

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

**Decision No. [2019] NZEnvC 027**

IN THE MATTER of the Resource Management Act 1991 ("the Act")  
AND application for an Enforcement Order pursuant to s 314 of the Act  
BETWEEN WAIKATO REGIONAL COUNCIL  
(ENV-2018-AKL-000372)  
Applicant  
AND DEVON PARK LIMITED  
First respondent  
AND PAUL RAYMOND GORDON  
Second respondent

Court: Environment Judge M Harland sitting alone under s 309 of the Act

Date of Decision: 18 February 2019

Date of Issue: 18 February 2019

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**DETERMINATION OF THE ENVIRONMENT COURT**

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A: The Court makes the enforcement order set out in this determination by consent.



## REASONS

### Introduction

[1] Devon Park Limited (**the company**) pleaded guilty to six charges for offending against the Resource Management Act 1991 (**the Act**). Mr Gordon is the sole director and shareholder of the Company. The charges relate to ss 9, 13, 14 and 15 of the Act.

[2] The Waikato Regional Council (**the Council**) has sought an enforcement order on sentencing against the Company pursuant to s 339(5) of the Act in the District Court at Hamilton. <sup>1</sup> The Court's decision on sentencing has yet to be issued.

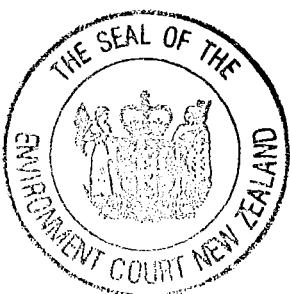
[3] On 12 December 2018 the Council also sought an enforcement order in this Court under s 314(1) of the Act, to ensure that appropriate measures which might extend beyond matters captured under a s 339(5) order, are also the subject of the process set out below.

[4] Since the application was filed, the parties have agreed that an enforcement order can be made by consent. Accordingly, the Environment Court makes the following enforcement order under s 316 of the Act by consent:

### Enforcement Order

[5] The Enforcement Order is made against Paul Gordon and Devon Park Limited (**the respondents**) in relation to:

- (a) 143 Harbutt Road, Te Miro, Waikato, legally described as Lot 1, DP433802 (**the property**); and
- (b) The downstream neighbours' properties (**the neighbours' properties**), namely:
  - (i) 369/11 Flume Road – Legal Description LOT 10 DP 315282
  - (ii) 42 Harbutt Road – Legal Description LOT Pt SEC 42S SETT TE MIRO (Waipa District Council)
  - (iii) 95 Te Miro Road (21 Harbutt Road) – Legal Description PT SEC 34S TE MIRO SEC 70S TE MIRO SO 29204



<sup>1</sup> *Waikato Regional Council v Devon Park Limited* CRI-2013-031-1457.

[6] This enforcement order applies to the neighbours' properties only to the extent that permission is granted by the landowners for work to occur on their properties.

**Expert**

[7] The respondents shall arrange for a plan for the purposes set out at [9] below (**the plan**) to be prepared by a suitably qualified expert (**the expert**), to provide an assessment and the plan.

[8] The respondents shall notify the within Council twenty (20) working days, by providing written details (name, qualifications, contact details) as to:

- (a) the expert proposed to prepare the plan; and
- (b) the timetable for submission of the plan, which shall be not more than fifty (50) working days from the date of the service of the enforcement order.

**The plan**

[9] The respondents shall obtain a plan from the expert (referred to at [7] above), addressing all matters required to ensure compliance with the Act and to avoid, remedy or mitigate actual or likely adverse effects on the environment, which must include but is not limited to:

- (a) The removal or installation of the culverts and crossing at the property;
- (b) The removal of litter and foreign materials from the stream and tributaries on the property and downstream;
- (c) Remediation of the earthworks and implementation of erosion and sediment control measures.
- (d) The plan must include a timetable for the above works to take place.

[10] The respondents shall, within fifty (50) working days from the date of service of the enforcement order, submit the plan to the Council.

