

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision No. [2024] NZEnvC 027**

IN THE MATTER OF

an appeal against an abatement notice  
under s 325 of the Resource  
Management Act 1991

BETWEEN

**GREENACRES WAIHEKE  
LIMITED**

(ENV-2021-AKL-000053)

Appellant

AND

**AUCKLAND COUNCIL**

Respondent

Court: Environment Judge MJL Dickey sitting alone under s 309(1)(a) of  
the Act

Hearing: On the papers

Date of Decision: 4 March 2024

Date of Issue: 4 March 2024

---

**DECISION OF THE ENVIRONMENT COURT EXTENDING STAY OF  
ABATEMENT NOTICE**

---

- A: The stay of the abatement notice is extended to 15 June 2024.
- B: The existing organic waste treatment facility may continue to operate in reliance on the existing resource consents that are the subject of the abatement notice subject to enhanced sampling and reporting requirements and improvements to the existing treatment process in accordance with condition 23 of the existing resource consents for the duration of the stay, and subject to the operating conditions as follows:



- (a) the organic waste treatment facility must be operated in accordance with the Updated Trial Plan dated 4 April 2022 for Stages 1 and 2, and the Stage 3.1 Trial Plan dated 1 September 2023;
- (b) the appellant must not make any changes to the operation of the organic waste treatment facility other than those set out in the Updated Trial Plan for Stages 1 and 2 and the Stage 3.1 Trial Plan without the prior written approval of the respondent;
- (c) the appellant must submit reports on the performance of the Trial (Stages 1, 2 and 3.1) to the respondent on or before 31 March, 30 June, 30 September, and 31 December each year (in line with existing reporting dates under the existing consent) on the matters set out in Table 1:

Table 1

Stage	Sampling and Reporting On
1	<ul style="list-style-type: none"> <li>completed as per Updated Trial Plan dated 4 April 2022</li> </ul>
2	<ul style="list-style-type: none"> <li>quarterly volume of wastewater treated via the BNR plant</li> <li>TN, TP, BOD<sub>5</sub>, and TSS on plant influent to be measured quarterly</li> <li>TN, TP, BOD<sub>5</sub>, and TSS on plant effluent to be measured quarterly</li> </ul>
3	<ul style="list-style-type: none"> <li>quarterly volume of grease trap material accepted on site for quarter</li> <li>method of treatment of grease trap material and quantity processed by method</li> <li>TN, TP, FOG, BOD<sub>5</sub>, and TSS on plant influent for each method of treatment to be measured quarterly</li> <li>TN, TP, FOG, BOD<sub>5</sub>, and TSS on plant effluent for each method of treatment to be measured quarterly</li> </ul>

- (d) the sampling and reporting requirements in conditions 42-46 of the existing resource consents are enhanced to require sampling and reporting as follows:
- (i) Condition 42 is adjusted to accommodate the Trial with sampling

and reporting associated with the trial to be in accordance with the Updated Trial Plan;

- (ii) Condition 43 sampling and reporting to take place in June and December each year;
- (iii) Condition 44 sampling and reporting to take place in June and December each year;
- (iv) Condition 45 sampling and reporting to take place in June and December each year; and
- (v) Condition 46 sampling and reporting to take place quarterly and include an additional surface water sampling location at the headwaters of eastern stream close to monitoring bore of upper field.

(e) the parties must advise the Court of the Auckland Council's notification decision in respect of the appellant's resource consent application (ref. no. BUN60388324); and

(f) the parties must report to the Court as to progress on or before 1 June 2024, proposing a further reporting date (if required), and advising whether a further extension of the stay is required.

C: Leave is reserved to apply to the Court for reconsideration of the stay or operating conditions.

D: Costs are reserved.

## REASONS

### Introduction

[1] The appellant is the owner and operator of an organic waste and green waste processing facility on Waiheke Island. The appellant provides waste management and processing services to residents and businesses on Waiheke Island including to

Watercare Services Limited in respect of the waste products produced by the Owhanake Wastewater Treatment Plant along with the solid organic waste from septic tanks and grease traps from properties that are connected to the Owhanake Wastewater Treatment Plant.

[2] The respondent issued the appellant with an abatement notice on 23 April 2021. The appellant appealed and applied for a stay of abatement notice on 17 May 2021.

[3] By Minute of the Environment Court dated 26 May 2021 a stay of abatement notice was granted on an interim basis until 30 June 2021 to enable Court-assisted mediation to take place.

[4] Following Court-assisted mediation on 15 June 2021, the parties agreed the existing stay of abatement notice should continue until an application for a replacement resource consent for an organic waste treatment plant was determined and proposed a series of conditions.

[5] The Court has since extended the stay in a number of decisions,<sup>1</sup> and Minutes to enable the parties to progress with a replacement resource consent.<sup>2</sup> The latest extension of the stay was granted until 15 March 2024, subject to the appellant complying with certain conditions agreed by the parties.

