

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 MATTHEW BYRNE
ON BEHALF OF THE AUCKLAND COUNCIL**

(REGIONAL EARTHWORKS)

Dated 21 August 2018

**BROOKFIELDS
LAWYERS**

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1. INTRODUCTION

- 1.1 My full name is Matthew Charles Byrne.
- 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 regional earthworks aspects of the Application.

2. QUALIFICATIONS AND EXPERIENCE

- 2.1 My qualifications are a Bachelor of Environmental Studies from the University of Waterloo, Ontario, Canada.
- 2.2 I am a director of Babington & Associates (2004) Limited, an environmental consultancy that specialises in environmental management, including erosion and sediment control, civil and environmental engineering design and implementation.
- 2.3 I am contracted to the Auckland Council's Earth, Streams and Trees Team, Specialist Input Unit, Resource Consent, as an Earthworks, Streamworks & Sediment Management Specialist. I have held this position for the past eight years. Prior to that, from July 2004, I was employed by both the legacy Auckland Regional Council and the current Auckland Council in a similar role, undertaking processing and compliance monitoring of regional earthworks and streamworks consents.
- 2.4 From 1993 I was employed as a Project Manager for an environmental consultancy, Soilcon Laboratories Ltd, which specialised in the investigation, assessment and remediation of contaminated land in British Columbia, Canada.
- 2.5 I have over 23 years' experience in the field of environmental protection including nine years' experience as a contaminated land expert, including all aspects of site investigation and remediation of predominantly petroleum contaminated sites, and over 14 years' experience as an erosion and sediment control and streamworks management consultant.

3. MY ROLE

- 3.1 Council officer Fiona Harte, an earthworks and streamworks specialist, prepared a report dated 13 June 2018 on the regional earthworks aspects of the Application (**Report**)¹. The Report was attached as Appendix Q to the Council's section 87F Report by Nicola Broadbent. I peer reviewed the Report and signed it to confirm my agreement with Ms Harte's conclusions and recommendations. I reaffirm the contents and conclusions of the Report, subject to the matters noted below.
- 3.2 In preparing this evidence, I carried out a site visit on 3 August 2018 and have, in a personal capacity, visited the site on numerous occasions in the past. I am familiar with the topography of the site and its proximity to the surrounding coastal marine area.
- 3.3 I participated in Joint Witness Conferencing with the Applicant's expert, Phillip Ware, and was a signatory to a Joint Witness Statement (**JWS**) dated 1 August 2018² dealing with the regional earthworks aspects of the Application. The JWS was multi-disciplinary and involved a number of other Council experts on other topics³.
- 3.4 In preparing this evidence I have reviewed the statements of evidence of:
- (a) Phillip Ware (Contaminated Land and Groundwater) for the Applicant dated 7 August 2018⁴, which attaches an updated draft Remediation Action Plan (**RAP**);
 - (b) Kurt Grant (Construction Methodology) for the Applicant dated 7 August 2018⁵, which attaches an updated draft Erosion and Sediment Control Plan (**ESCP**); and
 - (c) Karl Cook and Vijay Lala (Planning) for the Applicant dated 7 August 2018⁶, including Attachment A: Proposed Conditions of Consent (**Proposed Conditions**).

1 CB152, page 3922 onwards.

2 E27, page 1316 onwards.

3 Richard Simonds, Marija Jukic, Rob van de Munckhof, and Paul Crimmins.

4 E14, page 0827 onwards.

5 E9, page 0311 onwards.

6 E19, page 1060 onwards.

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) A brief overview of the assessment of the regional earthworks aspects of the Application contained in Ms Harte's Report (**Assessment of the Application**);
- (c) An overview of the outcome of expert witness conferencing and a brief response to the Applicant's evidence (**Update Following Expert Witness Conferencing / Response to Applicant's Evidence**);
- (d) Comments on draft conditions and proposed mitigation (**Conditions**); and
- (e) Conclusions.

6. EXECUTIVE SUMMARY

6.1 The Applicant has provided a draft ESCP to manage the potential effects associated with the earthworks required to complete the development. Although site specific erosion and sediment control drawings have not been provided with the Application, the detail contained within the draft ESCP dated 3 August 2018, and also the draft RAP of the same date, is sufficient to demonstrate that the effects associated with potential sediment discharges can be appropriately managed. The Proposed Conditions relating to earthworks matters are appropriate.