[11] The Council may obtain an independent review of the plan, by an appropriately qualified expert, and make amendments to the plan on their recommendation including on appropriate timeframes for the works. If this takes place, the further requirements set out below are to attach to the plan so amended. The Council shall either approve



or amend the plan and notify the respondents, within twenty (20) working days of receipt of the plan from the respondents.

**The works**

[12] The respondents shall, within fifty (50) days from the date of service of the enforcement order, submit its proposal as to who will conduct any works set out in the plan, together with their qualifications and contact details to the Council for assessment.

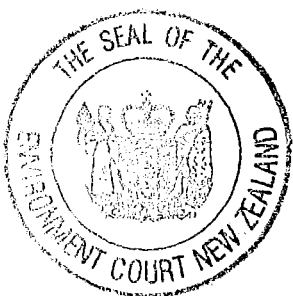
[13] The Waikato Regional Council is to respond to the respondents within a further seven (7) days of receipt of notification by the respondents as to whether the person is approved to conduct the works.

[14] Once the plan has been approved or amended by the Council, the respondents shall arrange for the works to be undertaken in accordance with:

- (a) the approved plan;
- (b) the timetable set out in the approved plan;
- (c) any applicable rules under the Waikato Regional plan and any resource consent conditions including resource consent timeframes;
- (d) by a contractor who is experienced and qualified and has been approved;  
and
- (e) under the supervision of an approved erosion and sediment control expert.

[15] The respondents are responsible for ensuring that any appropriate applications and consents are obtained in accordance with the requirements of the Resource Management Act 1991 to complete the plan. Further, that any conditions of such consents are complied with.

[16] All erosion and sediment control measures, including re-vegetation and mulching, be undertaken to comply with the requirements set out within the Council document titled "*Erosion and Sediment Control – Guidelines for Soil Disturbing Activities*" (Technical Report No. 2009/02 – dated January 2009), unless otherwise agreed to in writing by the Council.



***Prohibition on further work***

[17] The respondents are to cease and are prohibited from commencing any unlawful activity under the Act, including any unlawful activity involving:

- (a) excavation, damming, diversion, placement of structures or drainage work;
- (b) excavation or works in rivers and streams;
- (c) construction of new tracks, maintenance or extension of existing tracks, driveways or crossings; and
- (d) stockpiling of composting or other organic materials (for example horse stable waste).

***Obligations to apply to personal representatives, successors or assigns in title***

[18] This enforcement order shall apply to the personal representatives, successors and assigns of the respondents to the same extent as it applies to the respondents.

**Further Orders**

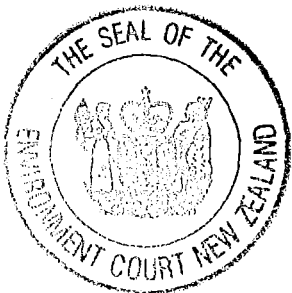
[19] The Council and the respondents may agree to amendments to the timeframes set out in this order by consent in writing.

[20] Under s 314(1)(d) and s 314(3) of the Act that in the event of a failure by the respondents to comply with this enforcement order, the Council may take all practicable steps to implement the enforcement order.

[21] Correspondence with the Council shall be made (in relation to notifications, agreements and timetabling within this order) by contact with Dave Hopkins at [dave.hopkins@waikatoregion.govt.nz](mailto:dave.hopkins@waikatoregion.govt.nz) or another representative of the Council as notified in writing.

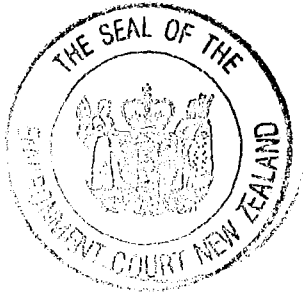
[22] The order shall take effect when it is served upon the respondents;

[23] Leave is reserved for the Council and the respondents and personal representatives, successors and assigns of the respondents, to seek further directions and/or orders from the Court.



**Costs**

[24] The Council are entitled to recover from the respondents any actual and reasonable costs and expenses incurred by the Council in ensuring compliance by the respondents with the terms of this enforcement order, or in taking all practicable steps to implement the enforcement order, including the costs of developing and implementing the plan.



