

**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

FURTHER AFFIDAVIT OF NICHOLAS HENRY TUROA

Filed 3 April 2020

the day of 2020

BUDDLE FINDLAY
NEW ZEALAND LAWYERS
Barristers and Solicitors
Wellington

Solicitors Acting: **Paul Beverley / Sebastian Bisley**
Email: paul.beverley@buddlefindlay.com / sebastian.bisley@buddlefindlay.com
Tel 64 4 499 4242 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6140

I, **NICHOLAS HENRY TUROA**, Operations Manager, of Auckland, solemnly and sincerely affirm:

INTRODUCTION

1. I provided an affidavit to the Court on 31 January 2020, in relation to these proceedings. That affidavit summarised my work on the resource consent application lodged by the Tūpuna Maunga o Tāmaki Makaurau Authority (**Tūpuna Maunga Authority**) regarding its application and decision to undertake a restoration project to establish 13,000 indigenous plantings and remove 345 exotics trees on Ōwairaka / Te Ahi-kā-a-Rakataura / Mt Albert.
2. I understand that the applicants have added a ground of review to their claim that challenges the Auckland Council's non-notification decision of the Tūpuna Maunga Authority's resource consent application.
3. In this affidavit I respond to:
 - (a) Matters raised about the adequacy of the resource consent application in the reply affidavits filed by the applicants on 18 February 2020 from: Averil Rosemary Norman, Mary Rose Inomata, Mary Tallon, Christopher Hoyles Howden, and Andrew Frances Barrell including in relation to the Auckland Council's non-notification decision.
 - (b) The new matter raised by Christopher Connell Parkinson: namely, that he was unaware of the Tūpuna Maunga Authority's proposal and the decision to remove 345 exotic trees on Ōwairaka / Te Ahi-kā-a-Rakataura / Mt Albert.
 - (c) Anna Marie Radford's statements about the lack of public meetings to "answer to community's questions" (in paragraph 7).

202.293
202.301
202.306
202.325
202.282

202.296

202.290

202.293

RESPONSE TO THE AFFIDAVIT OF AVERIL ROSEMARY NORMAN

Paragraphs 6 and 8

4. In paragraphs 6 and 8 of her affidavit, Ms Norman describes the remnants of trees felled at Te Pane a Mataoho / Te Ara Pueru / Mangere Mountain as "ugly tree stumps", and that "the parts of the mountain where trees were felled are now barren and shade-less", and that "the scene was just heart-breaking to her".

305.2070

5. As part of the work at Te Pane a Mataoho / Te Ara Pueru / Mangere Mountain, we commissioned a Landscape Visual Assessment prior to commencing our restoration programme from Rebecca Skidmore from Urban Design LTD which I mark exhibit **NT6**. In her assessment of effects Ms Skidmore notes:

“The removal of the exotic vegetation will restore the integrity of the Maunga and enable its mana to be better recognised and uplifted. This is consistent with the values and pathways set out in the IMP. There is also a range of native vegetation present on the flanks of the Maunga. The retention of this vegetation will reduce the perceived extent of scarring as the exotic vegetation is removed and will maintain a vegetated aspect to the Maunga. The removal of areas of exotic vegetation will also provide a better growing environment for the existing native specimens.”

6. Ms Skidmore also notes:

“Visual effects are somewhat different from many other environmental factors because their assessment requires information on perceptions as well as on resources. Because visual experience is a combination of physical stimulus and psychological response, some aspects of visual effects are undeniably subjective.

To understand and assess the visual effects of a project, we must therefore understand not only the project and its context, but also anticipate the probable responses of the people who will see it.”

7. In this instance, Ms Norman’s view is that the scene is “ugly”, the land is “barren”, and it was “heart-breaking to her”. However, as I have previously explained in my original affidavit (in paragraph 43 to 45), the purpose of these projects is to:

- (a) open the viewshafts to and from the Maunga and recreate a cultural landscape exposing archaeological features; and
- (b) remove trees that are unsafe and weed species.

8. From the perspective of opening the viewshafts, and exposing the archaeological features, I am very pleased with the aesthetics and the success of the project at Te Pane a Mataoho / Te Ara Pueru / Mangere Mountain, in terms of these aspects.

