

**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, directors of Auckland

Applicants

and

Tūpuna Maunga o Tāmaki Makaurau Authority, a body established under section 106 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014

First Respondent

and

Auckland Council, a unitary authority established under the Local Government (Auckland Council) Act 2009

Second Respondent

AFFIDAVIT OF KYLEE
MARIE MURPHY

31 January 2020

HIGH COURT
31 JAN 2020
3:49pm
AUCKLAND

Solicitor:
Andrew Peat
Duncan King Law
95 Manukau Road
Epsom, Auckland
T: 09 623 0515
E: Andrew@dklaw.co.nz


Counsel:
RJ Hollyman QC / JWH Little
Shortland Chambers
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E: hollyman@shortlandchambers.co.nz
E: james.little@shortlandchambers.co.nz

Affidavit of Kylee Marie Murphy

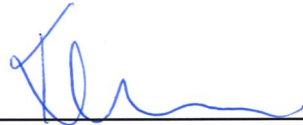
I, Kylee Marie Murphy, Personal Assistant, of Auckland, swear:

1. I am employed as Personal Assistant to counsel for the Applicants.
2. Annexed to this affidavit and marked as Exhibit "A" is a copy of a letter from Duncan King Law solicitors to Auckland Council's solicitors and dated 31 January 2020.
3. Annexed to this affidavit and marked as Exhibit "B" is a copy of Resource Consent LUC60328646 dated 20 February 2019.
4. This affidavit is made and filed in addition to the affidavits already filed on behalf of the Applicants.

SWORN at **AUCKLAND** this
31st day of January 2020
before me:



Barrister/Solicitor of the
High Court of New Zealand
Bridget McLay

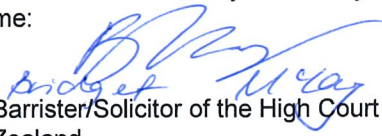


Kylee Marie Murphy

Exhibit "A"

Duncan King Law Ltd
T 09 623 0515
F 09 638 9296
95 Manukau Road
Epsom, Auckland 1023
PO Box 26301, DX CP 32519
Epsom, Auckland 1344
mail@dclaw.co.nz
www.dclaw.co.nz

This is the exhibit marked "A" referred to in the affidavit of Kylee Marie Murphy sworn at Auckland this 31st day of January 2020 before me:


Bridget Murray
Barrister/Solicitor of the High Court of New Zealand



Duncan King Law

31 January 2020

Padraig McNamara
Simpson Grierson
Auckland

Copy to: Sebastian Bisley
and Paul Beverly, Buddle Findlay

By email

Dear Mr McNamara

CIV-2019-404-2682 - Norman v Tūpuna Maunga o Tāmaki Makaurau Authority and Auckland Council

1. We write in relation to our clients' judicial review of resource consent decision LUC60328646 dated 20 February 2019 and concerning the felling of trees on Ōwairaka / Mt Albert.
2. At present our clients have a copy of consent decision LUC60328646 dated 20 February 2019. That decision refers to a number of reports, some of which are or were to be finalized. There are copies of various reports in the public domain and we have copies of some of those, but require final versions of such reports as were taken into account as part of the resource consent.
3. In the circumstances, it would be inappropriate for our clients to provide the Court with those documents as the final form of the official record is unconfirmed. We would invite your client to do so.

Yours faithfully
DUNCAN KING LAW



ANDREW PEAT
Litigation Director
DDI: 09 520 7938
Email: andrew@dclaw.co.nz

Decision on notification of an application for resource consent under the Resource Management Act 1991




Discretionary activity

Application number: LUC60328646
Applicant's name: Tūpuna Maunga o Tāmaki Makaurau Authority and Auckland Council
Site address: 27 Summit Drive, Mt Albert
Legal description and Site Area: SEC 1 SO 454869
Operative plan: Auckland Unitary Plan: Operative in Part
Zoning: Open Space – Conservation Zone
 Open Space – Sport and Active Recreation Zone
Precinct N/A
Special features, overlays etc: Natural Resources: Significant Ecological Areas Overlay - SEA_T_6016, Terrestrial

Exhibit "B"

This is the exhibit marked "B" referred to in the affidavit of Kylee Marie Murphy sworn at Auckland this 31st day of January 2020 before me:


 Barrister/solicitor of the High Court of New Zealand

Natural Resources: Quality-Sensitive Aquifer Management Areas Overlay [rp] - Auckland Isthmus Volcanic

Natural Resources: Quality-Sensitive Aquifer Management Areas Overlay [rp] - Western Springs Volcanic Aquifer

Natural Heritage: Outstanding Natural Features Overlay [rcp/dp] - ID 108, Mt Albert (Owairaka)

Natural Heritage: Regionally Significant Volcanic Viewshafts And Height Sensitive Areas Overlay [rcp/dp] - Mount Albert, Height Sensitive Areas

Natural Heritage: Regionally Significant Volcanic Viewshafts And Height Sensitive Areas Overlay [rcp/dp] - A1, Mount Albert, Viewshafts