M Harland

**M Harland  
Environment Judge**

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

IN THE MATTER of the Resource Management Act 1991  
("the Act")

AND application for an Enforcement Order  
pursuant to s 314 of the Act

BETWEEN WAIKATO REGIONAL COUNCIL  
  
(ENV-2018-AKL-000372)  
Applicant

AND DEVON PARK LIMITED  
First respondent

AND PAUL RAYMOND GORDON  
Second respondent

Court: Environment Judge M Harland sitting alone under s 309 of the  
Act

Date of Order: 18 February 2019

Date of Issue: 18 February 2019

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**ENFORCEMENT ORDER**

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A: The Court makes the enforcement order set out in this determination by  
consent under ss 314(1) and 319 of the Resource Management Act 1991.

## REASONS

### 1. Background

- 1.1. Devon Park Limited (**the Company**) pleaded guilty to six charges for offending against the Resource Management Act 1991 (**the Act**). Mr Gordon is the sole director and shareholder of the company. The charges relate to ss 9, 13, 14 and 15 of the Act.
- 1.2. The Waikato Regional Council (**the Council**) sought enforcement orders on sentencing against the Company pursuant to s 339(5) of the Act (case *Waikato Regional Council v Devon Park Limited* CRI-2013-031-1457 in the District Court at Hamilton before Harland DCJ).
- 1.3. The Council also seeks an enforcement order under s 314(1) of the Act, to ensure that appropriate measures which might extend beyond matters captured under a section 339(5) order, are also the subject of the process set out below.
- 1.4. This Enforcement Order is made by consent against Paul Gordon and Devon Park Limited (**the Respondents**) in relation to:
  - a) 143 Harbutt Road, Te Miro, Waikato, legally described as Lot 1, DP433802 (**the property**); and
  - b) The downstream neighbours' properties (**the neighbours' properties**), namely:
    - i. 369/11 Flume Road – Legal Description LOT 10 DP 315282
    - ii. 42 Harbutt Road – Legal Description LOT Pt SEC 42S SETT TE MIRO (Waipa District Council)
    - iii. 95 Te Miro Road (21 Harbutt Road) – Legal Description PT SEC 34S TE MIRO SEC 70S TE MIRO SO 29204
- 1.5. This enforcement order applies to the neighbours' properties only to the extent that permission is granted by the landowners for work to occur on their properties.

### 2. Expert

- 2.1. The Respondents shall arrange for a plan for the purposes set out at paragraph 3.1 below (**the Plan**) to be prepared by a suitably qualified expert (**the Expert**), to provide an assessment and the Plan.
- 2.2. The Respondents shall notify the within Council twenty (20) working days, by providing written details (name, qualifications, contact details) as to:
  - i) the Expert proposed to prepare the Plan; and
  - ii) the timetable for submission of the Plan, which shall be not more than fifty (50) working days from the date of the service of the enforcement order.





### 3. The Plan

3.1. The Respondents shall obtain a Plan from the Expert (referred to at paragraph 2.1 above), addressing all matters required to ensure compliance with the Act and to avoid, remedy or mitigate actual or likely adverse effects on the environment, which must include but is not limited to:

- i) The removal or installation of the culverts and crossing at the property;
- ii) The removal of litter and foreign materials from the stream and tributaries on the property and downstream;
- iii) Remediation of the earthworks and implementation of erosion and sediment control measures.
- iv) The Plan must include a timetable for the above works to take place.

3.2. The Respondents shall, within fifty (50) working days from the date of service of the enforcement order, submit the Plan to the Council.

3.3. The Council may obtain an independent review of the Plan, by an appropriately qualified expert, and make amendments to the Plan on their recommendation including on appropriate timeframes for the works. If this takes place, the further requirements set out below are to attach to the Plan so amended. The Council shall either approve or amend the Plan and notify the Respondents, within twenty (20) working days of receipt of the Plan from the Respondents.

