

**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

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

**Decision No. [2020] NZEnvC 199**

IN THE MATTER of the Resource Management Act 1991  
AND of an appeal pursuant to s325 of the Act  
BETWEEN GORE DISTRICT COUNCIL  
(ENV-2020-CHC-135)  
Appellant  
AND SOUTHLAND REGIONAL COUNCIL  
Respondent

Court: Environment Judge J J M Hassan  
(Sitting alone under s309(1) of the Act)

Hearing: In Chambers at Christchurch

Date of Decision: 1 December 2020

Date of Issue: 1 December 2020

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**DECISION ON APPLICATION TO STAY AN ABATEMENT NOTICE**

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

B: Costs are reserved.

**REASONS**

**Introduction**

[1] Gore District Council ('GDC') has lodged an appeal against an abatement notice issued by the Southland Regional Council relating to unauthorised stormwater discharges at Cronin's Creek, Mataura River.



[2] At the same time, GDC made an application to stay the abatement notice supported by an affidavit of Matthew Bayliss, the 3 Waters Asset Manager at the GDC, affirmed 9 November 2020.

### The application for stay

[3] The application for stay is made on the following grounds:<sup>1</sup>

- (a) There is some uncertainty about precisely what the abatement notice requires, due to the abatement notice presently containing a broad statement of the actions required across numerous locations, while the reasons for the notice are considerably more specific and only refer to stormwater discharges from one discharge point on Cronin's Creek;
- (b) In the reasons given for the abatement notice, ES<sup>2</sup> refers at paragraph 5(f) to activities on private land which is not owned by GDC;
- (c) There are potentially other sources of sediment discharges to Cronin's Creek that are unrelated to the GDC stormwater consent which have not been properly acknowledged in the reasons for the abatement notice e.g. runoff from roads and other private properties;
- (d) ES has refused GDC's request for a copy of ES's investigation file, and GDC therefore needs time to make an official information request in order to gain access to that sampling information and assess it understand more about the likely sources of contamination it identified;
- (e) GDC needs further time to enable a full investigation into the stormwater discharge point on Cronin's Creek, including sampling and further investigations during periods of high rainfall. The information gained through that investigation will then enable GDC to identify any, and all different sources of contamination, whether through the stormwater network or from other sources, and with this information GDC will be able to better identify the most effective means of resolving any issues with its stormwater system in this catchment area;
- (f) If there is more than one option for upgrading or managing the stormwater discharge point on Cronin's Creek, GDC would prefer to have sufficient time to be able to seek ES's input on the merits of each option;
- (g) Even if a short term solution can be identified, it will still need to be properly engineered in order to optimise performance, contractors engaged and works carried out which will require longer than the period currently provided in the abatement notice;
- (h) There will be no irrevocable loss or irremediable injustice in granting a stay, but rather

<sup>1</sup> Application for stay of abatement notice dated 9 November 2020 at [4].

<sup>2</sup> 'ES' stands for Environment Southland/Southland Regional Council.



it will better provide time for the parties to meet in an Environment Court mediation and discuss and agree a practical way forward; and

- (i) This is an appeal that is likely to be able to be resolved through mediation.

[4] The likely effect on the environment if a stay is granted is that the status quo will be maintained until such time as a full investigation can be carried out and an appropriate resolution can be found. GDC says that the effects on the environment are intermittent and occur only at times of high rainfall, and given the present summer season, these high rainfall events are less likely.<sup>3</sup>

### **The Regional Council's position**

[5] The Regional Council does not oppose the application to stay the abatement notice.<sup>4</sup>

### **Consideration**

[6] Section 325(3D) of the Act 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.

[7] If the stay against the abatement notice is granted there may be effects on the environment in that the discharges to Cronin's Creek may continue. However, I note GDC's assertion that high rainfall events are less likely over summer so the intermittent discharge events may be less frequent.

[8] GDC maintains that it needs more time to conduct proper investigation, analysis and gathering of information to ensure implementation of an effective and optimal outcome for the environment. Mr Bayliss deposes that GDC intends to take all necessary

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<sup>3</sup> Application for stay of abatement notice dated 9 November 2020 at [5](b).

<sup>4</sup> Email to the Registry from the Southland Regional Council received 19 November 2020.



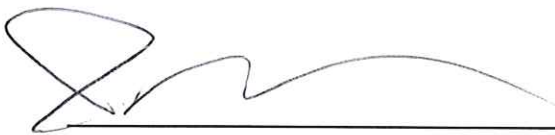
steps to ensure full compliance with the conditions of the Gore stormwater consent but needs sufficient information to understand the problem and ensure the solution found fully addresses the issue.<sup>5</sup> Mr Bayliss says that given the complexities of the issue a number of steps may need to be taken, including a sampling programme to be implemented over the next six months. If the sources of contamination are from private properties this may require the development of appropriate policies and property owners may need time to fund and implement necessary solutions.<sup>6</sup> Improvements to GDC's stormwater infrastructure may also be required but this is dependent on the outcome of the investigation.

[9] Given GDC's need for further time to investigate the source and find an appropriate solution, it is unlikely significant progress will have been made before 1 January 2021 (the current timeframe in the abatement notice). In these circumstances I consider it is unreasonable for GDC to comply with the abatement notice pending the decision on the appeal as without time for an investigation, it is unlikely the solution will be forthcoming.

[10] Finally, I take into account the lack of opposition from the Regional Council. I do not need to hear from the parties further as I am satisfied that it is appropriate to grant a stay in these circumstances.

### **Outcome**

[11] The application for stay of the abatement notice is granted pending the outcome of the appeal. The substantive matter will be referred to mediation.



**J J M Hassan**  
**Environment Judge**



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<sup>5</sup> M P Bayliss affidavit sworn 9 November 2020 at [22].

<sup>6</sup> M P Bayliss affidavit sworn 9 November 2020 at [23] and [24].