

**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

**FIRST AFFIDAVIT OF
JULIE MARGARET STOUT FOR APPLICANT**

Sworn

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I, **Julie Margaret Stout**, of Auckland, Architect, swear:

Introduction

1. My name is Julie Margaret Stout. I am a registered architect with 30 years professional experience. I have a Bachelor in Architecture degree from the University of Auckland. I am a Fellow of the New Zealand Institute of Architects Inc. **Annexure 1** is a summary of relevant professional experience. I consider that I am professionally qualified to provide opinion evidence on the scale and significance of visual and consequent amenity effects arising from new structures in the environment.
2. I am giving this affidavit for Urban Auckland, The Society for the Protection of Auckland City and Waterfront Inc. (**Urban Auckland**). I am the Chair of Urban Auckland (since 2011) and have been a member since 2009. I am authorised to make this affidavit on behalf of Urban Auckland.
3. Urban Auckland has applied for interim relief against Ports of Auckland Ltd (**POAL**). Interim relief is required in order to prevent construction of the B2 and B3 extensions to the Bledisloe Wharf and irreversible harm to the environment until our application to review the consents granted for those extensions is determined by the court.
4. I discuss the following issues:
 - (a) Background
 - (b) B2 and B3 Extensions to Bledisloe Wharf
 - (c) Environmental effects
 - (d) Public interest
 - (e) Urgency
 - (f) Summary

Background

5. Urban Auckland was formed in 2000, to advocate for good design in relation to Auckland's waterfront and CBD. It is an incorporated

society, registration number 1046425. Attached and marked “**JS1**” is a true copy of its certificate of incorporation and rules. Its objects are:

“ (a) To promote and encourage the protection and enhancement of the natural and built environment and amenities of Auckland City and the Auckland Waterfront, including in particular (but without limitation) the Downtown Waterfront.

(b) To ensure that Auckland City and the Auckland Waterfront is developed, utilised or maintained in a way that maximises its amenity value and aesthetic appeal to Aucklanders and visitors to Auckland.”

6. Since formation, Urban Auckland has been involved in a number of ‘public good’ projects to enhance Auckland’s waterfront and CBD area, including the City Centre. This experience has demonstrated the importance of robust public debate. Public input almost invariably improves design outcomes for the waterfront. A critical part of the waterfront is the interface between the City Centre and Port Precinct. **Annexure 2** is a summary of Urban Auckland’s involvement in City Centre projects since its formation.

B2 and B3 Extensions to Bledisloe Wharf

7. The Waitemata is city-defining and iconic. Aucklanders identify with the Harbour. It is our “City of Sails”, part of our regional identity. America’s Cup, Whitbread Races, and national and regional regattas start in the Harbour. Friday afternoon and weekend racing by yachts and other craft adds to the texture and vibrancy of what we love about Auckland. Tourists and locals walk the wharves and piers to see the sparkling Waitemata. They admire the vistas on ferry trips to Devonport, Waiheke and many other destinations.
8. While Auckland has many beautiful regional parks and beaches, these are often remote or inaccessible (and remoteness is often part of the attraction). In contrast, the waterfront at the City Centre is highly accessible. Few Aucklanders may own or have access to a boat but anyone can take a bus, ferry or train to Britomart to experience the Harbour. Connectivity with the natural environment is inherent to good urban design. Public access to the water’s edge, and public vistas to

and from the Harbour, are vital to the cultural life of the city, as with Wellington, Sydney or San Francisco. They maintain and enhance our connection to the Waitemata.

9. Within that context, the Port Precinct occupied by POAL does not sit on its own, as an island. It is visually and spatially connected to the City Centre. Its prominence means that wharf extensions (and reclamations) have an obvious potential to impact public domain values.
10. Attached and marked “**JS2**” is a public statement dated 9 February 2015 given by POAL which provides spatial context for Port Area 1A. It shows the proximity of the B3 extension to Queens Wharf and Captain Cook Wharf. Attached and marked “**JS3**” is a fact sheet distributed by POAL [on 20 March 2015]. The B2 and B3 extensions are both shown on Exhibit JS3. B2 is 4,290m² in area and B3 occupies 3300m².¹ These are substantial physical incursions into the Waitemata, extending approximately one tenth of the width of the harbour at this point. **Annexure 3** shows a “before and after” photo simulation perspective of the visibility of B3 (if constructed) on public views of the Harbour, as viewed from Queens Wharf.
11. Urban Auckland is not opposed to POAL operations and acknowledges the importance of its economic contribution, both regionally and nationally. However the public’s ability to have input into the form and scale of that development, and its effects on the City Centre and Waterfront has been limited. The B2 and B3 extensions are prominently located, and will have irreversible adverse effects. The public should be entitled to ‘have its say’ on that development.

