

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

**AND**

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

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

**Applicant**

**AND**

**AUCKLAND COUNCIL**

**Respondent**

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**MEMORANDUM FOR NGĀTI PAOA IWI TRUST IN RESPONSE TO APPLICATION FOR  
WAIVER AND LODGMENT OF S274 RMA NOTICE BY NGĀTI PAOA TRUST BOARD**

**Dated 7<sup>th</sup> September 2018**

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## MAY IT PLEASE THE COURT

- 1 Counsel refers to the waiver application lodged yesterday by Ngāti Paoa Trust Board (**Board**). The Board has applied for waiver to join the proceedings as a s274 party adopting a neutral position. The Board relies on exclusive mandate to represent Ngāti Paoa iwi under the terms of a 2009 Māori Land Court Order (**2009 Order**).<sup>1</sup> This issue has recently surfaced, in context of a High Court appeal and rehearing application for Kennedy Point marina lodged on or about 3<sup>rd</sup> September 2018.<sup>2</sup>
- 2 For reasons stated below, Ngāti Paoa Iwi Trust (**Trust**) does not oppose the waiver application, but reserves its position on factual and legal assertions made by the Board. Grounds for non-opposition are as follows:
- 3 The Trust acknowledges the existence of the 2009 Order. It says that circumstances have materially changed, so the Order may have no continuing legal effect or alternatively the Order is likely to be set aside on application by the Trust to the Māori Land Court, analogous to the circumstances in *Re Whakatohea* (183 Waiariki MB 169, copy attached, at [55]-[59]). The supporting affidavit filed by the Board appears to accept there was an interregnum period, when the Board was not functioning, pending appointment of new Trustees.<sup>3</sup> It was the Trust that spoke for Ngāti Paoa on resource management matters.
- 4 The Trust acknowledges that only the Māori Land Court has jurisdiction to set aside or vary the 2009 Order. An affidavit by Gary Thompson (Trustee of the Trust) is being prepared by Kāhui Legal Solicitors (who act for the Trust in the Māori Land Court jurisdiction<sup>4</sup>). Leave is sought to file that affidavit today, in answer to the affidavit filed for the Board. The affidavit provides context to the above matters, including that the Trust intends to issue urgent Māori Land Court proceedings to clarify the status of the 2009 Order and seek to have it varied or set aside.

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<sup>1</sup> *Re Ngāti Paoa Trust Board* 141 Waikato MB 271. It is not a sealed Order, but the judgment identifies at [40] that:

“[40] Thus we make a determination and order pursuant to section 30(1)(b) of Te Ture Whenua Maori Act 1993 that the Ngati Paoa Trust Board is the appropriate representative of Ngati Paoa in relation to:

- a) The Resource Management Act 1991; and
- b) The Local Government Act 2002.”

<sup>2</sup> No comment is made on the merits of those separate proceedings.

<sup>3</sup> Affidavit of David Roebeck dated 31 August 2018 at [36]

<sup>4</sup> Given urgency, Kāhui Legal has been unable to review the final version of this memorandum prior to being filed; so Counsel respectfully reserves the ability to make minor editorial changes.

- 5 To the extent that it remains relevant, the Order is not determinative as to the RMA role to be played by the Board (“appropriate representative” may have limitations in meaning, but this is an interpretive issue for the Māori Land Court).
- 6 Without prejudice to the above submissions, the Trust says that the terms of the 2009 Order, if accepted at face value, do not preclude it from raising s6(e) RMA issues (noting the reference to “Māori” in s6(e) RMA, a point identified by the Court in its minute of 31 August 2018). Relevantly, Morehu Wilson (witness for the Trust) identifies in his evidence that he is a mandated negotiator for Ngāti Paoa iwi. His evidence addresses s6(e) RMA relationships held by Ngāti Paoa, on behalf of the Trust.
- 7 In light of the above, the Trust:
- does not oppose the application for waiver and for lodgement of s274 notice by the Board;
  - reserves its position on the correctness of the assertions as to the legal effectiveness of the 2009 order, and the factual and legal matters raised by the waiver application;
  - says that the mandate issues will be the subject of separate urgent proceedings to be issued by the Trust in the Māori Land Court.

**Dated** this 7<sup>th</sup> day of September 2018



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**Rob Enright**  
**Counsel for Ngāti Paoa Iwi Trust (as supporting mana whenua)**