

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

**AFFIDAVIT OF BROOKE JAMES MACDONALD DALES ON
BEHALF OF THE SECOND RESPONDENT**

Filed 3 April 2020

Affirmed:

2020

 **Simpson Grierson**
Barristers & Solicitors

Padraig McNamara / Sarah Mitchell
Telephone: +64-9-358 2222
Facsimile: +64-9-307 0331
Email: padraig.mcnamara@simpsongrierson.com
DX CX10092
Private Bag 92518
Auckland

I, **Brooke James Macdonald Dales**, Consultant Planner, of Auckland, solemnly and sincerely affirm:

QUALIFICATIONS AND EXPERIENCE

1. I hold a Bachelor of Planning from the University of Auckland (1994).
2. I am a Director/Planning Consultant at DCS Limited (**DCS**), a private planning consultancy based in Auckland.
3. I have approximately twenty six years' experience in the planning profession in New Zealand, including ten years in local government and sixteen years in the private sector. I have lived and worked in Auckland throughout this time and have worked extensively with the Auckland Council. In recent years, I have specialised in project and development planning advice and assessment. Project areas I have been involved with include visitor accommodation, industrial development, hospitality, healthcare, open space and recreation, office, residential and mixed use developments. Typically, my work on behalf of Council involves work on more complex applications in recognition of my experience.
4. I am authorised by the Council to make this affidavit.
5. I have read the Code of Conduct for expert witnesses contained in Schedule 4 of the High Court Rules and to the extent that I am exercising my professional opinion, agree to comply with it.

PURPOSE AND SCOPE OF AFFIDAVIT

6. The purpose of this affidavit is to describe my involvement in the processing of the resource consent application by the Tūpuna Maunga o Tāmaki Makaurau Authority (**Authority**) to undertake the necessary works to remove exotic vegetation and undertake restoration planting on Ōwairaka / Te Ahi-kā-a-Rakataura / Mt Albert (**Ōwairaka**) at 27 Summit Drive, Mt Albert, Auckland (**Application**). I also respond to matters raised in the first amended statement of claim and affidavits filed and served on behalf of the Applicants.

- 304.1301
7. The fourth ground of review in the first amended statement of claim concerns the Council's decisions to neither publicly or limited notify the Application under sections 95A – 95E of the Resource Management Act 1991 (**Notification Decision**). The Notification Decision is annexed to Mr Yates' affidavit at "AY2".
- 305.1963
8. I was the planner that prepared the report recommending that the Application be granted without public or limited notification (**Notification and Substantive Report**). This report is attached to this affidavit as exhibit **BD-1**.
9. This affidavit addresses the following matters:
- (a) Processing of the Application;
 - (b) The Notification and Substantive Report;
 - (c) Responses to certain matters raised in the Applicants' affidavit evidence; and
 - (d) Conclusion.
10. I have knowledge of the matters in this affidavit from my role as the reporting planner on the Application. In preparing this affidavit I have reviewed the Council's Application file to confirm specific details. To the best of my ability I also provide my recollection of communications associated with the Application.
11. In preparing this affidavit I have also reviewed the first amended statement of claim and the following statements of evidence filed by the Applicants and the Authority in these proceedings:

Affidavit of Andrew Francis Barrell	6 December 2019
Affidavit of Sir Harold Marshall	6 December 2019
Affidavit of Averil Rosemary Norman	6 December 2019

Affidavit of Anna Marie Radford	6 December 2019
Further affidavit of Andrew Francis Barrell	20 December 2019
Affidavit of Sally Barbara Peake	31 January 2020
Affidavit of John Robert Styles	31 January 2020
Affidavit of Antony Bernard Yates	30 January 2020
Affidavit of Richard John Mairs	31 January 2020
Affidavit of Bradley William Beach	31 January 2020
Affidavit of Brent Dale Druskovich	30 January 2020
Affidavit of Mary Rose Inomata	13 February 2020
Reply affidavit of Anna Marie Radford	13 February 2020
Reply affidavit of Averil Rosemary Norman	13 February 2020
Reply affidavit of Marie Elaine Tallon	13 February 2020
Reply affidavit of Francis Andrew Barrell	14 February 2020
Affidavit of Phillip Blakely	17 February 2020

PROCESSING OF THE APPLICATION

Lodgement of the Application

12. I was first approached by Council's resource consents project manager Fennel Mason on 20 April 2017 advising that the Authority had completed a form seeking pre-application advice regarding asset management and vegetation removal on the maunga administered by the Authority in the Auckland region. A meeting was held at Council between Mr Mason and myself with Antony Yates and Tania Richmond in their roles as planners for the Authority. A further meeting was held on 8 June 2017 to introduce two projects prior to formal pre-application discussions, one being for

works within various maunga / parks around the region (such as asset renewal, upgrades of paths and maintenance), and the other being vegetation removal. It was advised that the first project was likely to be a blanket consent to cover all asset renewal works, and the second project likely to be in the form of individual applications for each maunga (estimated to be 12 applications). A further meeting was held on 1 August 2017 regarding the upgrades of paths and maintenance project, but did not address the proposed tree removal and replanting project. I am not aware that this blanket consent application for the asset renewal work was progressed any further and I have not had any further involvement.