9. Ms Skidmore also explained that visitors, such as Ms Norman, to the Maunga will have the most direct experience of the removal of vegetation. Ms

Skidmore explains that the magnitude of change will be most recognisable to visitors to the Maunga and views will differ from **positive** through to **low adverse**, and the effect will depend on the attitude towards existing trees and their contribution to amenity

Paragraph 7

10. At paragraph 7, Ms Norman says that *“the effective re-planting does not seem to be effective at all”*. In my view, this is incorrect.
11. Approximately 900 trees were planted on Te Pane a Mataoho / Te Ara Pueru / Mangere Mountain: 600 trees on the lower southern flanks of the Maunga by the Mangere Mountain Education Trust, and approximately 300 near the tihi/summit.
12. The 600 trees planted at the lower flanks of the Maunga have been largely successful and are doing well with a minimal fatality rate.
13. Only 300 trees were planted on the tihi of the Maunga. It was known from the outset that this would be a difficult place to plant for the following reasons:
 - (a) the site is exposed to high winds, is elevated above the natural water table and can dry out easily being on the tihi of a Maunga; and
 - (b) there is a number of significant wāhi tapu and archaeological features in and near the tihi of the Maunga. The Tūpuna Maunga Authority has a no-dig policy at such sites.
14. As such only a small amount of plants were trialled on the Maunga in the first year of planting. Plants were selected based off a list of plants suitable for planting near archaeological sites based on the Kevin Jones list of plants outlined in *“Caring for Archaeological sites”* attached as **BD2** to the affidavit of Brent Druskovich.
15. A technique called ‘mound planting’ was utilised whereby plants were left in their plastic containers and pinned to the ground – this meant that no digging was required.
16. We have used this technique successfully on other Maunga in the past. Although this technique is successful at protecting archaeological sites – there is a risk of a higher fatality rate – this was always known and planned for.

304.1507

17. The key principles underlying the Tūpuna Maunga Authority's implementation of each replanting programme are:
- (a) to appropriately respond to learnings each year, including on other maunga; and
 - (b) that the imperative for each maunga is achieving the IMP values and pathways, that is establishing canopy cover and the cultural values associated with the replanting plans. Accordingly, for Ōwairaka / Te Ahi-kā-a-Rakataura / Mt Albert, 13,000 indigenous plants is a minimum. Replacement of losses will occur, and potentially further planting in the future in accordance with the vision set out in the Integrated Management Plan, which may go beyond the establishment of 13,000 indigenous plants.
18. In paragraph 4, Ms Norman has explained that she visited the Maunga on 27th January 2020 and that the day was “sunny and windless”. This summer has had a record-breaking drought with over 40 days with no substantial rain. By the 27th of January we had been 21 days without rain. This has, unsurprisingly, had an impact on the plantings.
19. Despite the challenges of the drought, and the challenges associated with mound planting, we still have had a 70% success rate in our plantings across both sites. With normal replanting efforts it is typical for a 20% fatality rate to occur – given the drought and the challenges with the mound planting, we are comfortable with the 70% success rate. I have attached a copy of a report from contractors monitoring the planting showing the trees are doing well in the quarry area, but that there was a 50% survival rate at the tihi (I exhibit this report and mark it **NT7**). The site visit occurred 4 days prior to Ms Norman's visit to the Maunga.
20. We have planned for infill planting to supplement the tree loss this year and this will occur in June through to August 2020, alongside 12,000 other indigenous plants and trees that will be planted on the Tupuna Maunga.
21. Importantly, the world view of the Tūpuna Maunga Authority is a long term one such that episodic short term experiences are just that – moments in time that can be learnt from and continuously improved upon to achieve the restoration of these iconic ancestral landscapes.

