

**BEFORE THE ENVIRONMENT COURT**  
**I MUA I TE KOOTI TAIAO O AOTEAROA**

**IN THE MATTER** of the Resource Management Act 1991 (**RMA**)

**AND**

**IN THE MATTER** of a direct referral application under section 87G of the RMA for resource consents for the necessary infrastructure and related activities associated with holding the America's Cup in Auckland

**BETWEEN** **PANUKU DEVELOPMENT AUCKLAND LIMITED**

(ENV-2018-AKL-000078)

Applicant

**AND** **AUCKLAND COUNCIL**

Regulatory Authority

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**STATEMENT OF EVIDENCE OF RICHARD SIMONDS  
ON BEHALF OF THE AUCKLAND COUNCIL**

**(GROUNDWATER)**

**Dated 21 August 2018**

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**BROOKFIELDS  
LAWYERS**

M C Allan  
Telephone No. 09 979 2128  
Fax No. 09 379 3224  
P O Box 240  
DX CP24134  
**AUCKLAND**

## 1. INTRODUCTION

- 1.1 My full name is Richard John Simonds.
- 1.2 My evidence is given on behalf of the Auckland Council (the **Council**) in its regulatory capacity in relation to the direct referral application filed by Panuku Development Auckland Limited (**Applicant**) seeking resource consents for the construction, occupation, use and maintenance of permanent and temporary infrastructure and undertaking of activities within the coastal marine area and on land, associated with the America's Cup (the **Application**). My evidence relates to the groundwater aspects of the Application.

## 2. QUALIFICATIONS AND EXPERIENCE

- 2.1 I have 34 years' experience in engineering geology and have worked in the United Kingdom, Hong Kong, Australia and New Zealand. I have a Bachelor of Science Degree in Geology (1980) and a Master Degree in Engineering Geology (1984). For the past three years I have worked as a Senior Specialist Advisor at Auckland Council reviewing resource consent applications across the Auckland area in relation to groundwater take (dewatering) and groundwater diversion.

## 3. MY ROLE

- 3.1 I prepared a report<sup>1</sup> for the Council reviewing the groundwater aspects of the Application (**Report**). My Report was attached as Appendix N to the Council's section 87F Report. I reaffirm the contents and conclusions of my Report, subject to the matters noted below.
- 3.2 In preparing my Report and this evidence, I carried out a site visit on 15 June 2018.
- 3.3 I participated in expert witness conferencing with the Applicant's expert, Phillip Ware, and was a signatory to a Joint Witness Statement (**JWS**) dealing with the groundwater aspects of the Application dated 1 August 2018<sup>2</sup>. The JWS was multi-disciplinary and involved a number of other Council experts on other topics<sup>3</sup>.
- 3.4 In preparing this evidence I have reviewed the following documents and reports:
- (a) The documents listed in paragraph 1.2 of my Report;

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<sup>1</sup> CB149, page 3889 onwards.

<sup>2</sup> E27, page 1316 onwards.

<sup>3</sup> Matt Byrne, Marija Jukic, Rob van de Munckhof, and Paul Crimmins.

- (b) The evidence of Phillip Ware for the Applicant concerning contaminated land and groundwater<sup>4</sup>;
- (c) The evidence of Kurt Grant for the Applicant (Construction Methodology), and in particular Attachment D which contains an updated draft Groundwater Monitoring and Contingency Plan (**GWMCP**) dated 3 August 2018<sup>5</sup>; and
- (d) The planning evidence of Vijay Lala and Karl Cook, including the proposed groundwater conditions in Attachment A<sup>6</sup>, and the discussion of 'Groundwater Diversion Effects' in Attachment B<sup>7</sup>.

#### 4. CODE OF CONDUCT

- 4.1 I have read the Code of Conduct for Expert Witnesses (**Code**) outlined in the Environment Court's Consolidated Practice Note 2014 and have complied with it in preparing this evidence. I also agree to follow the Code when presenting evidence to the Court. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state that I rely upon the evidence of other expert witnesses. I also confirm that I have not omitted to consider material facts known to me that might alter or detract from my opinions.