Natural Heritage: Regionally Significant Volcanic Viewshafts And Height Sensitive Areas Overlay [rcp/dp] - A10, Mount Albert, Viewshafts

Natural Heritage: Regionally Significant Volcanic Viewshafts And Height Sensitive Areas Overlay [rcp/dp] - A13, Mount Albert, Viewshafts

Natural Heritage: Regionally Significant Volcanic Viewshafts And Height Sensitive Areas Overlay [rcp/dp] - A2, Mount Albert, Viewshafts

Natural Heritage: Regionally Significant Volcanic Viewshafts And Height Sensitive Areas Overlay [rcp/dp] - A3, Mount Albert, Viewshafts

Natural Heritage: Regionally Significant Volcanic Viewshafts And Height Sensitive Areas Overlay [rcp/dp] - A7, Mount Albert, Viewshafts

Natural Heritage: Regionally Significant Volcanic Viewshafts And Height Sensitive Areas Overlay [rcp/dp] - A8, Mount Albert, Viewshafts

Natural Heritage: Regionally Significant Volcanic Viewshafts And Height Sensitive Areas Overlay [rcp/dp] - A9, Mount Albert, Viewshafts

Historic Heritage and Special Character: Historic Heritage Overlay Extent of Place [rcp/dp] - 1576, Mount Albert/Owairakai R11_20 Volcanic cone pa site including terrace/s, ditch/s, pit/s and midden

Designations

Notice of Requirements, NoR 7: Proposed Northern Runway, Airspace Restriction Designations, notified 15/02/2018

Proposal

To remove exotic vegetation and undertake restoration planting on Ōwairaka / Te Ahi-kā-a-Rakataura / Mt Albert (Ōwairaka) at 27 Summit Drive, Mt Albert.

The resource consents are:

Land use consents (s9) – LUC60328646

Ōwairaka

Auckland Council Unitary Plan (Operative in Part)

District land use

Historic Heritage Overlay (Chapter D17)

- Modifications to, or restoration of, buildings, structures, fabric or features of a scheduled historic heritage place, except where provided for as a permitted, controlled or restricted discretionary activity in another rule in this overlay requires consent as a **restricted discretionary activity** pursuant to D17.4.1 (A9).
- Conservation planting requires consent for a **discretionary activity** pursuant to D17.4.2 (A23).
- The removal of trees greater than 3m in height or greater than 300mm in girth requires consent for a **discretionary activity** pursuant to D17.4.2 (A26).

Land Disturbance – District (Chapter E12)

- The activity of replanting will involve approximately 525m² of ground disturbance. Consent for a **restricted discretionary activity** is required for earthworks not otherwise permitted between 500m² up to 1000m² in the Open Space – Conservation Zone pursuant to Rule E12.4.1 (A4);
- The activity of replanting will involve approximately 52m³ of ground disturbance. Consent for a **restricted discretionary activity** is required for earthworks not otherwise permitted up to 250m³ in the Open Space – Conservation Zone pursuant to Rule E12.4.1 (A7);

- The activity of replanting will involve 525m² of ground disturbance over the site. Consent for a **restricted discretionary activity** is required for earthworks in the Historic Heritage Overlay over an area of greater than 50m² pursuant to Rule E12.4.2 (A30);
- The activity of replanting will involve 52m³ of ground disturbance over the site. Consent for a **restricted discretionary activity** is required for earthworks in the Historic Heritage Overlay of greater than 5m³ up to 250m³ in pursuant to Rule E12.4.2 (A32);
- The activity of replanting will involve 52m³ of ground disturbance over the site. Consent for a **restricted discretionary activity** is required for earthworks within the V1 Outstanding Natural Feature Overlay of greater than 50m³ pursuant to Rule E12.4.3 (A41);

Vegetation Management and Biodiversity (Chapter E15)

- Within an SEA-T, any vegetation removal not otherwise provided for requires consent as a **discretionary activity** pursuant to E15.4.1 (A43);

Trees in Open Space Zones (Chapter E16)

- The proposed tree works do not comply with Standards E16.6.1 and E16.6.2. Consent for **restricted discretionary activities** is required pursuant to E16.4.1 (A6) and (A8).
- The proposed tree removals include trees that are greater than 4 meters in height and 400mm girth. Consent for a **restricted discretionary activity** is required for these removals pursuant to Rule E16.4.1 (A10);

Noise and Vibration (Chapter E25)

- Construction noise levels exceeding the permitted standards of 75dB Leq (by a maximum of 7dB) are anticipated. Construction noise that exceeds the permitted activity standards in E25.6.27 requires consent as a **restricted discretionary activity** pursuant to E25.4.1 (A2);

Decision

I have read the application, supporting documents, and the report and recommendations on the application for resource consent. I am satisfied that I have sufficient information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on notification.

