

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2015-404-719

IN THE MATTER OF an application for judicial review under Part 1 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

**THIRD AFFIDAVIT OF ALISTAIR GRAEME KIRK
SWORN 18 MAY 2015**

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I, **ALISTAIR GRAEME KIRK**, of Auckland, swear:

1. I am the General Manager, Infrastructure and Property, of Ports of Auckland Limited ("**POAL**"). I have been in this role for two years, and have been employed by POAL for nine years. Prior to my current role, I held the position of Civil Engineer at POAL for seven years.
2. POAL is an incorporated company with the principal objective (as set out in the Port Companies Act) to operate as a successful business. POAL has determined that in order to do that and meet Auckland's growing freight needs, it needs to extend two of the berths on our Bledisloe Terminal, known as B2 and B3.
3. The extensions to the B2 berth ("**B2 Extension**") and B3 berth ("**B3 Extension**") will be wholly within the area specially designated for port activities. In late 2014 POAL obtained resource consents for the B2 and B3 Extensions from the First Respondent ("**Auckland Council**") in accordance with the Resource Management Act 1991 ("**RMA**").
4. It has signed, and work has commenced under, a construction contract with Brian Perry Civil, a division of Fletcher Construction Company Limited ("**Brian Perry Civil**"). The Applicant ("**Urban Auckland**") did not raise the issues in this proceeding until after that contract was signed.
5. I was the manager within POAL responsible for managing the consenting process and am responsible, from POAL's side, for the construction of the B2 and B3 Extensions. I am authorised to swear this affidavit on behalf of POAL. I have sworn two previous affidavits in this proceeding, on 10 April 2015 and 15 April 2015.
6. In this affidavit, I set out:
 - (a) an overview of POAL and its operations;
 - (b) B2 and B3;
 - (c) the resource consent process;
 - (d) construction of the B2 and B3 Extensions; and
 - (e) a response to some of the evidence filed by Urban Auckland.

POAL

Company structure

7. POAL is a wholly owned subsidiary of Auckland Council Investments Limited ("**ACIL**"). ACIL is, in turn, a wholly owned subsidiary of Auckland Council. The ownership of POAL has been intentionally structured so that it acts as a "standalone" company, independent of Auckland Council. POAL is a company incorporated pursuant to the Companies Act 1993 and a port company under the Port Companies Act 1988.
8. Under the Port Companies Act, POAL is required to act as a successful business. In order to be a "successful business", POAL has to deliver a commercial return on its assets. Asset utilisation is particularly important for POAL, given the Port is a capital-intensive business. Investment in new assets must be founded on strong confidence that they are required and that satisfactory returns can be earned. POAL will always be more successful if it is able to utilise its existing assets to their full potential, in order to postpone needing to invest in additional assets. In other words, POAL's commercial incentive is to be as efficient as possible with its existing footprint and utilising its existing assets.
9. For this reason, POAL needs to recoup a commercial return from its existing footprint and facilities. POAL is continually seeking ways to improve asset utilisation, utilise infrastructure more efficiently, extract more capacity from its existing infrastructure, to delay capital investment in new infrastructure for as long as is feasible. It has made significant improvements through consolidation of its container terminal and labour efficiencies. These improvements have helped to delay the need for additional physical growth. POAL is, however, now at the point where we need to expand to meet demand. POAL has chosen to expand by extending two existing wharves (B2 and B3), as this meets the specific and immediate need to accommodate growth, and also makes the best use of our existing assets.

POAL's operations

10. POAL operates two marine ports, including the Waitemata seaport in the city which is the focus of this dispute. POAL also operates the Port of

Onehunga, the Wiri inland port and has port related land at Gabador Place on the Tamaki River and Pikes Point.

11. The Port of Onehunga is situated on the Manukau Harbour on the west coast of Auckland. The Manukau Harbour has a shallow, difficult entrance not suited to modern shipping. There has been a move away from this port for some time and the last container service left in 2012. The last remaining major shipping customer, Holcim Cement, is currently building a new facility at the Port of Auckland, and their ships will no longer call at the Port of Onehunga from mid 2016.
12. POAL's city port, known as the Port of Auckland, is situated on the Waitemata Harbour. POAL has a coastal permit to occupy this area under section 384A of the RMA. That means that this part of the coastal marine area is specifically set aside for the management and operation of the port and its associated activities. POAL has a right to occupy this area, and operate a port in it. **[CB, doc FR.3(c), vol 2B, p10,105]** We are, of course, not the only users of area of the harbour that we occupy. We regularly liaise with the Harbour Master and on occasion suspend or delay shipping across the port to assist with the facilitation of events like the Auckland Anniversary Day Regatta and the Volvo Ocean Race.
13. The area occupied by POAL is specifically recognised as such in planning and environmental documents. The current operative Auckland Regional Plan: Coastal ("**Operative Coastal Plan**") contains a series of specific rules applying to the port, as does the proposed Auckland Unitary Plan ("**Proposed Plan**").
14. The Operative Coastal Plan gives effect to the New Zealand Coastal Policy Statement, which in turn recognises that a sustainable national transport system requires an efficient network of ports. The Operative Coastal Plan provides for a number of different management areas, five of which relate to discrete parts of the Port of Auckland. The Operative Coastal Plan recognises that new port facilities may be developed, and that should preferably occur within the port management areas. The B2 and B3 Extensions are within those areas.
15. The Proposed Plan has a similar regime. It has various zones, including the General Coastal Marine zone, which comprises the huge expanse of coastal and harbour landscape throughout the region. The Proposed

Plan also specifies a small part of the General Coastal Marine Zone and the adjoining land in the City Centre zone as the "Port Precinct". This is where the Port of Auckland is located. A true copy of the map which sets out the Port Precinct is annexed and marked "AGK-1".