13. The Authority then made a formal pre-application request specific to the Maungarei (Mt Wellington) vegetation removal and restoration project (PRR00020087) and a pre-application meeting was held at Council on 22 September 2017 where the further application details were supplied and feedback was provided by the Council team of specialists. The Authority subsequently reviewed this information and lodged the application on 6 November 2017 (LUC60311082). This application was the first application as part the wider plan for removals of exotic vegetation and undertaking restoration planting of the 14 Tūpuna Maunga. The resource consent was approved on a non-notified basis on 19 April 2018 by Duty Commissioner Cherie Lane.
14. As part of the processing of that application and determination, it was noted that Council's Arborist, Gavin Donaldson had reviewed the Authority's Arborist assessment (and the broader application material) and agreed with the conclusions of the Treescape assessment that the site specific tree removal methodologies proposed are acceptable. It was noted in the reporting that Mr Donaldson had expressed concerns with the broader merits of the proposal, particularly with respect to visual and heritage effects and their arboricultural merit. Importantly, while Mr Donaldson had concerns with the tree removals, he had confirmed that he was satisfied with the tree removal methodologies proposed. These tree removal methodologies informed each of the lodged Tūpuna Maunga applications. Furthermore, visual and heritage effects were addressed by the appropriate specialists in their assessments (i.e. the Authority's Landscape Architect and Heritage Specialist and reviewed by

Council's Landscape Architect and Heritage Specialist) as addressed in the Council section 42A report.

15. I first became involved with the specific Ōwairaka / Te Ahi-kā-a-Rakataura / Mt Albert (**Ōwairaka**) Application on 24 October 2018 when Council Premium Resource Consents Principal Project Lead Jonathan Begg emailed me seeking my engagement as the reporting planner and including a one drive link to the Application documentation. The Application was allocated to me due to my previous pre-application involvement with the wider revegetation and weed management programme for all 14 Tūpuna Maunga, the consented Maungarei (Mt Wellington) application LUC60311082 and the lodged Māngere Mountain LUC60326774 application.
16. In particular, the Application involved:
- (a) The removal (to stump) of 345 exotic trees from Ōwairaka as set out in the Assessment of Environmental Effects (**AEE**) over a period of 50 days (with helicopter work being anticipated to occur over 20 days) between February and June and not during the main bird breeding season of August-January;
 - (b) Removing the trees in a way which:
 - (i) avoids ground disturbance to protect archaeology and the landform;
 - (ii) avoids damage to native tree species;
 - (iii) minimises ecological effects on flora and fauna values;
 - (iv) limits effects on sensitive noise receivers; and
 - (v) protects the public and workers whilst minimising disruption and closure of the maunga to the public;

- (c) Once removed, processing those trees on site within the existing sports field areas and then removing them via Summit Drive;
 - (d) A communication plan to inform the public of the works, and to reflect the need at times to restrict access to the maunga for health and safety reasons; and
 - (e) Following the removal of the exotic trees, restoration planting of the maunga with indigenous species to establish a WF7 Puriri broad leaf forest type and low native mound plantings.
17. I commenced my initial review of the Application on 24 October 2018 and completed my full review on 7 November 2018. As is my usual practice in undertaking a preliminary desktop assessment of any application, I reviewed the Application documents, researched the site's consent history, researched the site's zoning, relevant provisions and status under the Auckland Unitary Plan (**AUP**), identified the relevant rules under which consent was required, viewed the site on the Council GIS and Geomaps and viewed the site and surrounds on Google Maps, utilising street-view prior to undertaking my full site visit and site assessment.
18. On 24 October 2018, utilising Council's standard process I sought the allocation of the Application to the following subject matter experts seeking their specialist advice (and was subsequently advised in email correspondence of the allocated specialist):
- (a) Ecologist – to biodiversity@aucklandcouncil.govt.nz for allocation – Application allocated to Sarah Budd
 - (b) Landscape Architect – to urbandesign@aucklandcouncil.govt.nz for allocation - Application allocated to Peter Kensington
 - (c) Heritage – to heritageconsents@aucklandcouncil.govt.nz for allocation - Application allocated to Joe Mills

- (d) Acoustic Engineer – to Jared.Osman@aucklandcouncil.govt.nz
for allocation - Application allocated to Peter Runcie

19. My review confirmed that the arboricultural methodology was consistent with the best practice arboricultural management that formed part of the approved consent for Maungarei (Mt Wellington), and therefore no specific further input was sought from a Council arborist.

