BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2019] NZEnvC 033

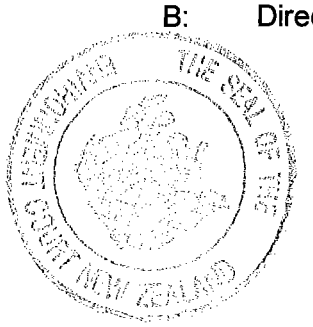
IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal under s 325 of the Act
BETWEEN	DONGHUA LIU
	(ENV-2017-AKL-000126)
	Appellant
AND	AUCKLAND COUNCIL
	Respondent

Court:	Environment Judge D A Kirkpatrick sitting alone pursuant to s279(1)(e) of the Act
Hearing:	at Auckland on 3 December 2018
Appearances:	F Pilditch for Appellant N Batts for Respondent
Date of Decision:	1 March 2019
Date of Issue:	1 March 2019

DECISION OF THE ENVIRONMENT COURT

A: The appeal is dismissed.

B: Directions are made for any application for costs.



REASONS

Introduction

[1] This appeal is against an abatement notice which has already been cancelled by the Respondent. The Appellant continues to pursue his appeal, contending that the basis on which the abatement notice was issued was unlawful and seeking that both it and the decision to issue it be quashed.

[2] The issues that arise in this situation include:

(a) what the basis of this appeal is;

(b) whether the Court has jurisdiction to consider and determine an appeal under s 325 RMA where the abatement notice has been cancelled;

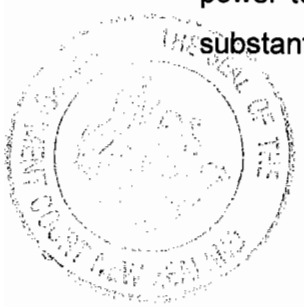
(c) whether the appeal is moot and, if so, whether the Court should decline to consider and determine it on that ground;

(d) whether the challenge to the basis on which the decision was made to issue the abatement notice amounts to judicial review of administrative action, beyond the powers of this Court;

(e) whether the relief sought by the Appellant could be satisfied by declaration as to the lawfulness of the Council's exercise of its power and, if so, whether the Court should consider making such a declaration; and

(f) whether, on its merits, the abatement notice should not have been issued because the Council's enforcement officer did not have reasonable grounds for his stated belief that a roof covered in asphalt shingles on this house at this location would have adverse effects on the environment.

[3] This decision will address the issues in that order. The basis for the appeal informs discussion of the subsequent issues. The issue of jurisdiction or power to address the appeal should be considered and determined first, because if there is no jurisdiction then that will dispose of the appeal. Consideration of any discretionary power to hear the appeal follows. Finally, if those prior thresholds are passed, the substantive issue can be considered on its merits.



[4] It is nonetheless important to set out the context in which these issues arise first, followed by the relevant statutory and district plan provisions for ease of reference.

Background

[5] The Appellant acquired the subject property at 110 St Andrews Road, Epsom, Auckland (the **Property**), in 2013. The Property has an area of 2302m^2. There was an existing house on it at the time the Appellant acquired it.

[6] The Appellant intended to redevelop the site. To that end he obtained a series of resource consents:

(i) 8 August 2013: external additions and alterations to the existing dwelling;

(ii) 24 July 2015: additions and alterations to the existing dwelling, construction of two new dwellings on adjacent sites and subdivision of the site into three lots; and

(iii) 20 June 2016: resource consent to change the roof structure of the existing house from a hipped roof to a gabled roof.

[7] The Council's enforcement officer, Mr Dean Ching Yee, acting on a complaint, inspected the Property and served an abatement notice dated 4 May 2017 (which is not the subject of this appeal) alleging that alterations to that date involved demolition to an extent that contravened a rule in the Auckland Unitary Plan (**AUP**) for the protection of the special character of the area and requiring all works to cease.

[8] In response, on 25 May 2017 the Appellant applied for a retrospective resource consent in respect of the alleged contravention of the rule. At around the same time, the Appellant's contractors installed an asphalt shingle roof, apparently believing that this could be done and then retrospectively consented as a minor variation to the consented work. The Appellant's architect included this change to the roofing material as part of the demolition application. There was correspondence about how this application should be processed. It appears that it was transformed from an application to demolish parts of the building into an application to alter and replace external walls and joinery areas.

[9] On around 14 July 2017, the Council's planning officer advised that the grant of consent for the alterations to the walls was supported, but the change in roofing

material was not supported. The Appellant decided to accept consent for the alteration work and to pursue consent for the roofing material separately. On 8 August 2017, retrospective consent for the alteration works was granted.

[10] The abatement notice in respect of the asphalt shingles on the roof, which is the subject of this appeal, was served on 14 August 2017. The abatement notice required that the Appellant:

> Reinstate the corrugated metal roofing on the existing dwelling in accordance with the approved resource consent plans (R/JSL/2014/2373 and R/VCC/2014-2373/1) by 14 November 2017.

The references to the approved plans are to the Council file numbers: the first is to the 2015 consent and the second is to the 2016 consent.

[11] The reasons for the abatement notice included that the original resource consent and the subsequent variation to it required the roof material to match the existing corrugated colourSteel roofing. The proposal to use asphalt shingles in a new resource consent application was not supported by the Council's Specialist "due to the use of asphalt roofing shingles having significant adverse effects in terms of built heritage issues". The notice goes on to state:

> This abatement notice is issued because in my opinion such an activity is a contravention of s 9(3) of the RMA and Activity table D18.4.1(A4) of the AUP(OP). Such a contravention is an offence.
>
> This abatement notice is issued because in my opinion the required action is necessary to ensure compliance by you and your contractors with the RMA and Activity table D18.4.1(A4) of the AUP(OP). And is also necessary to avoid, remedy or mitigate any actual or likely adverse effect on the environment caused by you and your contractors.
>
> The use of asphalt shingles roofing material is not sympathetic to the original house in the locality, and is not a positive contribution to the house into the house. Widespread use would reduce character in the locality and the overlay. The use of asphalt shingles roofing does not respond positively to the identified special character values and context the existing house is in.

[12] The Appellant lodged his notice of appeal against the abatement notice on 29 August 2017. The subject of the appeal was the requirement to reinstate the corrugated roofing on the existing dwelling. The notice of appeal stated that the reasons for it were:

(1) the reinstatement of the corrugated roofing on the existing dwelling is not necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment in terms of s 322(1)(b) RMA;

(2) the enforcement officer issuing the abatement notice did not have reasonable grounds for believing that the reinstatement of the corrugated roofing was necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment (s 322(4)); and

(3) such other grounds as maybe identified in writing prior to the hearing of the appeal.

