

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU 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 MAKĀURAU  
AUTHORITY**

**First Respondent**

**AND**                                **AUCKLAND COUNCIL**

**Second Respondent**

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**MEMORANDUM OF COUNSEL FOR SECOND RESPONDENT IN RESPONSE  
TO MEMORANDUM OF COUNSEL FOR FIRST RESPONDENT SEEKING AN  
URGENT DIRECTIONS HEARING**

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10 March 2020

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 **Simpson Grierson**  
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## **MAY IT PLEASE THE COURT:**

1. This memorandum is filed on behalf of Auckland Council (**Council**) in response to the memorandum of counsel for the first respondent (**Authority**) dated 9 March 2020 requesting an urgent directions hearing to resolve timetabling matters. The Council supports that request.

### **Background**

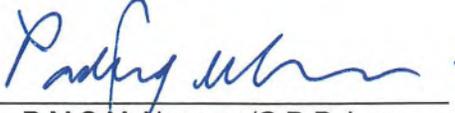
2. In a minute dated 9 December 2019 Lang J made by consent the timetable directions proposed in paragraph 6(c) of the joint memorandum of counsel dated 8 December 2019 (**Current Timetable Orders**). His Honour also allocated a one day fixture (20 March 2020) for the substantive application for judicial review.
3. The Current Timetable Orders require the applicants to file and serve their synopsis of argument and a bundle of relevant documents at least 10 working days before the hearing i.e. by 6 March 2020. If 20 March 2020 remains available for a substantive hearing (which is not entirely clear – see paragraph 7 below), the applicants have not complied with this order, and have not sought any revision to the timetable. Nor have they corresponded with the second respondent as to when the synopsis of argument and bundle of relevant documents will be filed and served. Compliance is unaffected by the applicants' application for leave to amend the statement of claim, as that application has not been determined and the Current Timetable Orders relate to the unamended statement of claim.
4. The Current Timetable Orders require the respondents to file a synopsis of argument and any other relevant documents at least 5 working days before the hearing i.e. by 13 March 2020. That timing was to ensure a 5 working day gap between the applicants' and respondents' submissions.

### **Position of the second respondent**

5. Whether or not the applicants are granted leave to file an amended statement of claim, the Current Timetable Orders now require amendment.

6. If leave to amend the statement of claim is declined, the Current Timetable Orders will require amendment because of the applicants' non-compliance to date. The respondents should not be prejudiced by the applicants' failure to file and serve their synopsis of argument by 6 March 2020. Five clear working days between the dates of the applicants' and the respondents' submissions should be maintained. If the timetable is, as the applicants suggest, now premised on a substantive hearing on 8 and 9 June 2020, this should be clarified.
7. If leave to amend the statement of claim is granted, the Current Timetable Orders will require amendment because the proceedings will have expanded in scope, the Council will be required to file a statement of defence to the amended statement of claim, and two days are required for the substantive hearing. Hearing time on 8 and 9 June has already been allocated to accommodate this possible scenario, through the minute of Palmer J dated 17 February 2020. In that minute Palmer J did not, however, vacate the 20 March 2020 fixture date, in case it was still required for an interlocutory application. It is not entirely clear whether the 20 March 2020 fixture is still available for a substantive hearing, if the leave application is determined on the papers and declined.
8. If leave to amend the statement of claim is granted, suggested timetable directions are set out in the submissions on behalf of the applicants dated 26 February 2020, and in the memorandum of counsel for the second respondent dated 27 February 2020.
9. The Council supports the Authority's request for an urgent directions hearing to determine what new timetable orders should be.

**Date:** 10 March 2020

  
P M S McNamara / G D Palmer  
Counsel for the second respondent