

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

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

**Decision No. [2023] NZEnvC 212**

IN THE MATTER OF

an appeal under s 325 of the Resource  
Management Act 1991

BETWEEN

KIWIRAIL HOLDINGS LIMITED

(ENV-2023-AKL-165)

Appellant

AND

TARANAKI REGIONAL COUNCIL

Respondent

Court: Environment Judge M J L Dickey

Last case event: 25 September 2023

Submissions: H Mahon for the Appellant  
K de Silva for the Respondent

Date of Decision: 26 September 2023

Date of Issue: 26 September 2023

---

**DECISION OF THE ENVIRONMENT COURT**

---

A: The application for stay of the appeal is granted.

B: The parties are to file a progress report on 27 November 2023.



## REASONS

### Introduction

[1] This appeal relates to an abatement notice issued by the Taranaki Regional Council (**Council**) on 29 August 2023 requiring the appellant, KiwiRail Holdings Limited (**KiwiRail**), to undertake works to ensure that there is no offensive or objectionable dust at or beyond the boundary of 51-63 Smart Road, New Plymouth.

[2] Prior to the abatement notice being issued KiwiRail proposed a plan to prevent and minimise dust generation at the site. KiwiRail's proposal to address the dust issues is set out below:

### Corrective and Preventative Actions

Action	Timeframe
A water truck was arranged for site on Monday 28th August. This will be used by site for dust suppression on an ongoing basis as required.	In place/Ongoing as required
KiwiRail has attempted to engage with the complainant by visiting their site on 29.08.23 and by phone on 29.08.23 and 1.09.23, but has been unable to make contact. The Regional Container Terminal Manager will continue contact and engage with the neighbour in response to this event and as site upgrades are undertaken. KiwiRail will encourage the neighbour to contact us with any concerns about dust from its operations and is committed to taking appropriate action.	In place/Ongoing
KiwiRail is arranging to have the surface of the unsealed portion of site scraped to reduce fines and a new layer of GAP40 aggregate applied. This involves: <ul style="list-style-type: none"> <li>• Finalising the scope of works;</li> <li>• Procuring a contractor;</li> <li>• Scraping back the fines; and</li> <li>• Placing a new Layer of aggregate.</li> </ul> The scoping and procuring of the contract will commence in September 2023; however, will take several weeks before physical works can commence.	End of October 23
Investigate long-term preventative measures for dust suppression which may include: <ul style="list-style-type: none"> <li>• On site resurfacing with new aggregate and/or asphalt.</li> <li>• Applying a dust suppression called "Gravel Lock".</li> </ul>	End of October 23

### **Appeal and application for stay**

[3] KiwiRail filed an appeal against the abatement notice on 20 September 2023. The appeal was accompanied by an application for stay of the abatement notice. An affidavit in support of that application was filed by Christopher Kells.

[4] The Council consents to the application for stay.

[5] The parties also seek an adjournment of the appeal until 27 November 2023 on the grounds that an adjournment will give the parties time to confirm whether the remedial steps proposed by KiwiRail above are effective. In addition, the parties have agreed that if the remedial steps proposed by KiwiRail are effective, the abatement notice will be cancelled.

[6] Before granting a stay of an abatement notice, under s 325(3D) of the RMA, I must consider:

- (a) what the likely effect of granting a 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 to hear
  - (i) the applicant;
  - (ii) the local authority or consent authority whose abatement notice is appealed against; and
- (d) such other matters as the Judge thinks fit.

[7] In the circumstances as they presently stand, I consider that the likely effect on the environment of granting a stay will be relatively minor and acceptable on a temporary basis. I have also taken into account the fact that the Council consents to the stay of the proceedings. On this basis I accept that it would be unreasonable for

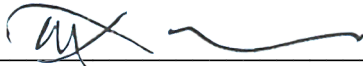
KiwiRail to comply with the abatement notice pending the decision on the appeal.

### Outcome

[8] The application for stay is granted pending the resolution of this appeal.

[9] The appeal is adjourned until 27 November 2023 in order to allow the parties to explore remedial steps.

[10] The parties are to file a progress report on this matter on **27 November 2023**.



MJL Dickey  
Environment Judge

