

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2021] NZEnvC 139

IN THE MATTER OF

an appeal against an abatement
notice under section 325 of the
Resource Management Act 1991
(the Act)

BETWEEN

J L JONES

(ENV-2020-AKL-188)

Appellant

AND

BAY OF PLENTY REGIONAL
COUNCIL

Respondent

Court: Chief Environment Court Judge D A Kirkpatrick, sitting
alone under s 279 of the Act

Hearing: On the Papers

Last case event: Joint Memorandum of Counsel, filed 10 September 2021

Appearances: S Ongley for the Appellant
A Hopkinson for the Respondent

Date of Decision: 14 September 2021

Date of Issue: 14 September 2021

DETERMINATION OF THE ENVIRONMENT COURT



Under s 279(1)(b) of the Resource Management Act 1991 the Court amends the abatement notice RA20-00112 issued by Bay of Plenty Regional Council to James Lawrence Jones by deleting the words “as shown in Appendix 2 to this Notice” from section 2.

B: The appeal is discontinued.

C: The costs of the appeal lie where they fall.

REASONS

Introduction

[1] This appeal by Mr James Lawrence Jones is in relation to an abatement notice (**the Notice**) issued by Bay of Plenty Regional Council and identified as RA20-00112.

[2] The Notice is in relation to a retaining wall built by Mr Jones on or adjacent to his property at 19 Waipa Road, Te Puna and legally described as Allotment 154D 3A Parish of Te Puna (**the Property**). The Council issued the Notice on the basis that the wall is an unauthorised seawall structure in the coastal marine area. Mr Jones' appeal sought the removal of the Notice on the basis that the retaining wall was within the boundary of the Property.

[3] Following a series of reporting memoranda and survey work to determine the boundary of the coastal marine area in relation to the Property, a joint memorandum was filed on 10 September 2021 seeking an amendment to the Notice by deleting the words "as shown in Appendix A to this Notice" from section 2.

[4] The parties advise that following that amendment, the appeal in front of this Court will be discontinued.

Evaluation

[5] Under s 279(1)(b) of the Act, an Environment Judge sitting alone may make an order that is not opposed. In this circumstance, the application to amend the abatement notice is not opposed by any party. Parties have agreed by consent to the amendment as described and have advised this agreement resolves the appeal in its entirety. In light of this, I accordingly make an order

amending the Notice under s 279(1)(b), resolving this matter by consent.

[6] I do not consider it appropriate to evaluate the merits of amending the abatement notice in this decision, as the outcome reflects the agreement reached between the parties. Therefore, while I am prepared to make the order as sought by consent, I wish to be clear that the order does not represent a reasoned determination by the Court.

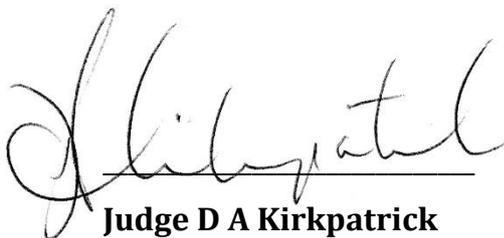
Outcome

[7] I accordingly make an order under s 279(1)(b) of the Resource Management Act 1991 the Court amending the abatement notice RA20-00112 issued by Bay of Plenty Regional Council to James Lawrence Jones by deleting the words “as shown in Appendix 2 to this Notice” from section 2.

[8] In light of the agreement between parties, as a result of that order the appeal before this Court is discontinued and so the proceeding is now at an end.

[9] Costs relating to this appeal are to lie where they fall.

For the Court:



Judge D A Kirkpatrick
Chief Environment Court Judge

