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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

**STATEMENT OF DEFENCE OF SECOND RESPONDENT IN RESPONSE TO
FIRST AMENDED STATEMENT OF CLAIM**

3 April 2020

 **Simpson Grierson**

Barristers & Solicitors

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THE SECOND DEFENDANT SAYS:

1. It has insufficient knowledge of, and therefore denies, the allegations in paragraph 1 of the first amended statement of claim.
2. It is not required to plead to the allegations in paragraph 2 of the first amended statement of claim.
3. It admits the allegations in paragraph 3 of the first amended statement of claim.
4. With regard to paragraph 4 of the first amended statement of claim, it:
 - (a) admits the allegations in subparagraph (a) and subparagraph (b);
 - (b) denies the allegations in subparagraph (c), and says that under section 61 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014, it must carry out the responsibility pleaded in subparagraph (b) under the direction of the Authority.
5. It admits the allegations in paragraph 5 of the first amended statement of claim.
6. It admits the allegations in paragraph 6 of the first amended statement of claim.
7. It admits the allegations in paragraph 7 of the first amended statement of claim.
8. With regard to paragraph 8 of the first amended statement of claim, it:
 - (a) admits that there are old and large trees on the Reserve which are non-native;
 - (b) otherwise denies the allegations in the paragraph.
9. With regard to paragraph 9 of the first amended statement of claim, it:

- (a) admits that there are non-native trees adjacent to the path around the summit;
 - (b) otherwise denies the allegations in the paragraph.
- 10.** With regard to paragraph 10 of the first amended statement of claim, it:
 - (a) admits that visitors to the Reserve may encounter non-native trees;
 - (b) otherwise denies the allegations in the paragraph.
- 11.** With regard to paragraph 11 of the first amended statement of claim, it:
 - (a) admits that birds, including those listed in the paragraph, are present from time to time on the Reserve;
 - (b) otherwise has insufficient knowledge of and denies the allegations in the paragraph.
- 12.** It admits the allegations in paragraph 12 of the first amended statement of claim.
- 13.** With regard to paragraph 13 of the first amended statement of claim, it:
 - (a) admits that birds nest in the trees, including non-native trees, on the Reserve;
 - (b) otherwise has insufficient knowledge of and denies the allegations in the paragraph.
- 14.** With regard to paragraph 14 of the first amended statement of claim, it admits that it was bird breeding season at the date the original statement of claim was filed, but denies that it is still bird breeding season (which runs from September to January inclusive).
- 15.** With regard to paragraph 15 of the first amended statement of claim, it:

- (a) admits that some birds use the trees on the Reserve as a food source;
 - (b) otherwise has insufficient knowledge of and denies the allegations in the paragraph.
- 16.** It admits the allegations in paragraph 16 of the first amended statement of claim.
- 17.** It admits the allegations in paragraph 17 of the first amended statement of claim.
- 18.** In relation to paragraph 18 of the first amended statement of claim it:
 - (a) denies that non-native trees on the Reserve contribute to the pleasantness, harmony, use, enjoyment and amenity value of the Reserve;
 - (b) otherwise admits the allegations in paragraph 18.
- 19.** In relation to paragraph 19 of the first amended statement of claim it:
 - (a) admits that the Authority has decided to remove all non-native trees from the Reserve;
 - (b) otherwise denies the allegations in the paragraph.
- 20.** It admits the allegations in paragraph 20 of the first amended statement of claim.
- 21.** It admits the allegations in paragraph 21 of the first amended statement of claim, and says further that its decisions in relation to notification and the granting of consent were made by an independent commissioner appointed by the Council.
- 22.** It admits the allegations in paragraph 22 of the first amended statement of claim.

