

**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

NGARIMU ALAN HUIROA BLAIR FOR APPLICANT

Sworn May 2015

Solicitor Acting:

Mr Geoff Hardy
Madison Hardy
Level 6, Wherescape Towers
Cnr Wyndham and Albert Streets,
PO Box 630 Shortland Street,
AUCKLAND 1140
Ph: (09) 970 9569
Email: geoff@madisonhardy.com

Counsel Instructed:

Mr Julian Miles, QC
Richmond Chambers
Level 5, General Buildings
33 Shortland Street
PO Box 1008
AUCKLAND 1140
DDI: (09) 600 5504
Email: miles@richmondchambers.co.nz

I, **Ngarimu Alan Huiroa Blair**, of Auckland, Deputy Chair, swear:

Introduction

1. My name is Ngarimu Alan Huiroa Blair. I am the Deputy Chair of the Ngati Whatua Orakei Trust which is an elected body that represents the collective interests of the descendants of Tuperiri, who established Ngati Whatua Orakei mana and Ahi Kaaroa on the Auckland Isthmus in the mid-17th Century.
2. I have been asked to provide this affidavit on behalf of Ngati Whatua Orakei and in support of Urban Auckland, the Society for the Protection of Auckland City and Waterfront (**Urban Auckland**) and proceedings it has lodged with the High Court challenging consents granted to Ports of Auckland Limited late last year for extensions to the Bledisloe Wharf.
3. I hold a bachelor's degree in Geography and Maori from the University of Auckland and lecture in various departments there and at AUT on Maori urban planning, design and media matters. I established the Ngati Whatua Orakei Heritage and Planning unit in 1998, the predecessor to the Ngati Whatua Orakei Whai Maia Limited, Toki Taiao Unit.
4. The Ngati Whatua Orakei Trust owns two subsidiary companies that have separate Boards of Directors including independent Directors. Ngati Whatua Orakei Whai Maia Limited is responsible for the day to day operations that relate to the social and cultural enhancement of our people. This includes protecting our natural resources, waahi whakahirahira (sites of significance) and waahi tapu (sacred sites) through the exercise of kaitiakitanga. Failure adequately to protect our natural and cultural heritage not only has serious negative impacts on our physical well-being but also on our cultural and spiritual essence.
5. Ngati Whatua Orakei has mana whenua/ahi kaaroa for a large and significant part of the area now governed by Auckland Council (Council), centred around the Auckland isthmus. Ngati Whatua Orakei acknowledges that other iwi or hapu can claim tangata

whenua status and hold mana and ahi kaaroa for other parts of Auckland Council's jurisdictional area.

6. Ngati Whatua Orakei is a significant landowner in Auckland. It owns land in various parts of Auckland, both Treaty settlement and commercially purchased land. Through these interests, Ngati Whatua Orakei has significant experience in co-governance with statutory bodies such as Council. This includes land-holdings in close proximity to the Port Precinct, owned by Ports of Auckland Ltd (**POAL**). Ngati Whatua Orakei, through its subsidiary entities Whai Maia and Ngati Whatua Orakei Whai Rawa Ltd, lodged submissions on the Proposed Auckland Unitary Plan in relation to the Port Precinct.

Application for relief

7. Urban Auckland has applied for judicial review of the Auckland Council's decisions to grant consents on a non-notified basis for the construction of the 'B2 and B3' extensions.¹ Ngati Whatua Orakei supports this application and the challenge to the B2 and B3 resource consents.
8. The Waitemata is of profound cultural and spiritual importance to Ngati Whatua Orakei. For close to 3 centuries it has sustained our people who had numerous fishing villages dotted along its coastline. The Waitemata is a cultural identity marker for Ngati Whatua Orakei. We continue to this day to recite in speeches our pepeha, the essence of who we are by noting that Tuperiri is our ancestor, Orakei is our marae, Maungakiekie is our mountain and the Waitemata is our sea. Ours, not in the European sense of ownership, but that we instead belong to them. We belong to the Waitemata.
9. The area occupied by POAL, including the footprint of the B2 and B3 extensions, has high cultural values and associations for Ngati Whatua Orakei. It forms part of Ngati Whatua Orakei's rohe (territory). POAL's wharves are in close proximity to Te Rerenga Ora Iti, a former headland Pa site named for a 16th century incident

¹ The B2 and B3 resource consents are identified in Owen Burn's affidavit.

where the famed ancestor Kawharu lead Ngati Whatua in a battle there. A part of the Pa was also known as Tangihanga Pukaea, a reference to trumpets of war and of death. The shellfish beds long since destroyed, despite the protests of Ngati Whatua, were known as Te Rou Kai or the 'Food baskets'.

10. These are ancestral relationships held by Ngati Whatua Orakei with lands, waters and taonga. They are matters of national importance recognised under s6(e), s7(a) and s8 Resource Management Act 1991; and s7 and s8 of the Hauraki Gulf Marine Park Act 2000.
11. Despite these nationally important values, Council did not require a cultural impact assessment of mana whenua effects for the B2 and B3 wharf extensions. Instead, Council relied on POAL's assurances about mana whenua consultation that was focussed solely on the treatment of stormwater within the Port Precinct, although in respect of the discharges I understand that Ngati Whatua Orakei did not finalise its position of the issue of whether a cultural impact assessment was required for that application. Nevertheless, the communications between POAL and Ngati Whatua before the consent applications for the the B2 and B3 wharf extensions did not disclose POAL's specific intentions, namely to seek consent for the B2 and B3 wharf extensions.
12. Ngati Whatua Orakei considers that the B2 and B3 extensions have more than minor, and potentially significant, adverse cultural effects.
13. The extension of wharf structures further into the Waitemata, along with continued changes to the visual landscape and appearance of the shoreline is a significant concern to Ngati Whatua Orakei. It is already impossible for most to 'read' the cultural landscape of the Waitemata. Increased port development and activity will further change the landscape making it even more difficult to read and understand the cultural landscape which is vital in maintaining our cultural identity.
14. If we were given the opportunity, Ngati Whatua Orakei would have been very likely to have been actively involved in the wharf extensions including by requiring a cultural impact assessment and

submitting on the applications if they were notified. We were involved as an opposing submitter in POAL's previous resource consent application for the POAL Fergusson Terminal extensions, and appealed the decision to grant consent to the Environment Court (the appeal did not proceed to a hearing however). We would have taken a similar position to the latest applications if given the chance.

