

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV-2019-404-2682

under the **Judicial Review Procedure Act 2016**

between

Averil Rosemary Norman and **Warwick Bruce Norman**

Applicants

and

Tūpuna Maunga o Tāmaki Makaurau Authority

First Respondent

and

Auckland Council

Second Respondent

REPLY AFFIDAVIT OF ANDREW FRANCIS BARRELL

14 February 2020

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REPLY AFFIDAVIT OF ANDREW FRANCIS BARRELL

I, Andrew Francis Barrell, arborist of Auckland, swear:

1. I have prepared two previous affidavits, the first dated 6 December 2019 (**my first affidavit**) and the second dated 19 December 2019 (**my second affidavit**). In this affidavit, I respond to certain matters raised in the affidavits filed by the respondents relevant to my evidence and expertise, which I have read.
2. I repeat the confirmation given in my earlier affidavits regarding the Code of Conduct for Expert Witnesses in Schedule 4 of the High Court Rules.
3. I confirm also that the opinions expressed in this affidavit are based on my experience and training as an arborist and in the tree management and arboriculture industry, as well as my experience of planning processes in Auckland.
4. In this affidavit, I comment on:
 - (a) The consideration of arboricultural effects in the resource consent process on the basis of the evidence filed by the respondents;
 - (b) The justifications given for removing some of the non-native trees in that evidence; and
 - (c) The assumption made in Sean Freeman's affidavit dated 24 January 2020 (and others) that the removal of the 345 trees is necessary for the native planting programme, including the planting of 5,385 trees.

Arboricultural assessment of intended felling

5. I have reviewed the reports filed in evidence by the respondents and in particular those reports submitted by them to the Council as part of the resource consent process (referred to at [18] of Antony Yates' affidavit dated 30 January 2020).
6. Over the past 15 years, the majority of my work has been concerned with the resource consent process with regards to trees from both within the local authority establishment and as an independent arboricultural consultant in the private sector. This experience has formed the basis of my understanding of processes relating to managing protected trees within the Auckland region, and the basis for the following comments.
7. The entire mountain at Mt Albert is covered by a *Significant Ecological Area (SEA)* overlay. Further, if any activity involving trees exceeds the permitted activity standards contained within Chapter E16 – *Trees in open space zones* – then resource consent is also required. This relates to the removal of any tree from an open space zone that is over 4m tall and/or

has a trunk girth over 400mm. There are many such non-native trees within the Mt Albert reserve area.

8. In those circumstances, in addition to the sheer scale of the intended felling – acres of mature trees being removed from an urban forest environment – I would have expected the Council, as the decision-maker on the resource consent application, to have required a detailed assessment of the application from an arboricultural perspective. I also would have expected it to have sought the input of Council arboricultural specialists. There are various Council arboricultural and urban forestry departments, i.e., resource consents arborists, parks arborists and specialists in the urban forest specialist department.
9. In my experience, the Council seeks the input of its arboricultural officials on even quite minor applications affecting trees, and the application here will have been one of the most significant, if not the most significant, from an arboricultural perspective received by the Council in recent years. I am not aware of any other application where the mass felling of 345 mature trees in an urban environment has been either assessed or consented, especially with no arboricultural assessment.
10. However, no such arboricultural assessment appears to have been provided to the Council (none is mentioned at [18] of Mr Yates' affidavit dated 30 January 2020). Nor was any input apparently sought from Council arboricultural officials either. Mr Yates' list of Council experts at [21] of his affidavit from whom advice on the application was sought do not include any internal or external arboricultural experts.
11. The only input I have seen from a Council arboricultural expert relates to the respondents' earlier tree removal works at Maungarei / Mt Wellington: **exhibit "A"** to this affidavit. I am instructed this correspondence was obtained by the applicants from a third party following a LGOIMA request. The input from the Council's arboricultural expert on that earlier application echoes concerns I expressed in my earlier affidavits and demonstrates, in my opinion, why such advice is typically sought. I quote some of that input as relevant below:

"AEE from Yates Planning – This document lists the site as Open Space, SEA-T, Notable Trees and Historic Heritage Overlay, but provides no comment, input, or tree asset owner approvals from the Council's Community Facilities who have the delegation for maintenance of trees and vegetation in Council Open Spaces, nor is there any comment or input from the Council's Heritage Arborist who has the jurisdiction for assessing the effects for works to Scheduled Notable trees.

In addition, given the scale of the tree removal proposed from public open space the Council's Urban Forest Specialist should be involved in this application.