16. The harbour included within Port Precinct is a small percentage of the total harbour area, which serves a single purpose – the accommodation and facilitation of port activities. The Port Precinct is a highly modified environment, almost completely "man-made", and is the site of specific and unique activities which occur nowhere else (other than at the other two minor port zones, to a much lesser extent).
17. The Port of Auckland is New Zealand's busiest container port, the New Zealand hub for the cruise industry and the country's largest vehicle import port. It handles a significant volume of bulk and break-bulk cargo. Bulk cargo is cargo in loose form like gypsum, cement, aggregate which is carried on bulk ships or barges in bulk form (ie "unpackaged"). Breakbulk cargo is non-containerised cargo which is bundled in consignments (such as steel sections, processed timber, or pipes etc) or transported in individual form, (such as machinery and construction equipment, and recently the new trains for Auckland and major project cargo such as the tunnel boring machine for the Waterview connection). Cars are also a form of breakbulk cargo. The Port of Auckland is also the hub port for the Pacific Islands, a trade which continues to grow.
18. The port is made up of a primary container terminal (Fergusson) and a number of multi-cargo wharves (Freyberg, Jellicoe, Bledisloe, Marsden and Captain Cook). Bledisloe also acts as a backup container terminal. In total, the Port of Auckland consists of 10 main cargo berths (across Fergusson terminal, Bledisloe Wharf, Jellicoe Wharf, Freyberg Wharf and Captain Cook Wharf), two dedicated cruise ship berths (Princes Wharf and Queens Wharf), a number of secondary berths for tugs, workboats and barges and approximately 80 hectares of yard space.
19. Attached as Schedule 1 is a diagram of the wharves that make up the Port of Auckland.

POAL's financial performance

20. In the past financial year, the Port has set a number of financial and freight handling records.
21. The Port handled 968,741 TEU (twenty-foot equivalent units, the standardised measurement for containers) in the 2013/14 financial year, an 18% increase over the previous year and over 200,000 TEU more than the next busiest container operator, the Port of Tauranga.
22. Over the same period, we handled over 5.6 million tonnes of bulk and breakbulk goods (an increase of 27%), including 207,591 cars (an increase of 25%). We also had 89 cruise ship visits. A copy of our Annual Review for 2014 is annexed and marked "AGK-2".
23. Financial results for POAL also hit record levels in the 2013/14 financial year. Our EBIT (earnings before income and tax) was \$84.5 million (up from \$55.4 million in 2013). This large increase in earnings and profit meant we could significantly increase the dividend paid to Auckland Council. In 2014 we paid a dividend of \$66.6 million, up from \$29.5 million in 2013.
24. This dramatic improvement is the product of a real change in how we do business. In November 2010 ACIL became our owner (replacing Auckland Regional Holdings) and several new directors were appointed to our board. We were advised that the Council wanted to see a rate of return on equity of 12% by 2016. Return on equity measures the rate of return on the ownership interests of shareholders. It is a measure of a company's efficiency at generating profits from its equity. This occurred at a time when despite continued investment and steady volume growth, returns had declined or remained flat over time. Dramatic changes were needed to achieve this rate of return. We needed to do more to increase our profitability and operate as a successful business.

Recent improvements in productivity

25. As a result of our objective to be a successful business, we have focussed on making our business more efficient and increasing productivity. The aim has been to get the most out of our existing

footprint before looking to expand. Improvements in productivity across the Port have come about as a result of three key reforms:

- (a) restructuring the company to create a 'one port' approach;
- (b) optimisation of the port layout and operating processes; and
- (c) a more efficient labour model.

26. Our work on optimisation of the port layout has led to the consolidation of our two container operations (Bledisloe and Fergusson Terminals at opposite ends of the port) to the eastern end of the Port at Fergusson, although Bledisloe still has a function as a backup terminal berth. This has simplified operations and improved efficiency.
27. POAL has engaged an internationally recognised port design consultant (TBA) to identify further improvements that could be made to port productivity and both berth and back-up land utilisation. POAL has optimised yard layouts (for example by reducing the number of roadways), implemented two-way driving for straddle carriers, upgraded the IT system, removed the container repair yard to off-port, introduced higher stacking of empty containers, and achieved world-class low dwell times. POAL has also increased Quay crane productivity, meaning that more containers can be loaded and unloaded per hour.
28. As a result of a lot of hard work, our container terminal productivity levels have hit record highs. We now have the distinction of having the best container terminal 'ship rate' in Australasia. The ship rate measures the speed with which containers are moved on and off a ship, effectively measuring how fast container ships are serviced. Measured as an annual average, our ship rate in the calendar year 2013 was 45% higher than for 2010, the year before POAL embarked on a reform programme. Before our reforms the average length of time it took for us to process a container ship was 19 hours. Now we average 14 hours. As ships are in port for less time, we can service more ships with the same infrastructure.
29. However, we are now constrained by the physical capacity of the port. We need more space to meet this increase in volume and to also cater for longer / bigger ships. We have catered for this in relation to our containerised business with the expansion of our Fergusson terminal,

which is currently underway. We also need to meet increased demand in our multi-cargo area.

