

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

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

Decision No. [2021] NZEnvC 152

IN THE MATTER

of the Resource Management Act 1991

AND

an appeal against an abatement notice
under s325 of the Act

BETWEEN

KESTEVEN FARM LIMITED

(ENV-2021-CHC-102)

Appellant

AND

MARLBOROUGH DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan

Hearing: In Chambers at Christchurch

Date of Decision: 1 October 2021

Date of Issue: 1 October 2021

DECISION OF THE ENVIRONMENT COURT

A: The stay of abatement notice is granted pending the outcome of the appeal, subject to the condition that water taken and used is restricted to 132,753m³ per annum.

B: Leave is reserved for any party to apply for further or other orders at any stage until the substantive appeal is determined.



REASONS

Introduction

[1] Kesteven Farm Limited ('the appellant') has lodged an appeal against an abatement notice issued by the Marlborough District Council ('MDC') requiring the appellant to cease taking and using water for irrigation of a vineyard at 164 Hillocks Road, Spring Creek ('the Property').¹

[2] Accompanying the appeal was an application to stay the abatement notice which was supported by an affidavit of Lindsay Sanford Parkinson, dated 29 September 2021.

Abatement notice

[3] The abatement notice was issued on 20 September 2021. The reasons for the abatement notice were stated in the notice as:²

The taking of water for irrigation of a vineyard is not provided for as a permitted activity (or controlled or prohibited) and therefore requires a Resource Consent. A search of Council's records shows that there is no Resource Consent in place permitting the activity. The activity is also not expressly allowed by a National Environmental Standard and is therefore a breach of Section 14(2) of the Resource Management Act.

... this abatement notice is required to minimise the adverse effects (the limited resource which affects the surrounding properties and the natural environment when taking water without a resource consent and not provided for by a resource consent), of taking water for the irrigation of a vineyard without resource consent and prevent the contravention of Section 14(2) of the Resource Management Act.

¹ Property Number 540810, Legal Description Lot 1 DP 8576 Lot 1 DP 543533 Lot 2 DP 543533.

² Abatement notice, at 2.

The application for stay

[4] The appellant seeks that the abatement notice be stayed on the grounds that:³

- (a) it has an arguable case on appeal because it has a resource consent for the take and use of water at the Property for the irrigation of crops;
- (b) if it ceases to take and use water for irrigation the vines on the Property are likely to suffer long term damage; and
- (c) damage to the vines will cause significant economic loss to the appellant, its workers, suppliers and business partners.

[5] The appellant also addressed the likely effects on the environment if the stay is granted, and assessed the effects as follows:⁴

- (a) Water will continue to be abstracted from the aquifer at its current rate. There are no persistent environmental effects from the abstraction of water.
- (b) Water will continue to be applied to the land for irrigation.

The Council's position

[6] Counsel for MDC was able to give the court an early indication of MDC's position in relation to the application for stay via email on 30 September 2021. It abides the court's decision in respect of the stay sought. However, given the conversion from pasture and crop to vineyard in an over-allocated aquifer, MDC strongly recommends that the water volume be restricted to a sustainable use level.

[7] MDC's submission was that a restriction to 132,753m³ per annum would enable sustainable use as opposed to enabling the current consented pasture and crop volume of 539,438m³ per annum to be taken. MDC submits that such a restriction would not negatively impact the appellant's vineyard operation and

³ Application for stay, at [4] and affidavit of Ms Parkinson, at [7].

⁴ Application for stay, at [5].

would give proper regard to the Proposed Marlborough Environment Plan ('PMEP') and the National Policy Statement for Freshwater Management ('NPS-FW').

Consideration

[8] Section 325(3D) of the Resource Management Act 1991 provides that before granting a stay, an Environment Judge must consider:

- (a) what the likely effect of granting the 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 the parties should be heard; and
- (d) such other matters as the Judge thinks fit.

[9] Having considered the application for stay, the affidavit of Ms Parkinson and the position of MDC, I find that it is appropriate to grant the application for stay.

[10] I find that it would be unreasonable for the appellant to comply with the abatement notice in full pending the decision on the appeal, due to the potential for damage to the vines if the appellant ceased to take and use water for irrigation in the vineyard.

[11] In granting the stay, I accept MDC's submission that the water volume taken should be restricted to a level that promotes sustainable use. Therefore, I grant a stay subject to the condition below-noted. That condition is not the grant of a water permit for the purposes of the RMA and does not relieve the appellant of any related legal obligation.

Outcome

[12] The application for stay of the abatement notice is granted subject to the condition that water taken and used at the Property is restricted to 132,753m³ per annum, pending the outcome of the appeal.



J J M Hassan
Environment Judge