[13] The relief sought was for the abatement notice to be quashed.

[14] Sometime later, a further application was made by the Appellant for retrospective resource consent to change the roofing material from corrugated metal cladding to asphalt shingles tiles. This was processed on a non-notified basis and granted by an independent commissioner for the Council on 28 February 2018.

[15] On 13 March 2018 the Council cancelled the abatement notice.

[16] An amended notice of appeal was filed on 28 June 2018 seeking as relief an order quashing the abatement notice and the decision to issue the abatement notice.

Auckland Unitary Plan Provisions

[17] Under the AUP, the Property is zoned Residential – Single House Zone. It is also subject to the Special Character Area Overlay for the Residential: Isthmus B – Mount Eden/Epsom (Part B) Area (the **Overlay**). As part of that Overlay the Property is identified as an Isthmus B2 site and also as being subject to the "Demolition, Removal and Relocation Rules."

[18] Table D18.4.1 is the Activity table for the Overlay. Rules (A3) and (A4) in that table provide for the following as restricted discretionary activities:

> (A3) Total demolition or substantial demolition (exceeding 30 percent or more, by area, of wall elevations and roof areas) of a building, or the removal of a building (excluding accessory buildings), or the relocation of a building within the site on: ...
>
> (b) all other sites identified as subject to demolition, removal or relocation rules as shown in the maps in the Special Character Areas Overlay Statements.
>
> (A4) External alterations or additions to a building on all sites in the Special Character Areas Overlay–Residential or Special Character Areas Overlay - General (with a residential zoning)

[19] To understand the purpose of these rules, it is necessary to read the relevant objectives and policies in Chapter D18 of the AUP, together with the relevant matters

to which the Council's discretion as the consent authority is restricted and the assessment criteria for the exercise of that discretion that are relevant to activities (A3) and (A4). These include:

a) The three objectives in D18.2:

(1) The special character values of the area, as identified in the special character area statement are maintained and enhanced.

(2) The physical attributes that define, contribute to, or support the special character of the area are retained, including:

(a) built form, design and architectural values of buildings and their contexts;

(b) streetscape qualities and cohesiveness, including historical form of subdivision and patterns of streets and roads; and

(c) the relationship of built form to landscape qualities and/or natural features including topography, vegetation, trees, and open spaces.

(3) The adverse effects of subdivision, use and development on the identified special character values of the area are avoided, remedied or mitigated.

b) A number of the policies in D18.3 for the residential areas, including:

(1) Require all development and redevelopment to have regard and respond positively to the identified special character values and context of the area as identified in the special character area statement.

(2) Maintain and enhance the built form, design and architectural values of the buildings and the area, as identified in the special character area statement, so that new buildings, alterations and additions to existing buildings, infrastructure and subdivision (where applicable):

(a) maintain the continuity or coherence of the identified special character values of the area;

(b) maintain the streetscape qualities and cohesiveness;

(c) respond positively to the design, scale, height, setback and massing of existing development, any distinctive pattern of subdivision, intensity of development, its relationship to the street, streetscape cohesiveness and is of a compatible form which contributes to the identified special character values of the area;

(d) maintain the relationship of built form to open space and landscape context;

(e) maintain the setting of the special character area, where these features, such as mature trees and landform, contribute to the special character values of the area;

(f) enable the removal of additions and features that detract from the special character of the building or identified special character of the wider area;

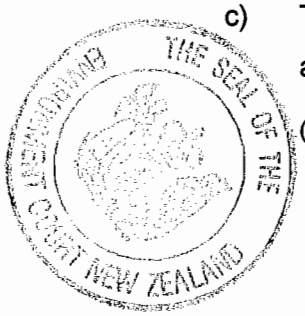
(g) minimise the loss of built fabric and encourage maintenance and repair;

(h) require new materials to be compatible with the age, detailing, finishes and colour; and

(i) recover or reveal special character values of buildings and features.

c) The following matters of discretion in D18.8.1.1 for restricted discretionary activities in the residential areas:

(1) For the total demolition or substantial demolition (exceeding 30 per cent or more, by area, of wall elevations and roof areas); or the removal of a building (excluding accessory buildings) from a site; or the relocation of a building within the site:



(a) the effects on the streetscape and special character context as outlined in the special character area statement;

(b) the integrity of the building in its current state, having regard to its architectural form and style and the authenticity of its component parts as well as its contribution to the streetscape character;

(c) the building's relationship to other adjacent buildings, and if it contributes to a group in such a way that its loss or relocation would result in the loss of a character value attributable to the group;

(d) the condition of the building, and the practicality and cost of any necessary rehabilitation, and the ability to achieve reasonable amenity for occupants and reasonable compliance with any requirement of the Building Act 2004;

(e) where a replacement building is proposed, its design, quality, purpose and amenities and the contribution that such as building might make to the qualities of streetscape character; and

(f) the effect on landscape and vegetation.

(2) for external alterations or additions to buildings; or for the construction of a new building or the relocation of a building onto a site:

(a) the effects on the streetscape and special character context as outlined in the Special Character Area Statement;

(b) the building and its contribution to streetscape character; including its design, quality, purpose and amenities including matters of scale, form, massing, materials, setbacks and the relationship to the street; and

(c) the effects on landscape and vegetation.

d) The assessment criteria in D18.8.2.1 for activities (A3) and (A4) in the residential areas:

(1) For the total demolition or substantial demolition (exceeding 30 per cent or more, by area, of wall elevations and roof areas); or the removal of a building (excluding accessory buildings) from a site; or the relocation of a building within the site:

(a) Policies D18.3(1) to (7); ...

(c) for Special Character Areas Overlay – Residential : Isthmus B and Residential : Isthmus C:

(i) whether the special character and architectural value of the existing building (irrespective of age) and its contribution to streetscape character warrants its retention;

(ii) whether the special character value of the building by reference to its architectural style, whether as an exemplar of the type or as being representative of the type warrants its retention;

(iii) whether the integrity of the building in its current state, having regard to its architectural form and style and the authenticity of its component parts warrants its retention;

(iv) whether its relationship to other adjacent buildings and whether the contribution it makes to a group of buildings is such that its loss would result in the loss of a character value attributable to the group;

(v) whether its contribution to streetscape character by reference to surrounds within the site, and/or to the public street, and/or to relationships to open space shared with adjacent buildings warrants its retention;

(vi) whether the practicability and cost of any necessary rehabilitation, and the inability to achieve reasonable amenity for occupants and reasonable compliance with any requirement of the Building Act warrants its demolition;

...

(2) For external alterations and additions to a building:

(a) policies D18.3(1) to (7); ...