Site visit

20. On 7 November 2018 I went on a site visit to Ōwairaka on my own. The purpose of this visit was to check the accuracy of the plans and information provided, to assess the site and surrounding environment, identify any specific site/surrounds features or characteristics which may not be immediately obvious from the plans accompanying the application and to assess various areas of work and the closest adjacent properties and assess the potential effects on persons and on the environment. I visited the site and surrounds (circumnavigating the maunga, which included assessing the viewpoints referenced in the Application Landscape and Visual Assessment prepared by Ms Peake), utilising a vehicle but also walking the maunga itself.

Request for further information

21. On 7 November 2018 I emailed a request for further information under section 92 of the RMA to the Authority's planner Antony Yates. The further information I requested essentially passed on (following my review) the requests of Council's Landscape Architect Peter Kensington. In summary, the requests were as follows:
- (a) Confirmation of tree locations – closer scaled drawings illustrating the location of trees proposed for removal and retention;
- (b) Clarification over black dot indicated within "Sport Field Mound" work area;

- (c) Assessment of the AUP Volcanic Viewshafts (Schedule 9 and Appendix 20);
- (d) Viewpoint location plan and annotated photographs to show the location and extent of the tree removal;
- (e) Assessment of landscape and visual effects on the identified Outstanding Natural Feature (**ONF**), as classified in the AUP (Mt Albert (Ōwairaka) ID 108);
- (f) Assessment of the potential landscape and visual effects of leaving the tree stumps in-situ.

22. There were no further information requests at this time from other Council specialists.
23. A meeting was held at the DCS offices on 16 November 2019 with myself, Peter Kensington and Antony Yates to work through the matters raised. Jodie Mitchell, the Authority's planner for the previously lodged application for Te Ara Pueru / Te Pane-O-Mataaho / Māngere tree works, also attended the meeting as similar matters were raised by Mr Kensington as part of the assessment of that application.
24. The meeting worked through each of the issues raised, clarified what information was already provided in the Application and confirmed what further information would be supplied post-meeting. Mr Yates emailed a summary of the agreed actions on 20 November 2018 and Mr Kensington and myself confirmed (following our review of this document) on 21 November 2018 that the document was an accurate reflection of our discussion. This document is attached to this affidavit as exhibit **BD-2**. These actions informed the Authority's section 92 response.
25. Mr Yates emailed me the Authority's section 92 response on 17 December 2018 and I email-forwarded this onto Mr Kensington.
26. On 7 January 2019 Council's Noise Specialist Peter Runcie emailed me seeking points of clarification on noise matters as part of the finalising his specialist assessment. As I was on leave at that time, I advised Mr

Hei EEEE

Runcie to email the Authority directly and cc me in. Mr Runcie did that on 8 January 2019 and received responses from Mr Yates on 9 January 2019 and Mr Styles (the Authority's Acoustic Engineer) on 18 January 2019. Mr Runcie was satisfied with this responses and completed his assessment memo and emailed it to me on 21 January 2019.

Preparation of Notification and Substantive Report

27. As a result of the responses to my requests for further information, I considered that I had sufficient information, having shared this information with the Council specialists and relying on their advice that they also were satisfied with the relevant responses relating to their specialist areas. The Council specialists were then managed as to the timing of the completion of their specialist assessments. I proceeded to prepare the front end of the Notification and Substantive Report whilst awaiting the specialist assessments.
28. In preparing the Notification and Substantive Report I used the relevant Council template which sets out an order as follows:
- (a) Application description
 - (b) The proposal, site and locality description
 - (c) RMA Reasons for the application
 - (d) RMA Activity Status of the application
 - (e) RMA Notification assessment and recommendation
 - (f) RMA Substantive consideration of the applications s104 (Part 2 and Other Matters)
 - (g) Substantive Conclusion
 - (h) Substantive Recommendation

- 29.** At the initial review of the Application stage and the request for further information stage of the Application processing, the reporting planner's role is to review all of the information in terms of effects, but also in terms of the relevant objectives, policies and assessment criteria set out in relevant statutory documents to ensure the application has addressed all relevant matters to enable a thorough and robust assessment of the application. This was undertaken and has been outlined earlier in this affidavit.
- 30.** At the report preparation phase the reporting planner firstly focusses on the adverse effects of the proposal as directed by the RMA's notification provisions. Upon completing this assessment the reporting planner then makes a recommendation on whether an application should be publicly notified (sections 95A, 95C-95D). If the recommendation is not to publicly notify the application under section 95A, the reporting planner must then assess whether to limited notify the application (sections 95B, 95E-95G). This involves an assessment as to whether there are any adversely affected persons. If it is considered that there are not any adversely affected persons then, unless there are special circumstances that warrant limited notification of the application, a recommendation is made that limited notification is not required.
- 31.** If this is the case, an overall recommendation can be made that the application can be processed non-notified.
- 32.** Following this notification recommendation, the reporting moves onto the substantive consideration of the application pursuant to section 104 (Part 2 and Other Matters). Under section 104B the Council may grant or refuse consent for a discretionary or non-complying activity. If it grants the application, it may impose conditions under section 108 of the RMA.
- 33.** At the conclusion of the substantive assessment, a substantive recommendation is made as to whether the actual and potential effects on the environment of allowing the activity are acceptable and whether the activity is consistent with the relevant statutory documents. A recommendation is then made as to whether the application should be granted or declined. Reasons are given and, if the recommendation is that consent be granted, conditions of consent are included to further

avoid, remedy or mitigate adverse effects and to further ensure consistency with the relevant statutory documents. These conditions are often proposed in the application, further amended or added to by Council specialists in undertaking their assessments and hence are addressed in the various reports as particular matters are addressed.