¹ The B2 and B3 resource consents are as follows:

Operative plan consents:

Coastal permit R/REG/2014/1290; Discharge permit R/REG/2014/1918

Unitary plan consents:

Discharge permit R/REG/2014/3853; Regional land use consents R/LUC/2014/3852

B3 Wharf Extensions (3300m²)

Operative plan consents:

Coastal permit R/REG/2014/4851; Discharge permit R/REG/2014/4850

Unitary plan consents:

Discharge permit R/REG/2014/4849; Regional land use consents R/LUC/2014/4848

(“the B2 and B3 consents”).

Environmental Effects

12. The Hauraki Gulf has nationally significant values. These are recognized in legislation: the Hauraki Gulf Marine Park Act. Values include amenity, cultural and recreational (as well as economic).
13. These nationally important values receive very little attention in the Council decisions to grant approval to the B2 and B3 extensions. My understanding is that the Consultant planner's report is meant to function as an independent assessment. This means the decision-maker is not solely reliant on the applicant's evaluation of effects. I therefore would have expected a full assessment of the environmental impacts on the amenity and visual impacts (and other nationally important values) in the Hauraki Gulf. The analysis provided by the Consultant planner's report is minimal, almost non-existent.
14. Council's consultant (Ms Halpin) stated in relation to the B2 and B3 extensions that:

"Any visual effects will be barely perceptible given this highly modified large working port environment."

followed by:

"I concur with the applicant that the life supporting capacity and environmental amenity of the Hauraki Gulf will not be affected." (pp15)

15. Ms Halpin says the B2 and B3 extensions will be "barely perceptible". I disagree with this analysis. The impact is obvious from a simple "before and after" of the B3 extension on Queens Wharf (Annexure 3). Once constructed, B2 and B3 will jut out into the harbour. Both structures (especially B3) will affect public enjoyment and appreciation of waterfront spaces and the amenity values of the Harbour for all Aucklanders.
16. POAL provided no visual assessment of the B2 and B3 extensions from public viewing points. Ms Halpin did no analysis and sought no independent assessment to substantiate her position of a "barely perceptible" effect. The decisions by Commissioners Macky and Kaye

to approve B2 and B3 contain no detail on visual and amenity effects to the waterfront. This is surprising to me considering that they had to be satisfied that the effects on the environment of the extensions would be no more than minor.

17. In my experience as an architect, a site visit is essential to assess potential visual and amenity effects. There is no evidence that Ms Halpin or any other report-writers visited the site and its' surroundings to view the impact, before writing their reports. Commissioners Macky and Kaye appear not to have done a site visit either (by reference to their Duty Commissioner record sheets (attached and marked "JS4")).
18. The visual and amenity effects of the B2 and B3 extensions will be significant. Another part of Auckland's vista over the waterfront from public spaces will be lost. A further step in POAL's well-known plans for reclamation (Exhibit JS3) will be taken. All this will be done without any scope for public input.
19. Urban Auckland will, as part of these proceedings, commission additional expert landscape evidence (Mr Gavin Lister) to demonstrate the kind of information that Council could (and should) have required when assessing the visual and amenity impacts of the B2 and B3 extensions.

Public Interest

20. Urban Auckland says there were strong public interest factors requiring notification of the B2 and B3 extensions as 'special circumstances'. POAL should not have been granted consent without public input and debate – because of the size, scale and location of the structures, and the scope for enhanced public access to Queens Ferry Wharf.
21. Attached and marked "JS5" are media articles indicating continued public interest and debate over the waterfront area, including the effect of development of the Port Precinct on the waterfront. They include public comment by Deputy Mayor Penny Hulse that the B2 and B3 resource consent decisions were an "own-goal" by Council; and Mayor Len Brown's decision to establish an independent review of POAL expansion plans, directly as a result of public outcry over the B2 and B3 extensions.