305.2099

Paragraphs 5 and 8

22. In paragraphs 5 and 8, Ms Norman also describes the removal of trees as “destructive” or “destruction”.
23. In my original affidavit, I noted (at paragraph 76) that hundreds of trees had been removed from Ōwairaka in the 1990s by Auckland Council. This was done without any complaint.
24. Similarly, to the Te Pane a Mataoho / Te Ara Pueru / Mangere Mountain project, when these trees were removed from Ōwairaka, the tree stumps were left in situ so as not to disturb the archaeological features. Grass has since grown over the stumps, and they are no longer visible.
25. For Te Pane a Mataoho / Te Ara Pueru / Mangere Mountain, this will occur for some of the tree stumps. For the larger tree stumps we are exploring techniques for “stump planting” whereby the stumps can be planted upon using native species. We are also in conversations with Mana Whenua about the opportunity to carve some of these stumps – adding to the cultural landscape of the Tūpuna Maunga. I mark and exhibit **NT8**, a concept proposal that we have received from Te Ngahere to begin trialling this on various maunga.
26. As a final note, the protestors still have a campsite on Ōwairaka, which has been established for some time. Although not currently occupied due to the Covid 19 response, the camp remains in situ despite the serious public health risks the vacated campsite poses including; the risk that the campsites are potentially contaminated surfaces, it encourages protestors to self-isolate on the Maunga, any member of the public could touch the tents and expose themselves to contamination.
27. I understand that the protest group have also encouraged people to undertake surveillance on their exercise routes or monitor the campsite from their vehicles. I exhibit and mark **NT9** a photo of the campsite taken 31 March 2020.

305.2109

305.2111

202.301
202.306

RESPONSE TO THE AFFIDAVIT OF MARY ROSE INOMATA AND MARY TALLON

28. To summarise the affidavits of Ms Inomata and Ms Tallon, they describe trees on Ōwairaka as having heritage value, and criticise the Tūpuna Maunga Authority for failing to consult with them over the proposed removal of those trees.

29. In my original affidavit, I discussed the IMP process carefully and the consultation it involved. I also wish to make some comments about what are considered and identified to be “notable trees” within the Auckland region.

30. On its website, Auckland Council describes a notable tree as:¹

“A notable tree is a tree or group of trees that a community or nation regards as being of special importance because they:

- commemorate important events in a nation’s history
- are an exceptional or unique example of a species
- are critical to the survival of other animal and plant species
- are of such age, stature, character and visibility that they are regarded as the best in the district”

31. As far as I am aware, there are no notable trees scheduled on Ōwairaka / Te Ahi-kā-a-Rakataura / Mt Albert. The Auckland Unitary Plan (**AUP**) is a recently developed, and significantly contested, plan subject to an extensive public process under special legislation that was well-known to the wider community. Notable trees were scheduled through that process. In any event, a process for nominating a tree to be considered as “notable” is easily accessible on the Auckland Council website. I am unaware of any applications, submissions, or decisions about the trees Ms Inomata refers to on Ōwairaka.

32. Where there have been notable trees, as scheduled in the AUP, the Tūpuna Maunga Authority has retained these trees, such as on Maungarei / Mt Wellington.

33. At an operational level, the Tūpuna Maunga Authority must work toward achieving the objectives of the carefully considered Integrated Management Plan (**IMP**). To achieve progress, relying on the notable trees scheduled through the recent, tested AUP, is appropriate to capture heritage values on each Maunga.

202.325

RESPONSE TO THE AFFIDAVIT OF CHRISTOPHER HOYLES HOWDEN

34. Mr Howden details a list of things that a reserve management plan should address. However, the Reserve Act 1977 (**Reserves Act**) does not specify

¹ <https://www.aucklandcouncil.govt.nz/building-and-consents/working-on-around-trees/Pages/what-is-notable-tree.aspx>.

that a reserve management plan has to do any of the things in Mr Howden's list.

