

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision No. [2024] NZEnvC 097

IN THE MATTER

of an appeal under s 325 of the
Resource Management Act 1991

BETWEEN

CLINTON GARWIN HARTLEY and
JILLIAN LEAH HARTLEY

(ENV-2024-AKL-033)

Appellants

AND

AUCKLAND COUNCIL

Respondent

Court: Environment Judge L J Semple sitting alone under s 309 of
the Act

Hearing: In Chambers at Wellington (on the papers)

Last case event: 24 April 2024

Date of Decision: 2 May 2024

Date of Issue: 2 May 2024

**DECISION OF THE ENVIRONMENT COURT
ON APPLICATION FOR STAY**

A: The application for a stay of the abatement notices is granted.

B: The abatement notices are stayed pending determination of a retrospective resource consent filed in respect of the non-complying parts of the fence or until Monday 30 September 2024, whichever date is the earliest.



- C: Auckland Council is to file a reporting memorandum as to the progress of the resource consent application by Friday 6 September 2024.
- D: Leave is reserved for any party to apply for further or other orders should circumstances change.

REASONS

Introduction

[1] Auckland Council issued abatement notices (ABT21711525 and ABT21711526) to Mr Hartley and Mrs Hartley (the Appellants) in February 2024. The notices relate to a section of fencing on the boundary of their property at 4 Keys Terrace, St Heliers which exceeds the 2m height standard in the Auckland Unitary Plan (Operative in Part) (Standard H6.6.16).

[2] The Appellants lodged a Notice of Appeal dated 8 March 2024 against both abatement notices together with an application for a stay of those abatement notices pending resolution of a retrospective resource consent lodged to regularise the height breaches.

[3] The Court sought the Council's position on the application for stay on 8 April 2024 and was advised on 24 April 2024 that it did not oppose the application for stay.

[4] Before granting a stay of an abatement notice, under s 325(3D) of the Resource Management Act 1991, an Environment Judge 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.

Determination

[5] I note that the Council does not oppose the application for stay. In addition, I have reviewed the affidavits of Mr Moore, (surveying), Mr Guthrie (architecture) and Mr O'Connor (planning) and am satisfied that the area of non-compliance with the height limit is relatively small and given the nature and location of the fence and the height exceedances, the effects on views, outdoor living and shading are negligible. I am further satisfied that it would be unreasonable to require the fence height to be reduced prior to knowing the outcome of the resource consent application.

[6] I therefore grant the application for stay until the outcome of the resource consent is known or 30 September 2024 whichever is the earlier.

[7] I consider it appropriate for the Council to report back to the Court within four months (6 September 2024) as to the progress of the resource consent application. If there is a need for the stay to be extended at that time, the Court will make that determination then.

[8] Leave is reserved for any party to apply for further or other orders at any stage.



L J Semple
Environment Judge

