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

MEMORANDUM OF COUNSEL FOR APPLICANTS IN REPLY

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12 February 2020

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MEMORANDUM OF COUNSEL FOR APPLICANTS IN REPLY

1. This memorandum is filed in response to the respondents' memoranda.

2. The Second Respondent's decision to issue a resource consent, on a non-notified basis, is integrally connected to the First Respondent's decision already under review. There is significant cross-over of facts and the factual basis for the resource consent has already been covered at length in evidence by the evidence already filed on both sides.

3. Both decisions should be reviewed in the same proceeding. The alternative would be that the Applicants file a separate proceeding, determined by a different judge. That is neither efficient nor desirable.

4. The Applicants' proposal (as already iterated) is that the Resource Consent be dealt with as a separate one-day hearing in the same proceeding, and that further evidence relating to it be filed under a parallel timetable.

5. The Statement of Claim was filed urgently in December, when contractors were expected to arrive at Ōwairaka / Mt Albert to fell trees.

6. With the immediate urgency abated it became clear that there were real questions about the Second Respondent's decision to issue a resource consent on a non-notified basis. The Applicants sought to understand the basis of that decision, and were able to obtain documents which suggest that the decision on the resource consent had been made on the basis of reports that are, in the Applicants' view, seriously flawed.

7. What the Applicants have not been able to establish – and LGOIMA requests to the Respondents have been deferred, making the point more difficult to address – is exactly which reports were in fact relied upon (and importantly, which versions of those reports, given that some reports have had multiple iterations).

8. The First Respondent has since filed significant evidence in this proceeding – more than 1,800 pages in 14 affidavits. A significant proportion of that evidence in fact addresses the Resource Consent and the reports apparently prepared for it. That reinforces the Applicant's submission that the review of the resource consent should be heard by the same judge, and in the same proceeding.

9. The Respondents' concerns largely turn on whether a further hearing day can be allocated in the not too distant future, in which case the only issue will be timetabling.

10. If not, an application for leave may need to be determined. The Applicants will say:

    (a) The amendment has to be viewed against the fact that this is an urgent matter which has been brought on for hearing on a short timetable.

    (b) It is both proper and expedient for both decisions in question to be before the same judge and in the same proceeding, rather than having separate proceedings filed and heard and determined separately.

    (c) The official Record for the Second Respondent's processes in respect of the resource consent remains unconfirmed, although it is already clear that evidence on the resource consent review will largely overlap.

    (d) There has been no relevant delay, but in any event, that is a matter for the substantive hearing.

    (e) Any prejudice to the Respondents will be cured by the proposal to hear the two issues separately.

11. The Applicants accordingly reiterate the timetable proposed in their memorandum of 30 January 2020.

Dated 12 February 2020

R J Hollyman QC / JWH Little
Counsel for the Applicants