

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2018-AKL-00078

I MUA I TE KOOTI TAIAO O AOTEAROA

UNDER THE

Resource Management Act 1991 ("**Act**")

IN THE MATTER OF

a direct referral of an application for resource consent for the necessary infrastructure and related activities associated with holding the America's Cup in Auckland

AND IN THE MATTER OF

an application under section 281 for waiver of the time period for filing a notice under section 274 of the Act

BETWEEN

PANUKU DEVELOPMENT AUCKLAND LIMITED

Applicant

AND

AUCKLAND COUNCIL

Respondent

**APPLICATION FOR WAIVER UNDER SECTION 281 ON BEHALF OF THE
NGATI PAOA TRUST BOARD IN RESPECT OF SECTION 274 NOTICE**

6 SEPTEMBER 2018

Counsel instructed:

JGH BARRISTER

J D K Gardner-Hopkins

Phone: 04 889 2776

james@jghbarrister.com

PO Box 25-160

WELLINGTON

TO: The Registrar
Environment Court
PO Box 7147
Wellesley Street
AUCKLAND 1141
(Janice.King@justice.govt.nz)

AND TO: The Applicant

AND TO: The Respondent

AND TO: The Parties, as listed at **Appendix A** of the Board's section 274 notice

TAKE NOTICE THAT the Ngati Paoa Trust Board ("**Board**") hereby applies under section 281 of the Act for a waiver in respect of *Panuku Development Ltd v Auckland Council* (ENV-2018-AKL-000078) ("**proceedings**").

The Board wishes to become a party to the proceedings under section 274 of the Act and seeks a waiver of the time period provided in section 274(2) to join the proceedings, **UPON THE GROUNDS THAT:**

1. The Board has an interest in the proceedings that is greater than the interest that the general public has for the reasons stated in its section 274 notice accompanying this application for waiver.
2. The Board is the only entity that is mandated, by a "determination and order" of the Maori Land Court in 2009 pursuant to section 30(1)(b) of Te Ture Whenua Maori Act 1993, to speak for Ngati Paoa in respect of resource management matters, including in respect of the proceedings. A copy of the 2009 Maori Land Court decision is **attached**.
3. The Board only became aware, on 3 September 2018, that Panuku Development Auckland Limited and Auckland Council has directed their engagement and communication regarding the proposal and these proceedings, as they relates to or affects Ngati Paoa, to the Ngati Paoa Iwi Trust ("**Trust**"). This has been to the exclusion of the Board, despite the Board being the mandated representative of Ngati Paoa in respect of resource management matters.
4. As a consequence of the engagement by Panuku Development and the Council, the Trust has joined the proceedings and is holding itself out as and/or adopting a position designed to imply that the Trust is authorised to speak for Ngati Paoa in respect of resource management matters, including the proposal.
5. The Court adopts the position that it is:

... persons who hold mana whenua are best placed to identify impacts of any proposal on the physical and cultural environment valued by them, and making submissions about provisions of the Act and findings in relevant case law on these matters.

Refer: *SKP Incorporated v Auckland Council* [2018] NZEnvC 81, at [157].

6. It is essential therefore that the Court, in hearing from mana whenua, hears from those who are properly mandated to speak for mana whenua.
7. Accordingly, it is appropriate and reasonable for the Court to hear from the Board, as the entity mandated to speak for Ngati Paoa on resource management matters (such as in these proceedings).
8. The Board has raised similar mandate/ process issues in respect of *SKP Incorporated v Auckland Council* [2018] NZEnvC 81. In that context, Ngati Paoa, through the Board as its mandated authority, is fundamentally opposed to that application. However, the context of this proceeding is different. Ngati Paoa (through its mandated authority, the Board) recognises that subject site and subject area also fall within the rohe of other mana whenua. Ngati Paoa does not and cannot speak for others, but, through the Board as its mandated authority, is *neutral* in respect of the proposal (on the basis of its current understanding of the proposal). The Board's primary focus is the detail of conditions and ensuring that Ngati Paoa, through the Board as its mandated authority, is properly recognised and provided for including in the implementation of the consent (if granted).
9. On this basis, the granting of a waiver to allow Ngati Paoa to join the proceedings, through the Board as its mandated authority, will not delay or otherwise materially extend the hearing – and accordingly there is no prejudice to the applicant in granting the waiver sought.
10. The Board also acknowledges that several other mana whenua groups have raised concerns regarding the lack of engagement and/or unsatisfactory engagement by Panuku Development with mana whenua groups prior to and after the application and/or proposal was lodged. The Board shares those concerns, and in particular where the Board was not provided with any direct notice of the proposal by Panuku Development and/or Auckland Council despite the parties' (or at least Auckland Council) being aware of the Board's mandate in respect of Ngati Paoa.
11. The Board has not unduly delayed in seeking to join the proceedings. The only reason it feels compelled to do so is its discovery that the engagement and communications by Panuku Development and Auckland Council with Ngati Paoa has been directed to the Trust and not to the Board, and because the Trust is a party and is purporting to speak on behalf of Ngati Paoa, when the Board is the only entity mandated to speak for Ngati Paoa. The Board cannot in face of that knowledge let that state of affairs proceed without seeking to correct the position and ensure that the Environment Court makes its decision having regard to the views of Ngati Paoa as put forward by its mandated authority. It is also important in terms of implementation of the consent, that Ngati Paoa, through the Board as its mandated authority, is appropriately recognised and provided for through the Mana Whenua Engagement provisions.

AND ON THE FURTHER GROUNDS / IN RELIANCE ON:

12. The 2009 Maori Land Court decision (**attached**).
13. The affidavit of Mr Roebeck sworn in respect of the rehearing of *SKP Incorporated v Auckland Council* [2018] NZEnvC 81 (but providing for context in respect of this application) (also **attached**).

DATED 6 September 2018



J D K Gardner-Hopkins
Counsel for the Board

The Board's address for service is C/- James Gardner-Hopkins, Barrister, PO Box 25-160, Wellington 6011.

Documents for service on the Board may be left at that address for service or may be emailed to james@jghbarrister.com. Service by email is preferred, with receipt confirmed by return email.