Public notification

Under section 95A of the RMA this application shall proceed without public notification because:

1. Under step 1, public notification is not mandatory as:
 - a. the applicant has not requested it
 - b. there are no outstanding or refused requests for further information, and
 - c. the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977.
2. Under step 2, public notification is not precluded as:
 - a. there is no rule or NES that specifically precludes public notification of the activities, and

- b. the application is for an activity other than those specified in s95A(5)(b).
3. Under step 3, public notification is not required as:
- a. the application is for an activity that is not subject to a rule that specifically requires it, and
 - b. the activity will have or is likely to have adverse effects on the environment that are no more than minor because:
 - In the context of the landscape and visual values of the Maunga, 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;
 - 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;
 - Any adverse effects on public access and recreation will be short term in nature and can be considered to be less than minor;
 - The proposed works have been designed to be sympathetic to the heritage values of the Maunga, and can be managed to ensure they are less than minor;
 - The tree removals methodologies are considered consistent with best arboricultural practice, and any adverse effects are therefore considered to be less than minor;
 - Any effects associated with land disturbance and stability can be appropriately managed to ensure they are less than minor.
4. Under step 4, there are no special circumstances that warrant the application being publicly notified 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 public notification should occur. The proposal reflects the directions and purposes set out in the approved Integrated Management Plan (IMP) administered by the Tūpuna Maunga o Tāmaki Makaurau Authority.

Limited notification

Under section 95B of the RMA this application shall proceed without limited notification because:

1. Under step 1, limited notification is not mandatory as:
 - a. there are no protected customary rights groups or customary marine title groups affected by this proposal, and
 - b. no persons to whom a statutory acknowledgement is made is adversely affected by this proposal.
2. Under step 2, limited notification is not precluded as:
 - a. there is no rule or NES that specifically precludes limited notification of the activities, and
 - b. the application is for an activity other than those specified in s95B(6)(b).
3. Under step 3, limited notification is not required as:

- a. this application is not for a boundary activity or prescribed activity, and
- b. there are no adversely affected persons because:
 - Noise effects arising from the proposal arise primarily through the use of the helicopter to remove the trees from the Maunga, the use of chainsaws and from processing of the trees. The applicant engaged Styles Group to model the potential noise effects of the proposed works (see Appendix 1 to the submitted A.E.E which is expanded on within the further information responses). Their assessment outlines that with the exception of the helicopter, noise levels generated by all activities will comply with the permitted levels of the AUP: OP. With respect to the noise generated by the helicopter, and noting that alternatives are not practicable to undertake the works, Styles Group predict that the helicopter will infringe the permitted noise levels by 7dB (although consent is sought for an infringement up to 10dB) at the closest residential receivers, and consider that any effects will be “noticeable” but will be limited to 10-12 days across the duration of the project.

To manage the effects arising from the helicopter it is proposed to limit the hours of use of the helicopter to between 9am and 5pm Monday to Friday, and to limit the consecutive days that the helicopter will be used to no more than three consecutive days per week (in the event that works take longer than the three days that the helicopter work is required). In addition, given the proximity of the dwellings at 27-37 Mount Royal Avenue (odd numbers only) to the removal of tree 649, it is recommended that the helicopter works associated with the removal of that particular tree, only occur when those properties are unoccupied (i.e. when they are at work/school or otherwise away), or following agreement with the owner/occupier as part of the communications about the works (see the Communication Plan attached as Appendix 7 to the applicant's A.E.E). On this basis, the applicant concludes that any adverse effects on people, and in particular residents within close proximity of the Maunga will be less than minor.

The acoustic assessments provided with the application have been peer reviewed on behalf of Council by Consultant Acoustics Specialist, Mr Peter Runcie. Mr Runcie has advised that the approach and limits identified by Styles Group are appropriate, and generally in accordance with the guidance of NZS6803:1999 Acoustics – Construction. Mr Runcie also confirms that in his experience that the noise model prepared by Styles Groups is reasonable, and that it is appropriate to mitigate these effects through limiting the hours and duration of the Helicopter use, and through advising properties in the vicinity of the works prior to the works commencing. Mr Runcie has also advised that the difference between the modelled 7dB infringement, and the 10dB max sought as part of the consent are likely to be imperceptible to the nearby receivers.

Conditions relating to the use of the helicopter and noise levels have been proposed by the applicant, and Mr Runcie's review recommends their inclusion. I am satisfied therefore that the conditions recommended by the applicant can be effectively implemented and monitored by the Council and will ensure that noise levels are properly managed.

Following from the above, I am satisfied that adverse noise effects on people arising from the proposal will be short term in nature and can be managed so that any effects are less than minor.

- Although public access to the Maunga will be temporarily disrupted, this disruption will be short term in nature, and is necessary for health and safety reasons. Also, the applicant has proposed a communications plan to ensure that users of the reserve are aware of any access restrictions. Overall, it is considered that any adverse effects on people accessing the Maunga will be less than minor;
 - Following from the expert assessments including the Council's peer review, it can be concluded that 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 positive effects arising in relation to the context of the volcanic cone landform that will be exposed (and noting the project implements part of the approved Integrated Management Plan (IMP) required under Section 58 of the Redress Act) any adverse effects will be less than minor;
 - 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
 - The applicant 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 expectations with respect to exotic vegetation and the cultural significance of the restoration of the Maunga, and the outcomes of the applicant's engagement have been incorporated in the application detail.
4. Under step 4, 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. The proposal reflects the directions and purposes set out in the approved Integrated Management Plan (IMP) administered by the Tūpuna Maunga o Tāmaki Makaurau Authority.