23. It admits the allegations in paragraph 23 of the first amended statement of claim but says further that the Council was acting under the direction of the Maunga Authority.
24. With regard to paragraph 24 of the first amended statement of claim it:
- (a) admits that at the date the original statement of claim was filed, implementation of the Decision was being impeded by protestors on the Reserve who were opposed to the Decision:
 - (b) otherwise denies the allegations in the paragraph and says that:
 - (i) at the date of the amended statement of claim, and thereafter, the Decision was not being implemented because of the undertaking referred to in paragraph 25 of amended statement of claim;
 - (ii) at the time of filing this statement of defence, there are no protestors on the Reserve.
25. It admits the allegations in paragraph 25 of the first amended statement of claim.
26. In relation to paragraph 26 of the first amended statement of claim it:
- (a) has insufficient knowledge of, and therefore denies, that the Decision affects half of the trees on the Reserve, but otherwise admits the allegations in subparagraph (a);
 - (b) admits that the Decision involves removal of oaks and eucalyptus trees, but otherwise has insufficient knowledge of, and therefore denies, the allegations in subparagraph (b);
 - (c) has insufficient knowledge of, and therefore denies, the allegations in subparagraph (c);

- (d) admits that the Decision involves the removal of olive trees, but otherwise has insufficient knowledge of, and therefore denies, the allegations in subparagraph (d);
- (e) admits that the Decision involves the removal of cherry blossom trees, but otherwise has insufficient knowledge of, and therefore denies, the allegations in subparagraph (e);
- (f) denies the allegations in subparagraph (f), and further says that the potential impact of the Decision on birds and other wildlife is managed through conditions of the resource consent granted by the Council on 20 February 2019;
- (g) denies the allegations in subparagraph (g), and further says that:
 - (i) the potential impact of the Decision on birds is managed through conditions of the resource consent granted by the Council on 20 February 2019; and
 - (ii) the breeding season has now ended;
- (h) denies the allegations in subparagraph (h);
- (i) denies the allegations in subparagraph (i), and says further that the breeding season has now ended; and
- (j) denies the allegations in subparagraph (j).

27-37. It is not required to plead to paragraphs 27 to 37 of the first amended statement of claim, which are not directed at it.

FIRST GROUND OF REVIEW – THE AUTHORITY - RESERVES ACT

38-46. It is not required to plead to paragraphs 38 to 46 of the first amended statement of claim, which are not directed at it.

SECOND GROUND OF REVIEW – THE AUTHORITY – LACK OF CONSULTATION

47-55. It is not required to plead to paragraphs 47 to 55 of the first amended statement of claim, which are not directed at it.

THIRD GROUND OF REVIEW – THE COUNCIL – RESERVES ACT 1977

56. It repeats paragraphs 1 to 55 above.

57. It is not required to plead to paragraph 57 of the first amended statement of claim, which contains allegations of law only.

58. It is not required to plead to paragraph 58 of the first amended statement of claim, which contains allegations of law only.

59. It is not required to plead to paragraph 59 of the first amended statement of claim, which contains only allegations of law.

FOURTH GROUND OF REVIEW – THE COUNCIL – RESOURCE MANAGEMENT ACT 1991

60. It repeats paragraphs 1 to 59 above.

61. It does not plead to the allegation in paragraph 61 of the first amended statement of claim, it being one of law.

62. It admits the allegations in paragraph 62 of the first amended statement of claim, and repeats paragraph 21 above.

63. It denies the allegations in paragraph 63 of the first amended statement of claim, and in particular it:

- (a) denies that it did not consider adequately, or at all, the matters in sub-paragraph (a) of the paragraph that required consideration as a consent authority;

- (b) denies that it had inadequate information as to the matters in sub-paragraph (a), and in this regard relies on the resource consent application, supporting documents, further information provided under s92 of the Resource Management Act 1991, advice from peer reviewers, and the report and recommendations prepared by the consultation planner appointed by the Council (**Consultant Planner**);
- (c) denies that the determination was unreasonable for any of the reasons pleaded at sub-paragraphs (a) and (b), or at paragraph 26 of the first amended statement of claim;
- (d) in relation to sub-paragraph (d):
 - (i) denies that it came to the conclusion set out in sub-paragraph (d), and says that its conclusion in relation to the level of adverse effects on the environment was that the activity (assessed as a whole) would have or was likely to have adverse effects on the environment that were no more than minor; and
 - (ii) denies that the conclusion which it did reach was one which no reasonable decision-maker could have come to.