15. The consultation process followed by POAL, and relied on by Council, was flawed. Commissioners Macky and Kaye (who approved the B2 and B3 extensions) did not have adequate information on cultural effects.
16. The B2 and B3 extensions should not be decided without a full process of public notification. This should include a cultural impact assessment by Ngati Whatua Orakei (as mana whenua) and potentially other iwi (as tangata whenua).

Inadequate information on cultural effects

17. Ngati Whatua Orakei has not been adequately involved in planning for Auckland since 1840, and has suffered as a result. There are many examples where I consider that a different, more informed and better outcome could have been arrived at if Ngati Whatua Orakei were involved. The result of this lack of input into planning decisions is an inadequate understanding and response to the cultural issues and concerns Ngati Whatua Orakei have.
18. Ngati Whatua Orakei was not consulted about the B2 and B3 applications. Instead POAL made general (and non-specific) enquiries of Ngati Whatua Orakei in relation to treatment and discharge of stormwater (to a TP10 standard) for un-specified structures within the Port Precinct. In hindsight, POAL provided minimal information to Ngati Whatua during consultation.

19. The Agreed Bundle contains a copy of the information provided to Ngati Whatua Orakei during POAL's consultation process.² Of key importance:

The Beca Report states:

The stormwater discharges would occur from new impervious surfaces associated with "marine and port facilities" or "marine and port accessory structures and services" located within the areas of the Port shown on **Figure A**. This area extends from Princes Wharf in the west to Fergusson Container Terminal in the east, and includes the water space as shown on **Figure A**. The area depicted on Figure A is within the Port Management Area 1A, 1C and 2A zones under the operative Auckland Regional Plan: Coastal (ARPC) and within the Port or Central Wharves Precincts under the PAUP.

The BECA text also states:

For the purpose of this report, POAL has confirmed that it will develop no more than 3,500m² (0.35ha) of additional impervious surface at any one time, and will develop no more than 10,000m² (1ha) of additional new impervious surface over any 10-year period. Any such impervious surfaces will be formed / surfaced in concrete or asphalt and will be used for marine and port activities, which are permitted activities in the Port area. (POAL will seek separate clarification as to whether or not a Cultural Impact Assessment is required for any development of impervious surfaces that may exceed these totals, should that situation arise in future.)

There will generally be a very low level of activity on the "marine and port facilities" or "marine and port accessory structures and services" that this report relates to. They will be sealed open areas that Port workers and vehicles will pass over and work on, to assist with the berthing of vessels alongside these facilities or structures and to access such vessels. The areas may also be used to load or unload cargo but will not be used for the storage of dangerous goods or hazardous substances.

20. There is no mention that the new impervious surfaces would be extensions of existing wharves into the Waitemata.
21. It is obvious that the larger the wharf extensions, the greater the likelihood of impacting cultural sites, waahi tapu or other taonga. All iwi groups consulted would have relied upon POAL's assurance. It is therefore of great concern that B2 and B3 (in combination) exceed the 3500m² "additional impervious surface area". If construction of B2 and B3 is allowed to proceed at this time, then POAL will be in breach of an important assurance given to Ngati Whatua Orakei and other iwi, both as to the extent of new surfaces and an understanding that new wharves, or extensions to existing wharves, were not involved.

² I understand the Common Bundle will provide bundle page numbers once it is completed.

22. As noted, consultation was limited to stormwater impacts of potential structures within the Port Precinct Area and how this might be mitigated through the TP10 standard. POAL did not disclose that other resource consents were required to construct structures in Port Precinct Area 1A. POAL did not consult on construction effects and opportunities for improved public access, including Captain Cook Wharf. Ngati Whatua Orakei has a policy of encouraging public access to its whenua at Orakei Marae and Takaparawhā. We would expect to be consulted on opportunities for improved public access, for example, to Captain Cook Wharf. This could include improved access by mana whenua (and tangata whenua) for cultural practices.
23. Consultation requires good faith discussions. Sufficient information must be provided by the consultor (POAL) so that the party being consulted (Ngati Whatua Orakei) can provide informed consent. POAL must have known about its intention to apply for the B2 and B3 extensions, as part of its overall plan for expanding the Bledisloe Wharf. It did not disclose those extensions. Had it done so, Ngati Whatua Orakei would have clearly identified the adverse cultural effects of doing so and would have required further information from POAL.

Conclusion

24. Construction of B2 and B3 will result in more than minor, potentially significant, adverse cultural effects. It will adversely affect the ancestral relationships held by Ngati Whatua Orakei with our lands, water and taonga. The decision on whether to allow construction of the B2 and B3 extensions should not commence until a full cultural impact assessment is done.
25. If the B2 and B3 resource consent applications had been publicly notified, then Ngati Whatua Orakei would have opposed construction of B2 and B3 into the Waitemata Harbour. Ngati Whatua does not agree that POAL should continue to expand its way into our rohe, ancestral waters and sites.
-

SWORN at Auckland this day of May before me:		
		Ngarimu Alan Huiroa Blair
A Solicitor of the High Court of New Zealand		