

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TAMAKI MAKAU

Decision [2023] NZEnvC 224

IN THE MATTER OF

an application for enforcement orders
under s 316 of the Resource
Management Act 1991

BETWEEN

WAIKATO DISTRICT COUNCIL

(ENV-2022-AKL-185)

Applicant

AND

TAS PROPERTY DEVELOPMENTS
LIMITED

First Respondent

AND

LATCHMAN GOUNDEN AND
SAVITA GOUNDEN

Second Respondent

Court: Environment Judge MJL Dickey
Last case event: 16 October 2023

Date of Decision: 27 October 2023

Date of Issue: 27 October 2023

DECISION OF THE ENVIRONMENT COURT

Under ss 314, 316 and 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- A: The First Respondent is to apply for the necessary resource consents and building consents (**Consents**) to authorise the works outlined in Order B by 15 November 2023 and comply in a timely manner with any requests for further



information from the Applicant.

B: If the Consents are obtained the following works shall be undertaken by the First Respondent:

(a) Within 5 months of obtaining the Consents it will excavate and remove all non-engineered fill from behind (above) the 2.8 high retaining wall (**Northern Retaining Wall**) at the north end of 26 Heather Green Avenue, Meremere (**Property**) and replace with suitably plate compacted hard fill (GAP 65 or equivalent). This must be conducted in accordance with the following standards:

- (i) Excavation is to occur only during a sustained period of fine weather;
- (ii) Excavation will occur in a continuous timeframe with no stand-down between the period of excavation and replacement;
- (iii) The replacement of fill is to be completed continuously and immediately following excavation;
- (iv) Replacement materials are to be tested and certified during placement by Ground Consulting Ltd; and
- (v) The rear slope of the Northern Retaining Wall should be finished to slope gradient no steeper than 25 degrees to the horizontal.

(b) Within 5 months of obtaining the Consents it will construct a 600mm high compacted earthen berm along the front of the Northern Retaining Wall as per the site plan annexed to this order. This earthen berm must be:

- (i) constructed in advance of work behind the Northern Retaining Wall; and
- (ii) maintained in place while the Northern Retaining Wall remains

in place.

(c) Appoint:

- (i) Ground Consulting Ltd to supervise and monitor the earthworks; and
- (ii) AV Engineering Design Limited to check the structural engineering aspects of the works.

(d) Within 20 working days of completion of the works in (a) and (b), procure from Ground Consulting Ltd and AV Engineering Design Limited, as applicable, Construction Review Producer Statements (PS4) to verify that the earthworks and retaining wall and subsoil drain have been constructed in accordance with the design drawings annexed to this order.

C: The following terms and conditions apply to the orders above:

- (a) That the orders are to apply to personal representatives, successors, and assignees of the Respondents to the same extent as the order applies to them, under section 314(5) of the Act. 'Successors' includes any new purchasers and/or subsequent owners of the Property.
- (b) Should Tas Property Developments Limited default on the orders the Second Respondents, Latchman Gounden and Savita Gounden, shall be subject to the orders, which can be enforced against them and their successors.

D: The costs of investigation and monitoring of adverse effects on the environment and the costs of and incidental to this application are reserved and may be referred to the Court if not agreed.

E: If the Consents are not obtained by 11 December 2024 the parties are to advise the Court and propose any amendments to these orders.

REASONS

Introduction

[1] On 14 October 2022 the Waikato District Council filed an application for enforcement orders in relation to works being undertaken at 24 and 26 Heather Green Avenue, Meremere.

[2] A Consent Order was issued on 19 December 2022 against the Respondents, after the parties reached an agreement in relation to the terms of the enforcement orders. The enforcement orders required, among others, geotechnical and engineering investigations to determine a suitable remedial design for the upper retaining wall and adjacent side wall at 26 Heather Green Avenue, Meremere.