B2 AND B3

30. The B2 and B3 Extensions are a response to trends in the global shipping industry (including multi-cargo shipping and cruise ships) that mean that POAL's current wharf configuration is not an efficient and effective use of its resources.
31. As can be seen from the diagram attached as Schedule 1, each of the wharves is a different length and has different sized berths. These different berths are used for different sorts of ships and cargo. POAL's multi-cargo area comprises:
- (a) three berths at Bledisloe Wharf (B1, B2 and B3), used for multi-cargo and as an overflow for containerised cargo;
 - (b) two large or four small berths at Jellicoe Wharf (one large berth on each side or two small berths on Jellicoe East and two on Jellicoe West) predominately used for break bulk cargo (including fruit, timber and steel), vehicles and the Queen Mary 2 when it is in Auckland;
 - (c) one main berth at Captain Cook Wharf (Captain Cook West) predominantly used for vehicles (including cars, trucks, machinery, equipment and buses);
 - (d) two berths at Freyberg Wharf, used predominately for bulk cargo (including sand, gypsum and wheat) and some break bulk and containerised cargo; and
 - (e) Marsden Wharf, which is no longer suitable for use as a berth / wharf structure for modern shipping and is instead used for cargo consolidation.

Current issues - multi-cargo

32. POAL has three (related) problems in its multi-cargo area:
- (a) an increase in cargo volume means that there is greater demand for berth space and more berths are required; and

- (b) an increase in the size of ships calling means that longer berths are required.
 - (c) Captain Cook West berth is of limited use during the summer cruise season, as larger cruise ships and cargo ships cannot be accommodated alongside each other in the Queens Wharf – Captain Cook Wharf basin due to its narrow width.
33. First, POAL has seen a dramatic increase in multi-cargo cargo volumes over the past five years. Volumes have increased from 2,967,604 tonnes in 2009/10 to 3,654,892 in 2010/11 and then to 5,679,325 tonnes in 2013/14. This is an overall increase of 91% over that period. The movement of more cargo requires more berth space.
34. Second, over the past decade, shipping lines throughout the world have consolidated their services. This means that ships are calling less frequently, but are bigger and transport more cargo. Bigger ships are in port for longer (as there is more cargo to move) and they require longer berths. This means we are getting greater volume without a commensurate increase in ship traffic.
35. The length and width of multi-cargo ships (general cargo ships (which includes some ships which carry containers but have their own cranes and do not use the container terminal at Fergusson), vehicle ships and bulk carriers) is outgrowing our current berth length and layout. Multi-cargo general cargo ships were previously typically around 140 metres long and carried about 900 TEU (twenty foot equivalent units). Now multi-cargo general cargo ships are up to 200 metres long and carry around 2,000 TEU. Vehicle ships are also increasing in size, with regular callers now reaching 260 metres to 265 metres long.
36. Ships that are longer and wider need longer berths, greater manoeuvring space between berths, and stronger wharf infrastructure. Because more cargo has to be transferred while ships are in port, they stay in port for longer, increasing berth occupancy. This means the associated back-up areas need to accommodate greater peaks of transit storage as these larger ships "spill out" or "suck in" greater volumes of cargo in one visit. This puts increased pressure on back-up storage associated with the berths.

37. The port layout in the multi cargo area is not ideally suited to these developments. Several of the older, narrower "finger wharf" configurations were built during an era where ships discharged and loaded cargo slowly (sometimes with wheelbarrows and by hand) over long periods of time, so cargo was moving on and off the wharves as fast as it was being loaded or discharged. That is no longer the case. These developments mean that Marsden Wharf, in particular, is no longer usable as there is insufficient room in the adjacent basin, and insufficient water depth to accommodate a modern ship.
38. Similarly, Captain Cook East is not usable for modern shipping because of its shallow depth and limited manoeuvring space. B2 berth is not useable for most ships because it is too short, and is constrained by the proximity of the B1 structure / berth.
39. Longer and wider ships are also higher and have greater windage. They need wider basins in which to safely manoeuvre, and longer wharf structures to safely moor to (structures that are longer than the ship to ensure mooring lines can be safely secured). The older finger wharves within POAL's multi-cargo area are in close proximity and a big ship at one wharf is now starting to impact on our ability to use other wharves – for example Queens Wharf and Captain Cook Wharf. The shape and location of Bledisloe Wharf (specifically B2 and B3) and the layout of the surrounding wharves means that it is best placed to accommodate these bigger ships - provided the berths are extended.
40. At the same time as demand is increasing, changes to POAL's infrastructure have increased pressure on space in the multi-cargo area:
- (a) In 2010 the Golden Bay Cement facility was relocated from Wynyard Quarter to the B1 berth at Bledisloe Wharf in order to free up a large area around Silo Park for public space and other mixed uses as part of the revitalisation of that part of the Auckland waterfront. B1 is now solely used by Golden Bay Cement and is no longer available for other uses.
 - (b) In 2010 POAL released Queens Wharf as a base for the Rugby World Cup 2011, and as a new focal point for cruise ships. Queens Wharf's two berths are therefore no longer part of POAL's multi-cargo infrastructure. Car vessels that did call at