Accordingly, this application shall proceed on a **NON-NOTIFIED** basis.



Barry Kaye

Duty Commissioner

20 February 2019

Decision on an application for resource consent under the Resource Management Act 1991



Discretionary activity

Application number: LUC60328646

Applicant's name: Tūpuna Maunga o Tāmaki Makaurau Authority and Auckland Council

Site address: 27 Summit Drive, Mt Albert

Legal description and Site Area: SEC 1 SO 454869

Operative plan: Auckland Unitary Plan: Operative in Part

Zoning: Open Space – Conservation Zone
Open Space – Sport and Active Recreation Zone

Precinct N/A

Special features, overlays etc: Natural Resources: Significant Ecological Areas Overlay - SEA_T_6016, Terrestrial

Natural Resources: Quality-Sensitive Aquifer Management Areas Overlay [rp] - Auckland Isthmus Volcanic

Natural Resources: Quality-Sensitive Aquifer Management Areas Overlay [rp] - Western Springs Volcanic Aquifer

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Notice of Requirements, NoR 7: Proposed Northern Runway, Airspace Restriction Designations, notified 15/02/2018

Proposal

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The resource consents are:

Land use consents (s9) – LUC60328646

Ōwairaka

Auckland Council Unitary Plan (Operative in Part)

District land use

Historic Heritage Overlay (Chapter D17)

- Modifications to, or restoration of, buildings, structures, fabric or features of a scheduled historic heritage place, except where provided for as a permitted, controlled or restricted discretionary activity in another rule in this overlay requires consent as a **restricted discretionary activity** pursuant to D17.4.1 (A9).
- Conservation planting requires consent for a **discretionary activity** pursuant to D17.4.2 (A23).
- The removal of trees greater than 3m in height or greater than 300mm in girth requires consent for a **discretionary activity** pursuant to D17.4.2 (A26).

Land Disturbance – District (Chapter E12)

- The activity of replanting will involve approximately 525m² of ground disturbance. Consent for a **restricted discretionary activity** is required for earthworks not otherwise permitted between 500m² up to 1000m² in the Open Space – Conservation Zone pursuant to Rule E12.4.1 (A4);
- The activity of replanting will involve approximately 52m³ of ground disturbance. Consent for a **restricted discretionary activity** is required for earthworks not otherwise permitted up to 250m³ in the Open Space – Conservation Zone pursuant to Rule E12.4.1 (A7);

- The activity of replanting will involve 525m² of ground disturbance over the site. Consent for a **restricted discretionary activity** is required for earthworks in the Historic Heritage Overlay over an area of greater than 50m² pursuant to Rule E12.4.2 (A30);
- The activity of replanting will involve 52m³ of ground disturbance over the site. Consent for a **restricted discretionary activity** is required for earthworks in the Historic Heritage Overlay of greater than 5m³ up to 250m³ in pursuant to Rule E12.4.2 (A32);
- The activity of replanting will involve 52m³ of ground disturbance over the site. Consent for a **restricted discretionary activity** is required for earthworks within the V1 Outstanding Natural Feature Overlay of greater than 50m³ pursuant to Rule E12.4.3 (A41);

Vegetation Management and Biodiversity (Chapter E15)

- Within a SEA-T, any vegetation removal not otherwise provided for requires consent as a **discretionary activity** pursuant to E15.4.1 (A43);

Trees in Open Space Zones (Chapter E16)

- The proposed tree works do not comply with Standards E16.6.1 and E16.6.2. Consent for **restricted discretionary activities** is required pursuant to E16.4.1 (A6) and (A8).
- The proposed tree removals include trees that are greater than 4 meters in height and 400mm girth. Consent for a **restricted discretionary activity** is required for these removals pursuant to Rule E16.4.1 (A10);

Noise and Vibration (Chapter E25)

- Construction noise levels exceeding the permitted standards of 75dB Leq (by a maximum of 7dB) are anticipated. Construction noise that exceeds the permitted activity standards in E25.6.27 requires consent as a **restricted discretionary activity** pursuant to E25.4.1 (A2);

Decision

I have read the application, supporting documents, and the report and recommendations on the application for resource consent(s). I am satisfied that I have sufficient information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on the application.

Acting under delegated authority, under sections 104, 104B, and Part 2 of the RMA, the application is **GRANTED**.

