

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision No. [2020] NZEnvC 182

IN THE MATTER an application for enforcement orders under
s 314 of the Resource Management Act
1991 (the Act)

BETWEEN AUCKLAND COUNCIL
(ENV-2018-AKL-00017)
Applicant

AND CABLE BAY WINE LIMITED
MOTUKAHA INVESTMENTS LIMITED
Respondents

Court: Alternate Environment Judge L J Newhook
Commissioner J A Hodges
Commissioner I M Buchanan

Hearing: Matter concluded on the papers after consulting with the parties

Date of Decision: 30th October 2020

Date of Issue: 30th October 2020

FINAL DECISION OF THE ENVIRONMENT COURT

- A: The interim enforcement orders made on 28 November 2018 are rescinded.
- B: The application for permanent enforcement orders is ultimately declined.
- C: Costs reserved.



REASONS

Introduction

[1] In early 2018, Auckland Council applied for enforcement orders against the respondents concerning unconsented structures and activities at the Cable Bay winery and restaurant at 12 Nick Johnstone Drive, Church Bay, Waiheke Island (Lot 21 DP159304).

[2] The proceeding ran in tandem with an appeal against refusal of consent by Auckland Council for the structures and activities, in *Cable Bay Wine Limited and Motukaha Investments Limited v Auckland Council*.¹

[3] In each proceeding there was a first interim decision in late 2018; that in the present enforcement proceeding being decision number [2018] NZEnvC 228. The other proceedings was ultimately the subject of four interim decisions and a final decision granting consents and imposing conditions.

[4] During finalisation of the other proceeding, a question arose in the Court's mind as to whether, consent ultimately having been granted, there remained any need for the present enforcement proceedings to remain on foot. It initially appeared there was agreement among the parties, that the enforcement proceedings could be closed, and the interim orders rescinded.

[5] The s274 parties in both proceedings, neighbours of the winery and restaurant, expressed concern about that course being followed upon Cable Bay Wine Limited filing an appeal in the High Court against some of the conditions of consent.

[6] I considered their expression of concern, and submissions made on behalf of Cable Bay and the Council, and issued the following Minute on 13 October 2020:

1. The Judge notes the Council's and the appellant's point about an appeal not operating as a stay (HC Rule 20.10). On this basis he agrees that the enforcement orders can be regarded as spent and will issue a decision in the matter accordingly. Mr Webb says the appellants have not sought a stay of the 2020 conditions appealed against. The Judge infers that they do not intend to seek a

¹ ENV-2018-AKL-00010.



stay under sub-Rule (2). If that changes and a stay is ordered, or in the unlikely event the High Court makes orders leaving a lacuna of control pending any directed re-hearing by this Court, the parties can seek interim relief to cover the situation, perhaps fresh interim orders similar to the now spent enforcement orders.

[7] I confirm now that that is the decision of the Court. On this basis, the interim enforcement orders are rescinded, and the substantive applications ultimately declined because the regulatory situation is now covered by the conditions of consent imposed in the Court's final decision in the other proceedings.

[8] For clarity, the substantive enforcement proceedings are not being declined because they were unmeritorious. The findings of the Court in the interim decision in these enforcement proceedings and many of the findings in the application proceedings, bear testament to the contrary being the case.

[9] Costs are reserved in these enforcement proceedings, with any applications to be filed and served by 15 working days after the date of this decision and responses filed and served within a further 10 working days after that.

For the court:



L J Newhook

Alternate Environment Judge

