

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2018-AKL-000078

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

A N D

IN THE MATTER of a direct referral of applications for resource consent for the necessary infrastructure and related activities associated with the holding of the America's Cup in Auckland

BETWEEN **PANUKU DEVELOPMENT AUCKLAND LIMITED**

Applicant

A N D **AUCKLAND COUNCIL**

Regulatory Authority

**NOTICE OF INTENTION TO BECOME AN INTERESTED PARTY PURSUANT
TO SECTION 274 OF THE RMA BY KIWI PROPERTY GROUP LIMITED**

**ELLIS GOULD
LAWYERS
AUCKLAND**

REF: Douglas Allan

**Level 17 Vero Centre
48 Shortland Street, Auckland
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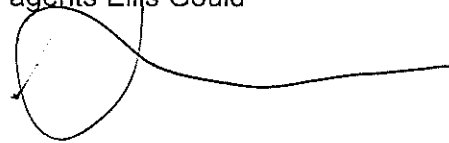
TO: The Registrar
Environment Court
AUCKLAND

1. **KIWI PROPERTY GROUP LIMITED** (“**Kiwi**”) gives notice pursuant to sections 87G(4) and 274 of the RMA that it wishes to be a party to these proceedings.
2. Panuku Development Auckland Limited has directly referred to the Environment Court its application for resource consents associated with the “*Wynyard Hobson Proposal*” for accommodating the 36th America’s Cup Regatta (“**the Application**”). The Application seeks consents in relation to the construction, occupation, use and maintenance of permanent and temporary infrastructure and the undertaking of activities within the coastal marine area and on land associated with the America’s Cup.
3. Kiwi is entitled to be a party to these proceedings for the following reasons:
 - (a) Kiwi lodged a submission on the application with Auckland Council on 26 May 2018 (“**the Kiwi Submission**”). A copy of the Kiwi Submission is **attached** to this notice.
 - (b) Kiwi has an interest in the proceedings that is greater than the interest of the general public, as it is the owner of a leasehold interest in land located in the Wynyard Precinct which is occupied by the ASB Building, which will be directly and adversely affected by the Application unless appropriate conditions are imposed as sought in the Kiwi Submission.
4. Kiwi is not a trade competitor of Panuku for the purposes of section 308C or 308CA of the RMA. In any event, Kiwi considers its interests could be directly and adversely affected by effects of the Wynyard Hobson Proposal that:
 - (a) Adversely affect the environment; and
 - (b) Do not relate to trade competition or the effects of trade competition.

5. Kiwi is interested in the Application in its entirety but is particularly concerned by the issues set out at paragraph 3 of the Kiwi Submission.
6. Kiwi seeks the relief set out in the Kiwi Submission, for the reasons set out in the Kiwi Submission.
7. Kiwi agrees to participate in mediation or other alternative dispute resolution of the proceedings.

DATED at Auckland this ^{14th} July 2018

KIWI PROPERTY GROUP LIMITED
by its solicitors and duly authorised
agents Ellis Gould



D A Allan

ADDRESS FOR SERVICE: The offices of Ellis Gould Lawyers, Level 17, Vero Centre, 48 Shortland Street, PO Box 1509, Auckland 1140, DX CP22003, Auckland, Telephone: (09) 307-2172, Facsimile: (09) 358-5215. Attention: D A Allan, dallan@ellisgould.co.nz.

Attachment – Copy of the Kiwi Submission

The Resource Management Act 1991

**Submission on resource consent applications
(AC36 Wynyard Hobson Proposal)**

**To: Auckland Council
Private Bag 92300
Auckland 1142**

By email: rcregulatorysupportcentral@aucklandcouncil.govt.nz

Name of submitter: Kiwi Property Group Limited ("Kiwi"), c/ Ellis Gould, solicitors at the address for service set out below.

1. Kiwi makes the following submission on the applications dated 13 April 2018 by **Panuku Development Auckland ("Panuku")**, c/ Simpson Grierson, Private Bag 92518, Auckland 1141 (for: Bill Loutit c/- Americas.cup36@simpsongrierson.com) to Auckland Council for resource consents associated with the "*Wynyard Hobson Proposal*" for accommodating the 36th America's Cup Regatta ("AC36"). The applications seek consents in relation to the construction, occupation, use and maintenance of permanent and temporary infrastructure and the undertaking of activities:
 - (a) Within the coastal marine area and on land at Hobson Wharf, Halsey Street Extension Wharf, Western Viaduct Wharf, the southern portion of Wynyard Wharf and Brigham Street;
 - (b) Within the water space in the Wynyard Basin and the Outer Viaduct Harbour;
 - (c) On public land areas within Wynyard Precinct and Viaduct Harbour Precinct;
 - (d) On private land to the west of Brigham Street; and
 - (e) On land within Jellicoe Street and Halsey Street, Auckland("the Wynyard Hobson Proposal").