Reasons

The reasons for this decision are:

- In accordance with an assessment under s104(1)(a) of the RMA the actual and potential effects from the proposal will be acceptable as:
 - 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;

- 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;
- Any adverse effects on public access and recreation will be short term in nature and will be less than minor;
- The proposed works have been designed to be sympathetic to the heritage values of the Maunga, and can be managed to ensure that any adverse effects are less than minor;
- The tree removals methodologies are consistent with best arboricultural practice, and any adverse effects will be less than minor;
- Any adverse effects associated with land disturbance and stability can be appropriately managed to ensure they are less than minor;
- Construction effects, and in particular noise effects arising from the helicopter use can be managed effectively through conditions of consent limiting hours of operation and by limiting consecutive day activity so that any adverse effects are less than minor; and
- The proposed removal of exotic trees from the Maunga will have positive effects including those related to the landscape and visual qualities of the Maunga, and in terms of the cultural and spiritual values of the Maunga in delivering on the mandate bestowed on the Tūpuna Maunga o Tāmaki Makaurau Authority as part of their role governing taonga tuku, such as Ōwairaka. In addition, proposed replanting will have a positive ecological effect on the Maunga.

Overall, and having considered the adverse effects in combination with the positive effects of the proposal, the proposed tree removals and restoration planting are considered to be generally positive and are acceptable from a resource management perspective.

- In accordance with an assessment under s104(1)(b) of the RMA the proposal is considered to provide for an acceptable outcome in respect of the relevant statutory documents as:
 - In terms of the relevant sections of the Auckland Unitary Plan (Operative Part), the proposal is considered to be consistent with the outcomes anticipated by the Outstanding Natural Features, and Heritage Overlays. In particular, the application manages the restoration of a sensitive environment whilst ensuring that any adverse effects on the receiving environment of the Maunga and surrounding residential and business environments are minimised through ensuring that the works are designed and managed to mitigate adverse effects on heritage, ecological, recreational and landscape and visual values. It is considered that the proposed works can be managed to ensure that effects on the sensitive environment of the Maunga and surrounding environment are minimised, whilst public access and recreational use of the reserve can be managed appropriately to avoid risk to people.
- Any consideration of an application under s104(1) of the RMA is subject to Part 2. The Court of Appeal in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA

316 has held that, in considering a resource consent application, the statutory language in section 104 plainly contemplates direct consideration of Part 2 matters. However, the Court considered that where a plan has been competently prepared under the RMA, it may be that in many cases there will be no need for the Council to refer to Part 2. Though if there is doubt that a plan has been "competently prepared" under the RMA, then it will be appropriate and necessary to have regard to Part 2. That is the implication of the words "subject to Part 2" in s104(1) of the RMA. In the context of this discretionary activity application, the objectives and policies capture all relevant planning considerations and provide a clear framework for assessing all relevant potential effects. As such, there is no need to go beyond the relevant provisions of the operative planning documents (AUP: OP) and look to Part 2 in making this decision.

Notwithstanding the above, for completeness it is noted that the proposal is consistent with Part 2 of the Resource Management Act 1991. In particular it is considered that the restoration of the Maunga will enable the social, economic, and cultural wellbeing of people and communities, whilst appropriately managing adverse effects on the sensitive site and surrounding environment, whilst adverse effects of the proposal are not considered to have an unreasonable impact on the sensitive receiving environment. The proposed restoration works also reflect the role of mana whenua through the applicant as kaitiakitanga and their stewardship of this iconic feature of the natural and cultural landscape, as well as being consistent with the principals of the Treaty of Waitangi. Overall, the application is considered to have a positive effect on the amenity and landscape values of the site and surrounding environment.

Overall, the proposal is considered to be consistent with the relevant matters for consideration under the NZCPS and the Auckland Unitary Plan (OP). Any actual or potential adverse effects are able to be managed such that they are considered acceptable in the context of the sensitive site and surrounding receiving environment. Furthermore, the application is considered to meet the relevant provisions of the RMA, and can be considered to have notable positive effects in terms of the restoration of the Maunga which is anticipated under the Integrated Management Plan (IMP). For these reasons, the proposal is considered to be acceptable from a resource management perspective and consent.

Conditions

Under section 108 of the RMA, these consents are subject to the following conditions:

General Conditions

1. The removal of exotic vegetation and restoration planting activities shall be carried out in accordance with the plans and all information submitted with the application, detailed below, and all referenced by the Council as consent number LUC60328646:
 - a. Application Form, and Assessment of Effects on the Environment and Statutory Assessment prepared by Antony Yates of Antony Yates Planning Limited, titled "*Tūpuna Maunga Authority, Ōwairaka/ Te Ahi-kā-a-Rakataura / Mt Albert Vegetation restoration and exotic vegetation removal works*", dated October 2018 and the following appendices:

Appendix 1	Acoustic Assessment
Appendix 2	Archaeological Assessment
Appendix 3	Landscape and Visual Assessment
Appendix 4	Ecological Assessment and Remediation Planting Plan
Appendix 5	Tree removal methodology and Removals Plan
Appendix 6	Herpetology Assessment
Appendix 7	Communications Plan
Appendix 8	Relevant Statutory Provisions
Appendix 9	Development Control Checklist
Appendix 10	Mana Whenua Engagement
Appendix 11	Certificate of Title

2. Under section 125 of the RMA, this consent lapses five years after the date it is granted unless:
 - a. The consent is given effect to; or
 - b. The Council extends the period after which the consent lapses.
3. The consent holder shall pay the Council an initial consent compliance monitoring charge of \$1,500.00 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs that have been incurred to ensure compliance with the conditions attached to this consent.

