

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

Decision No. [2018] NZEnvC 212

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of an appeal against an abatement
notice under s 325 of the Act

BETWEEN YANZHEN CHEN
(ENV-2018-AKL-000287)
Appellant
AND AUCKLAND COUNCIL
Respondent

Court: Environment Judge D A Kirkpatrick
sitting alone under s 309(1)(a) of the Act

Hearing: On the papers

Date of Decision: 26 October 2018

Date of Issue: 26 October 2018

**DECISION OF THE ENVIRONMENT COURT
ON APPLICATION FOR STAY OF ABATEMENT NOTICE PENDING APPEAL**

- A. The application for a stay of the abatement notice pending the hearing of this appeal is granted.
- B. The parties are directed to confer and report to the Court by 16 November 2018 about a timetable and other arrangements for the hearing of the appeal.
- C. Leave is reserved to apply if circumstances change.
- D. Costs are reserved.



REASONS

[1] On 28 September 2018 Mr Corey Anderson, an enforcement officer of the Auckland Council, issued an abatement notice (reference: ABT 2141527) to Darren Chen in respect of certain works at Mr Chen's property at 2A Lurline Avenue, Epsom, Auckland, which allegedly do not comply with the relevant development controls under the Auckland Unitary Plan (Operative in part) (**AUP**). The abatement notice stated that compliance was required by 28 October 2018. It appears that the notice was served on Mr Chen in the ordinary course of the post, in terms of s 352(5) of the RMA, on or about 3 October 2018.

[2] Mr Chen lodged an appeal against the notice on 23 October 2018, an application for a stay of the abatement notice pending his appeal on 25 October 2018 and an affidavit in support of that application on 26 October 2018.

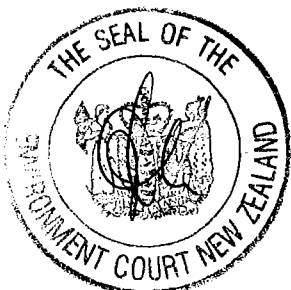
[3] In his affidavit Mr Chen sets out his reasons why the basis of the abatement notice (alleging non-compliance with the development controls) is either incorrect or is likely to be rectified by a current application for resource consent which he has made. There appear at first impression (but without reaching any conclusions) to be arguable reasons in support of the appeal.

[4] By a memorandum of its counsel dated 26 October 2018, the Council advises that it has no opposition to the application for a stay.

[5] Before granting a stay of an abatement notice, under s 325(3D) of the Act 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.

[6] 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. In such circumstances it would be unreasonable to require Mr Chen



to comply with the abatement notice pending his appeal and, in particular, the outcome of his application for resource consent. In my view, it would be preferable to allow Mr Chen the opportunity to see if the compliance issues can be resolved before requiring any works to be demolished. Of course, if Mr Chen is unsuccessful in his application for resource consent, then that may be a matter that would warrant reconsideration of the stay.

[7] I do not consider there is any need to hear further from Mr Chen or the Council. The documents filed are sufficient to inform me of the relevant circumstances.

[8] I will accordingly grant a stay of the abatement notice pending the appeal. I reserve to both parties the right to apply for reconsideration of the stay should circumstances change.

[9] I will direct the parties to confer about a timetable for dealing with the appeal. It may be appropriate to defer setting such a timetable until the outcome of the application for resource consent is known, but if that is likely to take a long time then it may be that the appeal against the abatement notice should be resolved first.

Decision

[10] For the foregoing reasons, the application for a stay of the abatement notice pending the hearing of this appeal is granted.

[11] The parties are directed to confer and report to the Court by 16 November 2018 about a timetable and other arrangements for the hearing of the appeal.

[12] Leave is reserved to apply if circumstances change.

[13] Costs are reserved.



A handwritten signature in cursive script, which appears to read 'D Kirkpatrick', is written over a horizontal line.

D A Kirkpatrick
Environment Judge