2. Kiwi is not a trade competitor of Panuku and could not gain an advantage in trade competition through this submission. In any event, Kiwi will be directly affected by effects of the Wynyard Hobson Proposal that:
 - (a) Adversely affect the environment; and

- (b) Do not relate to trade competition or the effects of trade competition.
3. This submission relates to the Wynyard Hobson Proposal in its entirety but Kiwi is particularly concerned by:
- (a) The implications of the Wynyard Hobson Proposal for Kiwi's Wynyard Quarter investment with particular regard to adverse effects on:
 - (i) Traffic conditions and congestion throughout the Wynyard Quarter and in particular in the vicinity of the Halsey Street / Jellicoe Street intersection;
 - (ii) Carparking availability for workers at and visitors to permanent businesses in Wynyard Quarter;
 - (iii) Construction and operational noise and vibration experienced at sites adjacent to the proposed works including Kiwi's ASB Building site on the corner of Halsey Street and Jellicoe Street;
 - (iv) Pedestrian connectivity and safety on the Halsey Street Extension Wharf and Western Viaduct Replacement Wharf, within the Wynyard Quarter and between the Wynyard Quarter and the Auckland Central Business District; and
 - (v) Visual amenity and urban design in the vicinity of the ASB Building.
 - (b) Panuku's proposal to address most adverse effects by way of management plans which will be drafted and approved after the consenting process is complete. Pursuant to that process, members of the public including Kiwi would have limited if any involvement in the preparation and approval of these documents.
4. Kiwi's submission is as follows:
- (a) Unless the concerns set out by Kiwi in this submission are appropriately addressed, the Wynyard Hobson Proposal:
 - (i) Will generate significant short-term, long-term and permanent adverse effects on the environment.
 - (ii) Will be contrary to the sustainable management of natural and physical resources.

- (iii) Will not promote the efficient use and development of resources.
- (iv) Will otherwise be inconsistent with the purpose and principles in Part 2 of the Resource Management Act 1991.
- (v) Will be inconsistent with objectives, policies and other provisions in relevant planning instruments.

In particular, but without limiting the generality of the above:

- (b) Kiwi supports the proposal to hold the AC36 event in Auckland and in particular to accommodate it within and around the Wynyard Quarter. Kiwi considers that the Wynyard Hobson Proposal is a marked improvement on the proposal for which Panuku originally sought resource consent ("**the Original Proposal**") which involved extensive additions to the Western Viaduct Replacement Wharf and intensive use of that enlarged wharf for accommodating syndicates. Kiwi considers that the Wynyard Hobson Proposal will generate far less adverse effects than would the Original Proposal.
- (c) Kiwi is the head-lessee of the site on the corner of Halsey Street and Jellicoe Street on which it has constructed the ASB Building. The ASB Building comprises extensive office activities, ground floor retail and food and beverage activities, and related carparking and other services.
- (d) Kiwi is concerned that the Wynyard Hobson Proposal may adversely affect:
 - (i) *The amenity of occupiers of and visitors to the ASB Building* - Such effects could arise in terms of acoustic and visual amenity and the potential for vibration. They could be generated as a consequence of construction activities and America's Cup event activities. Kiwi seeks conditions of consent that ensure that such effects do not arise or are appropriately managed.
 - (ii) *The vehicular and pedestrian accessibility of the ASB Building to workers and visitors* - As a consequence of the proximity of the ASB Building to the key Halsey Street / Jellicoe Street intersection, Kiwi seeks conditions of consent which ensure that ongoing high-quality accessibility to the ASB Building for vehicular and pedestrian visitors is maintained at all times.