(f) for Special Character Areas Overlay – Residential : Isthmus B:

(i) whether the alteration or addition has regard to, or complements the form, style and materials of the existing building;

(ii) whether the proposed change contributes positively to the street;

and

(iii) whether the alteration or addition is designed to have regard to landscape elements, including structural and built elements and existing established trees and hedges which make a significant contribution to streetscape value or if, where this is not practical, replacement planting or a replacement structural/built element is proposed.

[20] It is readily apparent that the special character area statement for the relevant area is an important reference for the consideration of these plan provisions and for the assessment of any activity to which they apply. This statement is included in the AUP as part of Schedule 15. The Residential B area starts at page 157 of the schedule with 13 maps covering parts of Remuera, Kohimarama, Mission Bay, St Heliers, Glendowie, Herne Bay, Parnell, Mount St John, One Tree Hill, Mount Eden, Epsom, Mount Albert, Mount Roskill, and Ōtāhuhu. The relevant map for Mt Eden/Epsom Part B is at page 158 of that schedule.

[21] There is then the text of the statement at pages 170 – 175. It is not necessary to set it out in full. The text, which covers all of those areas, is cast in general terms, dealing with the areas collectively. It concisely gives a broad outline of residential development on the Auckland isthmus during the late 19th and early 20th centuries with reference to the changes in building styles and designs. Some emphasis is given to the size of sites and the location of houses on sites and setbacks from the street. Some finer-grained assessment is offered by dividing the area into three types, B1, B2 and B3. Even so, the commentary is in broad terms reflecting a great deal of variation and diversity within the categories and styles of villas, cottages, houses and bungalows. The nature of the streetscape, including facades, gardens and street trees, is also noted in several places. There is also a section headed "Urban structure" addressing subdivision and road patterns.

[22] There is a specific section in the special character area statement on building materials, as follows:

Materials and construction – built fabric

Timber is the predominant material used for houses in the area, with many houses clad in weatherboards and decorated with timber detailing. However, houses in the Arts and Crafts, English Cottage and Moderne styles were often constructed in brick, plastered brick or partially

clad in timber shingles. Roof materials generally include corrugated iron, as well as clay and concrete tiles.

Statutory Provisions

[23] Section 322 RMA relevantly provides:

> **322 Scope of abatement notice**
>
> (1) An abatement notice may be served on any person by an enforcement officer—
>
> (a) requiring that person to cease, or prohibiting that person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the enforcement officer,—
>
> (i) contravenes or is likely to contravene this Act, any regulations, a rule in a plan, or a resource consent;
>
> ...
>
> (b) requiring that person to do something that, in the opinion of the enforcement officer, is necessary to ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan or a proposed plan, or a resource consent, and also necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment—
>
> (i) caused by or on behalf of the person; or
>
> (ii) relating to any land of which the person is the owner or occupier:
>
> ...
>
> (3) An abatement notice may be made subject to such conditions as the enforcement officer serving it thinks fit.
>
> (4) An abatement notice shall not be served unless the enforcement officer has reasonable grounds for believing that any of the circumstances in subsection (1) or subsection (2) exist.

[24] There is an important difference between the grounds on which an abatement notice may be issued, depending on whether it requires something to cease (in terms of s 322(1)(a)(i)) or whether it requires a person to do something (in terms of s 322(1)(b)). In both cases, the enforcement officer must hold the opinion, on reasonable grounds, that the thing which is to cease or to be done is controlled by the Act or regulations or a rule in the plan or a resource consent. In the case of an abatement notice requiring something to be done, there is an additional threshold that the enforcement officer must also hold the opinion, on reasonable grounds, that the thing required to be done is necessary to avoid, remedy or mitigate any actual or likely adverse effect on the environment caused by the person to whom the notice is issued or relating to land owned or occupied by that person.

[25] Under s 324 an abatement notice must state, among other things, the reasons for the notice, the action required to be taken and the period within which to cease the action. Under s 323(1), subject to the rights of appeal in s 325, a person on whom an

abatement notice is served must comply with the notice within the period specified in it.

[26] Under s 325(1) RMA, any person on whom an abatement notice is served may appeal to this Court against the whole or any part of the notice. Relevantly, subss (5) and (6) provide as follows:

> (5) Except as provided in subsection (6), the Environment Court must not confirm an abatement notice that is the subject of an appeal if—
>
> (a) the person served with the abatement notice was acting in accordance with—
>
> (i) a rule in a plan; or
>
> (ii) a resource consent; or
>
> (iii) a designation; and
>
> (b) the adverse effects in respect of which the notice was served were expressly recognised by the person who approved the plan, or notified the proposed plan, or granted the resource consent, or approved the designation, at the time of the approval, notification, or granting, as the case may be.
>
> (6) The Environment Court may confirm an abatement notice, that is the subject of an appeal, if the court considers it appropriate after having regard to the time that has elapsed and any change in circumstances since the approval, notification, or granting, as the case may be.

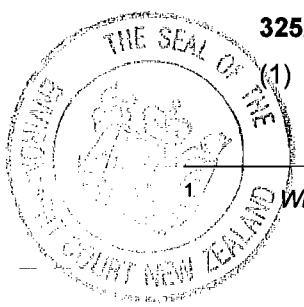
[27] The standard of proof required to support an abatement notice is the civil standard, being the balance of probabilities having regard to the gravity of the matter.[1]

[28] The Court's powers on an appeal are set out in s 290 of the Act:

> **290 Powers of court in regard to appeals and inquiries**
>
> (1) The Environment Court has the same power, duty, and discretion in respect of a decision appealed against ... as the person against whose decision the appeal ... is brought.
>
> (2) The Environment Court may confirm, amend, or cancel a decision to which an appeal relates.
>
> ...
>
> (4) Nothing in this section affects any specific power or duty the Environment Court has under this Act or under any other Act or regulation.

[29] The cancellation of an abatement notice is governed by s 325A RMA, which provides:

> **325A Cancellation of abatement notice**
>
> (1) For the purposes of this section, relevant authority means the local authority or Minister of Conservation which or who authorised, under section 38, the



[1] *Wilhelmsen v Dunedin City Council* (1992) 1A ELRNZ 126 (PT).

enforcement officer who issued the abatement notice.

(2) Where a relevant authority considers that an abatement notice is no longer required, the relevant authority may cancel the abatement notice at any time.

(3) The relevant authority shall give written notice of its decision under subsection (2) to cancel an abatement notice to any person subject to that abatement notice.

(4) Any person who is directly affected by an abatement notice may apply in writing to the relevant authority to change or cancel the abatement notice.

(5) The relevant authority shall, as soon as practicable, consider the application having regard to the purpose for which the abatement notice was given, the effect of a change or cancellation on that purpose, and any other matter the relevant authority thinks fit; and the relevant authority may confirm, change, or cancel the abatement notice.