### **Joint memorandum of counsel – 23 February 2024**

[6] A joint memorandum of counsel was received on 23 February 2024.

#### ***Steps to date***

[7] The parties report that the following steps have been undertaken since the Decision dated 15 December 2023:

- (a) the appellant has continued to operate the organic waste and green waste processing facility at 1 Fisher Road, Waiheke Island in accordance with the

---

<sup>1</sup> [2021] NZEnvC 090; [2021] NZEnvC 052; [2023] NZEnvC 275

<sup>2</sup> Minutes of the Environment Court dated 1 March 2023, 21 June 2023 and 7 September 2023.

stay conditions, the Updated Trial Plan dated 4 April 2022 in respect of Stages 1 and 2 of the Trial, including complying with the operational, monitoring, sampling, and reporting requirements of the Updated Trial Plan as required by stay conditions;

- (b) the appellant has completed the Stage 3.1 Trials and submitted its report to the respondent on 14 February 2024.
- (c) the respondent has continued to process the appellant's application for resource consent (ref. no. BUN60388324) and is currently reviewing:
  - i. The September 2023 Stages 1 and 2 Trial results (received November 2023);
  - ii. The February 2024 Stage 3.1 Trial results (received February 2024);
  - iii. The December 2023 Stages 1 and 2 Trial results (received February 2024);
  - iv. An operations and maintenance plan for the grease trap window (received February 2024); and
  - v. Monitoring returns (received February 2024).

***Continuation of stay***

[8] The parties' view is that the stay should continue until the replacement resource consent application has been determined. The parties request that the stay be extended until 15 June 2024 subject to the conditions set out below:

- (a) the organic waste treatment facility must be operated in accordance with the Updated Trial Plan dated 4 April 2022 for Stages 1 and 2, and the Stage 3.1 Trial Plan dated 1 September 2023;
- (b) the appellant must not make any changes to the operation of the organic waste treatment facility other than those set out in the Updated Trial Plan for Stages 1 and 2 and the Stage 3.1 Trial Plan without the prior written

approval of the respondent;

- (c) the appellant must submit reports on the performance of the Trial (Stages 1, 2 and 3.1) to the respondent on or before 31 March, 30 June, 30 September, and 31 December each year (in line with existing reporting dates under the existing consent) on the matters set out in Table 1:

Table 1

Stage	Sampling and Reporting On
1	<ul style="list-style-type: none"> <li>completed as per Updated Trial Plan dated 4 April 2022</li> </ul>
2	<ul style="list-style-type: none"> <li>quarterly volume of wastewater treated via the BNR plant</li> <li>TN, TP, BOD<sub>5</sub>, and TSS on plant influent to be measured quarterly</li> <li>TN, TP, BOD<sub>5</sub>, and TSS on plant effluent to be measured quarterly</li> </ul>
3	<ul style="list-style-type: none"> <li>quarterly volume of grease trap material accepted on site for quarter</li> <li>method of treatment of grease trap material and quantity processed by method</li> <li>TN, TP, FOG, BOD<sub>5</sub>, and TSS on plant influent for each method of treatment to be measured quarterly</li> <li>TN, TP, FOG, BOD<sub>5</sub>, and TSS on plant effluent for each method of treatment to be measured quarterly</li> </ul>

- (d) the sampling and reporting requirements in conditions 42-46 of the existing resource consents are enhanced to require sampling and reporting as follows:

- (i) Condition 42 is adjusted to accommodate the Trial with sampling and reporting associated with the trial to be in accordance with the Updated Trial Plan;
- (ii) Condition 43 sampling and reporting to take place in June and December each year;
- (iii) Condition 44 sampling and reporting to take place in June and December each year;

- (iv) Condition 45 sampling and reporting to take place in June and December each year; and
  - (v) Condition 46 sampling and reporting to take place quarterly and include an additional surface water sampling location at the headwaters of eastern stream close to monitoring bore of upper field.
- (e) the parties must advise the Court of the Auckland Council's notification decision in respect of the appellant's resource consent application (ref. no. BUN60388324); and
- (f) the parties must report to the Court as to progress on or before 1 June 2024, proposing a further reporting date (if required), and advising whether a further extension of the stay is required.

### **The Court's view**

[9] Given that the proposed orders are sought jointly by both parties and having regard to the matters in s 325(3D) of the Act, the Court grants the extension of the stay of abatement notice subject to amended conditions. I accept the parties' advice on the appropriateness of the extension. The conditions are unchanged since the extension of the stay was granted on 15 December 2023.

### **Decision**

[10] I make the following orders:

- (a) The stay of abatement notice is extended until 15 June 2024 subject to the conditions set out in paragraph 8.
- (b) The parties must report to the Court as to progress on or before 1 June 2024, proposing a further reporting date (if required), and advising whether a further extension to the stay is required.

[11] Leave is reserved to apply to the Court for reconsideration of the stay or operating conditions.

[12] Costs are reserved.



---

**MJL Dickey**  
**Environment Judge**

