Respondents to remove all the shipping containers from the Property so that they no longer contravene Rule 4.2.5.1(a) of the District Plan;
 - 1.3 An order for the costs of and incidental to this application under section 285 of the Act.
4. **The following terms and conditions are sought in respect of the orders:**
 - 4.1 That the Respondents be required to comply with the orders sought in paragraphs 1.1 and 1.2 immediately; and
 - 4.2 That the Respondents be required to comply with the order sought in paragraph 1.3 as the Court directs; and
 - 4.3 That the orders are to apply to personal representatives, successors and assignees of the Respondents to the same extent as the orders apply to them, under s 314(5) of the Act.

The application was supported by an affidavit of Craig Morgan Lunn (the Regulatory Services Manager at the Council).

[4] Before considering the merits of the application it is necessary for me to address some matters of process. I record that Mr Easton attended the hearing on behalf of the Respondents. He advised the Court that he had not received any documents relating to the proceedings, particularly the affidavit of Mr Lunn and the application which had been filed by the Council in February 2018. Mr Easton was certainly aware of the existence of the proceedings as he had both written to and telephoned the Court about them.

[5] I am satisfied from the affidavit of service held on the Court file that the documents were served in accordance with the provisions of s 352 RMA at the



address given of 8 Mountbatten Grove. A number of documents have been forwarded to that address, some of which Mr Easton acknowledged having received and some which he had not acknowledged having received. By email of 13 July 2018 Mr Easton advised that was the address to which documents should be sent so I am satisfied that service in fact had been effected.

[6] Capital is the registered proprietor of the Property and Mr Easton is its sole director. It seems from Mr Lunn's affidavit that Capital purchased the Property in early 2017. Mr Lunn referred to enquiries made by Mr Easton at the Council involving shipping containers on the property on 11 January 2017 and discussing planning requirements regarding shipping containers on 17 January 2017 when he explained to Council planner Nicole McPeak that he was looking to purchase the Property.

[7] It appears that Capital had taken ownership or possession and commenced development work on the Property by March 2017. On 21 March 2017 the Council received a complaint regarding excavation work on the Property and another complaint regarding stone and dirt on the Property was received on 21 April 2017.

[8] On 27 and 28 June 2017 the Council received two further complaints regarding activities on the Property including reference to the stacking of shipping containers. Mr Lunn conducted site visits to the Property to check the complaints on 10 and 11 July. There were a number of issues subject to the complaints but, relevant to these proceedings, Mr Lunn observed a number of shipping containers in situ.

[9] On 17 July 2017 the Council's CEO (Mr B King) wrote to the Respondents about a number of aspects of the work being undertaken on the Property. The letter recorded among other things that use of the Property for the storage of shipping containers was not a permitted activity under the Tararua District Plan (the District Plan). A series of interactions between Mr Easton and Council officers and the Mayor followed but as far as the Council was concerned compliance issues at the Property remained unresolved.

[10] On 4 September 2017 the Council's solicitors served an abatement notice on Mr Easton which (among other things) required him to remove all shipping containers stored on the Property. Mr Easton responded to receipt of the abatement notice by letter of 18 September. The Council deemed the letter to be an application to vary or cancel the abatement notice.



[11] On 12 October the Council wrote to Mr Easton advising that the deemed application to cancel or vary the abatement notice was declined. The letter recorded that some aspects of the abatement notice had been satisfied but the containers remained and he was given until 20 October 2017 to remove them.

[12] A site inspection by Mr Lunn on 15 November 2017 established that there were still containers on the Property although apparently fewer of them than before. Site inspections were undertaken by Mr Lunn on 21 December 2017 and 31 January 2018. On each occasion he found there to be at least 12 shipping containers stored on the Property. Mr Lunn's observations on those dates are confirmed by photographic exhibits L and M attached to his affidavit which was sworn on 14 February 2018.

[13] Mr Lunn swore a further affidavit on 13 July 2018 confirming that as at 4 July there were still about 12 containers on the Property.

[14] Mr Lunn's initial affidavit and the submissions of counsel satisfy me that the property is situated in the Residential Management Area in the District Plan. The storage of shipping containers on the Property is neither a permitted nor a controlled activity under the District Plan and is accordingly a discretionary activity pursuant to Rule 4.2.5.1(a). Consequently a resource consent is required to undertake that activity. Mr Lunn's initial affidavit stated that neither of the Respondents has applied for or obtained resource consent to allow the storage of shipping containers on the Property.