35. In contrast, section 41 of the Reserves Act sets out the requirements that a reserve management plan must meet. The Tūpuna Maunga Authority has met those requirements and more, for example by consulting on the individual strategies for which there is no consultation requirement in the Nga Mana Whenua o Tāmaki Makarau Collective Redress Act (**Tāmaki Collective Redress Act**).
36. Respectfully, much has changed since Mr Howden was professionally involved in reserve management planning. In particular, the significance of Treaty settlement and the new 'integrated management plan' approach that is provided for in Tāmaki Collective Redress Act. The context and requirements of the integrated management plan are very different to the standard reserve management plan approach that Mr Howden would have been familiar with. That integrated management plan must cover a number of Maunga reserves, not just one, and cannot be expected to contain the detail that is suggested by Mr Howden.
37. The Reserves Act enables the required flexibility to ensure the efficiency and effectiveness of new types of administering bodies, and newly protected cultural values.
38. In my view, it is worth noting that, in part, many of the cultural grievances that the Treaty settlements have addressed, can be attributed to the prescriptive types of management plans that have allowed for narrow perceptions of the relevant values to be considered, to the exclusion of cultural values. The Tāmaki Collective Redress Act allows for appropriate protection and implementation of cultural values to give meaningful effect to the Treaty settlement agreed between Mana Whenua and the Crown – it is the cultural, spiritual, historical, and customary significance of *the maunga* that are the paramount values. It is also worth noting that as part of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act, the Tūpuna Maunga must remain as reserve and is held in Trust (by The Tūpuna Taonga Trust) for the common benefit of Ngā Mana Whenua o Tāmaki Makaurau and the other people of Auckland. This is another key value that is held dear by Nga Mana Whenua o Tāmaki as a symbol of their generosity and manaakitanga so that all the people of Auckland enjoy visiting these ancestral sites. The Integrated Management Plan also strongly reflects these values.

39. In my view, with Treaty settlements - a new generation of management plans are appropriately being developed. There are a number of examples of new types of management plans that are intended to deliver a new approach to protected area management planning, incorporating a Te Ao Māori world view. That new approach is not only evident in the IMP, but also in other protected area management plans such as:
- (a) Te Kawa o Te Urewera;
 - (b) the Hauturu o Toi Conservation Management Plan; and
 - (c) the Whirinaki Te Pua a Tāne Conservation Plan.
40. In contrast to Mr Howden's list, section 59(5) of the Tāmaki Collective Redress Act determines that in developing the Integrated Management Plan, the Tūpuna Maunga Authority:
- “must consider including provisions in the plan that relate to members of Ngā Mana Whenua o Tāmaki Makaurau carrying out the following activities:
- (a) Limited land cultivation for harvesting traditional food and plants:
 - (b) limited collection of other materials, including volcanic rock:
 - (c) archaeological activities:
 - (d) hāngi:
 - (e) tribally significant tangihanga or hari tūpāpaku and the interment of tūpāpaku:
 - (f) spiritual and cultural traditional practices and ceremonies other than those described in section 66(a) to (h):
 - (g) nohoanga:
 - (h) the permanent erection of symbolic structures and signage:
 - (i) activities that exercise kaitiakitanga or manaakitanga, including overnight occupation.”
41. The Integrated Management Plan provides for all of these activities including activities that exercise Kaitiakitanga – the restoration programme being an expression of this kaitiakitanga. This again reinforces the contemporary approach to management planning for protected areas that have been the subject of Treaty settlements.

RESPONSE TO THE AFFIDAVIT OF ANDREW FRANCES BARRELL

42. Mr Barrell refers to the Urban Ngāhere (Forest) Strategy in both of his affidavits for this proceeding (dated 6 December 2019 and 4 February 2020) and criticises that it had not been considered by the Tūpuna Maunga Authority in its decisions. To be clear, that document has been considered to the extent it is relevant.
43. Ōwairaka / Te Ahi-Kā-a Rakataura / Mt Albert, along with all of the Tūpuna Maunga are not “urban forests”; they are Tūpuna Maunga – Ancestral Mountains with whakapapa connections to Nga Mana Whenua o Tāmaki Makaurau. To mana whenua the Tūpuna Maunga are ancestors, not “urban forests”. The Tāmaki Collective Redress Act recognises these cultural, spiritual, ancestral and customary links and the Tūpuna Maunga Authority must consider the significance of these values when exercising its powers and functions.
44. Furthermore, the Urban Ngāhere (Forest) Strategy is a non-statutory Auckland Council document on the management of urban forests. It is not a Tūpuna Maunga Authority document. The Tāmaki Collective Redress Act determines that the Tūpuna Maunga Authority is an independent statutory body that makes its own decisions, strategies and policy for the Tūpuna Maunga.
45. Mr Barrell’s views about Pest Trees, for example, are very relevant in an urban forest setting, but in my view, have little relevance in a Tūpuna Maunga – Ancestral mountain setting governed by the Tāmaki Collective Redress Act. As per my previous affidavit, the Regional Pest Management Strategy is a regional strategy for managing pest species across the region. As explained in my original affidavit, the 2007- 2012 RPMS advocates that “a site led approach may be taken in any area which would benefit from a targeted approach”. The Tūpuna Maunga Authority has adopted a site-led approach to managing the pest species on Ōwairaka / Te Ahi-kā-a-Rakataura / Mount Albert.
46. Ōwairaka / Te Ahi-kā-a-Rakataura as an ancestral mountain is one of the last remaining cultural features of Tāmaki Makaurau. As such, it requires a unique site-led approach to protect the cultural, spiritual, ancestral, and customary values of the Maunga.