Advice note:

The initial monitoring charge is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, inspections, in excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge or charges as they fall due. Such further charges are to be paid within one month of the date of invoice. Only after all conditions of the resource consent have been met, will Council issue a letter confirming compliance on request of the consent holder.

Pre-commencement Conditions

Pre-Construction Meeting with Compliance and Monitoring Staff

4. Prior to the commencement of **each stage** of the tree removals, the consent holder shall hold a pre-construction meeting that
 - a. is located on the subject site,
 - b. is scheduled not less than 5 days before the anticipated commencement of tree removals,
 - c. includes Senior Compliance Advisor (Central) and relevant other specialists (eg Ecologist/ Archaeologist) at the Council's discretion
 - d. includes the Project Manager and supervising Archaeologist
 - e. includes representation from the contractors who will undertake the works.

The following information shall be made available at the pre-construction meeting:

- a. Timeframes for key stages of the works authorised under this consent
- b. Finalised Communications Plan, including: Details regarding implementation of Communications Plan (e.g. Sign locations, copies of letters to residents)
- c. Finalised Restoration Plan (Planting Plan)
- d. Finalised Construction Management Plan
- e. Finalised Tree Protection Methodologies;
- f. Finalised Lizard Management Plan (and surveys)
- g. Details of briefing for contractors, including: heritage protocols, location of processing sites, and ecological protocols

Advice Note:

To arrange the pre-construction meeting please contact the Council's Monitoring Team Leader Central on 373 6292 or email monitoring@aucklandcouncil.govt.nz.

It is noted that these documents may be updated as required for subsequent stages.

Finalised Management Plans and documents to be provided

- 5. A minimum of 5 working days prior to the commencement of construction activity and the vegetation removal approved by this resource consent, the consent holder shall submit to the Council (Monitoring Team Leader Central) for certification in writing, final versions of the following management plans:
 - a. Finalised Communications Plan;
 - b. Restoration Plan (Planting Plan);
 - c. Lizard Survey Results and Finalised Lizard Management Plan;
 - d. Tree protection methodologies
 - e. Predator Management Plan (Lizards);
 - f. Works Management Plan, including:
 - Health and Safety Plan;
 - Traffic Management Plan; and
 - Incorporation of ecological protection measures.

Lizard Survey to be undertaken

- 6. A survey to confirm the presence of native lizards, particularly rare 'At Risk' species of skinks, shall be carried out by a suitably qualified and experienced herpetologist. The lizard survey must:
 - a. Target potential lizard habitat identified during the herpetological assessment, including the quarry and rock bomb areas in the craters;
 - b. Be carried out at a time of year and during weather conditions that will maximise the chance of locating native lizards, including rare and 'At Risk' species potentially present at the site;
 - c. Utilise no-dig, non-pitfall methodologies suitable for deployment in high value archaeological areas with public access; and

- d. Be conducted after the implementation of specific targeted predator control in any areas of high value skink habitat to be surveyed.
7. A finalised Adaptive Lizard Management Plan for the site shall be prepared by a suitably qualified herpetologist after surveys have been conducted on site and provided to the Council (Monitoring Team Leader Central) for certification prior to vegetation clearance commencing. This shall include, but not be limited to, the following:
- Tree felling and associated works methodologies and restrictions based on the Ecogecko Herpetology report and best practice scouting and rescue conditions;
- a. Project ecologist and permit details;
 - b. Specific targeted predator control in any areas of high value skink habitat;
 - c. Habitat enhancement including any specific weed management in identified high value skink habitat areas; and
 - d. Survey outcomes and management methods.
8. The finalised Restoration Plan (planting plan) shall be prepared by a suitably qualified and experienced ecologist and informed by the lizard survey (required by the conditions of this consent), and provided to Auckland Council for certification. The final planting plan shall include, but not be limited to, the following:
- a. Final locations of planting following the completion of the lizard survey;
 - b. Plant species, spacing, planting zones (if required), plant numbers and specification on plant size as described in this assessment report;
 - c. Inclusion of threatened species;
 - d. Planting methodology, including any staging;
 - e. Plant maintenance and weed management until canopy closure (minimum of five years); and
 - f. Monitoring and reporting.

The restoration plan shall also include a methodology and procedures for the reinstatement of the playing fields where they are used for the processing of trees removed as part of this consent.

9. A predator management plan targeting potential habitat of native lizard and bird species shall be provided to and approved by Auckland Council. The predator management plan shall incorporate pest animal control work already being undertaken on the site.

Development in Progress Conditions

Implementation of Management Plans

10. No construction activity or vegetation removal approved by this resource consent shall commence until written confirmation is provided by the Council that all of the submitted final management plans have been certified under Condition 5 and that all measures identified in these plans, as needing to be put in place prior to commencement of works, have been undertaken.