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Landscape assessment from Rebecca Skidmore -

This report advocates for the proposed tree removals, "to better reveal the underlying landform" but acknowledges that in doing so this "will expose the modification and scarring" of the quarry area, which will require replanting to establish "a veil of vegetation to obscure the scars created through quarrying." The landscape report does not acknowledge that the existing pines already provide this very screening function as well as eco-system services vital to soil stability, storm water attenuation, transpiration etc, including the prevention of mass erosion of the unstable quarry slope. The landscape assessment dismisses the exotic trees as 'incongruous', but acknowledges that their removal will be "readily apparent", as will the removal of individual pine and Macrocarpa trees sited on the slopes and skyline, however, the effects of this activity is assessed as only moderate.? I do not agree with this assessment of visual effects.

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Ecological effects assessment –

This report lists 170 trees to be removed including the Scheduled Notable Macrocarpa within the Memorial Grove. This is not consistent the AEE statement that the tree removal will total 180 trees and does not include any trees listed as Notable trees within the AUP OP. The proposal seeks to remove the trees in order to protect and preserve features and values associated with pre-European occupation of the site, however, the Ecological Assessment states that none of Auckland's volcanic cones (including Maungarei) have a vegetation cover of the type that would naturally be present at the time of original settlement. It is clear that the vegetation on the site has been largely removed during pre European occupation to create fortifications and terraces and then further modified by European activities, including planting of many of the trees currently on the site, both exotic and indigenous. The proposal seeks to restore a WF7 Puriri forest type vegetation cover in the quarry area, although there is some doubt expressed in the Ecological Assessment regarding the type of original forest cover on Maungarei. The Ecological Assessment draws upon the work of Mike Wilcox and his recent publication 'Auckland's Remarkable Urban Forest'. This book describes the pines proposed for removal as 'a significant urban forest feature', recording these as having been planted during the 1940's. The Application provides no arboricultural reasoning to support removal of these trees.

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Summary -

I do not support the proposal to remove these trees from Maungarei for the reasons stated in the Application. There is no arboricultural reason to do so and I do not believe that the visual effects of the proposal can be dismissed as minor. I do not consider that the tree removals are in the interest of all of Auckland's communities and generations to come.

The proposal places no value on the European historical and cultural links with the site, which is documented as predominantly the planting of the existing trees (both exotic and indigenous). The application amounts to the removal of a recognised significant urban forest feature, which further reinforces the need to assess this proposal in the wider context of eco-system services provided by trees, with particular reference to the objectives and policies at E15.2, E154.3, E16.1, E16.2, E16.3 and assessment criteria at E16.8.2."

(301.0371)

12. Bradley Beach, a project manager at Treescape Limited, the company with the contract to carry out the felling, has given evidence for the Authority. He exhibits to his affidavit Treescape's "Tree Methodology Report", which he notes was prepared in support of the respondents' resource consent application (**exhibit BB1**). This report is concerned with how to remove the non-native trees, not whether to do so or otherwise on the arboricultural effects of doing so. It is simply an inventory and technical process description.

13. Richard Mairs, the ecologist who participated in the preparation of the Te Ngahere "Assessment of Ecological Effects" that I refer to in my first affidavit, has also given evidence for the Authority. He says at [33]:

"Mr Barrell notes that arboricultural effects were not included in our ecological assessment. This is simply because the [Authority] engaged experienced arborists to select appropriate methods to minimise direct effects of the felling operation on surrounding vegetation and our assessments sit alongside their assessments".

(301.0342)

14. I repeat my comments above regarding the content of Treescape's report.
15. The result was no assessment from an arboricultural perspective. The "Assessment of Ecological Effects" report prepared by Mr Mairs' company in support of the resource consent application states in the introduction that it "does not cover amenity and arboricultural effects of exotic tree removal" (**exhibit RM1** to Mr Mairs' affidavit at p 5).
16. No reference appears to have been made at any stage in the resource consent process to the Council's Urban Ngahere (Forest) Strategy, referred to in my first affidavit at [30].

Justifications for removal of certain non-native trees

17. In Paul Majurey's affidavit at [45], he says the felling "will see 345 trees removed (182 are pest species and a large number of the others pose a

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risk to health and safety and archaeological fabric of the Maunga through their invasive root structure)". In Nicholas Turoa's affidavit from [35], he also gives reasons for the felling of some of the trees.

