

**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**

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**STATEMENT OF DEFENCE OF SECOND RESPONDENT**

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31 January 2020

 **Simpson Grierson**  
Barristers & Solicitors

Padraig McNamara / Graeme Palmer  
 Telephone: +64-9-358 2222  
 Facsimile: +64-9-307 0331  
 Email: [padraig.mcnamara@simpsongrierson.com](mailto:padraig.mcnamara@simpsongrierson.com)  
 DX CX10921  
 Private Bag 92518  
 Auckland

HIGH COURT <i>IN</i>
· 31 JAN 2020 ·
<i>AS</i> AUCKLAND <i>403</i>

**THE SECOND DEFENDANT SAYS:**

1. It has insufficient knowledge of, and therefore denies, the allegations in paragraph 1 of the statement of claim.
2. It is not required to plead to the allegations in paragraph 2 of the statement of claim.
3. It admits the allegations in paragraph 3 of the statement of claim.
4. It admits the allegations in paragraph 4 of the statement of claim.
5. It admits the allegations in paragraph 5 of the statement of claim.
6. It admits the allegations in paragraph 6 of the statement of claim.
7. It admits the allegations in paragraph 7 of the statement of claim.
8. With regard to paragraph 8 of the 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 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 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 statement of claim, it:
- (a) admits that birds, including those listed in the paragraph, may be 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 statement of claim.
13. With regard to paragraph 13 of the 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. It admits the allegations in paragraph 14 of the statement of claim.
15. With regard to paragraph 15 of the 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 statement of claim.
17. It admits the allegations in paragraph 17 of the statement of claim.
18. In relation to paragraph 18 of the 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 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 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.

**21.** It admits the allegations in paragraph 21 of the statement of claim.

**22.** It admits the allegations in paragraph 22 of the statement of claim but says further that the Council was acting under the direction of the Maunga Authority.

**23.** It admits the allegations in paragraph 23 of the statement of claim.

**24.** In relation to paragraph 24 of the 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, radiata pines 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 the potential impact of the Decision on birds is managed through conditions of the resource consent granted by the Council on 20 February 2019;
- (h) denies the allegations in subparagraph (h);
- (i) denies the allegations in subparagraph (i); and
- (j) denies the allegations in subparagraph (j).

25. It is not required to plead to paragraphs 25 to 35 of the statement of claim, which are not directed at it.

#### **FIRST GROUND OF REVIEW - THE AUTHORITY - RESERVES ACT**

26. It is not required to plead to paragraphs 36 to 44 of the statement of claim, which are not directed at it.

#### **SECOND GROUND OF REVIEW - THE AUTHORITY – LACK OF CONSULTATION**

27. It is not required to plead to paragraphs 44 to 53 of the statement of claim, which are not directed at it.

### THIRD GROUND OF REVIEW – THE COUNCIL – RESERVES ACT 1977

28. It repeats paragraphs 1 to 25 above.
29. It is not required to plead to paragraph 55 of the statement of claim, which contains allegations of law only.
30. It is not required to plead to paragraph 56 of the statement of claim, which contains allegations of law only.
31. It is not required to plead to paragraph 57 of the statement of claim, which contains only allegations of law.

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](mailto:padraig.mcnamara@simpsongrierson.com)