Urgency

22. Urban Auckland has requested urgent interim relief in these proceedings. Urgency is required because POAL has stated publicly that it intends to commence construction of B2 and B3 in April 2015. I understand that preliminary works may have already commenced.
23. The situation is therefore now of the utmost urgency. While a decision to prevent construction of the B2 and B3 extensions may cause inconvenience or financial cost to POAL, it is partly a consequence of the inadequate information provided by POAL on visual, amenity and other effects from the B2 and B3 extensions on nationally important values. It would also only be until Urban Auckland's application for review is determined, the hearing of which it is willing to ensure happens swiftly.
24. Once constructed B2 and B3 wharves, two nearly 100m long wharf-pile structures, will be difficult to remove (in any practical sense) and the environmental damage will have been done. Furthermore, POAL see construction of B2 and B3 wharves as part of a larger plan to undertake reclamation within Port Area 1A. Reclamation requires a separate resource consent but B2 and B3 are a key step to "stake-out" the future area for expansion of Bledisloe Wharf into the Harbour.
25. Because the consents for B2 and B3 were not notified, Urban Auckland (through its executive) and myself personally were not aware that resource consents had been granted until 19 February 2015 when POAL distributed a media release at a meeting of the Council Development Committee. It appears that the Mayor and Councillors were also unaware prior to this date (refer JS5). The Mayor himself has said he did not know until early February 2015.
26. On 26 March 2015, Urban Auckland's solicitors wrote to Auckland Council and POAL to notify them of pending judicial review proceedings to be filed in the High Court. POAL was invited to agree to "pause" before commencing construction on the basis of a number of legal issues with the consents granted for the B2 and B3 extensions. Attached and marked "**JS6**" is a true copy of our solicitor's letter and "**JS7**" and "**JS8**" are responses received from the solicitors acting for

Council and POAL.

Summary

27. Urban Auckland believes that POAL should not be allowed to rely on the B2 and B3 resource consents to construct the extensions until resolution of the issues raised by these proceedings. This is due to the significant adverse effects and public interest issues raised.
28. B2 and B3 will adversely affect public enjoyment and appreciation of waterfront spaces that are subject to ongoing debate over future use and development. These adverse effects are significant, they are not minor.
29. The consents should have been notified and proper process should have been followed. Informed decision making about development in the City Centre and Waterfront is critical to maintain and enhance the nationally important values of the Hauraki Gulf.

SWORN at Auckland this day of April before me:		
		Julie Margaret Stout
A Solicitor of the High Court of New Zealand		

CV - JULIE MARGARET STOUT

1. I studied Architecture at the University of Auckland, graduating with a Bachelor of Architecture in 1984. I have worked professionally in Auckland, Suva and Hong Kong.
2. In 1988 David Mitchell and I formed our own practice, Mitchell & Stout Architects Ltd. Our work has encompassed residential, public and community buildings and urban design projects, and has won many NZIA awards. Built work has included the early masterplanning of the Viaduct Basin and hotel/restaurant complex, the NEW City Art Gallery, Tauranga Art Gallery and recently, the Lopdell House Precinct in Titirangi. This included developing heritage buildings and the new Te Uru Contemporary Art Gallery.
3. I am a Fellow of the New Zealand Institute of Architects.(NZIA). In 2014 I was awarded, based on my career to date, the inaugural Women in Architecture Chrystall Award for Excellence.
4. I have been a member of the NZIA Urban Issues Group for fourteen years and I have made numerous submissions on the Group's behalf to Auckland Council on planning processes which could lead to better urban design in Auckland City.
5. In 2006 the NZIA asked the then mayor, Dick Hubbard to demand higher quality urban design in the city. As a result, I was invited to be a member of the first Mayoral Task Force on Urban Design. Out of this came a number of initiatives, subsequently taken up by Auckland City Council, and they have eventually led to the Auckland Plan.
6. On behalf of Urban Auckland, I have been involved in the recent Proposed Auckland Unitary Plan submission and hearings process.
7. I reside in Narrow Neck, Auckland.

