

**BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I MUA I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2020] NZEnvC 167

IN THE MATTER of the Resource Management Act 1991
AND of an appeal pursuant to s 325 of the Act
BETWEEN RENEW ENERGY LIMITED and
ERP GROUP LIMITED
(ENV-2020-CHC-007)
Appellants
AND CANTERBURY REGIONAL COUNCIL
Respondent

Court: Environment Judge J E Borthwick
(Sitting alone under s 309 of the Act)

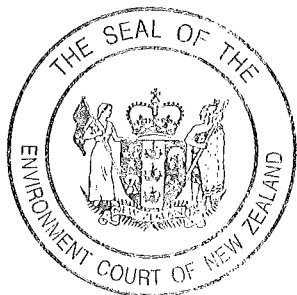
Hearing: In Chambers at Christchurch

Date of Decision: 1 October 2020

Date of Issue: 1 October 2020

**DECISION ON APPLICATION TO CHANGE CONDITIONS
OF A STAY OF ABATEMENT NOTICE**

A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court declines to vary the conditions of the stay of an abatement notice.



REASONS

Introduction

[1] This proceeding concerns the stockpiling of waste by Renew Energy Limited to be used as fuel in a Waste to Energy Plant. The bales of waste are stored on a site owned by ERP Group Limited at Spencerville Road. On 10 September 2019, the Canterbury Regional Council served an abatement notice on ERP requiring it to remove by February 2020 all stockpiles of bales containing municipal waste from the property as it did not have resource consent for the same.

[2] The abatement notice was appealed and an application for a stay of the conditions of the abatement notice granted.¹ The stay allowed the appellants time to obtain resource consent to store the waste materials at another site. By May 2020, the appellants decided they would no longer seek resource consent for an alternative site, but instead remove the bales to a landfill. A subsequent application was made to change the conditions of the stay, with the appellants proposing a new condition requiring all bales be removed from the Spencerville Road site by 30 September 2020. The application was granted.²

[3] On 31 August 2020, the appellants sought to change the conditions of the stay for a second time, effectively enlarging the time for compliance to 31 March 2021.³ Before confirming its position on the second application, the Regional Council wanted to inspect the site. Of the 4,000 bales of waste stored at the site only 230 had been removed, and the Regional Council was concerned with the condition of the bales which have been stored on site, without resource consent, for over a year.⁴ The application was placed on hold until 25 September 2020,⁵ by which time the Regional Council advised that it wished to reserve its position for a further month to see what, if any, progress was being made to remove the bales.⁶

[4] The appellants then amended their application⁷ reporting that progress, while

1 [2020] NZEnvC 17.

2 [2020] NZEnvC 77.

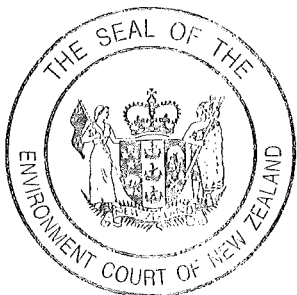
3 Memorandum of counsel for the appellants dated 31 August 2020.

4 Memorandum of counsel for the Canterbury Regional Council dated 1 September 2020.

5 Minute dated 2 September 2020.

6 Memorandum of counsel for the Canterbury Regional Council dated 22 September 2020.

7 Memorandum of counsel for the appellants dated 24 September 2020.



“significantly less than what it [sic] would like to be achieving”, is slowly being made but due to financial constraints the bales will not be removed as required by 30 September 2020, with December 2020 being more “realistic”.⁸ Nevertheless, the appellants seek that condition 3(d) be amended to provide that:

Unless an application is made to cancel the grant of stay, Renew Energy Limited will remove all bales of waste stored at 25 Spencerville Rd, Christchurch in the following manner:

...

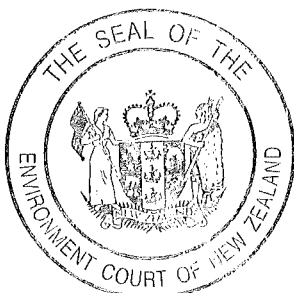
- d. Renew Energy Limited will exercise all reasonable efforts to remove all bales from the site as soon as practicable, but in any event shall ensure that all bales shall be are removed by 30 September 2020-31 October 2020, and the stay of conditions 1 and 3 of the abatement notice will remain in place until 30 September-31 October 2020.

[5] In a subsequent Minute I queried the utility of making an order where there appeared to be no prospect of that order being complied with by 31 October 2020. I gave the parties an opportunity to file submissions to persuade me to the contrary view.⁹

[6] In response the parties have filed a joint memorandum with Renew Energy Limited advising that it was actively seeking the funding for “the removal of the bales and that its financial position is likely to become clearer towards the end of October 2020”. The parties considered the appropriate way forward is:¹⁰

- (a) REL/ERP will withdraw their appeal against the Council's decision not to amend the conditions of the abatement notice;
- (b) REL/ERP will continue to abide by the conditions of stay imposed by the Court and as proposed to be amended by REL/ERP on 24 September 2020;
- (c) Counsel for REL/ERP is obtaining instructions on whether to make an application to the Council under s325A of the Act to change the date in the abatement notice by which the bales are to be removed.

[7] The appeal was withdrawn but the appellants still seek that the conditions of the stay be amended as at (b) above.



⁸ Memorandum of counsel for the appellants dated 24 September 2020 at [3] and [13].
⁹ Minute dated 28 September 2020.
¹⁰ Joint memorandum dated 29 September 2020 at [3].

Consideration

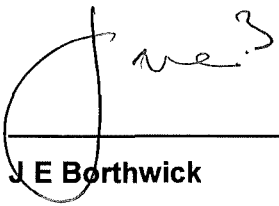
[8] The appellants' reporting memorandum has not persuaded me to a different view. Varying the conditions of the stay is a matter of judicial discretion and I can simply see no utility in making the orders in circumstances where, despite their best intentions, the appellants have not demonstrated they can comply with the same.

Outcome

[9] Accordingly, the application to change the conditions of the stay is declined. It is a matter for the Regional Council to decide the next steps in relation to this matter.

[10] Given the circumstances, I direct the appellants to confirm whether they still wish to withdraw the appeal by Friday 16 October 2020.

[11] Costs are reserved on the second application to amend the conditions of the stay. Any application must be filed by **Friday 16 October 2020** and any reply by **Tuesday 27 October 2020**. In the event no application for costs is made, the court's order will be (without further decision of the court issuing) that there is no order as to costs.


J E Borthwick
Environment Judge

