

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE

CIV-2019-404-2682

Under the	<b>JUDICIAL REVIEW PROCEDURE ACT 2016</b>
Between	<b>AVERIL ROSEMARY NORMAN AND WARWICK BRUCE NORMAN</b>
	Applicants
And	<b>TŪPUNA MAUNGA O TĀMAKI MAKĀURAU AUTHORITY</b>
	First Respondent
And	<b>AUCKLAND COUNCIL</b>
	Second Respondent

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**AFFIDAVIT OF SALLY BARBARA PEAKE**

the 31<sup>st</sup> day of January 2020

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I, **SALLY BARBARA PEAKE**, Landscape Architect, of Auckland, solemnly and sincerely swear:

1. My full name is **Sally Barbara Peake**.
2. I am Principal Landscape Architect and owner of Peake Design Limited. I have operated the company for 18 years. Prior to that, I was employed by City Design Ltd (an Auckland City Local Authority Trading Enterprise) and Auckland City Council following my arrival in New Zealand in 1988. Prior to that, I held positions as a Landscape Architect in Fiji and the UK. I qualified as a Landscape Architect in 1973 and as an Urban Designer in 1979.
3. I have been engaged by the Tūpuna Maunga o Tāmaki Makaurau Authority ("**Tūpuna Maunga Authority**"), the First Respondent, which is a statutory authority established under the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014. My evidence relates to the landscape and visual amenity aspects of the Tūpuna Maunga Authority's resource consent decision to undertake a restoration project of indigenous planting and removing exotic vegetation on Ōwairaka/Te Ahi-kā-a- Rakataura/Mt Albert ("**Ōwairaka/Te Ahi-kā-a- Rakataura**").
4. In 2018, I assisted with the assessment of landscape and visual effects relating to the replanting of 13,000 indigenous plantings and removal of 345 exotic trees at Ōwairaka/Te Ahi-kā-a- Rakataura. This was set out in the *Landscape and Visual Assessment for Proposed Tree Removal Owairaka* that was attached to the Tūpuna Maunga Authority's October 2018 resource consent application. I exhibit this report and mark it "**SP1**".
5. I understand that Auckland Council ("**Council**") granted consent on 20 February 2019.

#### **Qualifications and experience**

6. I have the following qualifications and experience relevant to the information in my affidavit:
  - (a) Registered FNZILA Landscape Architect;

- (b) 47 years of experience as a landscape architect; and
- (c) 41 years of experience as an urban designer.

**Code of conduct**

- 7. I confirm that I have read and will comply with the 'Code of conduct for expert witnesses' contained in the High Court Rules 2016.
- 8. I further set out the scope (and the extent of that scope) of my affidavit below.

**Scope of affidavit**

- 9. My affidavit covers the following matters:
  - (a) the background materials I have referenced;
  - (b) my involvement in the resource consent process, including:
    - (i) the key matters I assessed;
    - (ii) my key conclusions in the assessment and response to relevant queries in the Section 92 request;
  - (c) a clarification of the resource consent notification and substantive decisions as they relate to landscape and visual effects;
  - (d) my response to matters raised by the Applicants in this proceeding; and
  - (e) my key conclusions.

**Background materials referenced**

- 10. In preparing my evidence I have reviewed the following documents:
  - (a) Landscape and Visual Assessment for Proposed Tree Removal Ōwairaka (**SP1**);
  - (b) Landscape and Visual Addendum which I exhibit and mark "**SP2**";
  - (c) Memorandum re Proposed Vegetation Removal – Ōwairaka, 7 December 2018 which I exhibit and mark "**SP3**";

- (d) Tūpuna Maunga o Tāmaki Makaurau Integrated Management Plan (2016) (“IMP”) which is produced by Janine Bell and marked **JB1**;
- (e) Evidence of Stephen Brown, Unitary Plan Hearings (25 May 2015) which I exhibit and mark “**SP4**”;
- (f) The Ōwairaka/ Te Ahi-kā-a- Rakataura Planting Plan, 16<sup>th</sup> October 2018 which is produced by Richard Mairs and marked **RM2**;
- (g) The notification decision dated 20 February 2019 which is produced by Antony Yates and marked **AY2**;
- (h) The substantive decision dated 20 February 2019 which is produced by Antony Yates and marked **AY3**;
- (i) Statement of Claim on behalf of the Applicants, 6 December 2019; and
- (j) Affidavits of Averil Rosemary Norman and Warwick Bruce Norman, Sir Harold Marshall, Anna Marie Radford and Andrew Francis Barrell dated 6 and/or 19 December 2019.