34. As described above, the set of conditions are often formed as part of an iterative process through the initial review of the application, the section 92 process, the specialist assessment and reporting and the drafting of the Council Planners section 42A report. On completion of the draft Council Planners section 42A report and recommendation, it is standard Council practice to share a copy of the final suite of conditions with the applicant for comment. This assists in efforts to ensure the conditions are clear and understood as to their intent. At this point it is preferable that the full set of conditions are agreed, but if there is any disagreement these can be tabled for the consideration of the decision maker in making the determination.
35. This process was followed in this Application. I liaised with Mr Yates who, after liaising with the Authority team, agreed with the final set of proposed conditions in my final section 42A report. A copy of Mr Yates' email of 11 February 2019 confirming that the Authority agreed to the proposed conditions of consent is annexed and marked **BD-3**.
36. On 11 February 2019 I completed my report, recommending that the Application be granted without public or limited notification and provided the report to Council Principal Project Lead Premium Resource Consents Jonathan Begg. In accordance with standard Council practice, I also supplied the completed Council's Duty Commissioner Record Sheet and Duty Commissioner Decision Template (i.e. a draft notification and substantive decision), along with a one drive link to all the relevant Application material. A copy of this email correspondence is annexed and marked **BD-4**. No changes were requested by Mr Begg following a review of these documents.
37. On 15 February 2019 I received from Mr Begg a tracked changed version of the Council's Duty Commissioner Decision Template that Mr Kaye used as the base to draft his decision. This tracked changed document

305.2005

305.2009

305.2030

made changes to the draft decision reasons and conditions and also sought the reporting planner's comment on specific matters. A copy of document is annexed and marked **BD-5**. I reviewed these changes and discussed these matters with my DCS colleague Colin Hopkins asking him to respond as I was unavailable to do so at that time. Mr Hopkins made further tracked changes to the document and responding to the comments. Following my review and confirmation, Mr Hopkins emailed to Mr Begg on 18 February 2019 a further tracked changed version of the Duty Commissioner Decision Template, a copy of which is annexed and marked **BD-6**.

305.2049

- 38.** On 20 February 2019 Mr Kaye determined that the Application was not required to be notified on either a public or a limited basis. On the same date Mr Kaye also determined that the Application should be granted consent subject to the recommended conditions of consent (the **Substantive Decision**).

NOTIFICATION RECOMMENDATION REPORT

- 39.** In this section I discuss the first section of my Notification and Substantive Report, which recommended that the Application proceed without public or limited notification (**Notification Report**).
- 40.** I assessed the Application and drafted the Notification Report based on:
- (a) The materials and specialist advice provided at lodgement (including the AEE and supporting expert reports);
 - (b) Information and specialist advice provided subsequent to lodgement (the section 92 response and relevant specialist reports);
 - (c) Information from my review of the site's consent history, the site's zoning, relevant provisions and status under the AUP, the relevant rules under which consent was required, my review of the site on the Council GIS and Geomaps and my review of the site and surrounds on Google Maps, utilising street-view prior to undertaking my full site visit and site assessment.

- (d) My observations and recollections from the site visit;
 - (e) Discussion with specialists in the processing of the Application up to the completion of their specialist reports;
 - (f) My experience as a resource consent planner; and
 - (g) My understanding of the RMA and the AUP, including the identification of the relevant matters for consideration in the AUP.
41. On page 3 of the Notification Report I listed the specialists who had been involved in assessing the Application. The involvement of these specialists was discussed in the sections above.
42. On page 4 of the Notification Report I described the proposal, site and locality description.
43. On page 5 of the Notification Report I listed the reasons resource consent was required for the proposal. On page 7 I noted that the resource consents required for the proposal overlapped and so were considered together as a discretionary activity overall. In looking at each of the reasons for consent I considered that each of the reasons was either related to and/or would have consequential or flow on effects on matters that would be considered as part of the assessment of the other reasons for consent even if they were considered separately, and hence I considered them all together. This approach is known as “bundling” and is common practice amongst resource management planners where multiple resource consents are required for a single proposal.

Public notification assessment

44. On page 7 of the Notification Report I began the assessment, required under sections 95A, 95C-95D, as to whether the Application should be publicly notified. First I addressed the steps listed in section 95A in the order in which they are set out in the RMA. I recorded for the purposes of Step 1 in section 95A that mandatory public notification was not

required, and for the purposes of Step 2 that public notification was not precluded.