Communications Plan

11. The consent holder shall ensure that all the actions within the Communications Plan certified as part of the conditions of this consent are undertaken as proposed and submit a written record to the Council (Monitoring Team Leader Central) confirming compliance within 5 days of each stage of work identified within the construction management and restoration plans having commenced. The consent holder shall undertake any additional communications as required by the council following their review of the submitted record(s).

Tree Removal Methodology

12. All tree removals shall be carried out in accordance with the Tree Removal Methodology and Removals Plan prepared by Treescape (Appendix 5 to the submitted A.E.E.)
13. All tree felling works and use of non-tarsealed access tracks or routes across the Reserve should only occur when the earth is dry to reduce the risk of pugging of the ground surface from repeated vehicle movements over soft ground.

Works Hours

14. Tree works (including removals, trimming, and processing) shall only be undertaken between the hours of 7:30 am and 6:00 pm, Monday to Friday. No works shall occur on any weekend or public holiday.

Use of Helicopters

15. The use of helicopters for works purposes is only permitted between the hours of 9am to 5pm from Monday to Friday.
16. The noise from the use of helicopters shall comply with a noise limit of 85dB L_{Aeq} when measured 1m from the façade of any occupied building in accordance with NZS6803:1999 Acoustics – Construction Noise.
17. The owners and occupants of all neighbouring buildings within a minimum of 200m of the extent of helicopter use within site shall be advised of the works in writing at least ten (10) days prior to the commencement of works on site. The written advice shall set out a brief overview of the construction works its expected duration, the mitigation measures to be implemented, availability of monitoring where concerns about noise are raised, the working hours, and a contact phone number for any concerns regarding noise.
18. Where the use of helicopters is required for a period of more than 3 days in any work area which would result in noise levels exceeding 75dB L_{Aeq} at any receiver, the use of helicopters shall be limited to 3 consecutive days per week, and may only be continued on the same 3 consecutive days in the subsequent weeks until the work in that area is complete.
19. The use of a helicopter for the removal of tree 649 (eucalyptus in the south-eastern part of the site) may only be undertaken where the consent holder has provided the Council with written evidence of agreements to carry out that work from the occupiers of the properties at 25 to 37 (odd numbers) Mount Royal Avenue prior to undertaking the removal of this tree.

Ecology

20. All vegetation shall be removed outside of bird breeding season (bird breeding season is September to January inclusive). If vegetation clearance is undertaken within the bird

breeding season, woody vegetation must be confirmed clear of nesting native birds by a suitably qualified ecologist, and confirmation provided to the Council prior to undertaking any works. This should ensure no nesting birds, eggs, or chicks are harmed.

Ecology – Myrtle Rust

21. Prior to any Myrtaceae species being delivered to the site, a signed Myrtle Rust Nursery Management Declaration that certifies that the plant producer has implemented the New Zealand Plant Producers Incorporated Myrtle Rust Nursery Management Protocol must be obtained by the consent holder and provided to the Council (Monitoring Team Leader Central) for certification.

Advice Note

The New Zealand Plant Producers Incorporated has developed a framework of supply chain biosecurity protocols that will satisfy the above condition. A copy of the Myrtle Rust Nursery Management Declaration and the New Zealand Plant Producers Incorporated Myrtle Rust Nursery Management Protocol can be found at the website (<http://nzppi.co.nz/>). The website explains that a declaration signed by the plant provider will be proof that any Myrtaceae species have been grown and treated according to best practice protocols to reduce the spread of Myrtle rust.

Historic Heritage

23. For the WF7 planting, only species that are defined as suitable for planting on archaeological sites, as per the Department of Conservation (Jones 2007) publication or any updated list that is subsequently released by the Department of Conservation, shall be planted within 5m of archaeological features or unmodified parts of the mountain.
24. The project archaeologist shall be on site for the set out of the WF7 plantings to define the limits of the adjacent archaeological evidence to facilitate condition 21 above. The consent holder shall advise the council (at least 2 days in advance) of this work occurring.
25. Should ground disturbance on the site result in the identification of any previously unknown archaeological site, the land disturbance – Regional Accidental Discovery (ADP) rule [E12.6.1] set out in the Auckland Unitary Plan Operative in part (November 2016) shall be applied.

Advice Note

Noting that the Tūpuna Maunga Authority are contacted as part of the ADP and that the responsibility of informing mana whenua as outlined in the protocol, rests with the Tūpuna Maunga Authority.

26. In the event that any unrecorded historic heritage sites are exposed as a result of consented work on the site, then these sites shall be recorded by the consent holder for inclusion within the Auckland Council Cultural Heritage Inventory. The consent holders project historic heritage expert shall prepare documentation suitable for inclusion in the Cultural Heritage Inventory and forward the information to the Council (Monitoring Team Leader Central) (who will consult with the Manager: Heritage Unit, heritageconsents@aucklandcouncil.govt.nz) within one calendar month of the completion of work on the site.

