

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TAMAKI MAKAU**

**Decision No. [2023] NZEnvC 217**

IN THE MATTER OF

an appeal under s 325 of the Resource  
Management Act 1991

BETWEEN

D & B YZENDOORN

(ENV-2023-AKL-000167)

Appellant

AND

HAMILTON CITY COUNCIL

Respondent

Court: Environment Judge M J L Dickey

Last case event: 25 September 2023

Submissions: T Fletcher for the Appellant  
L F Muldowney for the Respondent

Date of Decision: 13 October 2023

Date of Issue: 13 October 2023

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**DECISION OF THE ENVIRONMENT COURT**

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A: The application for stay of the appeal is granted.



## REASONS

### Introduction

[1] This appeal relates to an abatement notice issued by the Hamilton City Council (**Council**) on 7 September 2023 requiring Mr and Mrs Yzendoorn (**Appellants**), to cease outdoor storage of the shipping container at 29 Petersburg Drive, Flagstaff, Hamilton) and to remove the shipping container from the Property.

### Appeal and application for stay

[2] The appeal against the abatement notice was filed on 22 September 2023. The appeal was accompanied by an application for stay of the abatement notice. An affidavit in support of that application was filed by the appellants.

[3] The Council consents to the application for stay.

[4] The parties also seek directions to timetable the matter towards a hearing.

[5] Before granting a stay of an abatement notice, under s 325(3D) of the RMA, 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. I have also taken into account the fact that the Council consents to the stay of the proceedings. On this basis I accept that it would be unreasonable for the Appellants to comply with the abatement notice pending the decision on the appeal.

### **Outcome**

[7] The application for stay is granted pending the resolution of this appeal.

[8] A separate minute will issue addressing timetabling directions.



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

