IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2015-404-0000719

IN THE MATTER OF	an application for judicial review under Part I of the Judicature Amendment Act 1972
BETWEEN	**URBAN AUCKLAND, THE SOCIETY FOR THE PROTECTION OF AUCKLAND CITY AND WATERFRONT INCORPORATED**
	Applicant
AND	**AUCKLAND COUNCIL**
	First Respondent
AND	**PORTS OF AUCKLAND LIMITED**
	Second Respondent

SECOND AFFIDAVIT OF

DR JOEL KEITH CAYFORD FOR APPLICANT

Sworn May 2015

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Dr Matthew Palmer QC

I, **Joel Keith Cayford**, of Auckland, Planner, Auckland, swear:

INTRODUCTION

1. My name is Joel Cayford. I have been a resident of Devonport, Auckland since 1991. I have provided an affidavit dated 1 May 2015 in support of the Urban Auckland (**Urban Auckland**) proceedings challenging the consents granted to Ports of Auckland Limited (**POAL**) late last year for the extensions to the Bledisloe Wharf (**first affidavit**). My qualifications and relevant experience are set out at paragraphs 1.2 to 1.4 of my first affidavit.

2. I provide this second affidavit in response to affidavits of Mr Alistair Kirk and Mr Mark Arbuthnot on behalf of Ports of Auckland Limited.

ALISTAIR KIRK'S EVIDENCE

3. Mr Kirk in his third affidavit at paragraphs 70 to 75 sets out POAL's reasons for separating the B2 and B3 projects for resource consent application purposes, and then POAL's reasons for subsequently combining the B2 and B3 Extension projects into a single construction contract.

4. The first reason given for separating the applications is stated at paragraph 71 as: "they are separate projects"…"they are two different ways to increase POAL's capacity in the multi-cargo area", and while I accept this distinction note that at paragraph 63 Mr Kirk states: "once we (POAL) had decided to proceed with the B2 and B3 Extensions, POAL engaged Bentley & Co Ltd… and Russell McVeagh to assist with the resource consent applications." This statement describes undated decisions which indicate that the B2 and B3 Extensions had been dealt with together to that point.

5. The second reason given for separating the applications is stated at paragraph 72 as: "splitting the consents made sense from an administrative point of view" because: "a lot of work was involved". However the two applications are almost identical. At paragraph 67 Mr Kirk states: "on 13 September 2014 POAL applied for five resource consents for the B2 Extension", and at paragraph 69 Kirk states: "on 19 November 2014 POAL applied for the same five consents for the B3 Extension". I have read the B2 and B3

applications in detail and consider that, apart from obvious locational differences, the two applications are almost identical and there would have been considerable administrative efficiencies and cost savings had they been dealt with at the same time.

6. The third reason given at paragraph 73: “we could ensure we incorporated into the application for the B3 Extension the relevant questions/additional information requested in relation to the B2 Extension” is understandable from POAL’s point of view, but ignores other obligations it is under, and duties that are imposed by the RMA, in order to deliver broader integrated outcomes.

7. What is not stated in these paragraphs as a reason for separating the B2 and B3 Extension projects is that POAL, in its consultation when seeking mana whenua’s agreement not to require Cultural Impact Assessments for new POAL impervious surfaces, had stated that it would not construct more than 3,500m2 of impervious structures at any one time. This commitment might have been voided had POAL consented the two together, and it certainly would have been voided had the Extensions been built at the same time. I note in this regard that at paragraph 83 Kirk states: “the commencement of the B3 Extension works had been staggered for cost and efficiency reasons”, but without referring to its mana whenua commitment.

8. At paragraph 102 Mr Kirk states: “Queens Wharf was released to enable its development as a cruise ship terminal and as fan zone for 2011 Rugby World Cup, not for its public views. Queens Wharf remains an operational wharf and access is restricted when cruise ships are berthed…”. I was an Auckland Regional Councillor at the time ARC allocated $20,000,000 to purchase its 50% share of Queens Wharf and I attended all of the related Council meetings and public occasions and do not agree with this statement. For example it is a matter of public record that the northern end of Queens Wharf cannot now be used to berth ships in recognition of the need to provide for unrestricted views and for recreational fishing and other activities, and that these public activities continue to be available even when a cruise ship is berthed at Queens Wharf.

