

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TAMAKI MAKAU**

Decision [2024] NZEnvC 019

IN THE MATTER OF

an appeal under s 325 of the Resource
Management Act 1991

BETWEEN

MICHAEL BARRACLOUGH

(ENV-2024-AKL-004)

Appellant

AND

GISBORNE DISTRICT COUNCIL

Respondent

Court: Environment Judge MJL Dickey
Environment Commissioner MCG Mabin

Hearing: 21 February 2024, via Microsoft Teams

Appearances: N King for the Appellant
A Hopkinson and R Zame for the Respondent

Date of Decision: 22 February 2024

Date of Issue: 22 February 2024

DECISION OF THE ENVIRONMENT COURT

- A: The application for stay of the abatement notice is declined.
- B: Reasons for this decision will follow.



Introduction

[1] This proceeding involves an appeal against an abatement notice issued to the appellant, Mr Michael Barraclough, by the Gisborne District Council on 20 December 2023 in relation to property at Wallis Road, Kaiti, Gisborne with a legal description of Lot 2 DP 382462 (**the property**).

Background

[2] Mr Barraclough is the owner of the property and the sole director of Fearless Star Limited which is carrying out earthworks on the property.

[3] Mr Barraclough began carrying out earthworks on the property (and the adjacent property - Lot 4 DP 382462) in 2022 with the intention of developing two residential subdivisions and a Buddhist cultural and spiritual centre. These earthworks were commenced without consent. An abatement notice was issued in November 2022 requiring earthworks to cease on both properties until a resource consent was issued.

[4] Fearless Star Limited obtained resource consent (LL-2022-111405-00) on 12 January 2023 for Stage 1 earthworks on the property. Since the earthworks consent was issued, Council enforcement officers have observed and documented ongoing contraventions of the conditions of the earthworks consent including unauthorised earthworks and breaches of sediment and erosion controls.

[5] As a result, a second abatement notice was issued on 23 June 2023. This second abatement notice resulted in a Council approved remedial plan being implemented in relation to the property on 4 September 2023.

[6] Ongoing compliance issues have continued to be an issue. The Council also has concerns regarding the geology of the property and its susceptibility to collapse/slumping. These issues prompted the Council to issue the current (and third) abatement notice in relation to the property. The notice requires Mr Barraclough to:

Rapidly stabilise all exposed areas of earthworks.

[7] Further conditions are also imposed that require Mr Barraclough:

... not carry out any further earthworks unless you provide a new erosion and sediment control plan to the Gisborne District Council and a Gisborne District Council enforcement officer provides written approval of that new plan.

[8] Compliance with the abatement notice was required no later than 21 January 2024.

Appeal and application for stay of the abatement notice

[9] Mr Barraclough appealed the abatement notice on 11 January 2024, and sought that the abatement notice be cancelled. The appeal was accompanied by an application to stay the abatement notice. Mr Barraclough's reasons for seeking the stay of the abatement notice are set out below:

- a) It is not reasonable or appropriate to rapidly stabilise earthworks at this point in the season, which means covering the site in mulch. To do so now would essentially prevent the already exposed earthworks from being completed this season, leaving the site exposed, eroding and producing sediment runoff for an extended period.
- b) Further, any rapid stabilisation done now, at the beginning of a dry summer, would make minimal difference in preventing sediment discharge, yet would have significant effects on what earthworks could be done this season and add significant costs and time to remove in order to complete any earthworks this season.
- c) It is unreasonable to rapidly stabilise the site now when the appropriate and simple solution at this time of year is to complete the earthworks in accordance with the resource consent and approved plans under the supervision of our approved expert.
- d) Gisborne District Council has already been provided an erosion and sediment control plan, which it approved on 3 February 2023.

The likely effect on the environment if the stay is granted is:

If the stay is granted and the applicant is allowed to undertake earthworks in accordance with its resource consent and approved plans, then earthworks can be completed with topsoil spread and seeded, thus permanently stabilising the site and preventing further erosion and sediment discharges.

[10] The Council opposed the application for stay on the grounds of Mr Barraclough's history of non-compliance, his failure to implement appropriate erosion and sediment controls and the environmental impacts of that non-compliance.

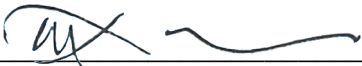
Hearing of the application for stay

[11] The application for stay of the abatement notice was the subject of a hearing on 21 February 2024. Both parties filed evidence and submissions in support of their positions.

Outcome

[12] Having regard to the matters we are obliged to consider in s325(3D) of the RMA we determine it is not appropriate to grant the stay. The application is therefore refused.

[13] Reasons for this decision will follow.



MJL Dickey
Environment Judge

