

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

---

*JOINT MEMORANDUM OF COUNSEL*

---

8 December 2019

---

**Solicitor:**

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

**Counsel:**

RJ Hollyman / JWH Little  
Shortland Chambers  
70 Shortland Street  
Auckland 1010  
T: 09 309 1769  
E: hollyman@shortlandchambers.co.nz  
E: james.little@shortlandchambers.co.nz

**May it please the Court:**

1. This joint memorandum is filed on behalf of the applicants and the first respondent, the Tūpuna Maunga o Tāmaki Makaurau Authority (the **Authority**), ahead of the call of this matter at 10am on 9 December 2019.
2. The applicants filed an application for judicial review, together with an application for urgent interim relief, on Friday 6 December 2019. The judicial review application concerns the Authority's decision to fell 345 non-native trees on the reserve at Ōwairaka / Mt Albert as part of a 13,000 native plant restoration programme. The interim injunction application seeks orders preventing the proposed felling until the judicial review application is determined.
3. The applicants and the Authority understand that the second respondent, Auckland Council, intends to abide the Court's decision, including with respect to interlocutory matters, but have not been able to confirm that in the time available.
4. The applicants and first respondent are now agreed that the status quo be preserved (the proposed tree felling not to take place) until the applicant's interim relief application is heard and determined. However, if the substantive judicial review proceeding can be allocated a priority fixture before the end of March 2020, the Authority is content to agree not to proceed with the felling until the judicial review application itself is determined. That would remove the need to hear the application for interim relief.
5. There is one issue that is not agreed between the applicants and the Authority. That is the length of hearing required for the substantive fixture. The applicants say that two days are required. The Authority believes that one day will suffice. The parties ask that the Court determine that issue.
6. Otherwise, the applicants and the Authority seek the following orders:
  - (a) The Registrar is directed to allocate the first available fixture (either one or two days) to hear the applicants' judicial review application after **28 February 2019**, after conferring with counsel as to their availability. If a fixture can be allocated in March 2020, the respondents are directed not

to implement the challenged Decision (as defined in the statement of claim) until that application is determined.

- (b) If a fixture cannot be allocated in March 2020 to hear the applicants' judicial review application, (i) the respondents are directed not to implement the challenged Decision (as defined in the statement of claim) until the applicant's application for an interim injunction is determined, and (ii) the Registrar is directed to allocate the first available half-day fixture from **28 February 2019** to hear the interim injunction application, after conferring with counsel as to their availability. For the avoidance of doubt, the Registrar need not allocate a date for the hearing of the interim injunction application in the event the judicial review application is allocated a date in March 2020.
- (c) The following timetabling orders are made in respect of the judicial review application and, if allocated a date in accordance with items (a) and (b) above, the application for an interim injunction:
  - (i) The applicants will file and serve any additional affidavits by **20 December 2019**.
  - (ii) The respondents will file and serve any statements of defence, notices of opposition and evidence in support by **31 January 2020**.
  - (iii) The applicants will file and serve any affidavits in reply by **7 February 2020**.
  - (iv) The applicants will file and serve their synopsis of argument, and a bundle of relevant documents, at least 10 working days before the hearing of the judicial review application and, if applicable, the hearing of the application for an injunction.
  - (v) The respondents will serve and file their synopses of argument, and bundles of any additional relevant documents, at least 5 working days before the hearing of the judicial review application and, if applicable, the hearing of the application for an injunction.

7. The applicants and the Authority respectfully seek a priority fixture for the following reasons:

- (a) It is in the public interest that the matter be heard and resolved quickly, given the implications for the Authority's plans in respect of the 14 maunga for which it is the administering authority across Auckland.
- (b) The Authority has explained that it is bearing financial holding costs as a result of its inability to proceed with the felling, which costs will ultimately be borne by the second respondent / Auckland ratepayers.



**RJ Hollyman QC / JWH Little**

**Counsel for the applicants**



**SM Bisley / P Beverley**

**Counsel for the first respondent**