

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

Decision No. [2018] NZEnvC 136

IN THE MATTER of the Resource Management Act 1991  
AND of an application for enforcement orders  
pursuant to s 316 of the Act  
BETWEEN WEST COAST REGIONAL COUNCIL  
(ENV-2015-CHC-067)  
Applicant  
AND WESTLAND DISTRICT COUNCIL  
Respondent

Court: Environment Judge J E Borthwick

Hearing: in Chambers at Christchurch

Date of Decision: 14 August 2018

Date of Issue: 14 August 2018

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**DECISION ON APPLICATION TO FURTHER CHANGE ENFORCEMENT  
ORDERS AND APPLICATIONS FOR WAIVER**

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A: The application to change enforcement orders is declined.

B: The applications for waiver are granted.

**REASONS**

**Introduction**

[1] On 27 July 2018, the court issued a decision<sup>1</sup> making changes to enforcement orders (by consent) concerning the commissioning by the District Council of a new wastewater treatment plant for Franz Josef, by 30 April 2019.

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<sup>1</sup> [2018] NZEnvC 119; Erratum [2018] NZEnvC 125.



[2] Order A(e) ordered that the District Council, by 3 August 2018, send a copy of the Final Design for the wastewater treatment plant, together with the Wastewater Treatment Plant Specifications and a copy of the Design Statement, to the Regional Council and the court.

[3] At the time of filing on 3 August 2018, the District Council failed to provide a complete Design Statement as defined in Order B(b) of the decision. The explanation offered by counsel for the non-compliance being that the District Council had “inadvertently overlooked” some of the requirements for a Design Statement. To remedy the contravention of the Order the District Council has made the following applications, dated 7 August 2018:

- (i) to amend Order A(e) in the decision, changing the date for compliance from Friday 3 August 2018 to Tuesday 7 August 2018;
- (ii) for waiver (s 281(1)(a)(vi)) of the requirement to provide an affidavit as part of the application to change enforcement orders;
- (iii) for waiver (s 281(a)(iv)) of the requirement to provide notice as to the application and an affidavit as to service of the Regional Council.

#### **Application to further change enforcement orders**

[4] The District Council contravenes the enforcement orders when it fails to fully comply with its terms. I am not prepared to effectively sanction the contravention by granting the change to Order A(e). If the Regional Council wishes to take the matter further it has remedies available under the Resource Management Act, including commencing a prosecution.

[5] If the contravention of Order A(e) impacts on the completion of the Key Milestones for the Project Works, an order has been made that the Regional Council bring the proceeding back before the court and to report on what effect, if any, the non-compliance has on the wastewater treatment plant being commissioned and made fully operational by 30 April 2019.

#### **Outcome of application to change Order A(e)**

[6] The application to change the date in Order A(e) of the decision is declined.



**Outcome of waiver applications**

[7] As the court has declined the application to change the enforcement orders, there is no need for an affidavit to be filed and, it follows, that there is no need for an affidavit as to service and notice as to the application. In these circumstances, the applications for waiver are granted.



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