- (iii) *Traffic conditions and congestion throughout the Wynyard Quarter and in particular in the vicinity of the Halsey Street / Jellicoe Street intersection* - The Halsey Street / Jellicoe Street intersection will be placed under significant pressure as a consequence of the construction works and AC36 event operation. Kiwi seeks that the conditions regarding traffic address all potential effects adequately, be reviewed regularly in consultation with Kiwi and other affected parties, and ensure that traffic and pedestrian management techniques implemented are flexible and acceptable to affected parties.
- (iv) *Public pedestrian safety* – This issue warrants consideration in light of the cul de sac nature of the Western Viaduct Replacement Wharf and Hobson Wharf; the potential for interaction on wharves between vehicles and pedestrians; and the narrow width of the Viaduct Harbour Pedestrian Bridge (which will form an important link for pedestrians and which may be required to function as an escape route in the event of an incident).
- (v) *On and off street carparking availability for workers at and visitors to the ASB Building* - Kiwi seeks the imposition of conditions that ensure that carparking accessibility and amenity for workers at and visitors to the ASB Building is not compromised.
- (e) Kiwi supports the relocation of syndicate bases to the west pursuant to the Wynyard Hobson Proposal (in comparison with the Original Proposal). That relocation will:
- (i) Generate positive amenity effects by ensuring extensive public views across the water space of the bases on Brigham Street and the Team NZ base on Halsey Street.
- (ii) Generate positive amenity effects with particular reference to the vitality experienced in public places, as a consequence of:
- The location of a large number of bases in close proximity to each other; and
 - Jellicoe Street forming a key connection between the bases and an appropriate location for supporting entertainment and retail activities.

- (iii) Take advantage of the extensive public and private investment in infrastructure and development on the Wynyard Quarter and in particular along Jellicoe Street.
 - (iv) Avoid the significant adverse effects on visual amenity and urban design as experienced from the Viaduct Harbour that would have arisen from the Original Proposal.
 - (v) Reduce the potential for adverse effects on public pedestrian congestion and safety that would have arisen from the Original Proposal, with particular reference to the area in the vicinity of and comprising the Halsey Street Extension Wharf, the Western Viaduct Replacement Wharf and the Viaduct Harbour Pedestrian Bridge.
 - (vi) Provide a long-term benefit to the city by facilitating the ongoing redevelopment and intensification of the Wynyard Quarter, in the same way that previous America's Cup events facilitated the redevelopment and intensification of the Viaduct Harbour area.
 - (vii) Reduce the intensity of construction works and event activities on the constrained area comprising the Western Viaduct Replacement Wharf and, as a consequence, reduce the concentration of adverse effects on the Halsey Street / Jellicoe Street intersection.
- (f) The proposed conditions provide for adverse effects to be addressed primarily through management plans including in particular the Construction Environmental Management Plan and its component parts. While the proposed conditions provide for consultation with specified parties regarding those management plans, Kiwi is not one of the parties specified and accordingly will not be involved in the formation and approval of the management plans. Kiwi seeks that it be included as party with whom consultation will occur regarding the management plans.
- (g) The management plans will, in terms of Panuku's proposed schedule of conditions, be drafted and certified after the consenting process is complete. As a consequence, Panuku's proposed schedule of conditions would deprive members of the public including Kiwi of meaningful involvement in the preparation and approval of most of the management plans.
- (h) Kiwi considers that, given:

- (i) The scale of works involved in this case;
- (ii) The severity of the potential adverse construction and operational effects; and
- (iii) The broad area over which those effects will be experienced

it is essential that all management plans required for the Wynyard Hobson Proposal be prepared, circulated for comment by submitters, considered by the decision maker, approved through the resource consenting process and incorporated directly into the resource consent by way of condition, rather than being the subject of a subsequent certification process. That will ensure that the content and effectiveness of management plans is addressed comprehensively through the hearing and that the decision maker and affected parties have comfort that the management plans will have the functionality required of them.

- (i) Kiwi acknowledges that there may be circumstances in which detailed provisions within the management plans require amendment. In order to enable such amendments to occur without the formality of a resource consent application, Kiwi considers that the conditions of consent should:
 - (i) Specify comprehensively and in detail all objectives, outcomes, standards and thresholds that are to be achieved through each management plan.
 - (ii) Establish a process through which changes may be incorporated into the approved management plans provided that:
 - The consent holder submits to Council a report recording the rationale for the change; the manner in which the amended provisions will continue to meet the outcomes, standards and thresholds relevant to the management plan; and any potential adverse effects on the environment including affected parties that might arise as a consequence of the change to the management plan;
 - The proposed changes are the subject of consultation with all potentially affected parties including Kiwi, with those parties

being given an opportunity to provide to the Council their written responses to the proposed changes; and

