

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2018] NZEnvC 185

IN THE MATTER of the Resource Management Act 1991
AND of an application for consent under s 315
of the Act
BETWEEN KAWERAU DISTRICT COUNCIL
(ENV-2018-AKL-000257)
Applicant
AND AQUASTAR HOLDINGS LIMITED
Respondent

Court: Environment Judge DA Kirkpatrick sitting alone under ss 279 and
309(1) of the Act

Hearing: On the papers

Date of Decision: 28 September 2018

Date of Issue: 28 SEPTEMBER 2018

DECISION OF THE ENVIRONMENT COURT ON REQUEST FOR CONSENT

A. The Environment Court grants consent to the Kawerau District Council so that the Council may:

1. comply with any of enforcement order B(b) as made by the Court in its decision in this proceeding dated 15 June 2018 and, for this purpose, enter upon the property at 55 Onslow Street, Kawerau and enter any structure on that property;



2. sell or otherwise dispose of any structure or materials salvaged in complying with the orders in accordance with (1) above; and
3. after allowing for moneys received under (2) above, if any, recover the costs and expenses of doing so as a debt due from the respondents.

REASONS

[1] In the Court's substantive decision in this proceeding,¹ Aquastar Holding Limited's (**Aquastar**) appeal against an abatement notice issued to it by the Council was dismissed and enforcement orders generally as sought by the Council against Aquastar were made as follows:

B: The Court makes the following enforcement orders under sections 314(1)(a)(i), 314(1)(b)(i) and (ii), 314(1)(c), 314(d) and 314(1)(da) of the Resource Management Act 1991:

Aquastar Holdings Limited (**Aquastar**), in respect of the property at 55 Onslow Street, Kawerau, legally described as Lots 39, 40 and 41 DPS 6531 (the **Property**), is required to do the following:

- (a) Cease contravening Rule C1.4.6 Verandahs of the Operative Kawerau District Plan (the **Plan**); and
- (b) Take all necessary action to ensure the verandah at the Property complies with the Rule C1.4.6 of the Plan, including by:
 - (1) Within one month of the date of these orders, providing the Kawerau District Council with a report from a suitability qualified engineer as to the integrity and weathertightness of the verandah at the Property against the requirements of Rule C1.4.6 of the Plan and setting out the remedial action required to ensure compliance with Rule C1.4.6 of the Plan;
 - (2) Within two months of the date of these orders, undertaking the remedial action detailed in that above-mentioned report to the



¹ *Aquastar Holdings Limited v Kawerau District Council* [2018] NZEnvC 091

extent necessary to ensure compliance with Rule C1.4.6 of the Plan;

and

- (3) Undertaking any other action the Court considers reasonably necessary to ensure compliance with Rule C1.4.6 of the Plan and to avoid, remedy or mitigate the adverse effects on the environment resulting from Aquastar's non-compliance with Rule C1.4.6 of the Plan; and

- (c) Reimburse the Kawerau District Council for the actual and reasonable costs and expenses which the Kawerau District Council has incurred and incurs in avoiding, remedying or mitigating any adverse effect on the environment as a result of Aquastar's non-compliance with Rule C1.4.6 of the Plan, the abatement notice dated 12 July 2017 and associated provisions, including ss 9 and 323, of the Act.

[2] On 18 September 2018 the Council sought consent under s 315(2) of the Act to allow it to comply with the enforcement orders on behalf of Aquastar should it fail to do so.

[3] The full text of s 315 provides:

315 Compliance with enforcement order

- (1) Where an enforcement order is made against a person, and that enforcement order is served on that person, that person shall—
- (a) Comply with the order; and
 - (b) Unless the order directs otherwise, pay all the costs and expenses of complying with the order.
- (2) If a person against whom an enforcement order is made fails to comply with the order, any person may, with the consent of the Environment Court,—
- (a) Comply with the order on behalf of the person who fails to comply with the order, and for this purpose, enter upon any land or enter any structure (with a constable if the structure is a dwellinghouse); and
 - (b) Sell or otherwise dispose of any structure or materials salvaged in complying with the order; and
 - (c) After allowing for any moneys received under paragraph (b), if any, recover the costs and expenses of doing so as a debt due from that person.
- (3) Any costs or expenses which remain unpaid under subsection (2)(c) may be registered under the Statutory Land Charges Registration Act 1928 as a charge on any land in respect of which an enforcement order is made.
- (4) Failure to comply with an enforcement order is an offence under section 338.

[4] In this case there was communication between Aquastar and the Council about compliance with the enforcement orders. The Council advised that it was content for its application for consent to be put on hold until 26 September 2018 to give Aquastar



an opportunity to complete the works by 25 September 2018 as it has advised it intends to do.

[5] The Council is to be commended for affording Aquastar this opportunity, notwithstanding that the history of this proceeding (as set out in the substantive decision) might indicate a regrettable tendency on Aquastar's part to fail to meet its own timeframes.

[6] As it transpires, Aquastar has again failed to do what it said it would. In its reporting memorandum dated 26 September 2018, counsel for the Council advised that while some work had been done, the Council's building control officer inspected the property on 25 September 2018 and found that work to be insufficient to comply with Rule C1.4.6 of the District plan. An unsworn affidavit in the name of the officer was filed with that memorandum. The Council now seeks consent in terms of its application.

[7] Also on 25 September 2018, the principals of Aquastar wrote to the Council's solicitors, with a copy to the Court, setting out the basis on which they had engaged a builder and enclosing photographs of the work carried out. Today Aquastar filed a memorandum referring to the unsworn affidavit and advising that the issues identified in that affidavit had been referred to the builder who would be returning to the job to make further repairs. Aquastar views the errors in the earlier work as being marginal. Whatever the degree of error may be, I take this to be, effectively, acknowledgement that the work has not been completed.

[8] On the basis of this material, I conclude that Aquastar has failed to comply with the order. I acknowledge that the further work required may not be great, but the real issue is that notwithstanding the time it has been afforded to fix the problem, Aquastar has not undertaken the repair work required. I also acknowledge that it may yet be possible for Aquastar to complete the work. There is nothing in the granting of consent under s 315(2) that forbids a person against whom an enforcement order has been made from continuing to try and comply with that order. There is also nothing that prevents the parties from dealing directly with each other to resolve any remaining issues. The purpose of the provision is to allow the enforcement agency or other person to whom the order has been granted to step in. It is a measure to promote progress towards compliance with the relevant plan and the Act and is a method of achieving finality in enforcement proceedings.



[9] Given the information before the Court and the history of this proceeding, I am satisfied that it is appropriate to grant consent to the Council to comply with the orders made in this proceeding on Aquastar's behalf. This matter has gone on too long. Even if Aquastar has the best of intentions about completing the work, the Council should have, as a backstop, the ability to step in and finish the job and recover its costs in doing so.

[10] The relevant enforcement order for this purpose is in B(b), as set out in paragraph [1] above, as the orders in B(a) and B(c) are not able to be done by someone other than Aquastar. Consent is granted accordingly to the Council to comply with that order in terms of s 315(2) of the Act, as set out at the commencement of this decision.



A handwritten signature in black ink, appearing to read "D A Kirkpatrick".

D A Kirkpatrick
Environment Judge