7. ASSESSMENT OF THE APPLICATION

- 7.1 In her Report, Ms Harte completed an assessment of the proposed earthworks as detailed in the Application documentation, including:
- a. The Assessment of Environmental Effects⁷;
 - b. The Beca Physical Infrastructure Technical Report⁸, which included an Outline ESCP at Appendix C; and
 - c. A draft RAP, which was Appendix F to the Preliminary Site Investigation Report prepared by Beca⁹.
- 7.2 Regional land use consent for earthworks is required under the provisions of Chapter E11 Land Disturbance – Regional, of the Auckland Unitary Plan – Operative in Part (**AUP**). Activity (A9) in Activity table E.11.4.1 of the AUP provides that general earthworks in the City Centre Zone and on roads, greater than 2,500m² within the Sediment Control Protection Area are to be assessed as a restricted discretionary activity. As the Report records (at paragraph 3.1), the Application requires earthworks over an area of 25,400m². As such, the Application requires regional consent with the proposed earthworks assessed as restricted discretionary activity.
- 7.3 Ms Harte concluded in relation to the proposed earthworks that, provided the erosion and sediment controls are installed, constructed and maintained in accordance with the AEE, supporting documentation, the recommendations contained in her Report, and any additional requirements as deemed necessary by the guidance outlined in Auckland Council Guideline Document 005, 'Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region', June 2016 (**GD05**), the resulting effects on the environment from potential sediment discharges during the earthworks would be appropriately managed.
- 7.4 At paragraphs 6.4 to 6.9 of the Report, Ms Harte recommended a number of amendments to the Applicant's proposed conditions relating to earthworks (as then set out in Application Document 7¹⁰) to ensure that the conditions are clear and enforceable, sufficiently detailed, provide for progressive / permanent stabilisation

⁷ CB4, page 0081 onwards.

⁸ CB10, page 0586 onwards.

⁹ CB32, page 1917 onwards, Attachment F is at page 2085.

¹⁰ CB8, page 0541 onwards. Specifically, Ms Harte proposed amendments to conditions 9, 13, 32, 40, 44 and 70-84.

of the site, and for consistency with other similar earthworks operations that have been granted consent in the Auckland Region.

7.5 As noted at para 3.1 above, I peer reviewed Ms Harte's Report (and the relevant Application documents) and agreed with her conclusions and recommendations.

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

8.1 I participated in expert witness conferencing with Mr Ware concerning the proposed earthworks / erosion and sediment control aspects of the Application, and the draft conditions of consent relevant to those matters.

8.2 For expert witness conferencing on earthworks and related topics, we used a 27 July 2018 set of draft conditions as the basis for our discussions. With reference to paragraph 2.1 of the JWS, Mr Ware and I agreed that the earthworks-related draft conditions in the 27 July 2018 version were appropriate. The recommended amendments set out in Ms Harte's Report were largely adopted in that set of conditions, subject to some further minor refinements made by the Applicant following further discussions between the parties.

8.3 There were therefore no matters of disagreement between Mr Ware and me at expert witness conferencing.

8.4 Since expert witness conferencing, I have seen the evidence of Mr Ware and Mr Grant, and the evidence of the Applicant's two planning witnesses, Mr Cook and Mr Lala.

8.5 Mr Ware's evidence does not comment specifically on Ms Harte's Report. His evidence does however attach an updated draft RAP dated 3 August 2018. Mr Grant's evidence likewise does not specifically address Ms Harte's Report, but discusses earthworks at paragraph 8.11 to 8.14, and attaches an updated draft ESCP dated 3 August 2018 at Appendix C.

8.6 Although detailed erosion and sediment control drawings have not been provided with the Application, I consider that the detail within the updated draft ESCP and RAP is sufficient to demonstrate that the Applicant can appropriately manage the effects relating to potential sediment discharges resulting from the proposed earthworks.

- 8.7 Ms Harte's Report is briefly addressed in Attachment B to the planning evidence¹¹, where Mr Cook and Mr Lala note that *"Council's earthworks, air and contamination specialists are satisfied with the proposed mitigation measures, subject to minor wording changes to the conditions, which have been the subject to further discussion between experts and adoption in to the proposed conditions at Attachment A to our evidence"*. This accurately summarises the position in relation to earthworks from my perspective. I comment on the revised Proposed Conditions attached to Mr Cook's and Mr Lala's evidence in section 9 below.

9. CONDITIONS

- 9.1 I have reviewed the revised set of Proposed Conditions attached to the evidence of Mr Cook and Mr Lala. I confirm that the Proposed Conditions reflect the experts' agreed position reached during expert witness conferencing. In particular, I am satisfied that conditions 71 to 81 under the heading Erosion and Sediment Control Plan reflect our agreed position and are appropriate. However, condition 70 requiring an ESCP to be prepared and certified by Council, does not stipulate a time frame. The ESCP is required at least 10 working days prior to commencement of earthworks and the condition should be changed to reflect this requirement.

10. CONCLUSIONS

- 10.1 Although site specific erosion and sediment control drawings have not been provided with the Application, the detail contained within the draft ESCP and RAP, both dated 3 August 2018, is sufficient to demonstrate that the effects associated with potential sediment discharges can be appropriately managed. As noted, I am satisfied that the Proposed Conditions relating to earthworks are appropriate, provided condition 70 is amended to stipulate a time frame.

Matthew Byrne

21 August 2018

¹¹ E19, page 1266, refer to 2nd row, 5th column, and footnote 8.