

**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

MEMORANDUM OF COUNSEL FOR THE FIRST RESPONDENT

8 December 2020

BUDDLE FINDLAY
NEW ZEALAND LAWYERS
Barristers and Solicitors
Wellington

Solicitors Acting: **Paul Beverley / Sebastian Bisley / Rachael Balasingam**
Email: paul.beverley@buddlefindlay.com / sebastian.bisley@buddlefindlay.com
Tel 64 4 499 4242 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6140

MAY IT PLEASE THE COURT:

1. The purpose of this memorandum is to update the Court on further issues that have arisen on Ōwairaka/Te Ahi-kā-a-Rakataura/Mt Albert (**Ōwairaka**) in relation to damaged exotic trees that have had to be removed.

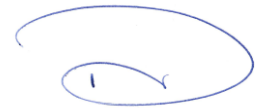
Tree damage from weather events

2. In total there have been four recent separate incidents involving tree damage as a result of weather events.
3. The first occurred on 30 June 2020 during a bout of heavy rain. This tree was situated on the lower slopes of the north east shoulder below the ring road on the maunga.
4. The entire tree was uprooted exposing bare earth. Fortunately, after inspection from staff, there was no apparent archaeological materials in situ or other harm caused.
5. A photo of this damaged tree is set out in **Appendix One**.
6. The second incident was reported on 6 November 2020 after a storm event. A large olive branch fell onto the road causing a road closure. Branches covering the road were immediately removed. However, a major portion of the branch had to be removed by an arborist at a later date.
7. A photo of this damaged tree is set out in **Appendix Two**.
8. On 26 November 2020, a large branch fell from a eucalyptus tree situated near the archery field in the vicinity of some of the recent plantings on the maunga. As a result of the branch failure and the removal process, approximately 25 native plants that were planted in the first and second years of planting were destroyed.
9. A photo of this damaged tree is set out in **Appendix Three**.
10. On 3 December 2020, it was reported that due to a weather event a large branch from a flame tree fell near the north east shoulder of the maunga. Unfortunately, there are no photos of this damaged tree.

Health and safety and archaeological concerns

11. In each of these incidents, serious injury or loss of life could have been sustained if people were in the vicinity when the branches fell. There could also have been further damage to the archaeological fabric of the maunga.
12. These events reinforce the health and safety and archaeological concerns that were raised by the Tūpuna Maunga Authority during these proceedings.
13. The Tūpuna Maunga Authority thought it important to bring these events to the attention of the Court.

DATED this 8th day of December 2020



Paul Beverley / Rachael Balasingam
Counsel for the First Respondent

Appendix One



Olive tree root ball – 30 June 2020 (off Summit Road).

Fallen tree removed 3 December 2020, root ball left onsite.

Appendix Two



Olive tree – large fallen branch reported 6 November 2020.

Road cleared on 6 November 2020, fallen branch debris removed 3 December 2020.

Appendix Three



Fallen tree branch reported 26 November 2020 in planting area by archery club.

Tree branch removed 3 December 2020.