45. On page 7 of the Notification Report I began the assessment of adverse effects that I carried out as part of Step 3 in section 95A.
46. On page 8 I identified the land adjacent to the subject site. Pursuant to section 95D(a)(ii) the Council is to disregard any effects on those persons who own or occupy this adjacent land when considering whether an activity will have more than minor effects for the purposes of public notification. On page 8 I also noted that no written approvals have been provided with the application.
47. My assessment of adverse effects (starting on page 9 of the Notification Report) was structured under the following headings:
 - (a) Effects on Landscape Values and Visual Amenity
 - (b) Effects of Construction – Noise, and Public Access and Recreational Amenity
 - (c) Effects on Ecology
 - (d) Effects on Heritage
 - (e) Effects on Arboriculture
 - (f) Effects arising from Land Disturbance
 - (g) Effects on the Stability of the site
48. In these assessments I referred to the specialist advice from the Authority team and the Council team and concluded the assessment by confirming that, subject to the agreed proposed conditions of consent, that these adverse effects resulting from the proposal can be managed so that they are less than minor.

49. Having reviewed the statements of evidence filed by the Applicants, I confirm that I stand by my assessments. Notwithstanding this, I refer to specific points raised in the following paragraphs.

Arboricultural effects

50. I refer to my assessment of effects on arboriculture on page 12 of the Notification Report where I state that an Arboricultural Assessment and Removal Methodology prepared by Treescape (Exhibit BB1 to Mr Beach's affidavit) has been provided with the Application, which outlines the tree removal methodologies proposed as part of the works. I also note that the works methodologies and conditions proposed by the Authority are consistent with those consented on Māngere Mountain and Maungarei (Mt Wellington) and confirmed as appropriate for works of this nature by the Council's Arboriculture specialist Mr Donaldson. I conclude this section as follows:

(301.0371)

With this in mind and having reviewed the applicant's assessment, I am satisfied that the tree removal works can be undertaken in a manner that is consistent with best arboricultural management to ensure that any adverse arboriculture effects will be less than minor. Conditions of consent are also proposed relating to the oversight of the tree removal works in accordance with the Treescape methodologies.

51. This section of the Notification Report follows on from the work summarised in paragraph 14 above regarding the previous advice of Council Arboriculture specialist Mr Donaldson. The affidavits filed by Mr Barrell on behalf of the Applicants query the lack of involvement of a Council Arborist and suggest alternative removal options (ring-barking and monolithing) that should have been considered.
52. However, as I have explained above, the Council Arborist had previously confirmed that he was satisfied with the tree removal methodologies proposed by the Authority, as advised by the Authority's Arborist. For that reason I did not consider that I needed any specific further input from the Council's Arborist to make my assessment.
53. I confirm that I remain satisfied that the tree removal works proposed by the Authority can be undertaken in a manner that is consistent with best arboricultural management to ensure that any adverse arboriculture

effects will be less than minor. When considering “arboricultural effects” in the Notification Report I am referring to the effects of the tree removal work (as detailed by tree removal methodologies proposed by the Authority) as it relates to the management of the effects of the removal process on the native trees being retained. The “ecological effects” of the proposal (including the exotic tree removals) are considered elsewhere in the Notification Report under ‘Effects on Ecology’ referencing the specialist advice of the Authority’s Ecologist and the Council’s Ecologist (Ms Budd). The “visual effects” of the exotic tree removals are considered elsewhere in the Notification Report under ‘Effects on Landscape Values and Visual Amenity’ referencing the specialist advice of the Authority’s Landscape Architect and the Council’s Landscape Architect (Mr Kensington).

Ecological effects

54. Related to this are the ecological effects of the tree removal. A number of the affidavits filed on behalf of the Applicant raise issues regarding the ecological effects on the flora and fauna (including birds and lizards) of Ōwairaka, and the ecosystem as a whole.
55. However, I am satisfied that I had sufficient information before me to assess the ecological effects of the Application and conclude, as I did at page 11 of the Notification Report, that the adverse ecological effects resulting from the Application could be managed so that they are less than minor. In making my assessment I considered the following documents that were submitted by the Authority as part of the Application:
- (a) The AEE and Statutory Assessment prepared by Mr Yates (annexed to Mr Yates’ affidavit as “AY1”);
 - (b) The Assessment of Ecological Effects by Te Ngahere (annexed to Mr Mairs’ affidavit as “RM1”). In particular this assessment outlined the effects on vegetation and fauna¹ and included a

304.1231

(301.0342)

¹ Anna Mairs, Richard Mairs, Jessica Le Grice, Kevin Floyd “Ōwairaka / Te Ahi-kā-a-aRakataura Assessment of Ecological Effects” (2 October 2018) Te Ngahere at [3.3] (annexed to the affidavit of Richard John Mairs affirmed 31 January 2020 as “RM1”).

table summarising the ecological effects and proposed mitigation.²

- (c) The Replanting Plan 2018 (annexed to Mr Mairs' affidavit as "RM2") which details the restoration planting proposed as part of the Application.