(6) The relevant authority shall give written notice of its decision to the person who applied under subsection (4).

(7) Where the relevant authority, after considering an application made under subsection (4) by a person who is directly affected by an abatement notice, confirms that abatement notice or changes it in a way other than that sought by that person, that person may appeal to the Environment Court in accordance with section 325(2) against the whole or any part of the abatement notice.

Basis of appeal

[30] The positions of the parties in relation to this appeal must be based on the foregoing statutory provisions:

> But it is trite to say that all appeals are creatures of statute, and their scope likewise.[2]

[31] An issue arose as to whether this appeal is properly a general appeal, as that term is used in other courts. In that usage, a general appeal is normally by way of a rehearing,[3] meaning that the appellate court reviews the evidence heard by the first instance decision-maker and submissions are made as to whether the record shows any error in that decision. The ability to lead new evidence on such an appeal is subject to discretionary control.[4]

[32] Appeals in the Environment Court are not normally by way of rehearing. Under s 269 RMA this Court can regulate own proceedings in such manner as it thinks fit. The almost invariable practice of the Court throughout its history has been to hear appeals by conducting a *de novo* or completely fresh hearing.[5] This approach is consistent with s 290 RMA, which gives the Court the same power, duty and discretion as the original decision-maker. It may also be noted that s 290A RMA, which requires

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2 *Shotover Gorge Jet Boats Ltd v Jamieson* [1987] 1 NZLR 437 (CA) at 441 *per* Cooke P.
3 See, e.g., Rule 47 Court of Appeal (Civil) Rules 2005.
4 See, e.g., Rule 45 Court of Appeal (Civil) Rules 2005 and Rule 12B Court of Appeal (Criminal) Rules 2001.
5 Environment Court Practice Note 2014, cl. 6.1(a).

the Court to have regard to the decision that is the subject of the appeal, is consistent with a *de novo* approach and not with a rehearing.

[33] In an appeal against an abatement notice the situation is rather different as there will have been no first instance hearing. The issue of an abatement notice is not any kind of judicial process. While in many cases it is a step in an enforcement process which involves some form of dialogue between one or more Council officers and the person to be served with the notice, it need not, and almost always does not, involve a hearing in a judicial sense. Rather, it is an executive act by a Council officer in respect of which a specific right of appeal is given.

[34] Usually this Court will hear an appeal under s 325 RMA appeal by reviewing all material relevant to both the issue of the abatement notice and the grounds of appeal. This will often include hearing any new evidence about the activity and its effects that either the Appellant or the Council wishes to call.

[35] An issue arose between the parties in identifying the true subject matter of the appeal, specifically whether it was the abatement notice or the decision of the enforcement officer to issue the notice. Reviewing s 325 RMA, one notes:

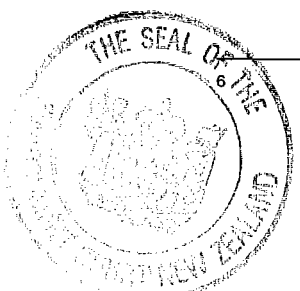
a) subs (1) states that a person may appeal against the whole or any part of an abatement notice;

b) subs (2)(c) refers to service on the local authority or consent authority whose decision is appealed, while subs (3B), relating to an application for a stay, refers to service on the entity whose abatement notice is appealed against;

c) subs (3) refers to an appeal against an abatement notice;

d) subss (5) and (6) refer to confirmation by the Court of the abatement notice.

[36] In my view, the subject matter of an appeal under s 325 RMA is the abatement notice rather than the decision to issue that notice. The scheme of ss 322 – 325B is based on the notice, as is the relevant form for an appeal.[6] The decision of the enforcement officer is obviously a necessary precursor to the notice and is the subject



[6] Form 49 in Schedule 1 to Resource Management (Forms, Fees, and Procedure) Regulations 2003.

of particular requirements in s 322, but those requirements reflect the importance of ensuring that the serious consequences of an abatement notice are properly considered before it is served. Once served, the focus of attention under the RMA is on the notice and its terms rather than on the process prior to service, including the decision to serve it.

[37] The reference to that decision in s 325(2)(c) appears to be a copy of similar references in other appeal provisions such as ss 121(1)(c) and 174(2)(c). It is notable that when s 325(3B) was inserted with other provisions relating to a stay of an abatement notice, it referred to the abatement notice rather than the decision. It is also significant that the appeal is to be served on the local authority or consent authority and not on the enforcement officer. It is the local authority or consent authority which responds to the appeal before the Court, and not the enforcement officer.

[38] For those reasons, I conclude that an appeal under s 325 RMA is against the abatement notice and not against the decision of the Council's enforcement officer.

Jurisdiction

[39] There is no dispute either that the Council's enforcement officer issued an abatement notice to the Appellant or that the Appellant filed and served an appeal against that abatement notice. There is also no dispute that the appeal was commenced in accordance with s 325 RMA. To that extent at least, no issue of jurisdiction arises.

[40] The events that give rise to a jurisdictional issue are the cancellation of the notice by the Council and the subsequent pursuit of the appeal by the Appellant.

[41] Mr Batts for the Council raises as a principal ground of opposition to the appeal that, as the abatement notice has been cancelled, there is now no longer any basis for the appeal. He submits that the appeal is a nullity, as cancellation means that the abatement notice no longer exists and so the foundation for the appeal has been removed. In terms of this Court's powers in regard to an appeal, he refers to s 290 RMA which empowers the Court to confirm, amend or cancel a decision to which an appeal relates. He submits that the relevant decision in this case is the abatement notice itself, relying on s 325(1) which provides that an appeal may be against the

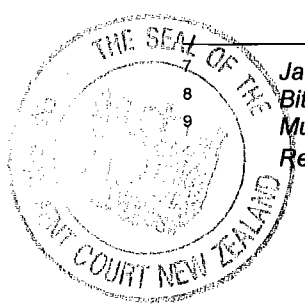
whole or any part of the notice. As the notice is gone, he submits that there is nothing for the Court to make a decision on.

[42] Counsel referred to a decision of this Court in *Jacques v Kapiti Coast District Council.*[7] There, Mr Jacques had sought to file an appeal in relation to an excessive noise direction under s 327 RMA. The respondent submitted, and the Court held, that the direction was not an abatement notice and that there was no appeal provision available in respect of such a direction. Further, the direction had expired prior to the date on which the purported appeal had been filed. The Court held that there had been no appeal properly filed and the proceeding was struck out. The circumstances in that case are plainly distinguishable from the present case.

