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

APPLICATION FOR INTERIM INJUNCTION

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6 December 2019

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APPLICATION FOR INTERIM INJUNCTION

To: the Registrar of the High Court of Auckland

And: the respondents

This document notifies you that:

1. The applicants will on apply for orders:

    (a) Restraining the respondents from implementing the challenged Decision (as defined in the statement of claim), being to destroy all 345 non-native trees on the recreation reserve at Ōwairaka / Mt Albert (**the Reserve**), until the applicants' judicial review application is finally determined; and

    (b) Costs.

2. The grounds on which the applicants seek the above orders are that:

    (a) An interim injunction is necessary to preserve the status-quo and the applicants' position; conversely, if the Decision were implemented, the damage to the 345 trees and the Reserve would be irreversible and would render the applicants' judicial review application nugatory;

    (b) There are strong grounds for challenging the legality of the Decision, including that:

        (i) The Decision does not conserve qualities of the Reserve that contribute to the pleasantness, harmony, and cohesion of the natural environment and to the better use and enjoyment of the reserve, as required by s 17 of the Reserves Act 1997;

        (ii) The first respondent cannot reasonably have been satisfied that its Decision to destroy 345 trees, being nearly half of those on the Reserve, and including many of the oldest and

largest, was "necessary" for the "proper management and maintenance" of the Reserve, as required by s 42(2) of the Reserves Act;

(iii) The first respondents' Decision to destroy all non-native trees on the Reserve at the same time, if implemented, would not have a "minimal impact" on the Reserve, as required by s 42(3) of the Reserves Act;

(iv) The Decision was taken without providing any opportunity to those with an interest in the Reserve, including those in the position of the applicants, to comment;

(v) The Decision is inconsistent with the two "plans" published by the Authority in relation to the Reserve; and

(vi) The Council, for the same reasons, would be acting unlawfully were it to follow a direction to implement the Decision.

(c) There is a strong public interest in the legality of Decision, as well as the fairness of the process by which it was reached, being properly tested before it is carried out; and

(d) Those furthers grounds appearing in the affidavits of Sir Arthur Harold Marshall, Averil Norman, Anna Radford, and Andrew Barrell, all dated 6 December 2019.

3. This application is made in reliance on s 15 of the Judicial Review Procedure Act 2016 and the principles of law as described in *McGechan on Procedure* (online ed.) at JR.15.

4. This application has made been on a *Pickwick* basis.

Stephen Mills QC / JWH Little

Counsel for the applicants