

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

Decision No. [2023] NZEnvC 219

IN THE MATTER of the Resource Management Act 1991

AND an appeal against an abatement notice
under s325 of the Act

BETWEEN GORE DISTRICT COUNCIL

(ENV-2023-CHC-098)

Appellant

AND SOUTHLAND REGIONAL
COUNCIL

Respondent

Court: Environment Judge P A Steven sitting alone under s309(1)
of the Act

Hearing: In chambers at Christchurch

Last case event: 13 October 2023

Date of Decision: 16 October 2023

Date of Issue: 16 October 2023

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

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

B: Leave is reserved for any party to apply for further (or other) directions,



ideally in consultation with the other parties.

- C: Any issues as to costs can be dealt with following the substantive appeal being determined.

REASONS

Introduction

[1] Gore District Council (the District Council') has lodged an appeal against an abatement notice¹ issued on 18 September 2023 by Southland Regional Council (the Regional Council'). At the same time, the District Council made an application to stay the abatement notice, supported by an affidavit of Jason Marc Domigan, General Manager Critical Services at the District Council.

The abatement notice

[2] An abatement notice was issued on 14 August 2023 by the Regional Council. This was objected to by the District Council.

[3] The Regional Council issued an amended abatement notice on 18 September 2023 which is subject to this appeal.

[4] The abatement notice relates to the Gore Transfer Station and closed landfill at 24 Toronto Street, Gore. The abatement notice requires the District Council to undertake the following actions:

1. Cease and continue to cease the discharge of cleanfill and greenwaste at the Gore Transfer Station and closed landfill (with the exception of any cleanfill and/or greenwaste being used for the purposes of action 3).
2. Engage a suitably qualified and experienced person to undertake an assessment of the capping layer at the Gore Transfer Station and closed landfill to determine its

¹ Reference number EAC-20231569.

compliance with discharge permit 94463 and provide recommendations for remediation of any identified defects in accordance with current best practice (First Expert Report). The Expert Report must be provided to, and approved by, Environment Southland. The scope of the Expert Report must include the person's opinion on:

- a. the integrity, thickness and effectiveness of the capping layer to operate as a barrier to surface water infiltration; and
 - b. the quality of the construction and functionality of the capping layer.
3. Implement any recommendations made by the First Expert Report.
 4. Engage a suitably qualified and experienced person to undertake a review of the Landfill Closure and Long-Term Management Plan (Closure Management Plan) prepared by Golder Associates and provide recommendations on any amendments to ensure that the Closure Management Plan meets industry best practice (Second Expert Report). The scope of the Second Expert Report must include the person's opinion on appropriate corrective measures to be taken in circumstances where a significant increase in contaminants are detected.
 5. Implement any recommendations made by the Second Expert Report by updating the Closure Management Plan.

The application for stay

[5] The District Council considers that it is unreasonable to comply with the abatement notice because:

- (a) The Abatement Notice has been improperly issued. The Gore District Council currently operate this landfill in accordance with a discharge permit issued by Southland Regional Council. The consent number is 94463 and expires on 29 April 2033.
- (b) The Gore District Council has been operating the landfill by disposing of clean fill and green waste to add to the capping depth since 2006 without any issue being raised by Southland Regional Council, nor any compliance issues Gore District Council was aware of.
- (c) The Gore District Council interprets this consent that it was required to cease discharge of solid waste, being municipal solid waste by 2006. This has occurred and there is no ongoing receipt of municipal solid waste at the site. It interprets this consent as authorising clean fill and green waste to build up the depth of the cap to exceed the minimum depth required.

- (d) As regulator of this consent, Southland Regional Council has now interpreted this consent as meaning that green waste and clean fill can not continue to be deposited to form the landfill cap in accordance with the terms of this consent.
- (e) The Gore District Council is not aware of any effects on the environment, nor any run-off or discharge from the landfill having an adverse effect on the environment from the clean fill and green waste operation adding to the cap. In short, there is no immediate environmental effect being created as far as Gore District Council is concerned that needs remediation or urgent attention.
- (f) If the discharge of clean fill and green waste is to cease immediately, this will result in significant social disruption to the residents of the Gore district. The significant short term financial and environmental outcomes this will likely result in is the material needing to be sent to the Southland Regional Landfill and Kings Bend. The amount of waste will be almost doubling the tonnage of waste to be sent to the landfill, and therefore doubles the cost to ratepayers for doing so. The cost is estimated to be up to \$150,000.00 per month based on Gore District Council's existing charges for disposing and transporting waste to the regional landfill. This also results in contravening the national direction from the Ministry of Environment which is seeking to divert as much waste from landfills (particularly organic waste).

[6] The District Council advises that, out of an abundance of caution, it has instructed consultants to urgently prepare a resource consent application to address the issue raised by the Regional Council and seek permission for the ongoing activity.

The Regional Council's position

[7] On 6 October 2023, the court directed the Regional Council to advise their position on the application for stay by 11 September 2023.

[8] No response was received from the Regional Council therefore I have proceeded to consider the application for stay.

Consideration

[9] Section 325(3D) of the Resource Management Act 1991 ('RMA') 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;
- (b) whether it is unreasonable for the person to comply with the abatement notice pending the decision on the appeal;
- (c) whether the parties should be heard; and
- (d) such other matters as the Judge thinks fit.

[10] Given the circumstances described by the District Council, I am satisfied that it would be unreasonable for it to comply with the abatement notice pending the decision on appeal. Further I accept the District Council's assessment that the grant of the stay as sought is not likely to give rise to any material adverse effect on the environment while the appeal proceeds.

[11] The Regional Council has been given an opportunity to provide a view on the application for stay. As they have not responded, I consider the application to be unopposed.

[12] Leaving reserved all findings on the appeal, I grant the stay against the abatement notice as sought.

Outcome

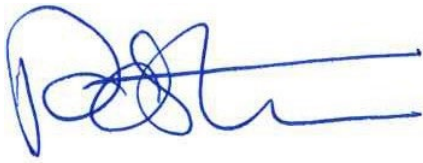
[13] The application for stay of the abatement notice is granted, pending the outcome of the appeal.

[14] Leave is reserved for any party to apply for further (or other) directions, ideally in consultation with the other parties.

[15] Any issues as to costs can be dealt with following the substantive appeal being determined.

Directions

[16] The file is referred to court-assisted mediation to be set down promptly. Parties are to confer and advise the court as to available dates.



P A Steven
Environment Judge