[43] Counsel also referred to an earlier decision of the Planning Tribunal in *Bitossi v Kapiti Coast District Council,*[8] a decision on costs following a decision striking out the appeal for want of jurisdiction. The would-be appellants challenged an administrative decision by the Council authorising use of certain residential property as emergency housing. The Tribunal held that as there had been no application for resource consent, such use coming within the relevant plan provisions for a permitted activity, there was therefore no right of appeal under s 120 RMA. Again, the circumstances of that case are clearly distinguishable from the present case.

[44] In my view it goes too far to say that the appeal is a nullity. In ordinary language, a *nullity* is something that never existed. Apposite examples of appeals that are nullities include where there is no right of appeal as in *Jacques*, and where there is no application as in *Bitossi.* In this case it is clear that there was an abatement notice and a lawful appeal against it. I see no basis on which the Court can disregard the existence of those two things prior to the cancellation of the abatement notice.

[45] The cognate verb *nullify* connotes a transition from something to nothing. Perhaps in that sense one might argue that the event of cancellation of the abatement notice nullified the appeal from that point on. But even in those terms, that is not truly what happened. The Council's cancellation of the notice did not remove the appeal from the Court's registry and the Court remained in charge of the proceeding. At the very least, the issue of costs remained at large. Even where an appeal is withdrawn (such withdrawal not requiring the leave of the Court[9]), it is clear that any other party



[7] *Jacques v Kapiti Coast District Council* C 75/2002, 27 June 2002.
[8] *Bitossi v Kapiti Coast District Council* W 4/93, 28 January 1993.
[9] *Mullen v Parkbrook Holdings Ltd,* [1999] NZRMA 23 (CA); *Hurunui Water Project v Canterbury Regional Council* [2015] NZHC 3098.

to the appeal retains the right to seek costs and the Court's consideration of any request for costs will proceed on the basis that the appeal still exists.

[46] For those reasons, I conclude that the appeal is not a nullity and that there is jurisdiction to consider it.

Mootness

[47] Separate from whether the appeal is a nullity is the issue of whether it is moot and, if so, what the consequences of mootness may be.

[48] The word *moot* is very old and has gained several meanings over time. As an adjective, *moot* may generally describe an issue proposed for or open to argument or debate. In more recent times and in a juridical context it has developed the particular sense of being academic or abstract, having no practical significance or relevance. This meaning has come to be associated with the longstanding general principles that the courts will not require anyone to do that which is vain and ineffectual[10] or grant relief which would not have any practical effect or serve any useful purpose.[11] It is also well-established that the courts, respecting the principle of the separation of powers which informs New Zealand's constitution, will not offer advisory opinions to the executive.[12] Given the discretionary nature of such principles, there are many examples of exceptions to them.[13]

[49] In New Zealand, the issue of whether an appeal court will hear a moot issue was addressed by the Supreme Court in *Gordon-Smith v R*.[14] In that case, a pre-trial ruling by the High Court about jury vetting favourable to the defendant, and based on which her trial proceeded, was appealed by the Crown because of its general importance and overruled by the Court of Appeal. That outcome did not affect the defendant's conviction or sentence and so an appeal by her against the decision of the Court of Appeal was moot. However, the Court of Appeal was divided on one aspect of the issue. The Crown accepted that this aspect was one which should be considered by the Supreme Court without delay, and the Supreme Court granted

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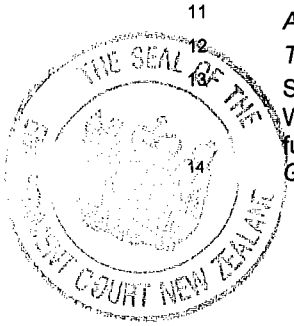
10 *Attorney-General v Waikato Regional Airport Ltd* [2002] 3 NZLR 433 (CA) at [136].

11 *Air Nelson Ltd v Minister of Transport* [2008] NZCA 26 at [59].

12 *Thompson v Treaty of Waitangi Fisheries Commission* [2005] 2 NZLR 6 (CA) at [237].

13 See Matthew Smith, *New Zealand Judicial Review Handbook*, 2nd ed. 2016, Thomson Reuters, Wellington, at 19.1.3 (Advisory opinions), 19.6 (No useful purpose) and 19.7 (Limits to futility/mootness).

14 *Gordon-Smith v R* [2008] NZSC 56; [2009] 1 NZLR 721.



leave to hear it. Ultimately the substantive appeal was dismissed, but the leave decision addresses mootness in detail.

[50] The Supreme Court's discussion of the issue commences by noting the traditional position:

> [14] The traditional position taken in New Zealand has been that the courts will not hear an appeal "where the substratum of the ... litigation between the parties has gone and there is no matter remaining in actual controversy and requiring decision".[15]

[51] The Supreme Court then referred to *R v Secretary of State for the Home Department ex p Salem*[16] where the House of Lords had departed from the view that it would invariably be an improper exercise of appellate authority to hear appeals in relation to questions that have become moot. In that decision Lord Slynn, speaking for the House, noted the difference between disputes concerning private law and those involving public law and said:[17]

> [I]n a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se. The decisions [in earlier cases] must be read accordingly as limited to disputes concerning private law rights between the parties to the case.
>
> The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so as for example (but only by way of example) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future.

[52] The Supreme Court agreed that mootness is not a matter that deprives a court of jurisdiction to hear an appeal and went on:

> [16] ... The question of whether this Court should hear an appeal which otherwise qualifies under statutory criteria for a grant of leave but is moot, is rather one of judicial policy. In general, appellate courts do not decide appeals where the decision will have no practical effect on the rights of parties before the Court, in relation to what has been at issue between them in lower courts. This is so even where the issue has become abstract only after leave to appeal has been given. But in circumstances warranting an exception to that policy, provided the Court has jurisdiction, it may exercise its discretion and hear an appeal on a moot question.

[53] After noting that the decision in *Salem*'s case had been applied by the Court

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15 *Gordon-Smith*, fn 14, citing *Finnigan v New Zealand Rugby Football Union Inc (No 3)* [1985] 2 NZLR 190 (CA) at p 199 per Richardson J.

16 *R v Secretary of State for the Home Department ex p Salem* [1999] UKHL 8; [1999] 1 AC 450; [1999] 2 All ER 42.

17 *Salem*'s case, fn 16, at [1999] 1 AC pp 456-457.

of Appeal to a case involving a question of employment law of general and public importance, the Supreme Court referred to the reasons for restraint:

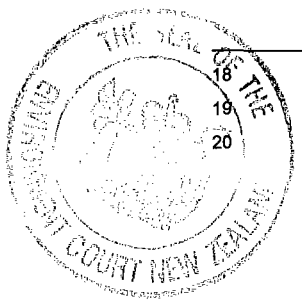
> [18] The main reasons for the general policy of restraint by appellate courts in addressing moot questions ... are, first, the importance of the adversarial nature of the appellate process in the determination of appeals, secondly, the need for economy in the use of limited resources of the appellate courts and, thirdly, the responsibility of the courts to show proper sensitivity to their role in our system of government. In general advisory opinions are not appropriate.

