

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2018-AKL-000078

UNDER the Resource Mangement Act 1991

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

BETWEEN **PANUKU DEVELOPMENT AUCKLAND**
Applicant

A N D **AUCKLAND COUNCIL**
Regulatory Authority

MEMORANDUM ON BEHALF OF VIADUCT HARBOUR HOLDINGS LIMITED

25 AUGUST 2018

**ELLIS GOULD
LAWYERS
AUCKLAND**

REF: Douglas Allan

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MAY IT PLEASE THE COURT

1. This memorandum is in response to the memorandum dated 24 August 2018 filed on behalf of Panuku Development Auckland ("**Panuku**") regarding the structure and content of draft conditions of consent ("**the Panuku Memorandum**").

Draft Conditions of Consent

2. Viaduct Harbour Holdings Limited ("**VHHL**") endorses the comments in the Panuku Memorandum regarding the effort that the parties and their consultants have put into resolving issues and settling conditions through mediation, caucusing and subsequent negotiations.
3. The schedule of conditions attached to the Panuku Memorandum incorporates with one exception all of the conditions sought by VHHL in the evidence exchanged on its behalf (see attachment to the evidence of Vaughan Smith for VHHL). The issues that remain outstanding for VHHL are:
 - a. The content of the Design Requirements relating to the Syndicate Bases referred to in proposed Conditions 23-25B, being a matter that does not necessitate a change in the text of the conditions themselves (addressed in the evidence of Ian Munro for VHHL); and
 - b. The controls governing low frequency sounds during High Noise Events in Condition 183Q(b) (addressed briefly in the evidence of Angela Bull for VHHL and in detail in the evidence exchanged on behalf of The Point Apartments).
4. The form of conditions (and in particular those regarding management plans) was addressed in detail through mediation and VHHL considers that the approach adopted is lawful and effective. VHHL appreciates that there are other ways in which these conditions might be drafted but is concerned that altering the form of the conditions might inadvertently produce changes in substantive content. Accordingly, if there is a significant change to the form of the management plan conditions VHHL would want to revisit the conditions to ensure that the agreed outcomes are retained. VHHL's preference is that the current form of the conditions be retained.
5. VHHL's acceptance of the management plan conditions in their current form is informed by Panuku's preparation and disclosure through mediation and caucusing of draft management plans. Those documents are referred to in the conditions, which provides

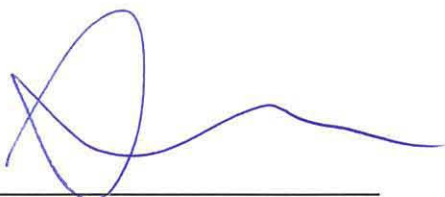
VHHL with comfort regarding the approach that will ultimately be taken in the management plans.

6. VHHL therefore supports the schedule of conditions attached to the Panuku Memorandum and asks in particular that the form of the management plan conditions be retained.

Request for Pre-hearing Conference

7. VHHL understands that the number of parties taking an active part in the proceedings and the range of issues before the Court have both reduced through the mediation, caucusing and evidence phases.
8. Accordingly, VHHL considers that it would be helpful for the Court to convene a further pre-hearing conference to consider:
 - a. The order of presentations by parties.
 - b. The extent to which witnesses will need to be cross examined (or questioned by the Court) and the possibility of some evidence being admitted without witnesses needing to attend in person.
 - c. The likely duration of the hearing.
 - d. Any arrangements that are required to ensure that witnesses whose attendance is required can present evidence. In that context, two of VHHL's witnesses will be out of New Zealand for part of the hearing and will need to put in place arrangements that allow them to present evidence, should that be necessary. VHHL's preference is to address those matters prior to the hearing, if possible.
9. VHHL acknowledges that any conference should only be held after evidence in chief for mana whenua parties has been exchanged.

Dated this 25th day of September 2018



Douglas Allan – Counsel for Viaduct Harbour Holdings Limited