ANNEXURE 2**HISTORY OF URBAN AUCKLAND*****AMP- 2000***

- 1 Urban Auckland filed judicial review proceedings in the High Court concerning the urban design of the lower portion of the AMP building now known as the Price Waterhouse-Coopers building at the south-west corner of Albert and Quay Streets. As with the current situation, resource consent to that development had also been granted without notification.
- 2 An initial challenge to the standing of the Society to bring the proceedings was declined, (Morris J, *Society for the Protection of Auckland City and Waterfront Incorporated v Auckland City Council* [2001] NZRMA 209) . The High Court ruled that the Society did have standing, and in doing so observed:

Ms Snijder's affidavit makes it plain members of the Society are not busybodies. They hold genuine views and concerns. It is not surprising they have banded together as a Society. Their numbers including persons whom I consider would have specialised knowledge and understanding on the matters referred to in the pleadings, and the addresses of the members indicate they come from various suburbs of Auckland and have different occupations. If I uphold the applicants, these views, voiced as I have said by responsible citizens, will never see the light of day and no judgment on them will be given. If I uphold the applicants, and the Society's claims are meritorious, the Council has acted incorrectly and permitted the erection of a very substantial building in a prime area of the Auckland Harbour and Waterfront for which consent may well not have been granted. That would, in my view, be intolerable and wrong.

- 3 In light of that finding the matter was settled out of Court after negotiations between the Society and the Defendants. As part of the settlement Urban Auckland:

- (a) Arranged for architects to assist the architects for AMP in redesigning the lower floors of the building;
 - (b) Arranged with Auckland City Council to institute the Urban Design Panels to assist in the design of significant buildings in the CBD; and
 - (c) Commissioned a study of the Auckland Waterfront area called Waitemata Harbour Downtown Auckland Urban Design Framework. This was completed in October 2001. However the full Council did not consider the report until more than a year later and therefore it was not available to the public until 2003. Essentially the framework sets out a broad brush documentation of the urban design issues which future development of the area should address.
- 4 The Urban Design Panels which arose out of this action are now considered by Auckland Council as a key working tool for better Urban Design in Auckland City.
- 5 The wholesale redesign of the lower two floors of the AMP building resulted in a great improvement of the urban design of the building at the pavement level. This not only improved the design of the foyer for the benefit of the tenants and the visitors to the building but greatly benefited the public by creating outdoor café space and encouraging pedestrian access through the lobby space.

Spirit of Adventure Museum Building, Princes Wharf - 2001

- 6 Urban Auckland lodged a submission with the Auckland Regional Council in June 2001 opposing a resource consent application by The Spirit of Adventure Trust to erect a building on Princes Wharf adjacent to the Maritime Museum. The building was to house a number of disparate activities and in the Society's opinion would have severely restricted the view of the sea from the land.
- 7 After the hearing before the Auckland Regional Council commissioners, Urban Auckland engaged in negotiations with

the Trustees of the Maritime Museum and the management of the Spirit of Adventure. The matter was finally settled during mediation under the auspices of the Environment Court, and a redesign was ordered.

- 8 It was only through Urban Auckland's involvement in the process that sea views from this area of the Auckland waterfront were maintained.

Public Access to Princes Wharf - 2003

- 9 Urban Auckland lodged submissions with the Auckland Regional Council in February and November 2003 regarding resource consent applications by Princes Wharf Investments Limited to change conditions of the Coastal Permit for that development concerning landscaping, storm water drainage, parking, public access and the erection of a tent structure on Princes Wharf.
- 10 The Society made written and verbal submissions to the hearing commissioners for the Auckland Regional Council in December 2003. The Society sought to maintain public access to viewing areas over reasonable periods and improvements to the amenities of the public area of the wharf. The decision dated January 2004 was to grant in part the changes sought. This was generally in accordance with the Society's submissions.