18. I confirm the comments in my earlier affidavits: the reasons given in the respondents' evidence for removing some of the trees do not apply to many of the trees intended to be felled, and some of them, if they justified the removal of certain non-native trees, would also justify the removal of certain native trees.
19. On the basis of my knowledge of the trees to be felled, I do not agree that a "large number...pose a risk to health and safety" ([45] of Mr Majurey's affidavit). I repeat the comments at [23] of my first affidavit regarding the management of health and safety risks posed by trees.
20. With respect to Mr Majurey's and Mr Turoa's comments regarding the "pest" status of some of the trees, I refer to the comments in my first affidavit at [49] regarding these classifications. Many so-called "pest species" are significant components of the landscape in towns and cities across New Zealand, and include many notable and historic trees.
21. Mr Turoa notes that 148 of the 182 trees said to be "pest species" under the Council's Regional Pest Management Strategy (**RPMS**) are "research plants" (at [71]). "Research plants" are not "pest species". A research plant is a plant or tree that requires further research. The RPMS states: "the organisms listed in [the part of the RPMS directed research plants] are not declared pests and there are no Rules or regulations with respect to these organisms": see pages 4 and 169 of **Exhibit NT1** to Mr Turoa's affidavit.
22. It is therefore inaccurate to say that 182 of the 345 trees intended to be felled are "pest species". It would be less inaccurate to say that 34 of the 345 are "pest species", but even then it is important to note that this is because they are listed as "surveillance pest plants". A surveillance pest plant is one which the Council has concluded is "too widespread to warrant direct control, but restriction on sale, propagation, distribution and exhibition is considered appropriate to limit further human-assisted spread", and where "limited control may be undertaken in sit-let programmes" (**exhibit NT1** to Mr Turoa's affidavit at page 7). This classification is not intended to suggest that these trees should necessarily be cut down. The emphasis is on control and management to limit further spread.
23. I note Mr Turoa's comments about the 97 eucalyptus trees on the mountain that are intended to be removed ([76]-[78]), to the effect they "fall over easily", that 2 of the 97 fell over the in superstorm in 2018, and that they are a "known fire risk".
24. I do not agree these trees "fall over easily", or that they pose a substantial fire risk on the mountain.

25. As far as I am aware, there is no Council or other regulatory requirement or policy in Auckland to cut down eucalyptus trees. Health and safety processes applying to trees are designed to manage their risks in normal situations, not in extreme superstorms. Many different types of trees fell over in that 2018 storm, including native varieties. The only relevant policy I am aware of is the Urban Ngahere (Forest) Strategy. As I noted in my first affidavit at [30], that Strategy provides for the retention and protection of mature, healthy trees, given the greater benefits they provide.

Connection between tree felling and native planting

26. In Sean Freeman's affidavit dated 24 January 2020, he says at [20] that:

"Based on the documentation associated with the consent application for the works on Owairaka / Te Ahi-ka-a-Rakataura, I note it is intended to eventually replant the Maunga with 5,385 trees (plus 7,615 shrubs and other smaller species), which equates to a replacement ratio of over 15:1. This ratio of replacement:removed trees, when achieved, would exceed any other revegetation project that I am aware of in the Auckland region".

27. Mr Freeman's comments imply that the removal of 345 mature non-native trees is necessary for the native planting programme and will result in 5,385 trees.
28. I do not understand the basis for that and do not agree. While a native shrub or tree naturally cannot be planted in the very spot in which an existing tree currently sits, in order to achieve the sort of numbers of new trees suggested, the very large majority of the new native trees will not be planted in and occupy the precise spot existing trees sit now. The "replacement:removed trees" ratio used by Mr Freeman is meaningless.
29. The planting plan (**exhibit RM2** to Mr Mairs' affidavit), which I understand to be the basis for the figures used by Mr Freeman and others, confirms that some of the planting would take place on bare land / grass land; other planting will take place under existing mature trees (as explained in my first affidavit, an existing canopy is useful to establish new trees, something also recognised in Mr Mairs' reports); and some of the trees intended to be felled will not be replaced.
30. I understand that 2,700 native plants, out of the 13,000-odd planned, have already been planted without any of the 345 trees being removed ([45] of Mr Turoa's affidavit). I do not know how many of those 2,700 plants have survived / been established.
31. The number of new trees and shrubs to be planted also appears very uncertain. The planting plan is a fairly loose proposal, such that the 5,385 figure should be treated with caution (as should the 7,615 shrub figure). Some trial and error is envisaged, including on the methods used for new planting, given the possible presence of archaeological features requiring

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protection. I am not sure how successful this will be, as I understand the "no dig" method of planting is novel. I am not aware of any assessment of the survival rate achieved using this method on the planting that has been done to date.

32. In addition, the size of the areas to be planted, and so the numbers of trees and shrubs that will be planted, are not yet fixed: see, e.g., on page 7 of the planting plan, where it states that "the extent of this restoration area will require further definition by an archaeologist to ensure no damage to significant features including archaeology occurs", and on page 8, to similar effect.
33. The planting plan also recommends that these numbers of shrubs and trees be *planted*, not that this the number of shrubs and trees that will actually result. The numbers of shrubs and trees that will result will depend on how successful the planting is and the size of the areas to be planted.

Conclusion

34. All the comments in this and my previous affidavits reflect what I would expect the various Council arboricultural departments to be assessing and evaluating as part of the resource consent process. My experience indicates that they would be asking more questions and in more detail than I have done.

SWORN at AUCKLAND this 14th day
of February 2020 before me:



Barrister/Solicitor of the High
Court of New Zealand

GEORGE STEPHEN ANDREW MORRISON



Andrew Francis Barrell