#### **The resource consent process**

- 11. I carried out an assessment of landscape and visual effects for the proposed tree removal on Ōwairaka/Te Ahi-kā-a- Rakataura for the resource consent application and prepared the *Landscape and Visual Assessment* report (**SP1** and **SP2**). I am also aware that the area is a recreation reserve under s 17 of the Reserves Act 1977.
- 12. I also prepared supplementary information following the Section 92 request from the Council (**SP3**).
- 13. The assessment of effects and report utilises a methodology that follows best practice and was undertaken in accordance with the NZILA Practice Note and Council’s Landscape and Visual Effects Assessment Guide.
- 14. A summary of the key assessment matters and conclusions from the Landscape and Visual Assessment and AEE are set out below (paragraphs 15-26).

15. The IMP (**JB1**), identifies the Tūpuna Maunga as among the most significant spiritual, cultural, historical, archaeological and geological landscapes in the Auckland region, while evidence presented in the Unitary Plan Hearings (Stephen Brown, 25 May 2015) (**SP4**) describes them as outstanding natural features with landscape value that arises from their combination of naturalness within an urban environment and their cultural associations.
16. From a visual perspective, Ōwairaka/Te Ahi-kā-a- Rakataura is a distinctive landscape feature within the residential context and widely visible, especially from the west. The Unitary Plan identifies multiple regionally significant views to the Tūpuna Maunga.
17. The planning context confirms its values in relation to conservation, recreation, historic heritage, natural heritage, and views.
18. In addition, the landscape assessment identified the following natural characteristics and qualities that could contribute to its values:
  - (a) natural elements, processes and patterns;
  - (b) biophysical, ecological, geological and geomorphological aspects; and
  - (c) experiential and sensory attributes.
19. Potential adverse effects were identified as relating to the magnitude of change to abiotic and biotic elements, processes and patterns, as well as the consequential experiential and aesthetic changes arising from the proposed vegetation removal and replanting.
20. The assessment relating to biophysical change and landscape quality determined that the proposal would have moderate impacts due to the number of trees proposed to be removed, but that the methods used to effect change would minimise physical effects, and the final outcome would result in positive effects on the key features and attributes (ONF/ landscape quality) through their protection and enhancement. Biophysical effects were therefore rated low adverse in the short term (during vegetation removal) and positive following vegetation removal and restoration.
21. Similar to effects of biophysical change, the assessment of landscape and natural character effects determined that there would be short term moderate

adverse impacts with noticeable alteration to key features/attributes, but low adverse effects. Similarly, there would be some change to landscape patterns and character, especially with the removal of taller trees in elevated areas on the tihi but effects were rated low in relation to overall landscape character.