[54] The Supreme Court considered this approach in a civil case in *Baker v Hodder*[18] and held that the court's discretion is not limited to public law cases. It considered that it is not possible to state a test governing the exercise of such discretion or to state comprehensively the circumstances in which it might be properly exercised beyond the caution that a decision to hear a moot appeal should be made only in exceptional circumstances, whether of the particular case (such as to address serious procedural unfairness) or the broader public interest (such as an important legal point).[19]

[55] One example which appears to be apposite to the present case is the High Court decision in *Reuters Homes Ltd v Wanganui District Council*[20] where a developer challenged decisions made by a local authority to exercise information gathering and public notification powers under the RMA, alleging that these decisions were part of an effort to get a developer to change its proposals to those more agreeable to the local authority. The resource consent was ultimately granted in the form the developer desired, however it nevertheless pursued its challenge to the earlier decisions. Dobson J held:

> [51] Here, the developer has obtained resource consent for the development substantially as it proposed, and certainly without being required to comply with the WDC's wishes on road connectivity. There has been no suggestion of any claim to recover any additional costs that may have arisen as a result of WDC's invocation of ss 92 and 95C. However, the point is not moot. Declaratory relief could have some practical value because such conduct is likely to recur, if not for this developer then for others, and certainly for territorial authorities. Use of statutory powers arising in the pre-determination stages of processing resource consent applications is a matter of some importance. It is not an issue on which the Court should decline to provide a ruling on the basis that it can no longer affect the course of relevant dealings between the developer and the local authority, in the immediate context.

[56] Mr Pilditch for the Appellant was content that this appeal may be moot in terms of the result, relying on these high authorities that mootness does not automatically preclude a hearing of, and decision on, the appeal. He submitted that there is a public



18 *Baker v Hodder* [2018] NZSC 78.
19 *Baker v Hodder*, fn 18, at [33].
20 *Reuters Homes Ltd v Wanganui District Council* [2011] NZHC 583, (2011) 16 ELRNZ 493, [2011] NZRMA 357.

interest in the review of executive action by an independent and objective court to guard against arbitrary or otherwise unlawful exercises of power.

[57] Counsel also noted that the letter advising the Appellant that the abatement notice had been cancelled had "strings attached" including a statement that the cancellation was without prejudice to the Council's position regarding: the validity of the notice as issued; the need to take any further action "as appropriate to ensure a conclusion that is satisfactory to the Council"; and the recovery of any costs incurred in completing the issue.

[58] Mr Batts for the Respondent submitted that every appeal against a cancelled abatement notice must be moot and that this was not one of the rare kinds of cases identified in *Gordon-Smith* where a moot appeal should be heard.

[59] Counsel for the Respondent submitted that the manner in which the appeal seeks to challenge the reasons for issuing the abatement notice now that the notice has been cancelled goes beyond the scope for an appeal. He referred to a related issue, whether an appellate court will hear an appeal against the reasons for a decision when the Appellant does not challenge the result. He cited the decision of Supreme Court in *Arbuthnot v Chief Executive of the Department of Work and Income*:[21]

> [25] It is fundamental that an appeal must be against the result to which a decision-maker has come, namely the order or declaration made or other relief given, not directly against the conclusions reached by the decision-maker which led to that result, although of course any flaws in those conclusions may provide the means of impeaching the result. A litigant cannot therefore, save perhaps in very exceptional circumstances, bring an appeal when they have been entirely successful and do not wish to alter the result. The successful litigant cannot seek to have the appeal body overturn unfavourable factual or legal conclusions made on the journey to that result which have had no significant impact on where the decision-maker ultimately arrived. In short, there is no right of appeal against the reasons for a judgment, only against the judgment itself.

[60] Consideration of this point starts from the premise that the RMA imposes restrictions on the use of private property to promote a public good and so is generally regarded as public law. Power is conferred under it on local authorities and their enforcement officers which authorises them to enforce the RMA and the plans made and consents granted under it. It is an important role of this Court to adjudicate disputes arising from enforcement matters. To that extent, the decision in *Gordon-Smith* clearly establishes that jurisdiction continues to exist to address issues even

21 *Arbuthnot v Chief Executive of the Department of Work and Income* [2007] NZSC 55; [2008] 1 NZLR 13.

where the outcome of the proceeding is moot.

[61] The remaining question under this heading is whether in this case a public law question of general importance is clearly presented so as to justify the exercise of the discretion to determine that question in a moot appeal. I will address that once I have reviewed the other issues.

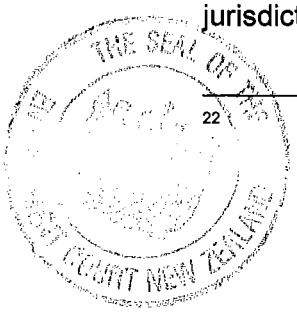
[62] I add here that I do not think that the "strings attached" to the Council's cancellation of the abatement notice alter my assessment of the mootness issue. There is no provision in s 325A RMA to attach conditions to the cancellation of an abatement notice, nor to cancel a notice in part. Section 325A(4) contemplates a change being made to a notice on the application of any person who is directly affected by it. In my experience the normal practice where a council grants such an application is for the notice to be cancelled and a new notice issued at the same time.

[63] In practical terms, none of the "strings" appear to hold back the cancellation of the notice. It is not surprising that the Council would maintain that the notice was validly issued. Cancellation under s 325A RMA may occur where the Council considers that the notice is no longer required and does not, by itself, indicate any error in issuing the notice. The grant of retrospective consent to the roof material did address the basis on which the notice was issued and so ended the requirement for it. The reference to the need to take further action may simply mean that the Council retains all its powers as an enforcement authority, and similarly the reference to costs may simply have been a warning that in the event that this appeal were to be withdrawn, the Council would seek costs.

[64] These matters all really go without saying and so it was superfluous for the Council to state them in its letter to the Appellant: with hindsight, it may also have been needlessly confrontational in a charged setting. Even so, these are not matters that have a material bearing on the appeal.