47. This involves the removal of all species listed in the RPPS, whatever category they fall into. As I understand it, the list of species categorised as research species did not make it into the RPMS by accident. They are to be researched because they have invasive qualities and it is those invasive qualities that have and will continue to affect the Ōwairaka / Te Ahi-kā-a-Rakataura / Mt Albert.
48. In my previous affidavit I also noted that the status of Taiwanese Cherries has recently been changed. The 2019 RPMS now recognizes that Taiwanese Cherries (being 131 of the pest weed species on Ōwairaka/ Te Ahi-ka-a-Rakataura / Mt Albert) alongside other cherry species as a sustained control species.
49. Mr Barrell also comments on the planting programme and discusses where a tree is recommended to be planted and where it shall be planted. The intention of the project is to plant all 13,000 plants as part of this project. To restore the Maunga, it is not in keeping with the cultural values to replace tree for tree. Replanting is consistent with the Tūpuna Maunga Authority considering the cultural spiritual, ancestral, and customary values of the Maunga.
- 305.2112 50. I exhibit and mark **NT10**. the Ōwairaka Summer Report for plant maintenance. This report is about how the young plants have coped with the extreme drought conditions and outlines that those conditions have posed challenges for the planting programme, however, there are a number of plants that have are coping better than others. I further note that the protest group have impeded access and made it harder for the contractors to deliver their work. Nevertheless, my staff have estimated that there is 70% survival rate of plants planted in the 2019 planting season.
51. I also emphasise that it has always been the intention to undertake infill planting to replace the trees that have failed on top of the remaining 12,000 plants, we will plant in the coming years.

202.296

RESPONSE TO THE AFFIDAVIT OF CHRISTOPHER CONNELL PARKINSON

52. Mr Parkinson makes various comments that I find surprising given his participation in many decisions relating to advancing the Tupuna Manga Authority's work, including on Ōwairaka.

53. I also note Mr Parkinson was a hard-working and constructive member of the Tūpuna Maunga Authority. Also, the record shows that in the two terms of which he was a member (2014-2019), Mr Parkinson never once voted against, or abstained on, a resolution of the Authority.

54. In paragraphs 11 and 12, Mr Parkinson says the Reserves Act 1977 was not considered as part of the IMP or afterwards, and that that the proposal to remove all of the exotic trees was not discussed in hui or workshops he was part of:

“I can confirm that, in all of the Hui and workshops that I attended and to the best of my knowledge, there was no discussion or consideration specifically given to Owairaka being classified as a recreation reserve and how the IMP should be shaped or drafted to address that.

While the TMA agrees the annual operational plan, those documents do not contain any detail on this proposed felling. To the best of my knowledge there was no discussion of the removal of all of those trees on Owairaka by us as part of that process. Nothing of that sort occurred at any of the Hui or workshops I was a part of.”

55. Mr Parkinson confirmed in his affidavit that

“Aside from a few absences, I attended all the Hui and prior workshops held by the Tupuna Maunga Authority, both during our formation of the IMP and thereafter, while I was a member.”