Queens Wharf have been relocated to Jellicoe, B3 and Captain Cook West, and import banana ships from Queens Wharf relocated to Jellicoe Wharf and Freyberg Wharf.

- (c) As can be seen from the diagram in Schedule 1, Queens Wharf and Captain Cook Wharf are close together. The increasing use of Queens Wharf east for larger cruise vessels impacts on our ability to use the Captain Cook West berth, due to constraints on the beam (width) of vessels which can be simultaneously berthed there. This became a significant issue in the 2013/14 cruise season. 12 cruise vessels with a beam greater than 32 metres are now regular callers. Many of these vessels make multiple calls in the season. Cargo vessels cannot use Captain Cook West on these occasions, and must be relocated.

41. This pressure on multi-cargo infrastructure will be further compounded in the short and medium term as:

- (a) Holcim New Zealand Limited is establishing their cement import facility at the Port of Auckland on Jellicoe West. From 2016 these further ships will be calling at an already busy berth on Jellicoe West.
- (b) Given its proximity to Fergusson terminal, it is anticipated that Freyberg Wharf will ultimately be absorbed into POAL's container terminal operations based at Fergusson Wharf, meaning it would no longer be available for multi-cargo use.

42. Multi-cargo berth utilisation is high at Jellicoe and Freyberg wharves, being in the range of 50% to 70% - it does vary within this range from month to month. Note that the 'technical' capacity of such berths is in our view around 60%. This is endorsed by PWC in their report "*How can we meet increasing demand for ports in the Upper North Island?*" which states '*the technical capacity of bulk berths occupancy for ports of the similar scale to the UNI ports is around 55% - 65%*'.

43. Multi cargo berth utilisation at Bledisloe B2 and B3 is lower, due to the operational constraints imposed by these shorter berths. B2 is too short to be effective for nearly all modern cargo vessels. B3 is becoming too short for many of the vessels it is needed to service. By extending these

berths, berth utilisation can be increased to cater for current demand, future growth and to safely moor larger ships.

44. The Jellicoe berth will not be available in the future for the occasional cruise ship visits, due to its high berth occupancy.
45. There have been numerous independent reports looking at the need to grow and expand. The most recent is the Port Study 2, an independent study. It was commissioned by Auckland Council, and undertaken by NZIER with specialist port and transportation input from Aurecon New Zealand and Australia and released in February 2015. POAL provided NZIER and Aurecon New Zealand and Australia with access to sensitive operational information so that they could benchmark the operational and footprint metrics against industry best practice. A true copy of this study is annexed and marked "AGK-3".
46. NZIER concludes that the Port of Auckland's multi-cargo capacity is constrained. For example:

General cargo operations are becoming constrained with respect to berth-capacity and on-wharf operations.

Ultimately POAL will either lose business or need more land, structures or berth-capacity to allow for the future demand.

Current issues - cruise ships

47. Cruise ships primarily call at Princes Wharf and Queens Wharf. However, two issues arise.
48. First, as mentioned above, when cruise ships call at Queens Wharf they preclude the use of nearby Captain Cook West for multi-cargo work. Consequently, POAL needs an additional multi-cargo berth in order to continue to service the vessels it is increasingly unable to service at Captain Cook West.
49. Second, the size of some of the cruise ships currently calling at Auckland (and some of the ships we anticipate will be calling at Auckland in a few years) cannot currently be accommodated at Princes Wharf and Queens Wharf. Three years ago, the largest cruise ship regularly calling at the Port of Auckland was 295 metres long. Princes Wharf and Queens Wharf (width issues aside) can handle ships of this length. However, cruise

ships of up to 320 metres now call regularly, and much longer ships call on occasion. For example, the Queen Mary 2 is 345 metres long and calls every second year. There has been recent media coverage about the giant cruise ship *Ovation of the Seas* coming to New Zealand in the summer of 2016/2017 on its maiden voyage. This vessel is 348 metres long, and can host nearly 5,000 passengers and 1,500 crew. I understand that its itinerary is still to be finalised, and it may make between 2 and 4 visits in the first summer.