- The Council is satisfied that the revised management plans continue to meet the outcomes, standards and thresholds specified in the conditions.
- (j) Kiwi acknowledges that the detailed design of the Wynyard Hobson Proposal and Panuku's proposed schedule of conditions are likely to change through this submission and hearing process and for that reason has not proposed specific amendments to the currently proposed conditions of consent. Kiwi wishes to be involved in any discussions regarding the terms and conditions on which consents are granted, to ensure that adverse effects on its investment are minimised and managed.
- (k) Kiwi reserves the right to raise issues relating to the detailed wording of the conditions but, without limiting that right, records in paragraph 5 below a number of particular matters that it considers should be incorporated into the schedule of conditions imposed on the resource consent for the Wynyard Hobson Proposal.

5. Kiwi seeks the following relief:

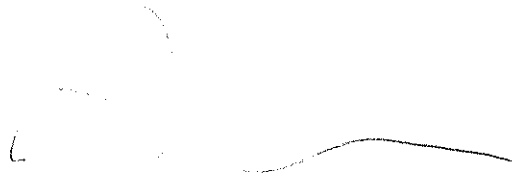
- (a) That the Wynyard Hobson Proposal be declined consent in its entirety unless the concerns expressed by Kiwi in this submission are addressed to its satisfaction. In that regard, Kiwi seeks amendments to the Wynyard Hobson Proposal and to the schedule of conditions proposed by Panuku including, by way of example but not by way of limitation, the matters listed in items (b) to (f) below.
- (b) The imposition of conditions that:
- (i) Recognise Kiwi as a key stakeholder;
 - (ii) Require the consent holder to consult with Kiwi with respect to the preparation of and changes to all management plans; and
 - (iii) Ensure that Kiwi is involved in any processes relating to event management, vehicle public access.

- (c) The imposition of conditions with reference to the Wynyard Hobson Proposal that address adequately all potential effects on the ASB Building including:
- (i) Traffic conditions and congestion throughout the Wynyard Quarter and in particular in the vicinity of the Halsey Street / Jellicoe Street intersection;
 - (ii) Carparking availability for workers at and visitors to permanent businesses in Wynyard Quarter;
 - (iii) Construction and operational noise, vibration and dust experienced at sites in the vicinity of the proposed works including the ASB Building;
 - (iv) Visual amenity and urban design in the vicinity of the ASB Building;
and
 - (v) Pedestrian safety and connectivity between the syndicate bases, Wynyard Quarter, Viaduct Basin and Auckland Central Business District.
- (d) Settling the terms and conditions of all and any management plans specified in the schedule of conditions through the preparation, consideration and approval of all management plans through the consenting process.
- (e) The imposition of conditions regarding any changes to the approved management plans that:
- (i) Specify in detail in the conditions the matters to be addressed in all management plans including the objectives, outcomes, standards and thresholds to be met by the consent holder with respect to specified potential adverse effects on the environment.
 - (ii) Establish a process through which changes may be incorporated into the approved management plans provided that:
 - The consent holder submits to Council a report recording the rationale for the change; the manner in which the amended provisions will continue to meet the outcomes, standards and thresholds relevant to the management plan; and any potential adverse effects on the environment including affected parties

that might arise as a consequence of the change to the management plan.

- The proposed changes are the subject of consultation with all potentially affected parties including Kiwi with those parties being given an opportunity to provide to the Council their written response to the proposed changes.
 - The Council is satisfied that the revised management plans continue to meet the outcomes, standards and thresholds specified in the conditions.
- (f) The imposition of an additional condition enabling the Council to review the conditions of consent within 6 months of the end of the 2021 AC36 event if New Zealand retains the America's Cup, to deal with any adverse effects on the environment that become apparent during the AC36 event as a consequence of the event operations.
- (g) Such alternative or other relief or consequential amendments as are considered appropriate or necessary to address the concerns set out in this submission.
6. Kiwi wishes to be heard in support of its submission.
7. If others make a similar submission, Kiwi will consider presenting a joint case with them at a hearing.

DATED this 26th day of May 2018



Douglas Allan - Counsel for KIWI PROPERTY GROUP LIMITED

ADDRESS FOR SERVICE: The offices of Ellis Gould, Solicitors, Level 17, Vero Centre, 48 Shortland Street, PO Box 1509, Auckland 1140, DX CP22003, Auckland, Telephone: (09) 307-2172, Facsimile: (09) 358-5215. Contact: Douglas Allan. Email: dallan@ellisgould.co.nz