

BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKAURAU

Decision No. [2020] NZEnvC 197

IN THE MATTER of the Resource Management Act 1991 (**the Act**)

AND of an appeal against an abatement Notice under s 325 of the Act

BETWEEN V RAGUNATHAN  
(ENV-2020-AKL-000174)

Appellant

AND AUCKLAND COUNCIL

Respondent

Court: Judge J A Smith sitting alone pursuant to s 279 of the Act

Appearances: V Ragunathan (**Appellant**)  
Mr T W M C Randal for the Auckland Council (**the Council**)

Date of Decision: 18<sup>th</sup> November 2020

Date of Issue: 27 NOVEMBER 2020

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**ORAL DECISION OF THE ENVIRONMENT COURT OF JUDGE J A SMITH**

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- A: That the Abatement Notice ABT21514508 issued on 13<sup>th</sup> October 2020 against the Appellant is cancelled.
- B: Given the notice is cancelled the Court remits the filing fee in respect of this matter and authorises the Registrar to repay the filing fee to Mr Ragunathan.
- C: The parties have reached a separate agreement to resolve the costs issues.
- D: The file may be closed.

**REASONS**



## Introduction

[1] This was an appeal against an Abatement Notice. Mr Ragunathan filed documents to this Appeal which were accepted by the Mr Quinn for the Council as being an Affidavit for the purposes of this proceeding.

[2] Mr Ragunathan is a Chartered Engineer and was retained to give both consultancy advice and also provide some producer statements in respect of a property being constructed at 227 Balmoral Road, Auckland 1024.

## Background

[3] Abatement notices had previously been issued against the owner and subsequently were also issued against the director of works onsite. The reason why Mr Ragunathan received an abatement notice is unclear, but this occurred some weeks after there had been a meeting at the site.

## Progress

[4] As soon as the Appeal was received the Court held a Judicial telephone conference and set the matter down for an early hearing on the 18<sup>th</sup> of November 2020. The Council subsequently filed a Cancellation of the Abatement Notice under s 325(a)(ii).

[5] As Mr Randal notes, there is no particular form required for that cancellation. Nevertheless, in this case there are several aspects of the cancellation which are of concern to Mr Ragunathan:

- (1) The withdrawal states the Abatement Notice is no longer required. Mr Ragunathan's view thus suggested it was at some previous time required; and
- (2) The withdrawal was cancelled without prejudice to the Council's ability to take further enforcement action.



[6] A Notice of Withdrawal cannot be conditional. Although Mr Randal questions the utility of the Court cancelling the order, he does not dispute that the Court has jurisdiction to do so.

## Outcome

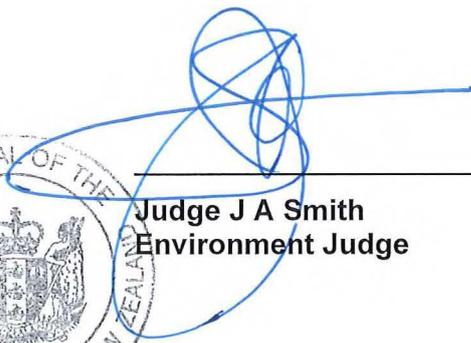
[7] Given Mr Ragunathan's concerns I consider it is clearer to issue a Notice of Decision cancelling the Notice of Abatement in full, from the date of inception.

[8] That being the case there is no need for an Appeal and accordingly I have authorised the Registrar to repay the filing fee in respect of this proceedings. The parties have reached separate agreement as to how to resolve other costs issues and it is not necessary for me to comment further on those.

[9] Accordingly, I make an Order:

- (a) Cancelling Abatement Notice ABT-21514508 issued on the 13<sup>th</sup> of October 2020 against the Appellant.
- (b) Given the notice is cancelled the Court remits the filing fee in respect of this matter and authorises the Registrar to repay the filing fee.
- (c) The parties have resolved costs issues by separate agreement. Accordingly, this ends the matter and the file may be closed.



  
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**Judge J A Smith**  
**Environment Judge**