50. In the past, POAL has been able to cater for the occasional one-off large cruise ship (such as a two yearly visit by the Queen Mary 2) at its Jellicoe cargo berth. This is not ideal, as POAL loses the cargo berth for around seven days for each visit, as the flow of cargo must be stopped several days beforehand, there is “pack-in” of facilities, the ship visit, then “pack-out” of facilities. Due to increasing berth occupancy, dedicated cement cargo handling equipment being installed on the wharf, and more frequent planned visits by similar large cruise ships, POAL is no longer able to free up the Jellicoe Wharf freight berth to accommodate this increasing number of large cruise ship visits. These large cruise ship visits could however be accommodated on an extended B3 berth at Bledisloe.
51. Given the pressure on multi-cargo berths, we simply cannot have these commercial areas of our business out of action for weeks every year. We need to find a permanent solution to this (permanent) problem. As set out at paragraph 86 below, the construction of the B3 Extension has now been put on hold until the outcome of the Port Future Study. On 1 May 2015 (just the day after we announced a halt to the construction of the B3 Extension) we were advised that *Ovation of the Seas* would not call at Auckland as planned in 2016. Cruise New Zealand estimated this to be a loss of \$12.4 million to the Auckland economy next year. Further, if the ship does not call at Auckland, it is unlikely to call at other New Zealand ports (such as Port Chalmers, Lyttelton, Port Nicholson or Tauranga).
52. We now understand that *Ovation of the Seas* might come to Auckland and anchor in the harbour, subject to a risk assessment. This is not ideal, as vast numbers of passengers would have to be ferried ashore, and passenger exchanges cannot be undertaken. Unless B3 is extended, the *Ovation of the Seas* cannot be accommodated at an Auckland berth.

The B2 Extension

53. As discussed above, issues with capacity in relation to multi-cargo and cruise ships means that POAL urgently needs to construct additional, usable berths that are long enough to accommodate the larger ships calling at Auckland. In order to address these issues, POAL has decided to construct the B2 and B3 Extensions. Attached as Schedule 2 is a diagram of Bledisloe Wharf which shows the extensions.
54. POAL has prepared a fact sheet which summarises the B2 and B3 Extensions. A true copy of this fact sheet is annexed and marked "AGK-4".
55. B2 is currently a 250 metre long berth on the eastern side of Bledisloe Wharf. Despite its length, the proximity of the B1 berth means that B2 can only berth narrow vessels up to 170 metres in length. This is too short for modern ships and it is therefore rarely utilised. This is a waste of infrastructure as the wharf structure is sound and is capable of supporting a reasonably deep berth. Extending B2 will significantly increase its value and usefulness for POAL.
56. The B2 Extension is 130 metres long, but as part of the extension will overlap with the existing B2 berth, it will extend B2 by 98 metres. This will enable it to cater for "RORO" (roll-on roll-off vessels) vessels of up to 200 metres in length and conventional geared cargo ships up to 220m in length and ensure it is a fully functional and effective multi-cargo berth. It will enable POAL to address increasing congestion in the Queens / Captain Cook basin, by relocating ships to B2, and to also cater for the significant increase in freight throughput. This will take advantage of the existing B2 structure, given its position, including depth.
57. The B2 Extension will convert what is currently essentially an unusable berth with good depth and a sound structure into a highly effective berth.

The B3 Extension

58. B3, on the western side of the Bledisloe Terminal, serves several functions, including servicing general cargo ships and RORO vehicle ships, as well as the container vessel overflow berth (which is used when Fergusson Container Terminal is full).

59. However, it is also now too short for many of these types of modern ships calling at Auckland. B3 needs to be extended to facilitate best practices for the mooring of ships which already call. POAL regularly services large ships which would ideally have mooring lines attached further along the wharf, and which in some cases “overhang” the end of the berth, creating operational constraints when working them. The extension of B3 will provide more operational flexibility by being able to properly and fully cater for larger ships which it currently services, as well as overflow or displaced vessels from other congested berths at the port, and will also enable it to take the occasional very large cruise ship (as outlined above).
60. The B3 Extension is 116 metres long, but as part of the extension will overlap with the existing B3 berth, it will extend B3 by 92 metres. The extension to B3 berth will increase its length from 260 metres to 357 metres, which will allow it to accommodate vessels of up to 280 metres safely without operational constraints and vessels up to 348 metres long with operational constraints. Currently vessels up to only 240 metres can be moored without operational constraints. The increases in vessel sizes over recent years, which I outlined in paragraph 35 above, have seen multi-cargo vessels increase in size to 265 metres, with longer vessels expected.
61. The new 357 metre long B3 berth would also be able to accommodate these larger cruise vessels, including the Queen Mary 2 and the Ovation of the Seas and would be the only berth at the Port of Auckland available for that purpose.
62. In summary, following the extension, B3 would be able to be of greater use to multi-cargo and the container terminal overflow berth, and would also be able to service the occasional larger cruise ships calling at Auckland.

RESOURCE CONSENTS FOR THE B2 AND B3 EXTENSIONS

63. Once we had decided to proceed with the B2 and B3 Extensions, POAL engaged Bentley & Co Limited (an independent planning consultancy practice) and Russell McVeagh to assist with the resource consent applications.

