

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

**STATEMENT OF EVIDENCE OF CHRISTIAAN MOSS
ON BEHALF OF THE AUCKLAND COUNCIL**

(NAVIGATION)

21 August 2018

**BROOKFIELDS
LAWYERS**

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1. INTRODUCTION

- 1.1 My full name is Christiaan Moss.
- 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 navigation aspects of the Application.

2. QUALIFICATIONS AND EXPERIENCE

- 2.1 I am Deputy Harbourmaster for the Auckland Council. I hold a New Zealand Certificate of Competency as Master of a Foreign-Going Ship and a Certificate of Competency as Inshore Launchmaster, both issued by Maritime New Zealand. In addition to this, I have a Bachelor of Arts degree from Victoria University in Wellington.
- 2.2 I have 21 years' experience in the maritime industry, 11 years serving as a navigating officer in the merchant navy, 2 years working for Maritime New Zealand as a Safety and Environmental auditor, and 8 years working as Deputy Harbourmaster for the Auckland Council (previously Auckland Regional Council).

3. MY ROLE

- 3.1 I prepared a report on the navigational aspects of the Application (**Report**)¹. My Report was attached as Appendix P 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, I visited the site on multiple occasions. My last site visit was on 13 August 2018.
- 3.3 I participated in expert witness conferencing with the Applicant's expert, Geraint Bermingham (Navigatus), and with Colin Williams (Sanford / Auckland Fishing Port Ltd), Bob Hawkins (Sealink – external expert), Guillaume de Rouvroy (Sealink), Clint Ross (Sealink – meeting only), on 25 July 2018 and was a signatory to the resulting Joint Witness Statement (**JWS**) of navigation safety experts dated 26 July 2018.²

¹ CB151, page 3913 onwards.

² E24, page 1300 onwards.

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, including the Navigational Safety and Utility Report prepared by Navigatus Consulting (**Navigatus Report**);
- (b) In reviewing the documents set out in paragraph 1.2 of my Report, I had regard to the Auckland Council Navigation and Safety Bylaw 2014, the New Zealand Port and Harbour Marine Safety Code and the relevant provisions of the Maritime Transport Act 1994;
- (c) Submissions by Spirit of Adventure Trust, Lance Wiggs, Sealink and Westhaven Marina Users Association that included comments on access, the lifting bridge on Te Wero Island and navigation safety;
- (d) The statement of evidence of Geraint Bermingham (Maritime Safety and Utility) for the Applicant³; and
- (e) The statement of evidence of Vijay Lala and Karl Cook (Planning) for the Applicant, including the Proposed Conditions of Consent at Attachment A (**Proposed Conditions**) dated 7 August 2018⁴.

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**);

³ E17, page 1026 onwards.

⁴ E19, page 1060 onwards.

- (b) A brief overview of my assessment of the navigation aspects of the Application contained in my Report (**Assessment of the Application**);
- (c) An update following expert witness conferencing, referring to the JWS where appropriate, and a brief response to the Applicant's evidence (**Update Following Expert Witness Conferencing / Response to Applicant's Evidence**);
- (d) Comments on the Proposed Conditions (**Conditions**); and
- (e) Conclusions.

6. EXECUTIVE SUMMARY

- 6.1 In my opinion the Applicant has addressed the primary navigation safety concerns for the Wynyard/Hobson proposal. As noted in my Report, any navigation and safety concerns can be appropriately managed if the Applicant adheres to the Proposed Conditions as discussed in section 9 below. In particular, the preparation of a Navigation Safety Management Plan (**NSMP**) during the construction period will alleviate a number of submitter concerns.
- 6.2 I generally agree with the summary of effects on existing maritime users in section 8 of the Navigatus Report.

7. ASSESSMENT OF THE APPLICATION

- 7.1 As noted in paragraph 2 of my Report, the Application area can be broken down into three areas of navigational interest to the Harbourmaster. Those areas are:
 - (a) Princes Wharf west;
 - (b) The Viaduct entrance fairway; and
 - (c) Wynyard Quarter.
- 7.2 At paragraphs 2.2 to 2.4 of my Report, I refer to the Princes Wharf west location and the 35m Hobson Wharf breakwater extension into the Princes Wharf west fairway. I express the view that I am satisfied that the remaining fairway width in excess of 60m provides sufficient room for vessels to manoeuvre and berth safely.
- 7.3 At paragraph 2.5 of my Report, I note the Viaduct entrance fairway will remain at a width of 40m which is sufficient for vessels using the space to do so in a safe manner.

- 7.4 I discuss the Applicant's proposals for berthing at the Wynyard Quarter location at paragraphs 2.6 to 2.12 of my Report. I agree with the Navigatus Report that both the berthing area and berthing window will be reduced. As stated in my Report, the proposal by Navigatus to restrict berthing to 1 hour either side of tide is not uncommon and Ports of Auckland Limited are also satisfied with the proposal.
- 7.5 As I discuss at paragraph 2.9 of my Report, if it is necessary to impose formal restrictions within the breakwater, the Harbourmaster will typically do this by making a direction under section 33(F)(1)(c) of the Marine Transport Act 1994.
- 7.6 At paragraph 2.11 of my Report, I agree with Navigatus that new navigation marks may need to be installed, or existing aids re-aligned to ensure they are in the correct position. I propose a condition to address this, discussed further in section 9 below.
- 7.7 As I note at paragraph 2.12 of my Report, all vessels over 500 gross tonnes operating in this area are subject to Maritime New Zealand Pilotage rules (Maritime Rules, Part 90) and are required to have a licensed pilot on board whilst underway.

