

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision No. [2024] NZEnvC 002

IN THE MATTER OF

an application under s 325(3A) of the
Resource Management Act 1991

BETWEEN

M & R NEWSOME

(ENV-2023-AKL-000202)

Appellant

AND

AUCKLAND COUNCIL

Respondent

Court: Environment Judge M J L Dickey

Last case event: 27 November 2023

Date of Decision: 25 January 2024

Date of Issue: 25 January 2024

DECISION OF THE ENVIRONMENT COURT

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



REASONS

Introduction

[1] This appeal relates to an abatement notice issued by the Auckland City Council (**Council**) on 7 November 2023 requiring Mr and Mrs Newsome (**Appellants**), to immediately remove the building partly within the road reserve and partly within the front yard at 1/213 Lake Road, Belmont, Auckland.

Appeal and application for stay

[2] The appeal against the abatement notice was filed on 27 November 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 but seeks that it only remains in place until 29 March 2024 for the following reasons:

- (a) the environment effects associated with a structure in this location (a flood-prone area) are expected to increase during higher rainfall periods in the autumn and winter months;
- (b) the Council has already extended the compliance date for the abatement notices until 16 February 2024; and
- (c) a stay until 29 March 2024 will provide sufficient time for the parties to engage in resolution discussions and attend court-assisted mediation, by which time the Council expects to have a clearer view on whether it considers that a further stay of the notices is appropriate.

[4] Before granting a stay of an abatement notice, under s 325(3D) of the RMA, I

must consider:

- (d) what the likely effect of granting a stay would be on the environment; and
- (e) whether it is unreasonable for the person to comply with the abatement notice pending the decision on the appeal; and
- (f) whether to hear
 - (i) the applicant;
 - (ii) the local authority or consent authority whose abatement notice is appealed against; and
- (g) such other matters as the Judge thinks fit.

[5] In the circumstances, 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

[6] The application for stay is granted until 29 March 2024.

[7] The parties are to report back to the Court on the status of the matter by 20 March 2024.



MJL Dickey
Environment Judge