64. Mr Arbuthnot assisted POAL with its application for the resource consents required for its new tug berth facility earlier in 2014. The tug berth project involved the construction of berths to accommodate four tugs in the basin between Bledisloe B1 Wharf and Jellicoe Wharf. This was required on a reasonably urgent basis to accommodate a large new tug boat that POAL had ordered. This will also allow all tugs to be relocated from the current berth between Queens Wharf and Captain Cook Wharf in an area that had become congested. Given the tug berth also involved the construction of a wharf within the areas set aside for the Port, the same consents were required. We worked with Mr Arbuthnot and Auckland Council to ensure the Council had the information it needed for the tug berth applications.
65. The tug berth application was the first application made by POAL under both the operative Auckland Regional Plan: Air Land Water ("**Operative Air Land Water Plan**") and the Operative Coastal Plan ("**Operative Plans**") and the Proposed Plan.
66. The way in which the Council approached and processed the tug berth application provided us with relevant information regarding the application for the B2 Extension. In particular, the Council had advised that two additional stormwater consents were required for the tug berth under the Proposed Plan. While we did not agree with this analysis, following discussion with Mr Arbuthnot we decided to also include these additional consents in our applications for the B2 and B3 Extensions. We included these two additional consents "without prejudice and out of an abundance of caution". The Council decided that they could appropriately be considered together (bundled), as they did also later in relation to the stormwater consent applications under the Proposed Plan for each of the B2 and B3 Extensions.
67. On 13 September 2014 POAL applied for five resource consents for the B2 Extension:
- (a) one consent for construction of the B2 Extension under the Operative Coastal Plan;
 - (b) one consent regarding stormwater under the Operative Air Land Water Plan; and

- (c) three consents regarding stormwater under the Proposed Plan
68. The consents for the B2 Extension were granted by Auckland Council on 31 October 2014.
69. On 19 November 2014 POAL applied for the same five resource consents for the B3 Extension. The consents for the B3 Extension were granted by Auckland Council on 19 December 2014 (for the consents under the Proposed Plan) and 23 December 2014 (for the consents under the Operative Plans).
70. Urban Auckland has criticised the decision to make separate applications for the B2 and B3 Extensions. We did this for three key reasons.
71. First, the B2 and B3 Extensions are separate projects. As set out above, they are two different ways to increase POAL's capacity in the multi-cargo area. They are independent in the sense that if we were only able to do one of the two extensions, we will still push on. This is demonstrated by the fact that we have subsequently agreed with Auckland Council that we will pause on construction of the B3 Extension until after the Port Future Study occurs (discussed in more detail at paragraph 86 below).
72. Second, splitting the applications made sense from an administrative point of view. As can be seen from the size of the applications, a lot of work was required. Bentley & Co, Russell McVeagh and I were (and are) all heavily involved in the submissions and hearing process for the Proposed Plan. Given the work involved, it was only practical to make the applications on a consecutive basis.
73. Third, by applying for the B2 Extension first, we could ensure that we incorporated into the application for the B3 Extension the relevant questions/additional information requested in relation to the B2 Extension. This also allowed POAL to offer as proposed conditions in its application for the B3 Extension those conditions that had been imposed on the resource consents for the B2 Extension.

CONSTRUCTION OF THE B2 AND B3 EXTENSIONS

Tender

74. Given the long lead times (some 52 weeks) to construct each extension, and the pressing berthing needs, POAL took steps to ensure that works could begin promptly after the resource consents were obtained. The construction contract for the B2 and B3 wharf extensions was accordingly put out for tender in December 2014.
75. While the extensions to each of B2 and B3 are separate projects, we elected to put the work out for tender for both projects together. We did this to:
- (a) avoid the need for two separate site compounds (there simply is not the space for this);
 - (b) simplify management of the works;
 - (c) minimise health and safety and operational risks by only having one contractor to deal with;
 - (d) minimising contractor down time (having one contractor allows greater continuity of work as, when there is a ship at B3 and it is not safe for the contractor to work there, work can continue at B2); and
 - (e) provide scale, which reduces total costs.
76. Tenders closed on 23 December 2014, and we received a tender from Brian Perry Civil. On 21 January 2015 POAL accepted the tender submitted by Brian Perry Civil. A construction contract was subsequently completed.
77. On 12 February 2015 the NZ Herald published an article which referred to the Council's approval of consents for B2 and B3. On 25 February 2015 a further article was published in which a representative from Urban Auckland is quoted in relation to this matter. A true copy of these articles is annexed and marked "AGK-5".

Construction Contract with Brian Perry Civil

78. Brian Perry Civil's tender was accepted on 21 January 2015 when a "Notification of Acceptance of Tender" was issued to them. POAL and Brian Perry Civil then signed the formal contract for the construction of the B2 Extension and the B3 Extension on 17 February 2015 ("**Contract**"). The value of the Contract is \$22,433,625. A copy of the Contract is annexed to the affidavit of Chris Turner.