[3] A further application for enforcement orders was made on 28 June 2023 against both Respondents. The application sought the following orders:

1. The further enforcement orders sought pursuant to section 316 of the Act and to be heard by the Environment Court at such time as the Court directs, are:
 - (a) An order under section 314(1)(b)(ii),(c) or (da) of the Act to excavate and remove all non-engineered fill from behind (above) the 2.8 high retaining wall (**Northern Retaining Wall**) at the north end of 26 Heather Green Avenue, Meremere (**Property**) and replace with suitably plate compacted hard fill (GAP 65 or equivalent). This must be conducted in accordance with the following standards:
 - i. Excavation is to occur only during a sustained period of fine weather;
 - ii. Excavation will occur in a continuous timeframe with no stand-down between the period of excavation and replacement;
 - iii. The replacement of fill will be completed continuously and immediately following excavation;
 - iv. Replacement materials are to be tested and certified during placement by Ground Consulting Ltd; and
 - v. The rear slope of the Northern Retaining Wall should be finished to slope gradient no steeper than 25 degrees to the horizontal.
 - (b) An order under section 314(1)(b)(ii), (c) or (da) of the Act to require the placement of a 600mm high compacted earthen berm along the front of the Northern Retaining Wall as per the site plan **annexed** to this

application, and that this earthen berm must be:

- i. constructed in advance of work behind the Northern Retaining Wall; and
 - ii. maintained in place while the Northern Retaining Wall remains in place.
- (c) An order under section 314(1)(b)(ii), (c) or (da) of the Act to require:
- i. Ground Consulting Ltd to be appointed to supervise and monitor the earthworks; and
 - ii. AV Engineering Design Limited to be appointed to check the structural engineering aspects of the works; and
 - ii. Ground Consulting Ltd and AV Engineering Design Limited to respectively provide, as applicable, Construction Review Producer Statements (PS4) verify that the earthworks and retaining wall and subsoil drain have been constructed in accordance with the design drawings annexed to this application at the completion of the earthworks.
- (d) An order under section 285 of the Act for the costs of and incidental to this application.

...

[4] The matter was set down for hearing on 6 September 2023 but this was subsequently cancelled when the parties advised that they had reached an agreement concerning the further application for enforcement orders. The agreement included a change to the proposed orders so as to only require the First Respondent to undertake the required works in the first instance. If it failed to comply with the orders the Second Respondent would then be subject to the orders

[5] Having considered the parties' agreement and proposed enforcement orders, the Court asked the parties to respond to the following questions in a Minute of 23 August 2023:

First, the Court would like to see a letter from the property owners, even though they are director/shareholders of the company, authorising the company to enter upon the land for the purpose of complying with the proposed orders.

Second, the Court would appreciate clarification on whether building or resource consent is required for the works in the proposed orders.

[6] On 25 August 2023 the Court received a letter from the owners of the Property/Second Respondents, Latchman Gounden and Savita Gounden, authorising Tas Property Developments Limited and its agents to enter the Property for the purpose of complying with the orders.

[7] On 6 September 2023 the Applicant confirmed that both resource consent and building consent is required for the works.

[8] On 16 October 2023 the parties advised the Court that they had reached an agreement to vary the orders sought to reflect that resource consent and building consent is required.

[9] Having considered the draft enforcement orders and the memorandum of the parties setting out the agreement reached between them, I have determined that it is appropriate to make the enforcement orders largely as sought.

Orders

[10] Accordingly, under ss 314, s316 and 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

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B: If the Consents are obtained the following works shall be undertaken by the First Respondent:

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- (c) Appoint:
- (iii) Ground Consulting Ltd to supervise and monitor the earthworks; and
 - (iv) AV Engineering Design Limited to check the structural engineering aspects of the works.
- (d) Within 20 working days of completion of the works in (a) and (b), procure from Ground Consulting Ltd and AV Engineering Design Limited, as

applicable, Construction Review Producer Statements (PS4) to verify that the earthworks and retaining wall and subsoil drain have been constructed in accordance with the design drawings annexed to this order.

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D: The costs of investigation and monitoring of adverse effects on the environment and the costs of and incidental to this application are reserved and may be referred to the Court if not agreed.

E: If Consents are not obtained by 11 December 2024 the parties are to advise the Court and propose any amendments to these orders.