Judicial review

[65] Judicial review of administrative action by the Executive, including the power to grant relief in the nature of mandamus, prohibition or certiorari, is within the original jurisdiction of the High Court.[22] That original jurisdiction continues the ancient



[22] *Kirkland v Dunedin City Council* [2001] NZCA 288; [2002] 1 NZLR 184; [2001] NZRMA 529; at [20].

jurisdictions of the English courts that were conferred on what was then the Supreme Court of New Zealand under colonial ordinances.[23] The procedure in that jurisdiction was codified in Part 1 of the Judicature Amendment Act 1972 and is now governed by the Judicial Review Procedure Act 2016, but that legislation proceeds on the basis that the jurisdiction is a continuation of the original jurisdiction and not a statutory replacement of it.[24]

[66] The Environment Court has been created in more limited statutory terms[25] and its jurisdiction is within the bounds of those statutes which confer it. There is no statutory provision that confers on the Environment Court a power of judicial review in the nature of mandamus, prohibition or certiorari.[26]

[67] The Environment Court does have a power to make declarations under s 310 RMA, which extends to declaring any issue or matter relating to the interpretation, administration, and enforcement of this Act, except for an issue as to whether any of sections 95 to 95G (relating to notification of applications) have been, or will be contravened. This statutory power to make declarations, and the absence of any corresponding power to make orders of or in the nature of mandamus, prohibition or certiorari, confirms the lack of jurisdiction of the Environment Court to exercise judicial review.

[68] Mr Pilditch for the Appellant characterised this appeal as seeking judicial scrutiny of executive action against an individual. The notice of appeal seeks to quash both the abatement notice and the decision of the enforcement officer to issue it. Counsel acknowledged that the language in the notice of appeal and in his submissions conveys a sense of judicial review of administrative action. He submitted that the cancellation of a decision is similar to quashing it and observed that an appeal is the only way in which to challenge the merits of a decision. He submitted that the Court should not quickly deprive the Appellant of his only opportunity to present a substantive case.

[69] Mr Batts for the Council submitted that the discretion to issue the abatement

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23 Supreme Court Ordinance 1841, 5 Vic. 1, ss 1 – 6.

24 Judicial Review Procedure Act 2016, s 3.

25 Section 247 RMA, continuing the Court of record called the Planning Tribunal established under s 128 Town and Country Planning Act 1977.

26 *Kirkland*, fn 22.

notice is that of the enforcement officer and not of the Council,[27] so that there can be no judicial review of any act or omission by the Council in respect of that officer's decision. Respectfully accepting the authority for the premise of that submission, I have some difficulty with the submission as to its conclusion. The enforcement officer is an officer employed by and holding a warrant from the Council under s 38 RMA to carry out the functions and powers as an enforcement officer. While it is a matter for an enforcement officer's independent discretion whether to serve an abatement notice under s 322, including forming the requisite opinions and having reasonable grounds for belief required by that section, all of that is done on behalf of the Council. As I have already found, the proper respondent to an appeal against an abatement notice under s 325 is the local authority or consent authority, not the enforcement officer. It is clear from the statutory context that an enforcement officer is not an autonomous authority.

[70] More to the point in this appeal is the question whether there can be judicial scrutiny of executive action outside of specific statutory rights and procedures. In particular, the question is whether the Environment Court can review the process of decision-making by an enforcement officer. If doing so would go behind the matter that is properly the subject of the appeal, then that would be inappropriate.[28]

[71] The boundaries between a decision-making process and the substance of the decision can be blurred. To the extent that the process affects the substantive issues on appeal, then I accept that this Court must be able to examine that process. Review of the process by itself, however, appears to me to go beyond the scope of an appeal against an abatement notice. I have already determined that the true basis of this appeal is in respect of the abatement notice and not the decision of the enforcement officer to serve the notice. To that extent, the relief sought of quashing the decision to issue the abatement notice is beyond the scope of this appeal.

[72] There remains an issue as to the extent to which there was any error in making the decision which affects the substance of the abatement notice and, subject to the discretion whether to consider it notwithstanding its mootness, that provides a basis for the grant of relief on the appeal. I address that in relation to the merits of the appeal.

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27 *Wislang v Rodney District Council* HC Auckland, CP 485/96, 14 August 1997, Paterson J, at 14.

28 *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112; [2007] 2 NZLR 149; [2007] NZRMA 137 at [38].

Alternative relief - declaration

[73] In light of the specific jurisdiction of the Environment Court to make declarations, I asked counsel for the Appellant whether the relief sought would be better framed to come within the scope of that jurisdiction. It was clear that this was not the Appellant's preference, but counsel did state that a suitable declaration would meet the Appellant's concerns. In response to my request for the wording of such a declaration, counsel composed the following:

> The abatement notice should not have been issued because the enforcement officer did not have reasonable grounds for the stated belief that the asphalt shingle roof had actual or likely adverse environmental effects.

[74] Such a declaration relates to the legality of the decision and therefore, if made, would be one step short of a review decision as granting certiorari to quash the enforcement officer's decision.

[75] Counsel for the Respondent submitted that there was no application for a declaration before the Court and that no declaration ought to be made without notice of the precise declaration sought[29] and a reasonable opportunity to respond and be heard on it.

[76] Having reflected on the responses from counsel, I think that the Court should not embark on considering declaratory relief where that would essentially involve judicial review of administrative action, for the same reasons as set out above in relation to the judicial review issue generally. I also accept the Respondent's submission that the Court should not do so where the statutory procedure for making a declaration has not been pursued.

Merits

[77] The possible declaration composed by counsel for the Appellant does at least serve to encapsulate the merits issue which the Appellant wishes to advance in this appeal.

[78] In evidence, there are the following affidavits with numerous documentary exhibits from:

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[29] Section 312 RMA, reg 28 and forms 41 and 42 Resource Management (Forms, Fees, and Procedure) Regulations 2003.

i) Di Guan, employee of the Appellant, sworn 29 August 2017 in support of application for stay of abatement notice;

ii) Jason Glenn Evans, town planner, urban designer and heritage specialist, affirmed 23 August 2018 as an expert in support of appeal;

iii) Paul Gregory France, architect, sworn 23 August 2018 in support of appeal;

iv) Di Guan, employee of the Appellant, sworn 23 August 2018 in support of appeal;

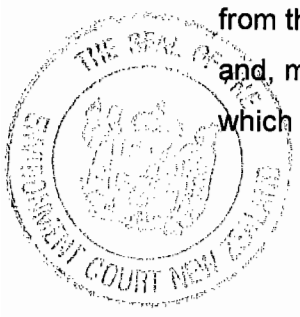
v) Dean Ching Yee, enforcement officer of Auckland Council, sworn 7 September 2018 in opposition to appeal;

vi) Dean Ching Yee, enforcement officer of Auckland Council, sworn 2 October 2018 in opposition to appeal.

[79] Given the conclusions I have reached about mootness, judicial review and alternative relief, I need not traverse the evidence in detail in this decision. However, there are certain aspects of the case revealed in the documents that are relevant to the appeal against the abatement notice and that warrant judicial comment.