Works undertaken under the Contract

79. Brian Perry Civil has commenced work under the Contract. It has:
- (a) taken possession of the B2 and B3 sites;
 - (b) erected a site compound, including offices, welfare facilities, services connections and fencing of the site;
 - (c) undertaken demolition enablement works on the B2 Extension (demolishing part of the existing deck to allow the extension to be tied in);
 - (d) undertaken temporary works detailed design and commenced fabrication of the temporary access platforms for the construction of both the B2 and B3 Extensions;
 - (e) undertaken falsework detailed design, and fabricated and delivered to site the travelling formwork for both the B2 and B3 Extensions;
 - (f) placed orders and let subcontracts for steel pile casings, reinforcing, formwork, concrete supply, site welding/splicing, expansion plate, temporary works platforms and other materials for both the B2 and B3 Extensions;
 - (g) placed orders for site specific equipment and plant, including part of the drill rig;
 - (h) undertaken significant other planning work and development of programmes, method statements, shop work drawings, supplier agreements etc for the works;

- (i) driven temporary piles and installed staging supports for the piling equipment;
 - (j) taken delivery of all pile casings for the B2 Extension;
 - (k) spliced 16 pile casings for the B2 Extension; and
 - (l) driven and poured three permanent piles for the B2 Extension.
80. The following machinery and plant has been delivered to site:
- (a) two large crawler cranes (40t and 90t);
 - (b) piling plant, including a 100t crawler crane; and
 - (c) ancillary plant and equipment, such as a work boat, generators, tools, workshops, welding facilities, scaffolding etc.
81. The steel pile casings were transported from China and have arrived in four batches, from 12 April to 17 May.
82. Accordingly, preparatory works were completed by 28 April and the main construction works commenced on 4 May. The B2 extension works are scheduled for completion in February 2016.

Construction of the B3 Extension

83. The commencement of the B3 Extension works had been staggered for cost and efficiency reasons, and was scheduled for completion in February 2017.
84. As has been well publicised, there has been a number of discussions, and some correspondence, between POAL, Auckland Council and ACIL regarding the B2 and B3 Extensions. Auckland Council wrote to ACIL on 30 March 2015 and ACIL wrote to POAL on 2 April 2015. A true copy of ACIL's letter is annexed and marked "**AGK-6**".
85. Further discussions and consideration occurred after receipt of each of those letters.
86. Those discussions culminated in POAL's offer not to proceed with the B3 Extension until the outcome of the Future Port Study is known. POAL

made this offer to Auckland Council on 30 April 2015. A true copy of POAL's letter to Auckland Council is annexed and marked "AGK-7".

87. The Future Port Study is being undertaken by Auckland Council and is anticipated to be concluded by 30 April 2016. We did not offer to delay construction of the B3 Extension because we do not need it. The opposite is true - it is vital that the B3 Extension is constructed if we are to continue to meet demand. Rather, we reached a compromise with Auckland Council which will see us push on with the B2 Extension while pausing for a period regarding the B3 Extension, when the Future Port Study is done (and assuming it confirms the need for the B3 Extension).

Cost to POAL if the B2 and B3 Extensions do not proceed

88. As I have stated above, Brian Perry Civil has undertaken significant work in respect of the B2 and B3 Extensions. Brian Perry Civil has allocated considerable staff resources to this project, organised its resources to carry out the works, and engaged subcontractors. POAL would also need to break arrangements with Brian Perry Civil.
89. While the B3 Extension has been put on hold, construction of the B2 Extension continues. If this was to have to cease, Brian Perry Civil would need to deploy its staff and subcontractors on other projects. BPC would also need to break arrangements with suppliers and subcontractors.
90. Brian Perry Civil has also committed machinery and plant to the B2 Extension works, including site compounds, cranes and piling plant. Again, that machinery and plant would need to be deployed on other projects (if that is possible). Brian Perry Civil has also entered into substantive contractual commitments to purchase materials for the works, including the pile casings I mentioned above. I understand that BPC has placed materials/supply orders and awarded subcontracts to the value of approximately \$10 million.
91. Furthermore, an order from the Court with the outcome that POAL could not construct the B2 and B3 Extensions would have consequences for POAL and the shipping industry. POAL would need to delay or turn away ships that would otherwise have been able to dock and unload using the extended B2 and B3 berths. Such a consequence could occur due to the

increasing berth congestion which I have outlined above (which the B2 and B3 Extensions are designed to address).

92. The cost of delay to a typical cargo ship which would have expected to use the extended B2 or B3 berths is significant and can be around US\$50,000 per day. Some of the shipping lines would also incur penalties from their customers as a result of late delivery of cargo. The cost of not be able to take the larger cruise ships referred to in paragraph 49 above has not yet been quantified, but it will be well in excess of the cost of delaying a cargo ship. On average, a cruise ship visit generates around \$1.5m of expenditure per visit in the wider Auckland economy and larger ships are likely to generate more.
93. Given the costs under the construction contract and the pressing need for more and longer berths, when both the direct costs and lost benefits involved in suspending the work are taken into account, they exceed any costs associated with continuing work. Shipping delays are already occurring. Longer ships are already here and even longer ships are imminent.
94. I understand that Urban Auckland may pursue an application for interim orders which would prohibit POAL from continuing work on the B2 Extension until the Court's judgment. In relation to this application, I note that as the B2 Extension is a wharf structure, any ongoing construction steps taken under the Contract (to meet this pressing need for longer berths) between the hearing and the Court's judgment are reversible.

