

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

Decision No. [2018] NZEnvC 188

IN THE MATTER of the Resource Management Act 1991
AND of an appeal and application for stay under
s325 of the Act
BETWEEN PERMANENT FORESTS LIMITED
(ENV-2018-WLG-115)
Appellant/Applicant
AND GISBORNE DISTRICT COUNCIL
Respondent

Court: Environment Judge J J M Hassan
Hearing: In Chambers at Christchurch
Counsel: R M Devine and C J Sinnott for the appellant/applicant
A A Hopkinson for the respondent
Date of Decision: 2 October 2018
Date of Issue: 2 October 2018

DECISION OF THE ENVIRONMENT COURT

- A: Stays granted on the conditions specified in [5].
B: There will be no order as to costs on the applications.
C: The standard track directions are vacated, pending further directions.

REASONS

Introduction

[1] On 30 August 2018, Permanent Forests Limited ('PFL') applied under s325(3A)

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of the Resource Management Act 1991 for stay of abatement notices issued by Gisborne District Council ('Council') that PFL has appealed. According to the court's directions, the Council replied to the application by memorandum of counsel dated 25 September 2018. In essence, this supported a stay but on a limited duration to 5 November 2018. PFL opposed the imposition of that time limit for reasons given in its memorandum in reply dated 27 September 2018.

[2] By Minute of 28 September 2018, the court invited the parties to consider whether stays could be appropriately granted on substantially the same conditions as were specified in an oral decision granting stays for abatements notices in the recent decision in *Timbergrow Ltd v Gisborne District Council*.¹ The Record of that decision was provided to the parties for consideration.

[3] Both PFL and the Council have informed the court that the proposal is acceptable.²

Statutory provisions

[4] 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.

¹ *Timbergrow Ltd v Gisborne District Council* [2018] NZEnvC 184.

² Memorandum of counsel for PFL dated 1 October 2018, memorandum of counsel for the Council dated 1 October 2018.



- (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

[5] I am satisfied on the evidence before me that, on the specified agreed conditions, the stay granted is reasonable and appropriate in terms of the interests of the environment, the community and the parties. Therefore, stays are granted to PFL on the following conditions:

- (a) 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 2 November 2018**;
- (b) 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.

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

[7] 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