22. The assessment of visual effects analysed views for visitors to Ōwairaka/Te Ahi-kā-a- Rakataura, other users of the open space network on the Maunga (e.g. recreation/sports users, and residents and users of the surrounding street network). The assessment noted that the mountain is a distinctive landscape feature within the residential context and that regionally significant views have been identified from all directions, including vantage points from some distance away. From closer distances, however, it was noted that development often screens views of the cone and tihi (summit).
23. Visual effects for visitors to Ōwairaka/Te Ahi-kā-a- Rakataura were rated positive through to low adverse (varying with location and available views). The general conclusion was that the removal of the exotic vegetation would reinstate the natural character of the volcanic feature and mountain, and has the opportunity to enhance the visitor experience. It noted that although the existing trees to be removed may be perceived by some viewers as providing some amenity, so that their loss would be perceived as negative, the restoration to native forest and grassland would result in positive effects. The visual effects of vegetation removal for users of the open space network were rated neutral.
24. A mix of views was identified for users of the surrounding street, noting that in many places, the Maunga is fully or partially obscured, or viewed with a foreground of urban development. The assessment determined that the magnitude of visual change would range over time and from positive to moderate adverse depending on the proximity to the Maunga and the face/amount visible. From most viewpoints, the removal of vegetation, particularly from the crest of the tihi, would enhance the profile and legibility of the volcanic feature, resulting in positive visual effects. Dense stands of native vegetation on the lower slopes would be retained, maintaining a vegetated containment over much of the Maunga feature. Elsewhere, grass slopes allow the Maunga profile to be better defined and revealed with the proposed removal of vegetation.



25. Visual effects for residents were deemed to be similar to those from surrounding streets, excepting that views would be static so that the magnitude of change may be perceived as greater. The assessment acknowledged that visual effects of the removal of vegetation may be perceived as positive by some and negative by others, depending on the nature of the view and whether they appreciate the difference between native and exotic vegetation. As a result, visual effects of the proposed vegetation removal would range from positive through to low adverse, depending on the location of the viewer.
26. The report included an assessment of the proposal against the Unitary Plan provisions and concluded that "the proposal will realise the outcomes sought by the policy framework in relation to landscape considerations as set out in various sections of the AUP", including the following:
- (a) The proposal is consistent with the overarching objectives contained in the Regional Policy Statement in relation to protecting and enhancing the visual, physical and cultural values of the volcanic feature, and will enhance the landscape values of the Maunga.
  - (b) Together with the removal of vegetation that is at odds with the values of the mountain, for example archaeological/historic heritage and cultural values, restoration planting will further enhance the landscape values of the ONF.
  - (c) The proposal is also consistent with the policy framework relating to volcanic viewshafts. The removal of the identified vegetation will improve the visual integrity of the volcanic feature, enhancing the contribution it makes to the landscape of Auckland.
  - (d) In relation to the Open Space – Conservation zone, it is considered that the proposal is consistent with the policy framework that also seeks to ensure that the natural, ecological, landscape, and Mana Whenua values of the zone are enhanced. In particular, the removal of exotic vegetation and the location of restoration planting will restore the landscape values of the Maunga, and contribute to re-establishing cultural landscape values by supporting the relationship of Mana Whenua to their ancestral lands. In this respect, the proposal is consistent with the direction provided in the IMP.

- (e) The proposal is also generally consistent with the objectives and policies relating to the Open Space – Sports and Active Recreation zone, and tree protection in Sections E15 and E16, as it protects trees in the open space zones that contribute to the cultural, amenity, landscape and ecological values, and protects and manages indigenous biological diversity and ecosystem services.

27. I confirm the findings of the assessment and conclusions in the report (SP1) and memorandum responding to relevant queries in the Section 92 request (SP2).

**The resource consent decision**

28. I have read the resource consent decision and support both the notification and substantive decision, including the reasons provided.
29. There is one area that I wish to clarify relating to the proposed restoration planting. The decision states in the notification decision:

“...any landscape and visual effects of the tree removals experienced by people with an outlook to, or using the Maunga, are of limited effect and such effects are adequately mitigated by the proposed restoration planting...”

and in the substantive decision:

“In the context of the landscape and visual values of the Maunga, any landscape and visual effects of the proposal are considered to be acceptable, with adverse effects being short term in nature, in keeping with the natural landform and landscape, and mitigated by the proposed restoration replanting to ensure that any adverse effects are less than minor.”

30. As restoration planting is proposed to facilitate the restoration of the natural and indigenous landscape, my conclusions do not rely upon the plantings to mitigate landscape and visual effects. The landscape strategy for the Tūpuna Maunga, and the conclusions of the landscape and visual assessment are dependent on restoring and enhancing the authenticity and visual integrity of the Maunga which includes making its cultural and natural features visually apparent. For this reason, parts of the Maunga, and in particular the tihi, should be retained in grass. This is consistent with the *Ōwairaka/Te Ahi-kā-a-Rakataura Planting Plan* (16<sup>th</sup> October 2018) which sets out the aims and location of proposed planting/restoration.