[80] At the heart of the dispute between the Appellant and the Council was the Appellant's action in replacing a roof clad with painted corrugated metal with a roof covered in asphalt shingle tiles. Such action could be regulated under the AUP by the identification of the Property in a Special Character Area Overlay and as being subject to either rule D18.4(A3) controlling demolition exceeding 30% of wall and roof areas or rule D18.4(A4) for external alterations, as a restricted discretionary activity. The Appellant (or at least his architect) appears to have been aware of that rule given earlier applications for consent to alter the existing dwelling on the Property. Indeed, the second abatement notice (the one to which this appeal relates) was not based on the latter rule: it was based on plans referred to in two of the earlier consents.

[81] Importantly, neither rule is a blanket restriction on demolition or alteration: as a restricted discretionary activity, the scope of either rule can or ought to be ascertained from the assessment criteria against which the restricted discretion is to be exercised and, more broadly, from the relevant objectives and policies applying to the Overlay, which are set out above. The particular guidance that is referred to in many of those



provisions is the special character area statement for the area where the activity is to occur.

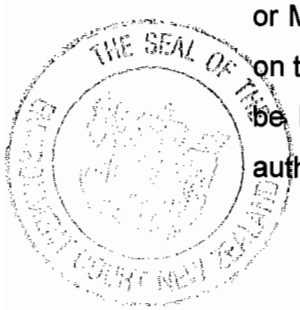
[82] As I raised with counsel during the hearing, I have struggled to track the basis for the enforcement officer's opinion that the alteration in the roofing material had any actual or likely adverse effect on the environment caused by the Appellant or relating to the Property, as required by s 322(1)(b) RMA, in terms of the relevant special character area statement for the Residential: Isthmus B – Mount Eden/Epsom (Part B) Area where the Property is located. That statement refers at some length to lot sizes, setbacks from the street, and trees, both in the street and on sites. References to architecture and design acknowledge the range and variety of styles. In relation to roofing, the clearest statement is at page 175 of the statement under the heading "Materials and construction – built fabric" as follows:

> Roof materials generally include corrugated iron, as well as clay and concrete tiles.

[83] I note that this statement is generally confirmed by the Appellant's witness, Mr Jason Evans, in the "heritage character assessment" dated November 2017 which he prepared to accompany the application for retrospective resource consent for the asphalt shingle roof.

[84] I accept that the enforcement officer was entitled to take advice on this issue from an expert in a relevant field of knowledge and that Mr Yee did so, obtaining the report of Mr Stephen Curham, a conservation architect employed by the Council in its Heritage Unit, dated 14 July 2017 and a peer review of that report by Mr John Brown, a heritage consultant engaged by the Council, dated 18 July 2017. Further, I accept that the reasonableness of Mr Yee's grounds for believing that there would be adverse effects caused by the change in roofing material (in terms of the requirement in s 325(4)) could be assessed on the basis of whether it was reasonable for him to rely an expert's opinion. To that extent, and given the clear views expressed by both Mr Curham and Mr Brown that the use of asphalt shingle tiles was at least inappropriate, Mr Yee's actions could arguably come within the ambit of the power under s 322.

[85] I cannot see, however, any clear reasoning in the reports of either Mr Curham or Mr Brown that bases their opinions of the appropriateness of the roofing material on the special character area statement in the AUP. Instead, their opinions appear to be based on assertions of their own knowledge about the historical accuracy or authenticity of the use of particular building materials when this part of Epsom was



subdivided and many of the houses were built. Such matters appear to me, on their face, to be more relevant to the AUP provisions for the protection of historic heritage (the overlay for which does not apply to the Property) than to those for maintaining special character.

[86] I do not question the knowledge or the expertise of the advisors to Mr Yee. What I question is the degree to which they have based their assessment on the provisions of the AUP, and the degree to which they have treated the discretionary scope of their assessment as allowing them to import their own views into the decision-making process in relation to the abatement notice. To the extent that their own views have outweighed the application of the relevant plan provisions, it appears arguable that the process was flawed and may have vitiated the foundation for serving an abatement notice on the basis of adverse effects on the environment.

[87] There is also the issue of the conditions of the resource consents requiring work to be done in accordance with the plans submitted with the relevant applications. Close inspection of the plans reveals notations on several elevations that the roof would be clad in colour steel, although it is not obvious whether a particular profile is specified. In any event, the use of a different roofing material is thus a departure from those plans. Whether such use is also not in accordance with the relevant resource consent depends on whether that detail is material to the consent. As Lord Denning MR observed in *Lever (Finance) Ltd v Westminster LBC*:[30]

> In my opinion a planning permission covers work which is specified in the detailed plans and any immaterial variation therein. I do not use the words "de minimis" because that would be misleading. It is obvious that, as the developer proceeds with the work, there will necessarily be variations from time to time. Things may arise which were not foreseen. It should not be necessary for the developers to go back to the Planning Committee for every immaterial variation. The permission covers any variation which is not material.

[88] The principle that immaterial variations to an authorised proposal do not render it unauthorised has been followed in New Zealand planning law on many occasions.[31] Even where, as in the present case, the consent is to be exercised in accordance with the relevant plans and not in "general" accordance, the principle of materiality remains applicable.

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30 *Lever (Finance) Ltd v Westminster LBC* [1970] EWCA Civ 3; [1971] 1 QB 222 at 230; [1970] 3 All ER 496 at 500.

31 *Cooke v Auckland City Council* [1996] NZRMA 511 (PT) at 516 – 519 and the cases referred to there.

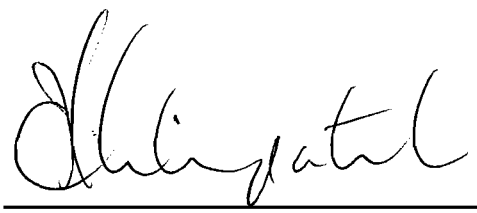
[89] It is not clear from the evidence before me that the type of roofing was a material element, either in terms of an objective consideration of the controls and guidance in the Overlay and the special character area statement or in terms of the scope of the resource consents. If the abatement notice were still in effect, this issue would have warranted a fuller inquiry. At this stage, however, and in light of intervening events, there is no need to take further action.

Conclusion

[90] This case, while raising issues that can be of significance for this area of the law, is not one where matters of general public importance are so clearly presented as to justify the exercise of the discretion to determine the question in a moot appeal in terms of the reasoning in *Baker v Hodder*.[32]

[91] For those reasons, the appeal is dismissed.

[92] Also for those reasons, applications for costs are not encouraged. If a party wishes to seek costs, its application must be filed and served within 15 working days of the delivery of this decision, and any response must be filed and served within a further 10 working days.



D A Kirkpatrick
Environment Judge

32 *Baker v Hodder*, fn 18.