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

REPLY AFFIDAVIT OF PHILIP RONALD BLAKELY

Filed 21 April 2020

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REPLY AFFIDAVIT OF PHILIP RONALD BLAKELY

I, Philip Blakely, landscape architect of Arrowtown, swear:

202.309

1. In my first affidavit dated 17 February 2020, I commented on the adequacy of the consideration given by Sally Peake, the landscape architect engaged by the respondents as part of their resource consent application, and by the Commissioner who determined the application, to the effects of felling the non-native trees on the amenity of the recreation reserve on Mt Albert / Owairaka.

202.426
202.410
202.353

2. In this affidavit, I address certain matters raised by Ms Peake, by Antony Yates, the Tūpuna Maunga Authority's planning consultant on the resource consent application, and by Brooke Dales, who drafted the recommendation to the Council's Commissioner not to notify the resource consent application, in their affidavits filed on 3 April 2020.

3. The matters stated in this affidavit are to the best of my knowledge true and correct. I repeat the confirmation regarding the Code of Conduct for Expert Witnesses at [4] of my earlier affidavit.

Identification of flaws in process

4. In Ms Peake's affidavit dated 3 April 2020 at [6]-[7], Ms Peake quotes my comment at [6] of my first affidavit that there were flaws in the consideration of landscape and amenity issues in the resource consent decision making process, and says my affidavit "does not however go on to discuss his perceived flaws".

5. I discussed the flaws at [12]-[46] of my first affidavit.

Assessing effects on overall or "averaged" basis

6. At [9]-[11], Ms Peake notes that I had criticised the lack of detailed assessment of the amenity effects on users in different areas of the reserve. I had made that criticism in view of the size and diversity of the reserve, with its many different groves of trees, different varieties of trees, different uses to those trees, different outlooks, different landforms, etc (see [17] of my first affidavit).

7. Ms Peake responds that:

> "It is true that my assessment does not detail effects for different groups of user in every part of the reserve. This does not mean that I have not considered effects of removal in different areas, however, only that the overall conclusions relating to the various parts of the reserve and the overall values and effects remain the same."

8. This response underscores the concern I expressed at [19] of my first affidavit. The assessment of effects appears to have been very much on a holistic or global basis. That was inadequate given the size and diversity of the reserve. The effect was to obscure what would, in my view, have otherwise been clear assessments and conclusions about the substantial adverse effects of the proposed felling on the environment / amenity value in particular parts of the reserve, for example the areas I refer to at [35]-[36] of my first affidavit.

Reliance on positive effects when considering notification issues

9. In my first affidavit at [24]-[28], I commented on the reliance placed by Ms Peake and the Commissioner on the positive effects of the native planting programme, as well as on the positive visual effects of exposing the volcanic cone by removing trees. It appeared to me that Ms Peake and the Commissioner had used those positive effects to reduce or balance out in some way the more immediate and negative effects of removing the non-native trees. I commented that it would not be rational to do this if the removal of all of the trees was not "necessary" in order to achieve those positive effects.

10. In response, Ms Peake has commented that my approach "would result in ignoring legitimate positive effects of a proposal" and that "'necessity' is not an assessment requirement under the RMA": at [15]-[16]. Mr Dales makes similar comments at [64](b) of his affidavit, as does Mr Yates at [19] of his.

11. I was not seeking to make a legal point. My point is a common sense one and is based on my experience of the resource consent process in similar situations. If, say, the native planting programme can proceed regardless of whether all non-native trees on the reserve are cut down, it would not have made sense to have taken into account the positive effects of the planting programme when evaluating whether removing the trees was going to have a "more than minor" effect on the environment or on users of the reserve.

12. The fact that a resource consent for both activities, i.e. – (i) to remove all non-native trees in every part of the reserve and (ii) to plant native trees and shrubs in selected areas of the reserve – was applied for at the same time, as part of the same application, did not, in my view, make it more reasonable or logical to do this.

13. I made a related point in my first affidavit at [30] regarding the reliance placed by Ms Peake and the Commissioner on the positive landscape and visual effects of exposing the volcanic cone. Those positive effects will be achieved without cutting down, for example, the historic cherry tree walk (which cannot be seen from outside the mountain). It therefore did not make sense, in my view, for the Commissioner to have taken into account those positive effects when assessing the impact on the environment or on users of cutting down all non-natives, which includes that grove.

Necessity of removing all trees

14. At [74] of Mr Dale's affidavit, he says that I have suggested that "the Authority could have achieved its aspirations for Owairaka without removing the exotic trees that are the subject of the application".

15. What I have suggested is that the Authority could achieve its aspirations for Owairaka (a) without removing *all* of the exotic trees that are the subject of application – e.g., retaining those that have heritage value or other significant amenity value – and (b) by taking a more phased approach, as opposed to cutting down all trees at once. A more phased approach would mean that the felling would not result in such a drastic change to the landscape for visitors / users of the reserve. It would reduce the adverse visual and other amenity effects of immediately felling all non-native trees at once. For instance, visitors would not be confronted with large numbers of decaying tree stumps across the Reserve (discussed in my first affidavit at [33]-[34] and [38]).

Conclusion

16. The sorts of questions I have raised in my evidence about the material submitted in support the resource consent application, including the questions above, is reflective of the type of probing I would have expected to have seen from the Council itself. That is especially the case in view of the significance of the application, which I commented on at [32]-[46] of my first affidavit.

SWORN at **ARROWTOWN** this day of 2020 before me:

Philip Ronald Blakely

Barrister/Solicitor of the High Court of New Zealand