#### 5. SCOPE OF EVIDENCE

- 5.1 This statement of evidence covers the following:

- (a) A summary of my evidence (**Executive Summary**);
- (b) An assessment of the Application, including an overview of the key points from my Report (**Assessment of the Application**);
- (c) An update following expert witness conferencing, referring to the JWS where appropriate, and a response to matters raised in the Applicant's evidence (**Update Following Expert Witness Conferencing / Response to Applicant's Evidence**);
- (d) Comments on draft conditions and proposed mitigation (**Conditions / Mitigation**); and

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<sup>4</sup> E14, page 0827 onwards.

<sup>5</sup> E9, page 0311 onwards. Attachment D is at page 0477 onwards.

<sup>6</sup> E19, page 1060 onwards. Attachment A is at page 1170 onwards.

<sup>7</sup> E19, at page 1267.

(e) Conclusions.

## 6. EXECUTIVE SUMMARY

- 6.1 I have undertaken a regulatory review and assessment of the effects of the proposed groundwater diversion associated with the Application. My assessment is summarised in section 7 below.
- 6.2 I consider that an appropriate assessment of effects has been undertaken by the Applicant and the proposed conditions (numbered 1 and 93 to 102) in Attachment A of the evidence of Mr Lala and Mr Cook will ensure that the effects of the proposed activity remain within the predicted envelope.
- 6.3 I conclude that the effects of the proposed groundwater diversion are less than minor for neighbouring buildings, structures and services and less than minor for the environment.

## 7. ASSESSMENT OF THE APPLICATION

- 7.1 My Report provided a regulatory review and assessment of the effects of taking and diverting groundwater associated with the Application.
- 7.2 I provide a brief summary of my Report below:
- a. The proposed shallow excavations and filling activities comply with the Permitted Activity Standards E7.6.1.6 and E7.6.1.10 of the Auckland Unitary Plan – Operative in Part (**AUP**) for groundwater diversion<sup>8</sup>.
  - b. Similarly, the proposed maritime activities such as coastal works and the Hobson Wharf extension will not have any impact on the groundwater regime and therefore do not need to be considered further<sup>9</sup>.
  - c. However, the proposed ground improvements will encounter groundwater and will not fully comply with the permitted activity standards in the AUP relating to the “Taking, using, damming and diversion of water and drilling”. Hence, the proposed activity of ground improvements will require a permit for groundwater diversion as a Restricted Discretionary Activity. My Report identified the need for consent in terms of rule E7.4.1 (A28)<sup>10</sup>. (In her section

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<sup>8</sup> CB149, page 3891, paragraph 2.1.

<sup>9</sup> CB149, page 3891, paragraph 2.2.

<sup>10</sup> CB149, page 3894, paragraph 3.2.

87F report, Nicola Broadbent also identified the ground improvement works as requiring consent for groundwater diversion as a restricted discretionary activity under rule E7.4.1 (A20)<sup>11</sup>.)

- d. I concurred with the assessment of groundwater effects provided by the Applicant and concluded that<sup>12</sup>:
- i. There have been adequate on-site geotechnical investigations to provide appropriate and suitably conservative geotechnical and groundwater level data for an adequate assessment of effects.
  - ii. On the basis of the effects assessment, a GWMCP is required to ensure that groundwater levels remain within the predicted envelope.
  - iii. The effects of the proposed take and diversion of groundwater are considered to be less than minor for neighbouring buildings, structures and services and less than minor for the environment.
- e. I considered the proposed groundwater conditions (as set out in an email from UNIO Environmental Ltd dated 16 May 2018) to be appropriate, subject to some minor modifications<sup>13</sup>.
- f. My Report also touched briefly on the objectives and policies stated in Chapter E7 of the AUP relating to “Taking, using damming and diversion of water and drilling”<sup>14</sup>. I did not consider the proposal to be inconsistent with them, from a technical perspective, subject to implementation of the project in a manner consistent with best practice and adherence to the recommended conditions of consent.

