

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND
I MUA I TE KOOTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU

UNDER the Resource Management Act 1991 (**RMA**)

A N D

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

BETWEEN **PANUKU DEVELOPMENT AUCKLAND LIMITED**

Applicant

A N D **AUCKLAND COUNCIL**

Regulatory Authority

**NOTICE OF INTENTION TO APPEAR AS A PARTY TO PROCEEDINGS UNDER SECTION 274
OF THE RESOURCE MANAGEMENT ACT 1991**

Dated 16 July 2018

Director
Aidan Warren
aidan.warren@mccawlewis.co.nz


McCaw Lewis
GOOD PEOPLE. GREAT LAWYERS.

ONE ON LONDON, 1 LONDON STREET, PO Box 9348
HAMILTON 3240, NEW ZEALAND
DX GP 20020, TEL +64 - 7 - 838 2079
WWW.MCCAWLEWIS.CO.NZ

1. Ngāti Tamaoho Trust, wish to be a party to the following proceedings:

Panuku Development Auckland Limited v Auckland Council

ENV-2018-AKL-000078

2. Being the direct referral of an application for resource consents for the necessary infrastructure and related activities associated with holding the America’s Cup in Auckland (“the Application”).
3. Ngāti Tamaoho Trust are:
 - (a) An iwi who made submissions opposing the Application;
 - (b) An iwi that views the Waitematā Harbour to be of great spiritual, cultural and historical significance. This relationship with the Waitematā has been recognised and acknowledged by the Crown;¹ and
 - (c) An iwi that has an interest in the Application that is greater than the interest that the general public has given their cultural and spiritual relationship with the Waitematā.
4. Ngāti Tamaoho Trust are not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991.
5. Ngāti Tamaoho Trust are interested in all of the proceedings.
6. Ngāti Tamaoho Trust are interested in the following particular issues:
 - (a) The Applicant has not adequately provided for active participation of Mana Whenua in the process to date and there has not been appropriate recognition of the role of Mana Whenua in the consent process;
 - (b) The role of Mana Whenua as kaitiaki has not been recognised or provided for, and the Application does not enable Mana Whenua to effectively implement kaitiakitanga over its lands and waters;

¹ As stated in Part 10 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Deed, the Waitematā Harbour is of extremely high spiritual, ancestral, cultural, customary and historical importance to Ngā Mana Whenua o Tāmaki Makaurau.

- (c) The Applicant has not adequately provided for timely, effective and meaningful engagement with Mana Whenua in preparing the Application and the post lodgement attempts are tokenistic and not in good faith;
- (d) Mana Whenua have not been given the opportunity to identify cultural values (tangible and intangible) and have not had the ability to identify how any such values should be recognised, protected and enhanced;
- (e) Mana Whenua have not had the opportunity to assess the effects on the mauri of the proposed development area, or the effects from the wider proposal and the activity currently seeking resource consent.
- (f) There was no opportunity for Mana Whenua to participate in the option selection process of the final America's cup proposal or have effective input into the aspects of the proposal that may impact on cultural values, including site selection, base layout and design, and the final selection process;
- (g) The Assessment of Environmental Effects does not contain appropriate assessment of effects on cultural values/interests;
- (h) There has been insufficient cultural considerations and input into the legacy effects of the proposal;
- (i) There has been no consideration of cumulative effects on sites of cultural significance;
- (j) The decisions made by the Applicant have not had particular regard to impacts on cultural values and interests nor have they ensured that the relationship of Mana Whenua with their cultural heritage has been provided for;
- (k) The proposed Mana Whenua consent condition² was prepared without Mana Whenua consultation and does not provide any certainty that Mana

² Section 7 of the Application identifies that a set of *'suggested conditions'* have been provided for that *'captures all of the mitigation measures and management plans address in specialist reports and assessment of effects'*. Under the proposed conditions (Attachment 7) there is only one condition (Condition 22) that has any reference to mana whenua or cultural matters.

Whenua values and interests will be adequately provided for, nor does it effectively provide Mana Whenua with a means to fulfil its role as kaitiaki.

- (l) Team New Zealand has confirmed and accepted only three potential challengers for the America's Cup.³ It is unclear what this means for design and associated effects.
7. Ngāti Tamaoho Trust oppose the Application in full because it is Ngāti Tamaoho Trust's position that the Application is contrary to:
- (a) Part II of the RMA, specifically sections 6(e), 7(a) and 8;
 - (b) The New Zealand Coastal Policy Statement 2010 ("NZPCS"), particularly Objective 3 and Policy 2; and
 - (c) The Mana Whenua provisions contained in Section B6 of the Auckland Unitary Plan.
8. This position is derived from the factors outlined above.

³ Although the official period for challengers has closed other potential challengers have until 30 November 2018 to enter per the Late Entry period defined in the Protocol.

9. Ngāti Tamaoho Trust agree to participate in mediation or other alternative dispute resolution of the proceedings.

Date: 16 July 2018



A H C Warren
Counsel for Applicant

Contact Details

Contact address: 1 London Street, Hamilton 3240
Telephone: 07 958 7426
Fax: 07 839 4652
Email: aidan.warren@mccawlewis.co.nz