56. I also relied on the review of the Ecological Assessment by the Council's specialist, Ms Sarah Budd (annexed to Mr Yates' affidavit as part of "AY8"). In particular, Ms Budd's review identified the primary adverse ecological effects as temporary loss of vegetation cover and habitat for indigenous fauna, disturbance and potential harm to indigenous lizards, and disturbance to indigenous birds. Ms Budd recommended preparation of a lizard management plan and consent conditions regarding the timing of works to minimise the effects on avifauna, both of which I referred to in my discussion of her report at page 11 of the Notification Report. Ms Budd concluded that:

Overall, I agree with the assertion that if the proposed mitigation actions (including revegetation of the former quarry area) are implemented, the removal of exotic trees will improve the ecological values of the site in the medium to long-term".³

57. On page 11 of the Notification Report I relied upon this statement when reaching a conclusion on the level of adverse ecological effects.

58. I note that Mr Barrell's further affidavit of 19 December 2019 raises concerns regarding the potential for the removal of exotic trees to affect native underplanting, and in particular the loss of the shading benefits exotic trees can provide to native trees. The Replanting Plan referred to above (annexed to Mr Mairs' affidavit as "RM2") had extensive notes on the species to be planted in identified locations including the preference for sun or shade, and dry or damp conditions, which demonstrated that considerations such as potential loss of shade provided by exotic trees being removed were considered by the Authority and specifically

² Anna Mairs, Richard Mairs, Jessica Le Grice, Kevin Floyd "Ōwairaka / Te Ahi-kā-a-aRakataura Assessment of Ecological Effects" (2 October 2018) Te Ngāhere at [3.5], Table 4 (annexed to the affidavit of Richard John Mairs affirmed 31 January 2020 as "RM1").

³ Letter from Sarah Budd (Senior Ecologist, Wildlands Consultants Ltd) to Jonathan Begg (Principle Project Lead, Premium Resource Consents, Auckland Council) regarding Ecological effects of exotic tree removals on Ōwairaka (Mt Albert) (LUC60328646) (31 October 2018) (annexed to the affidavit of Antony Bernard Yates affirmed 30 January 2020 as a part of "AY8").

informed what vegetation to plant and where. Again, I consider that I had sufficient information to assess the ecological effects of the Application.

Heritage effects

59. In the Applicants' evidence concerns have been raised regarding the extent to which effects on heritage were taken into account. The heritage effects of the Application were addressed by the Authority's Consultant Archaeologist Mr Brett Druskovich and reviewed by Council's Historic Heritage Specialist Mr Joe Mills), as explained in the Notification Report. I relied on these assessments when making my recommendations.
60. Ōwairaka is scheduled as a Category A* Historic Heritage Place (01576) in the AUP. As explained in the memorandum Mr Mills provided to me after completing his specialist review of the Application (annexed as part of "AY8" to Mr Yates' affidavit), Ōwairaka is one of the Auckland region's most significant historic heritage places with a rich history of pre-European Maori occupation resulting in highly-significant archaeological remains covering much of the Maunga.⁴ Mr Druskovich and Mr Mills both assessed the extent to which the Application (and in particular the tree removal process) would have on the heritage values of the site. I took these specialist opinions into account and determined that I was satisfied that any adverse effects associated with the heritage values of the site can be managed so that they are less than minor.⁵
61. I note that a number of the affidavits filed by the Applicant have alleged that a number of the exotic trees to be removed had heritage value which was not considered by the Council⁶. However, none of the trees that are proposed to be removed were included in the AUP's schedule of notable trees, which is the usual way trees with heritage value would be recognised and protected. This was recorded in the AEE that formed part

4 Memo from Brooke Dales (Planning Consultant, DCS) to Joe Mills (Specialist Historic Heritage, Cultural Heritage Implementation Team) regarding Resource Consent Application LUC60328646: 27 Summit Drive, Mt Albert, Resource Consent Application for the removal of exotic trees and revegetation of native planting on Ōwairaka (4 December 2018) at [6.1] (annexed to the affidavit of Antony Bernard Yates affirmed 30 January 2020 as a part of "AY8").

5 Brooke Dales "Notification and substantive report for resource consent under the Resource Management Act 1991 (RMA) LUC60328646" (11 February 2019) Auckland Council at 12 (annexed to this affidavit as exhibit "BD-1").

6 The Olive Grove, the so-called "penny trees", the large *Macrocarpa* on the far side of the reserve, the cherry trees and the woodland grove referred to in the affidavits of Mary Rose Inomata sworn 13 February 2020 at [9], Averil Rosemary Norman sworn 6 December 2019 at [16]-[20] and Mary Elaine Tallon sworn 13 February 2020 at [5] and [10].

of the Application.⁷ Furthermore, none of the trees are included in a description of the Extent of Place for the Scheduled Historic Heritage Place. There was nothing in the AUP to suggest that these trees had any heritage value.