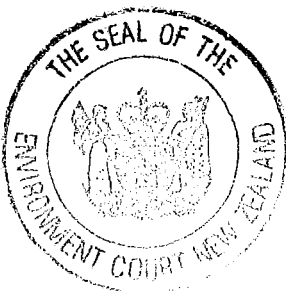
### 4. The Works

4.1. The Respondents shall, within fifty (50) days from the date of service of the enforcement order, submit its proposal as to who will conduct any works set out in the Plan, together with their qualifications and contact details to the Council for assessment.

4.2. The Waikato Regional Council is to respond to the Respondents within a further seven (7) days of receipt of notification by the Respondents as to whether the person is approved to conduct the works.

4.3. Once the Plan has been approved or amended by the Council, the Respondents shall arrange for the works to be undertaken in accordance with:

- i) the approved Plan;
- ii) the timetable set out in the approved Plan;



- iii) any applicable rules under the Waikato Regional Plan and any resource consent conditions including resource consent timeframes;
- iv) by a contractor who is experienced and qualified and has been approved; and
- v) under the supervision of an approved erosion and sediment control expert.

4.4. The Respondents are responsible for ensuring that any appropriate applications and consents are obtained in accordance with the requirements of the Resource Management Act 1991 to complete the Plan. Further, that any conditions of such consents are complied with.

4.5. All erosion and sediment control measures, including re-vegetation and mulching, be undertaken to comply with the requirements set out within the Waikato Regional Council document titled "*Erosion and Sediment Control – Guidelines for Soil Disturbing Activities*" (Technical Report No. 2009/02 – dated January 2009), unless otherwise agreed to in writing by the Waikato Regional Council.

#### **5. Prohibition on further work**

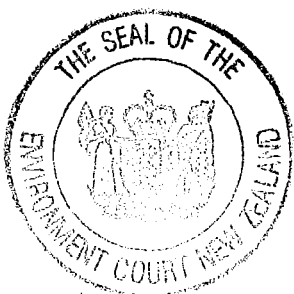
- 5.1. The Respondents are to cease and are prohibited from commencing any unlawful activity under the Act, including any unlawful activity involving:
- a) excavation, damming, diversion, placement of structures or drainage work;
  - b) excavation or works in rivers and streams;
  - c) construction of new tracks, maintenance or extension of existing tracks, driveways or crossings; and
  - d) stockpiling of composting or other organic materials (for example horse stable waste).

#### **6. Obligations to apply to personal representatives, successors or assigns in title**

- 6.1. This enforcement order shall apply to the personal representatives, successors and assigns of the Respondents to the same extent as it applies to the Respondents.

#### **7. Further Orders**

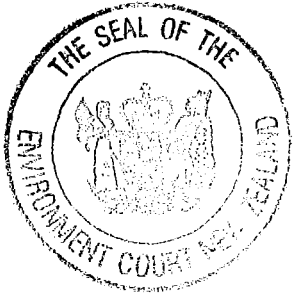
- 7.1. The Council and the Respondents may agree to amendments to the timeframes set out in this order by consent in writing.
- 7.2. Under section 314(1)(d) and 314(3) of the RMA that in the event of a failure by the Respondents to comply with this enforcement order, the Council may take all practicable steps to implement the enforcement order.

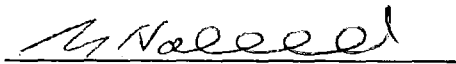


- 7.3. Correspondence with the Council shall be made (in relation to notifications, agreements and timetabling within this Order) by contact with Dave Hopkins at [dave.hopkins@waikatoregion.govt.nz](mailto:dave.hopkins@waikatoregion.govt.nz) or another representative of the Council as notified in writing.
- 7.4. The Order shall take effect when it is served upon the Respondents;
- 7.5. Leave is reserved for the Waikato Regional Council and the Respondents and personal representatives, successors and assigns of the Respondents, to seek further directions and/or orders from the Court.

#### 8. Costs

- 8.1. The Council are entitled to recover from the Respondents any actual and reasonable costs and expenses incurred by the Council in ensuring compliance by the Respondents with the terms of this enforcement order, or in taking all practicable steps to implement the enforcement order, including the costs of developing and implementing the Plan.





M Harland  
Environment Judge