56. I can confirm the minutes of the meetings provided to the Court in Mr Majurey’s original affidavit (as exhibits **PM5**, and **PM7** through to **PM9**), demonstrate that, Mr Parkinson was in attendance for the following hui and therefore was part of the following decisions made:

302.0616
302.0730
302.0741
302.0749

302.0616

(a) **Hui #36** 28 May 2018 (**PM5**) (Mr Parkinson’s attendance is recorded): adoption of the 2018/2019 annual operational plan, and an express reference at paragraph 8 **Statutory Context** to:

The Authority administers the Tūpuna Maunga under the Reserves Act 1977 and pursuant to Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014.

302.0730

(b) **Hui #42** 3 December 2018 (**PM7**): approval of the operations plan for the 2019/2020 financial year including the **Vegetation Restoration Programme** for the Tūpuna Maunga listed as recorded below:

Significant progress in the planning and consenting phase of this programme for Ōhūiarangi/Pigeon Mountain, Ōtāhuhu / Mt Richmond, Ōwairaka / Te Ahi-Ka-Rakataura / Mt Albert, Te Pane-o-Mataaho / Te Ara Puera / Māngere Mountain and Te Tātua-a-Riukiuta / Big King;

302.0741

- (c) **Hui #44** 4 March /2019 (**PM8**) noted the report on the second quarter and again includes the text directly above relating to the **Vegetation Restoration Programme**;

302.0749

- (d) **Hui #46** 6 May 2019 (**PM9**): noted that a presentation was received by Kirsty Hunt and Caleb Azor in relation to tree felling on maunga, noted the report on the third quarter, and key highlights include:

Vegetation restoration programme

Maungarei/Mt Wellington stage 2 removals completed and removals on Te Pane-o-Mataaho/ Te Ara Pueru / Māngere Mountain initiated and largely completed

Finalised planning and ordering of plants for planting between May – August on Maungarei, Ōhūiarangi, Ōwairaka and Te Pane-o-Mataaho.

57. In addition, the front page of each Tūpuna Maunga Authority hui agenda refers to the Reserves Act 1977 (please refer to the first page of the exhibits listed in paragraph 56 above). This includes the hui in which the Integrated Management Plan was adopted (Hui #19, which the agenda and minutes of are attached to the affidavit of Janine Bell and marked **JB24** and **JB25**). I note Mr Parkinson is listed as an apology for that hui.

303.1023
303.1145

58. Respectfully, it was clear to me and other members of the management team that Mr Parkinson was indeed aware of the restoration programme and the details of it on Ōwairaka / Te Ahi-kā-a-Rakataura / Mt Albert, and at no stage did he raise any concerns.

202.290

RESPONSE TO THE AFFIDAVIT OF ANNA MARIE RADFORD

59. Ms Radford says in her affidavit that “to this day I do not believe that the Tūpuna Maunga Authority has ever held a public meeting to answer the community’s questions about the felling on Mt Albert”.
60. I have provided information about consultation in my original affidavit at paragraphs 118 to 136. By way of clarification, the Project letter mail was

305.2120

dropped to houses in streets directly around the maunga. I exhibit and mark a map of the letter drop as **NT11**. In addition to that information the Tūpuna Maunga Authority has recently held a number of consultation events including the “Love Your Maunga” event at Te Pane a Mataoho / Te Ara Pueru / Mangere mountain on 29 February 2020 – where information was freely available on the work of the Tūpuna Maunga Authority and the Tūpuna Maunga Operational Plan for the 2020/2021 financial year. Staff, and members of the Authority freely answered questions on the work of the Authority, including our restoration efforts across the Tūpuna Maunga network. Further, a whole tent of information on restoration, trapping, the new track and the Maunga and the new playground was made available for people to ask questions about.

61. A further event was held at Puketapa / Pukewiwi / Mt Roskill where information on the 2020/2021 operational plan was provided and staff were available to answer questions on the proposal.
62. Ms Radford attended this day and to the best of my abilities I answered her questions about our restoration projects (noting that we were currently before the courts and I was limited in what I could say).

AFFIRMED by **NICHOLAS HENRY**

TUROA at)

This day of 2020))

before me:)

N H TUROA

A solicitor of the High Court of New Zealand