- 62.** In addition, I did not observe any signage, plaques or similar on the site when I undertook my site visit indicating when any particular trees or groups of trees on Ōwairaka were planted, who planted them, or the circumstances in which they were planted. I do not believe any such signage or other information is present on Ōwairaka.
- 63.** While it is apparent after reviewing the Applicants' evidence that some individuals have a personal connection with particular groups of trees on Ōwairaka, planted at various times in the past and sometimes for commemorative reasons, to my knowledge none of this information is in the public domain. I remain satisfied that notwithstanding that the Application involves the removal of these and other exotic trees on Ōwairaka, the heritage effects of the Application will be less than minor.

Landscape and visual effects

- 64.** I also have some comments in response to the affidavit filed by Mr Phillip Blakely on behalf of the Applicants in relation to the adequacy of the landscape and visual assessments that have been carried out:
- (a) Mr Blakely alleges that a detailed assessment of the amenity effects on users from within different areas of the reserve does not appear to have been made. However, the material included with the Application included the Landscape and Visual Assessment by Ms Sally Peake. Ms Peake's report identified and considered the effects on three viewing audiences – visitors, users of the open space network and residents/users of the surrounding street network⁸. This is referred to in my

⁷ Affidavit of Antony Bernard Yates affirmed 20 January 2020, Exhibit AY1 at [6.1.2].

⁸ Sally Peake "Landscape and Visual Assessment for Proposed Tree Removal Ōwairaka" (19 September 2018) Peake Design at 14-15 (annexed to the affidavit of Sally Barbara Peake sworn 31 January 2020 as exhibit "SP1").

Notification Report.⁹ In my opinion the information provided by Ms Peake (and peer reviewed by the Council's specialist Mr Kensington) was sufficient and a more fine-grained assessment of effects within the reserve was not required;

- (b) Ms Peake's report explains that the removal of the exotic vegetation will reinstate the natural character of the volcanic feature and mountain¹⁰. Mr Blakely states that no consideration appears to have been given to whether the removal of all of the exotic trees was necessary to achieve this.¹¹ However, as I explain further below, I was not required to examine the necessity of removing the trees when making my notification assessment. The Authority, like any applicant, was required to make judgments as to what it would apply for – and in particular whether its application would be to remove all 345 exotic trees on Ōwairaka. My role, for the purposes of my notification recommendation, was to assess the adverse effects of the Application as lodged. In addition, in my opinion Mr Blakely's emphasis on negative effects of felling the trees overlooks and does not more broadly consider the overall ecological effects and heritage/archaeological effects of the proposal, which includes substantial native restoration replanting and the avoidance of adverse effects on the heritage/archaeological asset.
- (c) Mr Blakely also comments that positive effects in some areas of the reserve have been used in the assessment process to "offset" or balance in some way the negative effects in other areas of the reserve. ¹² It is not clear whether Mr Blakely had access to my Notification Report or Mr Kensington's specialist review. I can clarify that no offsetting was referenced or considered in my Notification Report, and clarify further that positive effects are not able to be considered in the RMA

9 Brooke Dales "Notification and substantive report for resource consent under the Resource Management Act 1991 (RMA) LUC60328646" (11 February 2019) Auckland Council at 9 (annexed to this affidavit as exhibit "BD-1").

10 Sally Peake "Landscape and Visual Assessment for Proposed Tree Removal Ōwairaka" (19 September 2018) Peake Design at 15 (annexed to the affidavit of Sally Barbara Peake sworn 31 January 2020 as exhibit "SP1").

11 Affidavit of Philip Blakely sworn 17 February 2020 at [25].

12 Affidavit of Philip Blakely sworn 17 February 2020 at [22].

notification assessment which is limited to adverse effects. Measures to mitigate adverse effects can be considered and are considered by resource management planners in assessing the scale and nature of adverse effects. Positive effects can be considered in the substantive assessment after, and separate to, the notification assessment.

- (d) In my Notification Report, any references to the replanting proposed by the Authority relate to the *mitigation* of adverse visual effects arising from the removal of trees, and the overall level of effects in light of the proposed mitigation. In my opinion Mr Blakely's focus on the effects of the tree removal downplays the mitigation actioned through the proposed replanting. The Application needed to be assessed as a whole and that is the approach I took in my Notification Report.

65. On page 12 of the Notification Report I concluded:

Overall, it is considered that the adverse effects on the environment of the proposed removal of exotic trees, and restoration planting of Ōwairaka can be effectively managed so that they are less than minor.

66. Whether an activity "will have or is likely to have adverse effects on the environment that are more than minor" is step 3 of the approach to public notification decisions required under section 95A of the RMA.

Special circumstances warranting public notification

67. I then turned at page 13 of the Notification Report to consider whether there were any special circumstances that warranted the Application being publicly notified under section 95A(9). This is step 4 of the approach to public notification decisions required under section 95A.

