

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2024] NZEnvC 055

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

WHANGĀREI DISTRICT COUNCIL

Respondents

Court: Environment Judge J A Smith

Hearing: 21 – 22 March 2024

Last case event: 22 March 2024

Appearances: A Braggins and A Parkinson for Mr Bowkett
G Mathias for Whangārei District Council
K de Silva for Northland Regional Council

Date of Decision: 25 March 2024

Date of Issue: 25 March 2024

**DECISION OF THE ENVIRONMENT COURT AS TO STAY OF
ABATEMENT NOTICES**

A: The abatement notices are stayed, on the basis of certain undertakings set out herein, until a decision is issued on the substantive matters.

Costs are reserved.



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 Whangārei District Council's Esplanade Reserve.

[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 Whangārei District Council's Esplanade Reserve.

[3] By decision dated 29 August 2023,¹ the Court ordered a stay of the abatement notices. The stay was further extended to 5 December 2023.

[4] On 5 December 2023, Whangārei District Council filed an application for enforcement orders² requiring Mr Bowkett to remove a concrete boat ramp, remove a seawall structure of rock gabion baskets, reinstate part of Council's esplanade reserve through which an accessway/driveway has been constructed, remedy the actual or likely effects on the environment caused through such works, ensure compliance with Rule NOSZ-R5 in the Whangārei District Plan Operative in Part 2022, and reimbursement of Council's costs associated with instituting proceedings.

[5] A Judicial Conference was convened on 15 December 2023 to discuss progress and next steps of the three files. As a way forward, and given the matter was progressing to hearing in mid-March, the parties and the Court agreed to extend the stay of the abatement notices, on the basis that Mr Bowkett made certain undertakings. The stay of the abatement notices was extended to 22 March 2024, with certain undertakings.³

Further stay of abatement notices

[6] At the conclusion of the hearing on 22 March 2024, I extended the stay of the

¹ [2023] NZEnvC 182.

² ENV-2023-AKL-000209 *Whangārei District Council v Bowkett*.

³ Stay and directions of the Environment Court, dated 15 December 2023.

abatement notices, by consent of all parties, until a decision is issued on the substantive matters. The stay of the abatement notices has been extended on the same terms as in December 2023.

[7] In the circumstances as they presently stand, I consider the likely effect on the environment of granting a further stay will be relatively minor and acceptable on a temporary basis. It would be unreasonable for Mr Bowkett to comply with the abatement notices pending the decision on the appeals (and application for enforcement orders).

Outcome


[8] The abatement notices are stayed ,by consent, until a decision is issued on the substantive matters, on the basis that Mr Bowkett has undertaken that:

- (1) Subject to (3), neither he, nor invitees to his property will use the esplanade reserve opposite 1439 Cove Road (esplanade reserve being legally described as Lot 181 DP 141000) (“Esplanade Reserve”) to access the CMA with vehicles. For the avoidance of doubt, kayaks on hand drawn trailers and sailing dinghies on hand drawn trailers are not vehicles;
- (2) Subject to (3), to not undertake any further work within the Esplanade Reserve, except the mowing of grass.
- (3) The following activities are allowed:
 - (a) Access across the esplanade reserve with vehicles for the purpose of removing the boat ramp and / or rock and making good the ground surface;
 - (b) Access (including vehicular access) for the purpose of obtaining information to assist with the preparation of geotechnical or other consultant reporting;

Other works may be undertaken if approved in writing by the Whangārei District Council and also the Northland Regional Council and any such

approval is filed with the Environment Court and any such work is to be undertaken in accordance with any such approval.

[9] Costs are reserved.



J A Smith
Environment Judge