64. It admits the allegations in paragraph 64 of the first amended statement of claim, but relies on the decision in its entirety.

65. It denies the allegations in paragraph 65 of the first amended statement of claim, and in particular it:

- (a) denies that it did not consider adequately, or at all, any of the matters in sub-paragraph (a) of the paragraph that required consideration as a consent authority;
- (b) denies that it had inadequate information as to the matters in sub-paragraph (a), and in this regard relies on the resource consent application, supporting documents, further information

provided under s92 of the Resource Management Act 1991, advice from peer reviewers, and the report and recommendations of the Consultant Planner;

(c) denies that the determination was unreasonable for any of the reasons pleaded at sub-paragraphs (a) and (b), or at paragraphs 16 to 17 or 26 or 28 to 31 of the first amended statement of claim;

(d) denies that no reasonable decision-maker could have concluded that there were no special circumstances warranting public notification.

66. It denies the allegations in paragraph 66 of the first amended statement of claim, and repeats paragraphs 63(a) and 65(a) above.

67. It does not plead to the allegation in paragraph 67 of the first amended statement of claim, it being one of law.

68. It admits the allegations in paragraph 68 of the first amended statement of claim.

69. It denies the allegations in paragraph 69 of the first amended statement of claim, and in particular it:

(a) denies that it did not consider adequately, or at all, the matters in paragraph 63(a)(iii), 63(a)(iv) or 65(a)(iii) and (iv) of the first amended statement of claim that required consideration as a consent authority;

(b) denies that it had inadequate information as to the matters in sub-paragraph (a), and in this regard relies on the resource consent application, supporting documents, further information provided under s92 of the Resource Management Act 1991, advice from peer reviewers, and the report and recommendations of the Consultant Planner;

- (c) denies that the determination was unreasonable for any of the reasons pleaded at sub-paragraphs (a) and (b), or at paragraph 26 of the first amended statement of claim;
- (d) in relation to sub-paragraph (d):
 - (i) denies that it came to the conclusion set out in sub-paragraph (d), and says that its conclusion that there were no adversely affected persons (i.e. persons on whom the activity's adverse effects would be minor or more than minor) related to the adverse effects of the activity as a whole (that is, including the restoration planting);
 - (ii) denies that the conclusion which it did reach was one which no reasonable decision-maker could have come to.

70. It admits the allegations in paragraph 70 of the first amended statement of claim, but relies on the decision in its entirety.

71. It denies the allegations in paragraph 71 of the first amended statement of claim, and in particular it:

- (a) denies that it did not consider adequately, or at all, any of the matters in sub-paragraph (a) of the paragraph that required consideration as a consent authority;
- (b) denies that it had inadequate information as to the matters in sub-paragraph (a), and in this regard relies on the resource consent application, supporting documents, further information provided under s92 of the Resource Management Act 1991, advice from peer reviewers, and the report and recommendations of the Consultant Planner;
- (c) denies that the determination was unreasonable for any of the reasons pleaded at sub-paragraphs (a) and (b), or at

paragraphs 16 to 17 or 26 or 28 to 31 of the first amended statement of claim;

- (d) denies that no reasonable decision-maker could have concluded that there were no special circumstances warranting limited notification, including to users of the Reserve and/or local residents.

72. It denies the allegations in paragraph 72 of the first amended statement of claim.

This statement of defence is filed by **PADRAIG MALCOLM SVEN McNAMARA** solicitor for the second respondent of the firm of Simpson Grierson.

The address for service of the second respondent is at the offices of Simpson Grierson, Level 27, 88 Shortland Street, Auckland.

Documents for service on the second respondent may be left at that address for service or may be -

- (a) posted to the solicitor at Private Bag 92518, Auckland; or
- (b) left for the solicitor at a document exchange for direction to DX CX10092; or
- (c) transmitted to the solicitor by facsimile to +64-9-307 0331; or
- (d) emailed to the solicitor at padraig.mcnamara@simpsongrierson.com