68. In this instance I turned my mind specifically to the existence of any special circumstances. I concluded that there is nothing exceptional or unusual about the Application, and that the proposal has nothing out of the ordinary run of things to suggest that public notification should occur as:

- (a) The proposed tree removals and ancillary works (including management techniques), and the management of the open space zoned land is generally consistent with the direction of the AUP, as applied through the discretion of the relevant activities of the AUP, with the range of matters relevant to the development provided for in the AUP specifically as either restricted discretionary or discretionary activities; and
 - (b) My assessment had not identified any aspect of the receiving environment or any other factor that would give rise to special circumstances.
- 69.** I considered that the application for the activity cannot be described as out of the ordinary and giving rise to special circumstances. Therefore in this instance I concluded there were no special circumstances warranting public notification.
- 70.** On page 13 of the Notification Report I concluded that the Application should be processed without public notification. I listed the following reasons:
- (a) In the context of the landscape and visual values of Ōwairaka, any adverse landscape and visual effects of the proposal are considered to be short term in nature and effectively mitigated by the proposed restoration and replanting such that they can be considered to be less than minor;
 - (b) Any adverse ecological effects arising from the proposal can be appropriately managed as part of the works programme to ensure that any adverse effects are less than minor;
 - (c) Any adverse effects on public access and recreation will be short term in nature and can be considered to be less than minor;
 - (d) The proposed works have been designed to be sympathetic to the heritage values of Ōwairaka, and can be managed to ensure they are less than minor;

- (e) The tree removals methodologies are considered consistent with best arboricultural practice, and any adverse effects are therefore considered to be less than minor;
- (f) Any effects associated with land disturbance and stability can be appropriately managed to ensure they are less than minor; and
- (g) There are no special circumstances.

Limited notification assessment

- 71.** My assessment then turned to whether there were any affected persons that should be limited notified, following the steps set out in section 95B beginning at page 14 of the Notification Report. On page 14 I concluded for the purposes of Step 1 in section 95B that there were no groups or persons that needed to be notified, and for the purposes of Step 2 that limited notification was not precluded.
- 72.** In summary, my assessment under Step 3 in section 95B was that there would be no adversely affected persons for the following reasons:
- (a) Adverse noise effects on people arising from the proposal are short term in nature and can be managed by the methodologies proposed in the Application and as further managed by conditions so that they are less than minor.
 - (b) Although public access to Ōwairaka will be temporarily disrupted, this disruption will be short term in nature, and necessary for health and safety reasons, and the Authority has proposed a communications plan to ensure that users of the reserve are aware of any restrictions. Overall, it is considered that any adverse effects on people accessing Ōwairaka will be less than minor;
 - (c) As outlined with respect to the tests of public notification, any landscape and visual effects of the tree removals experienced

by people with an outlook to or using Ōwairaka are likely to be short term in nature and it is considered that these effects are mitigated by the proposed restoration planting, and in the context of the volcanic cone landform that will be exposed, any adverse effects are less than minor;

- (d) Given the scale and nature of the works, any construction traffic associated with the removal of the processed trees, and that associated with the necessary machinery, will be limited in volume, short term in nature, and occur only in the hours of work (7:30am-6pm Monday to Friday with no work on weekends or public holidays), and as such can be considered to be less than minor; and
- (e) The Authority has engaged with local Iwi groups and the general public as part of the consultation process for the Tūpuna Maunga Integrated Management Plan (**IMP**). Having reviewed the IMP, this document makes clear the expectations with respect to exotic vegetation and cultural significance of the restoration of the maunga, and the outcomes of this engagement have been incorporated in the Application.

- 73.** In terms of Step 4 under section 95B, on page 16 I stated that I consider there are no special circumstances that warrant the application being limited notified to any persons because there is nothing exceptional or unusual about the application, and the proposal has nothing out of the ordinary run of things to suggest that notification to any other persons should occur.

ADDITIONAL COMMENTS ON APPLICANTS' EVIDENCE

- 74.** The affidavits filed by Mr Barrell and Mr Blakely suggest that the Authority could have achieved its aspirations for Ōwairaka without removing the exotic trees that are the subject of the Application. However, as explained above, in my opinion the role of a consent authority, including the reporting planner, is to consider the proposal as a whole, and as lodged by an applicant. The reasons why the Authority wanted to remove all exotic trees were clear from the Application and that is the proposal

(together with the replanting program set out in the Replanting Plan) that was before me to assess.

CONCLUSION

75. In summary, I have explained the extent of my involvement in the processing of the Application and the process that I undertook in recommending that the application may be processed without public or limited notification and subsequently granted consent, subject to conditions.
76. In my opinion, I have appropriately considered all relevant matters when processing the Application. In assessing the Application, I had adequate and reliable information to understand the nature and scope of the proposed development, to assess the magnitude of any adverse effects on the environment associated with the Application, and to identify the extent of effects it may have on people.
77. I continue to hold the opinion that the Application did not need to be notified.

Signature of deponent:



Brooke James Macdonald Dales

Affirmed at Auckland on
Before me:

Signature

Name

A Solicitor of the High Court of New Zealand