## **8. UPDATE FOLLOWING EXPERT WITNESS CONFERENCING / RESPONSE TO APPLICANT’S EVIDENCE**

### **Expert Witness Conferencing**

- 8.1 As noted, I participated in expert witness conferencing with Mr Ware in relation to groundwater matters. The outcome of conferencing is recorded in the JWS. There

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<sup>11</sup> CB135, page 3515, paragraph 5.2.34.

<sup>12</sup> CB149, page 3896, paragraph 4.10.

<sup>13</sup> CB149, page 3898, paragraph 6.3.

<sup>14</sup> CB149, page 3897, paragraph 5.1.

were no matters of disagreement between me and Mr Ware. As paragraph 2.6 of the JWS records<sup>15</sup>:

The experts agreed that the effects on groundwater level, ground settlement, air quality and odour, human health with relation to contaminated land, and the environment in relation to contaminated soil and groundwater, can be appropriately mitigated via the controls put forward within the Construction Environmental Management Plan Rev B dated 24 July 2018 and The Remediation Action Plan as submitted with the application, and the conditions of consent proposed. ...

- 8.2 Expert witness conferencing took place on the basis of the version of the proposed conditions dated 27 July 2018, set out at Attachment A to the JWS. I note that the proposed conditions in Attachment A to the JWS have been superseded by the proposed conditions presented in Attachment A of the planning evidence of Mr Lala and Mr Cook. I provide further comment on these conditions in section 9 below.

### **Applicant's Evidence**

- 8.3 I have read the evidence of Mr Ware concerning groundwater and in general I have no significant points of disagreement with any of the content of his evidence. I have also read paragraphs 8.15 to 8.19 of Mr Grant's evidence<sup>16</sup> relating to the draft GWMCP, and reviewed the updated draft GWMCP attached to his evidence at Attachment D. I consider that the contingency and mitigation measures described in the GWMCP are appropriate. Finally, I record that I have also read the planning evaluation of groundwater diversion effects contained in the evidence of Mr Lala and Mr Cook<sup>17</sup>, and agree generally with their overview.

## **9. CONDITIONS / MITIGATION**

- 9.1 Following lodgement of the Application, on 16 May 2018, the Council received an email from UNIO, on behalf of the Applicant, with amended consent conditions relating to groundwater, to which I recommended minor changes. The minor changes which I recommended were adopted by the Applicant, and were reflected in the set of conditions attached to the JWS.
- 9.2 I note that some minor additional changes to the groundwater conditions have also been made by the Applicant since expert witness conferencing. The proposed conditions which have relevance to groundwater are parts of Condition 1 and

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<sup>15</sup> E27, page 1317.

<sup>16</sup> E9, page 0328.

<sup>17</sup> E19, page 1267.

Conditions 93 to 102, which are presented as Attachment A to the evidence of Mr Lala and Mr Cook.

- 9.3 I have reviewed the further amendments to the proposed groundwater conditions, and consider they are appropriate, subject to two minor typographic changes:
- a. In Condition 96 the word “wenty” should be deleted and replaced with the word “twenty”; and
  - b. In Condition 100(b) the word “their” that has been struck through should be deleted.
- 9.4 I note that these minor corrections are incorporated into the revised set of conditions attached to the planning evidence of Nicola Broadbent for the Council.
- 9.5 As noted above, I consider that the contingency and mitigation measures described in the updated GWMCP attached to Mr Grant’s evidence are appropriate.

## **10. CONCLUSIONS**

- 10.1 The Applicant has undertaken an appropriate scope of on-site geotechnical investigations and provided appropriate and suitably conservative geotechnical and groundwater level data and on the basis of this data has undertaken an adequate assessment of effects.
- 10.2 The Applicant has provided details of suitable monitoring together with appropriate contingency and mitigation measures to be undertaken in the event that measured groundwater levels are beyond those predicted.
- 10.3 I conclude that the effects of the proposed activity are less than minor for neighbouring buildings, structures and services and less than minor for the environment.

**Richard Simonds**

**21 August 2018**