MJ L Dickey
Environment Judge

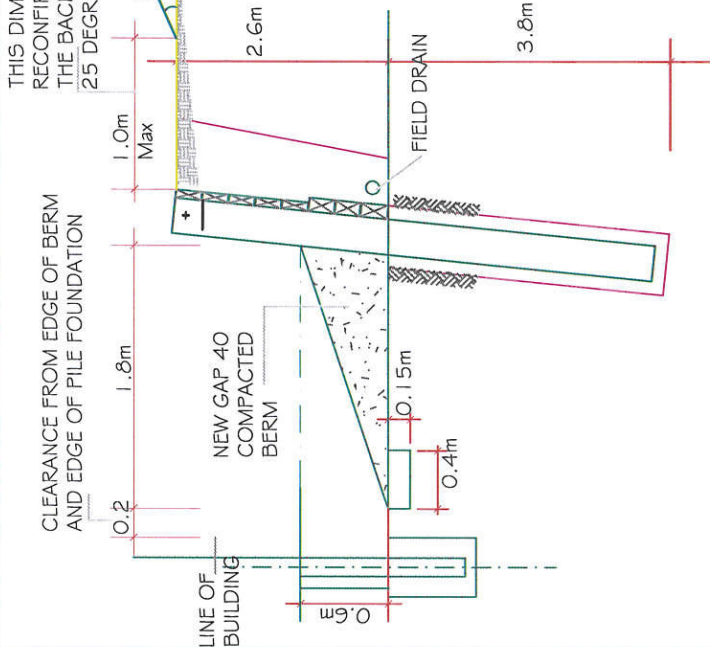


Annexure - AV Engineering Design Drawing dated 7 June 2023 Rev1

SITE COVERAGE
SITE AREA: 815 SQ M
35% COVERAGE = 288.4 SQ M

PROPOSED RESIDENCE : 141 SQ M = 16%
IMPERMEABLE AREA : 31 SQ M = 4.7%
PERMEABLE AREA : 507 SQ M = 75.3%
WIND ZONE: MEDIUM
EARTHQUAKE ZONE: ZONE 1
EXCAVATION : 60 CUBIC M

PATIO AND PAVING TO FRONT DOOR TO COMPLY WITH NZBC
D1.2.1 SLIP RESISTANCE TABLE 2. MAXIMUM STEP HEIGHT TO
COMMON / MAIN PRIVATE STAIRWAYS TO BE 190mm



SECTION X - X

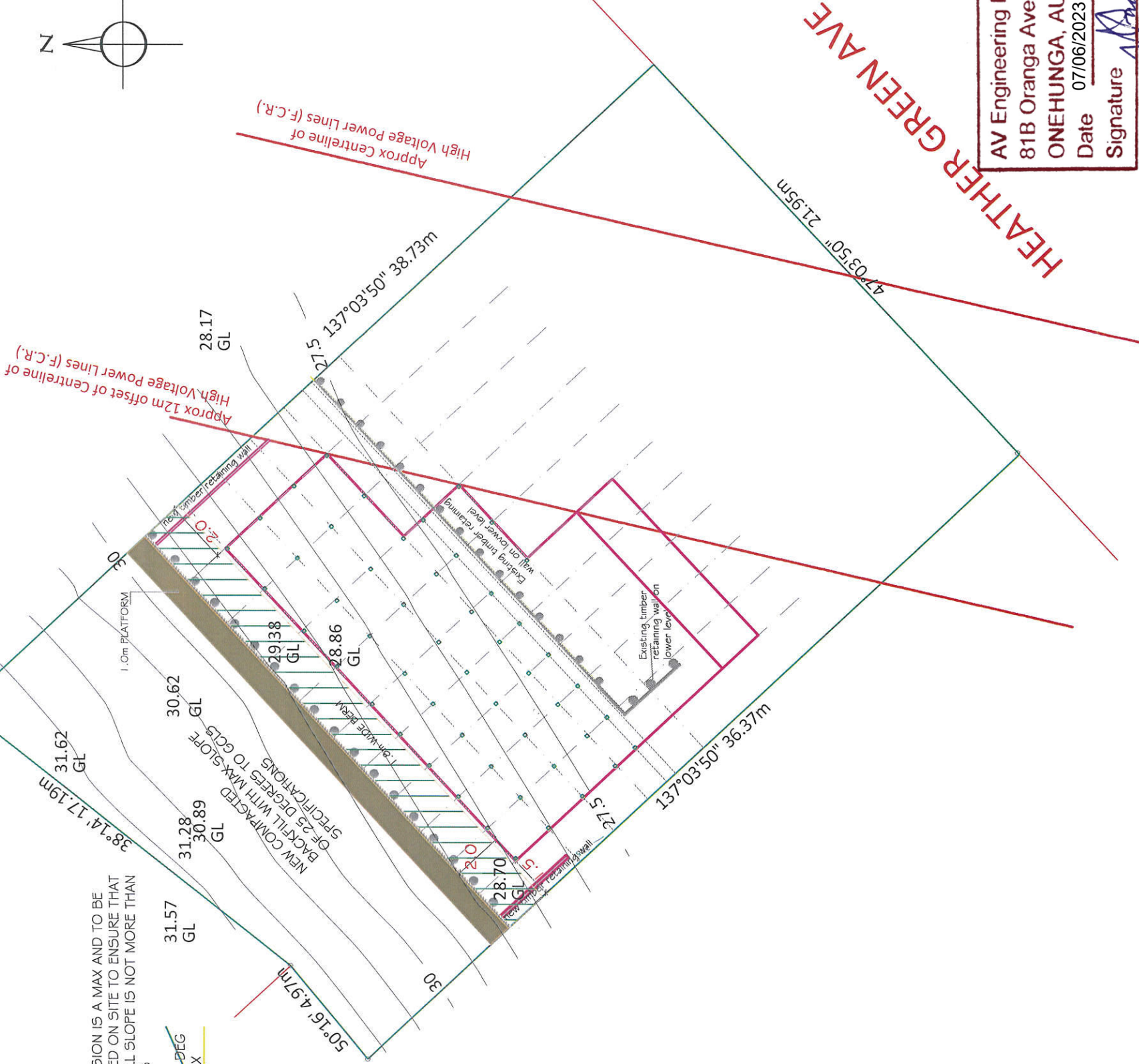
NOTE:
BEARERS - 1/140 x 45 SG8 BEARERS 1.6m
MAX SPAN
PILES - 125 x 125 (H5) SENTON PILES IN
400mm DIA x 600mm DEEP
CONCRETE PAD
JOISTS - 140 x 45 SG8 AT 400mm CRS
BASEMENT FLOOR - 100mm CONCRETE FLOOR
REINFORCED WITH S72 MESH