RESPONSE TO URBAN AUCKLAND EVIDENCE

"Special circumstances" and Port development

95. Several of the affidavits filed on behalf of Urban Auckland comment on whether there were "special circumstances" requiring notification of the B2 and B3 Extensions.
96. From paragraph 6 on in her affidavit, Ms Heather Shotter makes a number of statements regarding the factors she regards as "special circumstances". This includes the work being done regarding the future of the Port. The forum for comments regarding this is the ongoing public participation process regarding the Proposed Plan, where both

Committee for Auckland (for whom Ms Shotter works) and Urban Auckland have lodged submissions. POAL currently has a right to occupy the area that is within the Port Precinct. During the Proposed Plan process no submissions have sought to remove or reduce the area set aside for the Port Precinct. Under the Proposed and Operative Plans, POAL has rights to carry out many activities, including the right to do things such as construct wharves (a permitted activity under the Port Precinct rules of the Proposed Plan and requiring only a controlled activity consent which cannot be declined under the Operative Coastal Plan).

97. As I mentioned above, there is currently an ongoing process underway regarding the Proposed Plan, including the activity status that will be given to particular activities within the Port Precinct, such as new wharves and reclamation and whether or not there should be any viewshaft inserted into the Proposed Plan to protect views from Queens Wharf. There is a broad opportunity for public participation in this process, as there was when the Operative Plans went through the submission process. Much of the evidence provided by witnesses on behalf of Urban Auckland relates to protections that are currently being sought in the Proposed Plan process. Witnesses on behalf of both POAL and Urban Auckland have given extensive evidence on these various topics before the Independent Hearings Panel chaired by Environment Court Judge Kirkpatrick as recently as the week of 11 May. I appeared as a witness, as did Mr Arbuthnot, Mr Goodwin, Ms Stout and Mr Lister. While the Royal New Zealand Yacht Squadron lodged a submission, this did not address the Port Precinct.
98. One of the "special circumstances" referred to in Urban Auckland's evidence is the level of public interest. In many of the affidavits filed by Urban Auckland there are comments that the public is against port expansion. While I acknowledge that there are members of the community who are opposed to expansion (even in the limited sense of extensions to existing wharves), it is not accurate to say that everyone - or even a majority of Aucklanders - oppose the B2 and B3 Extensions. There have been very few submissions made in the Proposed Plan process which are against port expansion.

99. Further, in May 2013 when we released our most recent ports development proposal, POAL conducted a survey to gauge public opinion on these issues. A true copy of a summary of this survey is annexed and marked "**AGK-8**". We placed advertisements in local papers and the New Zealand Herald and on social media with a link to the survey. There were only 181 respondents. 66.3% of respondents said "yes" in answer to the question "Do you agree that Bledisloe Wharf should be extended so that it can accommodate large ocean liners such as the Queen Mary 2, which don't fit at Queens Wharf?"

Visual effects

100. Mr Gavin Lister has provided an affidavit regarding visual effects. I wish to respond to two points in his affidavit.
101. First, at paragraph 29 of his affidavit, Mr Lister refers to the evidence of Mr John Goodwin in the Proposed Plan process. Mr Goodwin is a Landscape Architect and Director of Boffa Miskell Limited who provided evidence as an expert instructed by POAL in the Proposed Plan process. Mr Lister sets out a quote from Mr Goodwin's evidence. While the quote is accurate, it is taken out of context. In that section of his evidence, Mr Goodwin was comparing the visual effects of the various activities at the Port for which consents have been obtained.
102. Second, Mr Lister's evidence focuses on the view to the north east from Queens Wharf. This public view did not even exist as a "public view" until a few years ago. In addition, Queens Wharf was released to enable its development as a cruise ship terminal and as a fan zone for the 2011 Rugby World Cup, not for its public views. Queens Wharf remains an operational wharf and access is restricted when cruise ships are berthed, for security, customs and biosecurity reasons.

Reclamation

103. In his affidavit, Dr Joel Cayford outlines various plans and proposal documents relating to POAL and its land throughout the past few decades. Some, but not all, of these documents were drafted by POAL. Many of the documents refer to reclamation and possible future expansion into the harbour.

104. Over the past few decades we have proposed various changes to the wharves within POAL. Many of these proposals have also included the reclamation of parts of the harbour. The earlier plans are no longer our proposed option, as port planning is dynamic. Our current planning does include the possibility of reclaiming the area between the B2 and B3 Extensions at some stage in the future. Of course, before this occurred we would need to fully investigate such a proposal, assess all relevant effects and then go through the proper resource consent process for reclamations (which are a different activity category). This would be a separate project. The current issue before this Court - the resource consent process for the B2 and B3 Extensions for the berthing of ships - does not include any reclamation. I also note that Dr Cayford did not make a submission against the port provisions in the Proposed Plan process.

SWORN at Auckland this 18th day of May
2015 before me:



A solicitor of the High Court of New Zealand

Kate Margaret Hope Austin
Solicitor
Auckland



A G Kirk