Submissions

- 7.8 I briefly address relevant submissions in section 3 of my Report:
- (a) At paragraph 3.2 of my Report, I note that the establishment of a NSMP for on water construction activities will help address the concern raised by the Spirit of Adventure Trust (**Trust**) about access to the West Side of the Princes Wharf. I do not envisage the Trust being impacted during the running of the America's Cup event. However, I do recognise there will be periods of high density traffic on some days during the event.
 - (b) Lance Wiggs has made a submission concerning the traffic management aspects of the proposal, in particular on the Te Wero Island lifting bridge. As noted at paragraph 3.4 of my Report, the operation of the Te Wero Island lifting Bridge falls under the remit of Panuku, not the Harbourmaster. However, the current operation of the bridge has caused no concerns in relation to navigation safety.
 - (c) At paragraphs 3.6 and 3.7 of my Report, I discuss the submissions made by SeaLink and Westhaven Marina Users Association on the issue of navigation safety, surrounding the potential relocation of Sealink ferries and the fishing fleet to a site within the Westhaven fairway. I observe that the

Harbourmaster's office does recognise that if plans do eventuate for the relocation of the SeaLink ferries and the fishing fleet to the Westhaven fairway, careful planning and consideration will need to be given to the impact on navigation safety, as there will be an increase in traffic density within the fairway.

8. UPDATE FOLLOWING EXPERT WITNESS CONFERENCING / RESPONSE TO APPLICANT'S EVIDENCE

8.1 There were no matters of disagreement between the experts at conferencing. As recorded in the JWS, it was agreed that:

- (a) Continued safe navigation access to berths must be maintained to enable continued operation by Sealink (Wynyard Terminal), Sanford, plus wider commercial fishing fleet (Auckland Fishing Port Ltd), prior to their respective relocation and to enable continued Tanker operations at Wynyard Wharf (north); and
- (b) Construction sequencing of Wynyard water space breakwaters shall take into account the breakwater construction footprint (as per JWS).

8.2 I have read the statement of evidence of the Applicant's navigation expert, Geraint Bermingham.⁵ I generally agree with Mr Bermingham's evidence, although I should clarify in relation to paragraph 4.3 of his evidence that, while the Harbourmaster is certainly part of the discussion and process relating to the approval of limited pilot exemptions, it is Maritime New Zealand who issues these exemptions.

9. CONDITIONS

9.1 Section 4 of my Report discusses the Applicant's original set of proposed conditions which relate to maritime safety, or refer to the Harbourmaster, namely conditions 46 to 50 and (as it then was) 143. I stated in the Report that I was satisfied with those conditions, subject to several suggested amendments and additions, including that a condition be imposed requiring the consent holder to establish a NSMP for on-water construction activities. My suggested amendments were incorporated into the revised set of conditions attached as Appendix U to Ms Broadbent's section 87F report.

⁵ E17, page 1026 onwards.

9.2 The conditions have since been further amended as a consequence of expert witness conferencing. I have read Proposed Conditions 46 – 50 attached to the evidence of Mr Cook and Mr Lala (and reproduced in Attachment A to Ms Broadbent's evidence), and am content with the redrafted conditions. In particular, I confirm that conditions 46A and 46B (requiring a NSMP) accurately reflect the outcome of conferencing.

9.3 There is one aspect of proposed condition 147 (condition 143 in the Applicant's initial set of conditions), which upon reflection I consider needs to be amended. Condition 147, as presently proposed, reads as follows:

The consent holder shall report to the Auckland Harbourmaster or the Auckland Council's 24 Hour Water pollution Hotline (09 377 3107) all spills of Hazardous Substances of Classes 1 to 6, 8 and 9 over 20 litres and all spills of other substances over 50 litres that have entered the stormwater system or a water body from the ITA sites.

9.4 Having consider this matter further, I do not support the 20 litre and 50 litre thresholds specified in the above condition. All spills into the marine environment should be reported. I have liaised with Gemma Chuah (Council's Stormwater and ITA expert) over this matter, and I understand that she agrees the reporting condition is inadequate, as presently drafted. Ms Chuah has recommended some revised wording for condition 147 in her evidence, which I support (and which I note is reflected in the revised set of conditions attached to Ms Broadbent's planning evidence as Attachment A).

9.5 Subject to that amendment, I am content with the Proposed Conditions.

10. CONCLUSIONS

10.1 Any navigation and safety concerns can be appropriately managed if the Applicant adheres to the Proposed Conditions as discussed in section 9 above. In particular, I support Proposed Conditions 46A and 46B requiring the preparation of a NSMP during the construction period. I also consider that condition 147 concerning the reporting of spills requires amendment, as discussed in paragraphs 9.3 and 9.4 above.

Christian Moss

21 August 2018