

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

**Decision No. [2018] NZEnvC 224**

IN THE MATTER of the Resource Management Act 1991  
AND of an appeal pursuant to s 120 of the Act  
BETWEEN INDIA JANE VAN DER WILT AND  
ARTHUR MARK VAN DER WILT  
(ENV-2018-CHC-188)  
Appellant  
AND SELWYN DISTRICT COUNCIL  
Respondent

Court: Environment Judge J E Borthwick

Hearing: In Chambers at Christchurch

Date of Decision: 19 November 2018

Date of Issue: 19 November 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 RC 175472, issued by the Selwyn District Council to India Jane van der Wilt and Arthur Mark van der Wilt, may commence on the date that this determination is issued.

B: Costs are reserved.

**REASONS**

**Introduction**

[1] This proceeding concerns an appeal by India Jane van der Wilt and Arthur Mark



van der Wilt (“the applicants”) against three conditions of consent attaching to a decision of the Selwyn District Council, granting consent to undertake a range of weddings and other functions, as well as relocating a designated building area, at Bangor Farm, Darfield.

[2] The applicants have applied for early commencement of the resource consent under s 116 of the Resource Management Act 1991 (“the Act”), accompanied by the affidavit of India Jane van der Wilt.

### **Section 116 application**

[3] The s 116 application is made on the following grounds:<sup>1</sup>

- (a) the appeal is in relation to three conditions: 2(ii), 2(iv) and 4(b);
- (b) no other appeals have been filed in respect of this consent;
- (c) to allow the consent to commence with the appealed conditions adhered to will not prejudice any party;
- (d) to allow the consent to commence with the appealed conditions adhered to would not be contrary to the purpose of the Act.

### **Position of the other parties**

[4] Any party wishing to oppose the s 116 application was directed to file a notice of opposition by Friday 26 October 2018.<sup>2</sup> No other party has opposed the application.

### **Consideration**

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

#### **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.

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<sup>1</sup> Notice of motion, dated 18 October 2018.

<sup>2</sup> Email to parties 19 October 2018.



[6] When considering whether to grant an application under s 116 the court must determine:<sup>3</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] In essence, a s 116 application may be granted so long as those parts of the consent that commence do not go to the core of the decision to be made by the court.<sup>4</sup>

### ***The purpose of the Act***

[8] I am assisted by the Council decision, which evaluated the application against the relevant provisions of the Selwyn District Plan and concluded that the modified application was consistent (subject to conditions) with its objectives and policies.

[9] The applicants are to adhere to the appealed conditions on early commencement of the consent, pending resolution of this appeal.<sup>5</sup> It seems that early commencement will not impede the applicants meeting the relevant policies and objectives in the District Plan and given this, I am satisfied the purpose of the Act will be promoted.

### ***Prejudice***

[10] No-one has appealed against the grant of consent and no party opposes the immediate commencement of consent. The appeal is on conditions only and the applicants are to adhere to those that have been appealed, so I am satisfied there is no prejudice in allowing the consent to commence earlier.

### **Outcome**

[11] Accordingly, the s 116 application for early commencement of resource consent

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<sup>3</sup> *Walker v Manukau City Council* C106/99.

<sup>4</sup> *Armstrong v Central Otago District Council* C132/09 at [8].

<sup>5</sup> Affidavit of I J van der Wilt, dated 16 October 2018, at [5].



RC 175472 is granted and may commence on the date that this determination is issued.  
I will reserve costs.

*Case 3.*

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

