

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2021] NZEnvC 157

IN THE MATTER

of the Resource Management Act 1991

AND

an appeal against an abatement notice
under s325 of the Act

BETWEEN

RICHARD KAY IRELAND

(ENV-2021-CHC-103)

Appellant

AND

MARLBOROUGH DISTRICT
COUNCIL

Respondent

Court: Environment Judge J J M Hassan

Hearing: In Chambers at Christchurch

Date of Decision: 5 October 2021

Date of Issue: 5 October 2021

DECISION OF THE ENVIRONMENT COURT

A: The stay of abatement notice is granted pending the outcome of the appeal.

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] Richard Ireland has appealed an abatement notice issued by the Marlborough District Council ('MDC') on 9 September 2021. The notice applies to a property at 2601 Queen Charlotte Drive, Whenuanui Bay, Picton ('the Property').¹ It requires Mr Ireland to remove one of the dwellings from the Property or carry out such alterations required to ensure one of the dwellings no longer constitutes a dwelling house as defined in the Proposed Marlborough Environment Plan ('PMEP').

[2] At the same time, Mr Ireland made an application to stay the abatement notice, supported by an affidavit of Philippa Muir Ireland dated 29 September 2021.

Abatement notice

[3] The notice states that it is issued in order to require cessation of contravention of s9(3), RMA,² rr 30.1 and 30.4 of the Marlborough Sounds Resource Management Plan ('MSRMP') and rr 7.1.1 and 7.4.1 of the PMEP.³ The notice states that this is necessary to avoid, remedy or mitigate actual or likely adverse effects on the environment caused by Mr Ireland, namely:

- (a) increased pressure from residential activity on water quality and water quantity;
- (b) increased demand for onsite disposal of domestic wastewater; and
- (c) increased pressure on the demand for the use of the foreshore reserve/coastal marine area.

¹ Legal description: Lot 2 DP 2162 PT Lot 2 DP 2081.

² Resource Management Act 1991.

³ Abatement notice, at 3.

The application for stay

[4] Mr Ireland applies for stay of the notice on the grounds that:⁴

- (a) there have been two dwellings on the Property since 1970;
- (b) the dwellings were lawfully established and constructed in accordance with building permits which were issued at the time and the planning regime which is described to permit two dwellings on the Property;
- (c) there has been no change in the scale or intensity of the specific land use activity; and
- (d) existing use rights are available.

[5] Mr Ireland submits that granting the stay would not likely cause any effects given that the dwellings have not so far done so during their existence on the Property since 1970.⁵

MDC's response to the stay application

[6] By email of 30 September 2021, counsel advises that MDC will abide by the court's decision on the stay application.

Consideration

[7] Under s325(3D), RMA, I am to 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

⁴ Application for stay, at [3].

⁵ Application for stay, at [4].

(d) such other matters as I thinks fit.

[8] Leaving reserved all findings on the appeal, I am satisfied that granting the stay is not likely to give rise to any material adverse effect on the environment in the meantime. As such, I find that it would be unreasonable for the appellant to comply with the abatement notice in full pending the decision on the appeal.

[9] Finally, given MDC will abide by the decision, I am satisfied that it is appropriate to grant a stay in the circumstances.

Outcome

[10] The application for stay of the abatement notice is granted pending the outcome of the appeal.



J J M Hassan
Environment Judge