PROPERTY DETAILS

LOT No 203
DP 47628
AREA 815 SQ M

NOTE:
1. LEVELS ARE IN TERMS OF LANDS AND
SURVEY ATUM (MSL) AUCKLAND 1946
2. CONTOUR INTERVALS IS 0.10m

NOTE HAZARD MANAGEMENT
TEMPORARY FENCE
IF A WORK SITE IN NOT COMPLETELY ENCLOSED AND UNAUTHORISED
ENTRY BY CHILDREN IS LIKELY. IT IS ACCEPTABLE FOR SPECIFIC
HAZARDS TO BE FENCED ONLY WHEN WORKERS ARE ABSENT FROM
THE IMMEDIATE VICINITY WHERE A POTENTIAL HAZARD WORK SITE
MAKES A SAFETY BARRIER NECESSARY. A BARRIER COMPLYING WITH
TABLE 1. NZBC F5/AS 1 IS AN ACCEPTABLE SOLUTION



AV Engineering Design Ltd
81B Oranga Ave
ONEHUNGA, AUCKLAND
Date 07/06/2023
Signature *[Signature]*

All enclosed timber framing to be
H1.2 treated
All exposed timber including
claddings, trims, bearers and cavity
battens to be H3.2 treated
All inground timber to be H5 treated
Use SG8 timber unless otherwise
stated
Subfloor fixings within 600mm of
finished ground level and all exterior
fixings to be stainless steel

1. All dimensions and underground
service locations to be checked on
site prior to commencement of work
2. Do not scale from drawings, if in
doubt, ask the Architectural
Designer
3. Construction to comply with
NZS3604, local body bylaws and the
New Zealand Building Code
4. These drawings are only to be
used for the purpose they were
supplied. No reproduction of these
plans is permitted without the written
approval of the Architectural
Designer
5. These drawings are subject to
copyright and remain the property of
the Architectural Designer
6. Refer to the Specification

PROJECT DETAILS

PROPOSED RESIDENCE AT
26 HEATHERGREEN AVENUE
MEREMERE

SITE PLAN

SCALE:	1:200	DESIGNED:	CP
DATE:	06/2023	DRAWN:	CP
		CHECKED:	CP
Drq No	Revision	Job No	
SKO3			

KASR DESIGNS LTD
P O BOX 14563
PANMURE
AUCKLAND 1741