

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

Decision No. [2018] NZEnvC 143

IN THE MATTER of the Resource Management Act 1991
AND of an appeal pursuant to s 325 of the Act
BETWEEN ZINDIA LIMITED
(ENV-2018-CHC-178)
Appellant
AND MARLBOROUGH DISTRICT COUNCIL
Respondent

Court: Environment Judge J J M Hassan

Hearing: In Chambers at Christchurch

Date of Decision: 21 August 2018

Date of Issue: 21 August 2018

DECISION ON APPLICATION TO STAY AN ABATEMENT NOTICE

- A: The stay of the abatement notice is granted pending the outcome of the appeal.
- B: Costs are reserved.

REASONS

Introduction

[1] Zindia Limited ('the appellant') has lodged an appeal against an abatement notice issued by the Marlborough District Council requiring it to cease and not recommence commercial forestry harvesting at the locations set out in the abatement notice.

[2] At the same time, the appellant made an application to stay the abatement notice



and this was supported by the affidavit of Suresh Krishnan, the National Business Manager for Zindia Limited, dated 1 August 2018.

The application for stay

[3] The application for stay is made on the following grounds:¹

- (a) it would be inappropriate for the appellant to suffer the effects of the abatement notice before its arguments have been tested on appeal;
- (b) the appeal is brought in the context of a National Environmental Standard which had been in force for less than half a year and a proposed plan which has not yet received final approval. For these reasons, the appeal may be viewed as a test case and so the appellant's commercial work ought not to be halted before the case has been determined;
- (c) complying with the abatement notice would cause financial hardship to the appellant;
- (d) the abatement notice alleges non-compliance with the regulatory regime, not adverse environmental effects.

[4] The likely effect on the environment if the stay is granted is that trees on the appellant's land will be felled and removed from the land. If the stay is not granted, the trees on the road lines may still be felled as a permitted activity. However, they must be stored on the land which may impact on amenity and the structural stability of the land.

The Council's position

[5] The Council does not oppose the application to stay the abatement notice.²

Consideration

[6] Section 325(3E) of the Act provides that before granting a stay, an Environment Judge must consider:

- (a) what the likely effect of granting the 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 the parties should be heard; and

¹ Application for stay of abatement notice, dated 1 August 2018.

² Memorandum on behalf of the Marlborough District Council, dated 9 August 2018.



(d) such other matters as the Judge thinks fit.

[7] I have no evidence that there could be adverse effects on the environment should the stay be granted. I am satisfied that granting the stay is not likely to give rise to any adverse effect on the environment, acknowledging the appellant's point that there may be some adverse effects connected with the need to store the logs on the land should the stay not be granted.

[8] The affidavit of Suresh Krishnan details the financial hardship that the appellant would experience if harvesting was to stop at this point. The appellants would likely have to forfeit the \$600,000 bond owing to the landowners based on an agreement to complete harvesting by August 2019. The effect on the workers who would need to find work elsewhere would also be significant. This could also impact the appellant's ability to hire workers in the future, as it is difficult to find forestry gangs willing to work in such a remote location.³ On the basis of this evidence, I find that it would be unreasonable for the appellant to comply with the abatement notice pending the decision on the appeal.

[9] Finally, I take into account the lack of opposition from the Council. I do not need to hear from the parties further as I am satisfied that it is appropriate to grant a stay in the circumstances.

Outcome

[10] The application for stay of the abatement notice is granted pending the outcome of the appeal.

[11] Costs are reserved.



J J M Hassan
Environment Judge



³ Affidavit of S Krishnan, dated 1 August 2018, at [16]-[18].