[15] The application for an order requiring the Respondents to cease the storage of shipping containers is founded on s 314(1)(a)(i) RMA which relevantly provides that the Court may:

- (a) Require a person to cease, or prohibit a person from commencing, anything done or to be done by or on behalf of that person, that, in the opinion of the Environment Court,—
 - (i) Contravenes or is likely to contravene this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, or a resource consent, section 10 (certain existing uses protected), or section 20A (certain existing lawful activities allowed).



[16] The application for an order requiring the Respondents to immediately remove all the containers on the Property is founded on s 314(1)(b)(i) which relevantly provides that the Court may:

- (b) Require a person to do something that, in the opinion of the Environment Court, is necessary in order to —
 - (i) Ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, or a resource consent.

[17] I am satisfied that the storage on the Property of containers by the Respondents contravenes Rule 4.2.5.1(a) of the District Plan and s 9(3) RMA as it is an activity which requires a resource consent to allow it and no such consent is held by the Respondents. I accordingly determine that it is appropriate for me to make an order pursuant to s 314(1)(a)(i) requiring the Respondents to cease the activity.

[18] I am further satisfied that it is necessary for me to make an order pursuant to s 314(1)(b)(i) RMA requiring the Respondents to remove all containers from the Property to ensure compliance by them with the Act and Rule. The reason I am satisfied that it is necessary for me to make the order is that the Respondents have failed to comply with written requests from the Council to remove the containers and have further failed to comply with abatement notices requiring them to do so. I record that at the hearing this morning Mr Easton advised the Court that he would remove the containers but in light of his past failures to do so, I consider that it is necessary for an order to be made.

[19] Orders 1.1 and 1.2 sought by the Council are made accordingly.

[20] The Council sought in paragraph 4.1 of its application that the Respondents be required to comply with the orders "immediately". I direct that the Respondents will have a period of 20 working days from date of service of the orders on them in which to comply. I advised Mr Easton of the potential to make an application to vary the orders if practical compliance proves not able to be met.

[21] Pursuant to s 314(5) RMA I state that the orders shall apply to any personal representative, successor or assign of the Respondents.



[22] Costs are reserved in favour of the Council. Any costs application to be made and responded to in accordance with the Environment Court Practice Note 2014.

[23] The Council is requested to submit to the Court for sealing an order reflecting the outcome of this decision. I note that pursuant to s 315(1) RMA the Respondents are not obliged to comply with the order until it is served on them.

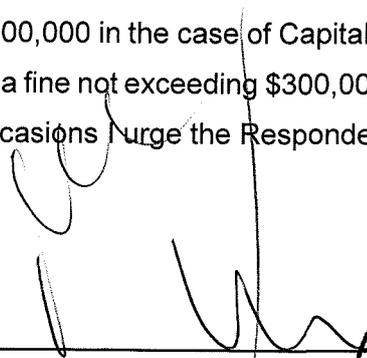
[24] In view of difficulties which have been experienced in obtaining acknowledgement from the Respondents of receipt of documents and their failure to file any formal appearance in these proceedings, I direct pursuant to s 352(1AA) RMA that service of the enforcement order shall be effected by the Council in the following matter:

- On Capital by prepaid post to its registered office as shown on Exhibit B of Mr Lunn's affidavit;
- On Mr Easton by prepaid post to his director's address as shown on Exhibit B of Mr Lunn's affidavit.

I had intended making a direction that a copy of the order be affixed in a prominent and readily visible place on the Property, however Mr Easton advised that there is no point in doing that.

[25] The Council is to file an affidavit of service when service of the documents has been effected in accordance with the above directions. I record that the Court will forward a copy of this decision by prepaid post to both Respondents at 8 Mountbatten Grove, Clouston Park, Upper Hutt 5018.

[26] Finally, for the sake of completeness, I record that contravention of the terms of an enforcement order is an offence which carries penalties of a fine of up to \$600,000 in the case of Capital and imprisonment for a term not exceeding two years or a fine not exceeding \$300,000 in Mr Easton's case. As I have done on two previous occasions I urge the Respondents to take legal advice on this matter.


B P Dwyer
Environment Judge