## Response to matters raised in this proceeding

31. I have read the Statement of Claim and Applicant's affidavits. My reading of matters raised in relation to landscape and visual effects are that they mainly relate to perceived loss of amenity arising from the proposed tree removal.
32. The overall vegetation cover contributes to Ōwairaka/Te Ahi-kā-a- Rakataura's use, enjoyment and ecology and that trees create a peaceful refuge in the neighbourhood and provide visual amenity and shade. These attributes and values will not be removed, however, as large areas of native trees will remain. It is also relevant to note that the Maunga does not just comprise the land administered by the Tūpuna Maunga Authority. As discussed by Mr Turoa in his affidavit, the Maunga is a historical landform that extends into other lands, both reserve and private. For example, an adjoining area of reserve land with public access is owned by Watercare (an Auckland Council Organisation) and contains a large number of exotic trees and none of these are being removed by the Tūpuna Maunga Authority.
33. Views towards the Maunga will change as a direct consequence of the proposed removals. It is incorrect to say that this will cause the vista towards and on the mountain to be "lost", however. Rather, as stated in paragraphs 24 and 26 above, it is my opinion that the removal of vegetation, particularly from the crest of the tihi, will enhance the profile and legibility of the volcanic feature, resulting in positive visual effects and contributing to re-establishing cultural landscape values.
34. I have also reviewed Mr Barrell's affidavit and photographs. Replanting and restoring traditional indigenous mana whenua flora and fauna on the maunga is a long-term goal of the Tūpuna Maunga Authority but is only one aspect of the IMP and I do not agree that managing the maunga as an urban forest is appropriate in this context. The bulk of his photographs support the findings of my assessment where I state:

"...the highest number of tree removals will occur in the central part of the mountain between the quarried/flat areas, which is the least visited part of the maunga and least visible, only accessible by informal walking tracks and the open grassed areas."

35. Image 2 of Mr Barrell's affidavit covers an area where I identify in my supplementary memo (**SP3**) that some Eucalypts will remain:

"In the images, while the trees to be removed have not been detailed or annotated, it can be seen that the tallest trees are exotics, most noticeably Eucalypts. These are readily identifiable within views and act as outliers, above the native trees. It is also evident that these are concentrated on the upper flanks of the cone and generally in the north and northeast areas.

It should also be noted that some of these Eucalypts are outside the site area.

As outlined in the report and above, the most noticeable change will be the removal of these outliers and it is considered that this will improve that the legibility of the profile as well as potentially reveal physical features of cultural importance."

36. Paragraphs 28 to 30 above confirm that there is no intention for proposed planting to exactly replace removed trees or restore current views so that concerns by applicants about the length of time for trees to reach existing heights and maturity is, in my opinion, irrelevant.
37. Similarly, based on my assessment of effects, an alternative methodology (such as phased removal) would only delay final outcomes (and positive effects). A phased removal would have a different set of effects over a different time scale.
38. I consider the proposal is consistent with the general purpose of the Act and the policies for Recreation Reserves and that the tree removal proposal will be undertaken in a manner that will have a minimal impact on the Maunga in terms of the Reserves Act.

### **Key conclusions**

39. I conclude that the proposed tree removal will realise the outcomes sought by the policy framework of the Auckland Unitary Plan, Tūpuna Maunga Integrated Management Plan, and that the overall potential effects with

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regard to landscape and visual effects are acceptable, and in any event,  
minimal and appropriately managed.

**SWORN** by **SALLY**

**PEAKE** at Auckland )  
this 31<sup>st</sup> day of January 2020 )  
before me: )

S PEAKE  
**S PEAKE**

Janou  
A solicitor of the High Court of New Zealand

Janou Marie Kannangara  
Solicitor  
Auckland