Implementation of Restoration Planting Plan

27. The consent holder shall ensure that all the actions within the restoration plan approved under the conditions of this consent are undertaken as proposed and submit a written record to the Council (Monitoring Team Leader Central) confirming compliance within 15 days of the completion of each stage of work identified within the restoration plan, on an ongoing basis.
28. All planting undertaken in accordance with the approved Restoration Plan shall be subject to:
 - a. The archaeologist marking out on the ground the area boundaries that the mound plantings are to be confined to prior to any mound plantings occurring.
 - b. The archaeologist marking out on the ground the area boundaries that the WF7 plantings are to be confined to prior to any WF7 plantings occurring.

Post Development Conditions

Historic Heritage

29. Within one calendar month of the completion of work on the site the consent holder's supervising archaeologist shall prepare documentation suitable for inclusion in the Cultural Heritage Inventory and forward the information to the Council (Monitoring Team Leader Central) (who will consult with the Manager: Heritage Unit, heritageconsents@aucklandcouncil.govt.nz).
30. In the event that any unrecorded historic heritage sites are exposed as a result of consented work on the site, then these sites shall be recorded by the consent holder for inclusion within the Auckland Council Cultural Heritage Inventory. The consent holders project historic heritage expert shall prepare documentation suitable for inclusion in the Cultural Heritage Inventory and forward the information to the Team Leader (for the Manager: Heritage Unit, heritageconsents@aucklandcouncil.govt.nz) within one calendar month of the completion of work on the site.

Maintenance of Restoration Planting

31. Once the final implementation stage of work is completed, the consent holder shall maintain in perpetuity the plantings carried out in accordance with the approved Restoration plan to the satisfaction of Council, including the removal of any weed species.

Advice notes

1. *For the purpose of compliance with the conditions of consent, "the council" refers to the council's monitoring inspector unless otherwise specified. Please contact the Team Leader Compliance Monitoring (Central) on 09 3010101 or monitoring@aucklandcouncil.govt.nz to identify your allocated officer.*
2. *For more information on the resource consent process with Auckland Council see the council's website www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.*
3. *If you disagree with any of the above conditions, or disagree with the additional charges relating to the processing of the application, you have a right of objection pursuant to sections 357A or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of notification of the decision.*
4. *The consent holder is responsible for obtaining all other necessary consents, permits, and*

licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.

5. The Heritage New Zealand Pouhere Taonga Act 2014 (hereafter referred to as the Act) provides for the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand. All archaeological sites are protected by the provisions of the Act (section 42). It is unlawful to modify, damage or destroy an archaeological site without prior authority from Heritage New Zealand Pouhere Taonga. An Authority is required whether or not the land on which an archaeological site may be present is designated, a resource or building consent has been granted, or the activity is permitted under the Auckland Unitary Plan Operative in part (November 2016).

According to the Act (section 6) archaeological site means, subject to section 42(3) –

any place in New Zealand, including any building or structure (or part of a building or structure), that –

was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and

- ii. provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and

includes a site for which a declaration is made under section 43(1)

It is the responsibility of the consent holder to consult with Heritage New Zealand Pouhere Taonga about the requirements of the Act and to obtain the necessary Authorities under the Act should these become necessary, as a result of any activity associated with the consented proposals.

For information please contact the Heritage New Zealand Pouhere Taonga Regional Archaeologist – 09 307 9923 or 307 9924 / archaeologistMN@historic.org.nz.

Māori artefacts such as carvings, stone adzes, and greenstone objects are considered to be tāonga (treasures). These are taonga tūturu within the meaning of the Protected Objects Act 1975 (hereafter referred to as the Act).

According to the Act (section 2) taonga tūturu means an object that –

- a) relates to Māori culture, history, or society; and

- b) was, or appears to have been –

manufactured or modified in New Zealand by Māori; or

- ii. brought into New Zealand by Māori; or

- iii. used by Māori; and

- c) is more than 50 years old

The Act is administered by the Ministry of Culture and Heritage. Tāonga may be discovered in isolated contexts, but are generally found within archaeological sites. The provisions of the Heritage New Zealand Pouhere Taonga Act 2014 in relation to the modification of an archaeological site should be considered by the consent holder if tāonga are found within an archaeological site, as defined by the Heritage New Zealand Pouhere Taonga Act 2014.

It is the responsibility of the consent holder to notify either the chief executive of the Ministry of Culture and Heritage or the nearest public museum (for Auckland this is the Auckland War Memorial Museum), which shall notify the chief executive, of the finding of the taonga tūturu, within 28 days of finding the taonga tūturu; alternatively provided that in the case of any taonga tūturu found during the course of any archaeological investigation authorised by Heritage New Zealand Pouhere Taonga under section 48 of the Heritage New Zealand Pouhere Taonga Act 2014, the notification shall be made within 28 days of the completion of the field work undertaken in connection with the investigation.

Under section 11 of the Act, newly found taonga tūturu are in the first instance Crown owned until a determination on ownership is made by the Māori Land Court.

For information please contact the Ministry of Culture and Heritage – 04 499 4229 / protected-objects@mch.govt.nz.



Barry Kaye

Duty Commissioner

20 February 2019