9. At the end of paragraph 104 Mr Kirk states: “I also note that Dr Cayford did not make a submission against the port provisions in the Proposed Plan process.” Perhaps this statement is intended to suggest I may not have an interest in, or knowledge of, the port provisions. Nothing could be further from the truth. During my twelve years as an elected councillor, when I also served as an accredited resource consent commissioner, I believed it was generally inappropriate for me to make submissions in respect of planning provisions. This did not, and has not, prevented me from making public comment however, and nor has it prevented me from investigating and researching related practices and activities and providing relevant information to other parties and organisations making submissions under their own names.

MARK ARBUTHNOT’S EVIDENCE

10. During the process of responding to POAL’s B2 and B3 consents, of engaging in these judicial review proceedings, and of reading and discovering more about the background to what has happened, inevitably means that new documents and facts have come to my attention which I was not aware of when I prepared my first affidavit. Some of these matters are referred to in Mr Arbuthnot’s evidence and provide an opportunity for my response.

11. At paragraph 122 Mr Arbuthnot describes the relationship between the Tug Berth consent process and the subsequent B2 consent process and states that: “it was at that point that we had a more complete picture of Auckland Council’s processing of applications for consents of this nature.” This statement does not describe how POAL used the Tug Berth consent process which was not just for the 850m2 tugboat wharf extension. It fundamentally changed the planning rules for the entire port area in ways that have enabled the B2 and B3 processes to occur as they did under the ARPC and the PAUP. Auckland Council made decisions that permitted a discharge permit for an Industrial or Trade Activity under the Auckland Council Regional Plan: Air, Land and Water; and under the Proposed Auckland Unitary Plan for an Industrial or Trade Activity (ITA) for the whole of the Port Management Area. While the decision and process appears superficially to relate to the tugboat berth, of much more

significance was the establishment of a new ITA across the whole of the port zone. However its role in assisting with the consenting processes for B2 and B3 were not disclosed as future or potential effects. The Tugboat consent process was an active exercise in the shaping of Council's processing systems, an exercise in building Council's wharf extension consent processing team, and a preparation for applications that were to come later.

12. Paragraph 123 contains a misleading statement: "the reasons for the B2 extension are quite different to the reasons for the B3 extension." It might be true to say that Mr Kirk's affidavit sets out different reasons for the need for the B2 and B3 extensions, but the reasons given for these extensions in the POAL resource consent applications are the same in all respects apart from the overall lengths of the completed wharves.

13. I disagree with Paragraph 167. What has transpired is because the Category 1 listing of Queens Wharf – which includes views of it from the harbour and from it toward the harbour and the harbour entrance – was not known by Auckland Council. This was a mistake or omission. This is a mistake that has been corrected – for example – midway through the processing of the resource consent application relating to the Parekowhai sculpture to be located Queens Wharf. In the course of my research I discovered that Queens Wharf had been listed as a Category 1 Historic Place in late 2010 and ran a blog posting about it dated: 9 April 2015. This led to an NZ Herald news article and to responses within Auckland Council. I was provided with a copy of an Auckland Council report about the sculpture recommending that the application be processed on a non-notified basis because no special circumstances existed. Subsequently that application has been notified (8 May 2015) – because of the special circumstance of QW's category 1 listing status.

14. The final sentence of paragraph 167 states: "It **was** not something that Auckland Council **is** able to exercise control…". Careful use of tenses obscures the fact that were the applications for B2 and B3 to be processed **now**, these matters **are** something that Auckland Council is able to exercise control over.

15. I disagree with paragraph 169 where Mr Arbuthnot states: “in my opinion, none of the above matters (set out in paragraph 168) constitute special circumstances for the purposes of section 95(4) of the RMA.” The recent Auckland Council decision (5 May 2015) that the Parekowhai application be publicly notified finds that: “under section 95A(1) and whether there are any special circumstances under section 95A(4) we find that there are relevant reasons to warrant public notification.” These include: “Queens Wharf is of public interest through its registration as a Categeory 1 Historic Place on the Heritage New Zealand list. This is despite it not being scheduled under either the Coastal Plan or PAUP.”

SWORN at Auckland this day of May before me:		
		Joel Keith Cayford
A Solicitor of the High Court of New Zealand		