

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

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

**Decision [2023] NZEnvC 182**

IN THE MATTER OF

appeals under s 325 of the Resource  
Management Act 1991

BETWEEN

G BOWKETT

(ENV-2023-AKL-000150)

(ENV-2023-AKL-000153)

Appellant

AND

NORTHLAND REGIONAL  
COUNCIL

WHANGAREI DISTRICT COUNCIL

Respondents

Court: Environment Judge J A Smith

Last case event: 28 August 2023

Appearances: A Braggins for Mr Bowkett  
K de Silva for Northland Regional Council  
R Vertongen for Whangarei District Council

Date of Decision: 29 August 2023

Date of Issue: 29 August 2023

---

**DECISION ON STAY APPLICATION AND DIRECTIONS OF THE  
ENVIRONMENT COURT**

---

A: The Court orders a stay of the abatement notices, with a review after 24 October 2023. Application to vary or cancel the stay may be made on notice.

B: A report is to be provided by 24 October 2023, preferably by joint memorandum. The memorandum is to address the progress made since the



making of the stay order and these directions, and outline steps to be taken to resolve the matter that is the subject of the abatement notices.

## **REASONS**

### **Introduction**

[1] On 23 August 2023, Mr Bowkett filed an appeal against an abatement notice regarding earthworks and construction works at 1439 Cove Road, Langs Beach, Waipu and at the Whangarei District Council's Esplanade Reserve. The abatement notice was issued on 4 August 2023 on behalf of Whangarei District Council. It requires certain actions by 11 August 2023, 15 September 2023, and 4 December 2023.

[2] On 25 August 2023, Mr Bowkett filed an appeal against abatement notices in relation to a boat ramp structure and gabion baskets in the Whangarei District Council's Esplanade Reserve. The two abatement notices were issued on 8 August 2023 on behalf of Northland Regional Council. The notices required compliance on or before 15 September 2023.

### **Application for stay of abatement notice**

[3] On 25 August 2023, an application for stay of the three abatement notices was filed. The application was supported by an affidavit of Graeme Douglas Bowkett affirmed 17 August 2023.

[4] In relation to the boat ramp, Mr Bowkett maintains that the boat ramp is a permitted activity. Therefore, a stay is requested to determine the lawfulness of the activity before compliance with the abatement notice is required. In respect of environmental considerations, Mr Bowkett submits there is no discharge, no material obstruction, the boat ramp is not out of character with the surrounding environment, and alleged effects relating to character and amenity are reversible if the appeal is unsuccessful. Mr Bowkett submits the potential effects of removing the ramp are greater than the status quo.

[5] In relation to the gabion baskets, Mr Bowkett maintains they are permitted. Mr Bowkett is in the process of seeking expert advice on the bank collapse and erosion around his property and intends on applying for any required resource consents once a decision has been made on how to proceed. He submits there are no alleged environmental effects of ecological relevance or significance, and character and amenity effects are reversible. He submits there are little to no environmental effects from the gabion baskets if the stay was to be granted as they are not obstructing access, the baskets provide shelter against further erosion at the toe of the slope which has failed and could affect his home. Mr Bowkett asserts this also reduces sediment run-off, the baskets themselves do not pose any sediment or contamination risk, and the baskets are a commercial designed product for use in similar environments.

[6] In relation to earthworks associated with the metal accessway, Mr Bowkett maintains the repair and maintenance is a permitted activity. Mr Bowkett has added further hessian matting along the face-cut area, therefore complying with the sediment controls aspect of the abatement notice. He submits there is no lawful basis to require landscaping works be undertaken. Further, given the current site is stable and compliant with sediment and erosion controls, not meeting the landscaping requirements of the abatement notice would not negatively affect the environment if a stay is granted.

[7] Mr Bowkett submits it would be unreasonable to require compliance with the before the appeals are determined.

### **Judicial conference – 28 August 2023**

[8] A judicial conference was convened on 28 August 2023 to discuss the application for stay of the abatement notices and progressing the appeals.

[9] It was agreed that while the appeals would retain separate Environment Court file numbers, they will be consolidated and dealt with together.

[10] It was also agreed that while the affidavit of Mr Bowkett in support of the stay application only refers to Whangarei District Council in the intituling, the application

for stay relates to both the Whangarei District Council and (two) Northland Regional Council abatement notices.

[11] The parties also agree that a stay could be granted for a period of two months. This will allow parties to discuss the appeals before reporting to the Court on progress.

### **Evaluation on stay application**

[12] Section 325 RMA requires me to consider:

- (a) what the likely effect of granting a 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 to hear from the parties; and
- (d) other matters as the Judge thinks fit.

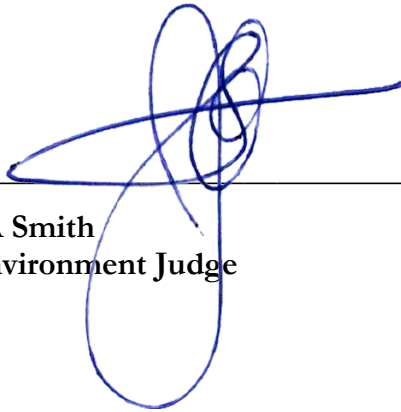
[13] The parties have agreed the stay application can be granted for a period of two months. I am satisfied at this stage that environmental considerations will not be of concern in granting the application for stay. Further I am satisfied that, at this time, it would be unreasonable to require compliance with the abatement notices pending the possible resolution of the appeals. I also have heard from the parties and the parties have an agreed position.

[14] Accordingly, the Court orders a stay of the abatement notices until 24 October 2023. The stay is to be reviewed on or after 24 October 2023. Application to vary or cancel the stay may be made on notice.

### **Further directions**

[15] The parties are to file a memorandum, preferably joint, **by 24 October 2023**. The memorandum is to address the progress made since the making of the stay order and these directions, and outline steps to be taken to resolve the matter that is the subject of the abatement notices.

[16] If the parties cannot agree or the Court retains concerns, a further judicial conference may be required. This may involve review of the stay order.



**J A Smith**  
**Environment Judge**