Ferry Terminal

- 11 Urban Auckland lodged a submission regarding some parts of the application by Auckland Regional Transport Network Limited ("**ARTNL**") to undertake alterations and additions to the Ferry Terminal on Queens Wharf. The main points made were that the design was inappropriate. It did not provide the required amount of shelter, it had poor traffic planning and parking and it had limited public access. As an introduction to Auckland City from the Harbour the design left a lot to be desired as it did not reflect the significance of the site. It was an opportunity missed.
- 12 The Society made written and verbal submissions regarding these aspects to the hearing before the hearing commissioners

of the Auckland Regional Council.

- 13 The decision was to grant the resource consent and the Society decided not to continue any further to attempt to improve the design.

Viaduct Basin

- 14 Urban Auckland lodged a submission opposing some parts of the application by Auckland City Council to restrict public access to Te Whero Island in the Viaduct Basin.
- 15 The decision made reflected in some part the submission made by the Society. Specifically a wider area of the perimeter of the island was made available to the public and the hours for which the public were to be excluded were reduced.

St James Development - 2008

- 16 Urban Auckland took a successful action in the High Court against Auckland City Council and Norfolk Trustee Company Ltd for failing to notify a proposal to develop a 39 storey apartment tower around the St James Theatre on Queen Street. Located opposite Aotea Square and within the main civic precinct of Auckland City the focus of the society's case was that the council did not properly consider the effect that the design of this building will have on one of the most important urban spaces within the country. The judge ruled that the process of granting Resource Consent within the Council was inadequate and the Design should be an integral part of this consideration.

POAL Expansion into the Harbour - 2012

- 17 Urban Auckland joined with the Auckland Architectural Association in condemning POAL plans to extend into the Waitemata Harbour by 179 m. POAL withdrew their application and the Mayor said that he would instigate a wider ranging study of the issues around Ports of Auckland growth and the Waitemata Harbour.

Proposed Auckland Unitary Plan

18 Urban Auckland has lodged submissions on the Proposed Auckland Unitary Plan on Waitemata harbour and POAL issues. Its submissions raised the following issues:

- a. Recognition of the Waitemata Harbour as an Outstanding Natural Feature;
- b. Opposition to Ports expansion into the Waitemata Harbour;
- c. Recognition of critical views between the waterfront and the outer harbour, in particular from Queens Wharf.

19 Our submission includes the following in relation to POAL provisions:

“Support for our Harbours

18) Outstanding Natural Features Policy
2.4.3.1 and 2.4.3.2 Objectives:

1. Auckland's areas of high and outstanding natural character in the coastal environment are protected from inappropriate subdivision, use and development.

2. Promote, where achievable, the restoration and enhancement of areas of high and outstanding natural character in the coastal environment, including in the Waitākere Ranges Heritage Area and the Hauraki Gulf/To Moana Nui o Toi/Tīkapa Moana.

We do not believe the Waitemata Harbour and Manukau Harbour are adequately covered in the PAUP as primary Outstanding Natural Landscapes of our city. While appreciating that any changes made to them are subject to RMA Resource Consents, we **seek** an overlying protection zone restricting land-fill into the harbours and changes to the harbour edges.

Oppose Ports Expansion into the Harbour and City

19) Urban Auckland **support** in general the presence of Ports of Auckland as a working Port in the centre of our city. However we believe a properly funded, long-term strategy needs to be undertaken both nationally and regionally to establish the optimum functioning and operations carried out on the wharves of Auckland, and to control the impact of goods transport on city streets.

20) We **strenuously oppose** any further expansion by Ports of Bledisloe Wharf into the Waitemata Harbour.

Support for Visual connections

21) Appendices 7.1 Sight Lines

With increasing development, critical views that reinforce Auckland city's marine character are vulnerable to being built out. Within the CBD these views are principally down the north-south roads. The city has already lost a key view of the harbour from Princes St to the Scene Apartments. The view from Symonds St is compromised by the Vector Arena. We **want** more view shafts added to the Controls, namely:

- a. Views to the outer harbour from the end of Queens Wharf. Queens wharf is becoming the central focus of our harbour/city interface – the arriving point, the doorstep of the City. This view out to the open water between North Head and Browns Island/Motukorea is **critical** to maintain. (Fig 1)”

ANNEXURE 3

Before and After Photos from Queens Wharf



View from Queens Wharf - now



View from Queens Wharf - after proposed 93m Port extension