

**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

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

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**ELLIS GOULD  
LAWYERS  
AUCKLAND**

**REF: Daniel Sadlier**

**Level 17 Vero Centre  
48 Shortland Street, Auckland  
Tel: 09 307 2172 / Fax: 09 358 5215  
PO Box 1509  
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AUCKLAND**

TO: The Registrar  
Environment Court  
**AUCKLAND**

1. **SANFORD LIMITED** (“**SANFORD**”) 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 36<sup>th</sup> 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. Sanford is entitled to be a party to these proceedings for the following reasons:
  - (a) Sanford lodged a submission, jointly with Auckland Fishing Port Limited (“**AFPL**”) on the application with Auckland Council on 28 May 2018 (“**the Sanford Submission**”). A copy of the Sanford Submission is **attached** to this notice.
  - (b) Sanford has an interest in the proceedings that is greater than the interest of the general public, as the Application proposes to relocate Sanford and AFPL from its existing berthage locations on Halsey Street Extension Wharf and the Western Viaduct Wharf. Sanford will accordingly be directly and adversely affected by the Application unless appropriate conditions are imposed as sought in the Sanford Submission.
4. Sanford is not a trade competitor of Panuku for the purposes of section 308C or 308CA of the RMA. In any event, Sanford 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. Sanford is interested in the Application in its entirety but is particularly concerned by the issues set out at paragraph 3 of the Sanford Submission.
  6. Sanford seeks the relief set out in the Sanford Submission, for the reasons set out in the Sanford Submission.
  7. Sanford agrees to participate in mediation or other alternative dispute resolution of the proceedings.

**DATED** at Auckland this Eleventh day of July 2018

**SANFORD LIMITED** by its solicitors  
and duly authorised agents Ellis Gould



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**D J Sadlier**

**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 J Sadlier, dsadlier@ellisgould.co.nz.

**Attachment – Copy of the Sanford Submission**

**The Resource Management Act 1991**

**Submission on resource consent application**

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

**By email: rcregulatorysupportcentral@aucklandcouncil.govt.nz**

**Name of submitters: Sanford Limited (“Sanford”) and Auckland Fishing Port Limited (“AFPL”)** (together the “**Submitters**”), c/ Ellis Gould, solicitors at the address for service set out below.

1. The Submitters make the following submission on the resource consent application (BUN60318372) by **Panuku Development Auckland (“Panuku”)**, c/ Simpson Grierson, Private Bag 92518, Auckland 1141 (for: Bill Loutit) to Auckland Council Consent applications (BUN60313877) relating to the construction, occupation, use and maintenance of permanent and temporary infrastructure and the undertaking of activities associated with the 36th America’s Cup Regatta (“**AC36**”) located:
  - (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 and Halsey Streets;
  - (b) Within the water space within 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 east of Hamer Street and west of Brigham Street; and
  - (e) On land within Jellicoe, Halsey, Hamer and Brigham Streets, Auckland.(“**the Proposal**”).
  
2. The Submitters are not trade competitors of Panuku and could not gain an advantage in trade competition through this submission. In any event, the Submitters will be directly affected by effects of the 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 Proposal in its entirety. In particular, the Submitters are concerned that:
- (a) The current AC36 Proposal replaces an earlier proposal that involved two separate resource consent applications. One of those applications related largely to the subject matter of this Proposal, and the other (BUN60313923) sought consent to establish a “Ferry and Fishing Industry Relocation Facility” on the western coastal edge of Wynyard Quarter accessed from 58-101 Hamer Street (“**Relocation Facility**”). The Relocation Facility application has now been placed “on hold” at Panuku’s request.
  - (b) While the Relocation Facility application is on hold, the Proposal still requires relocation of the fishing industry (including the Submitters) from their current berthage areas on Halsey Street Extension Wharf and the Western Viaduct Wharf for at least the period of the AC36 event, and likely for at least some part of the construction period. However, the Proposal provides no detail regarding the timing, location and suitability of alternative berthage. It is not clear from the Proposal application documents whether any alternative location exists, or is workable for fishing industry activities. It would be inappropriate to grant consent to the Proposal until such time as these matters have been appropriately resolved, and it can be demonstrated that the adverse environmental effects, including on the Submitters, can be appropriately avoided, remedied or mitigated.
  - (c) Further, and more fundamentally, the Submitters are concerned that their relocation from their current berthage areas is likely to become permanent. Past event-related redevelopment on the Auckland Waterfront in and around the Viaduct Harbour and Wynyard Quarter has had the effect of making fishing industry berthage areas more attractive to recreational vessels and other public uses. The fishing industry has found itself permanently relocated from these areas in the past. The Proposal involves the construction of new facilities, including for super-yacht berthage, within the Submitters existing berthage areas. It is likely that these activities and facilities will wish to remain, and accordingly a permanent alternative berthage area will need to be provided for the fishing industry. The Relocation Facility application provided an opportunity to ensure that a “fit for purpose” and potentially long term solution was available in the event that permanent relocation was required. However, the Proposal as currently put forward contains no such certainty or comfort for the Submitters.

(d) The Proposal will have significant adverse effects upon ongoing fishing industry operations in Wynyard Quarter, both in the coastal marine area and on land, including:

(i) The Proposal proposes that the Submitters vacate their current berthage areas, but provides no alternative location for berthage, loading, unloading, servicing and refuelling of fishing vessels. As such, the application has failed to provide any consideration of:

- Whether berthage for the period of relocation is available, appropriate and workable in terms of both the CMA (for example, waterspace and wharf areas, lineal berthage availability, water depths and vessel manoeuvring areas), and land (for example, land based facilities, services, access and manoeuvring for heavy vehicles).
- The flow on effects on efficient fishing industry operations in managing interaction and connectivity between existing land-based facilities and alternative berthage areas.
- The flow on effects for the receiving environment due to additional and likely longer heavy vehicle and other trips on an already heavily congested local road network both within Wynyard Quarter and likely beyond (depending on where berthage is located).

The Proposal has the potential to significantly adversely affect fishing industry operations in a manner that may affect the ongoing viability of east coast based fishing industry operations in Auckland.

(ii) The Proposal creates the potential for conflict with other users of the coastal marine area or adjacent land in Wynyard Quarter and elsewhere, including other fishing industry operators, ferry operators, and members of the public, including within the application site (CMA and land), at any location of temporary or permanently relocated berthage for the fishing industry, and in the broader environment where fishing industry operations would not otherwise have taken place.

4. The Submitters' submission is as follows:

- (a) Unless the concerns set out by the Submitters in this submission are appropriately addressed, the 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 ("**the Act**").
  - (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) The Submitters generally support the proposal to hold the AC36 event in Auckland, and to accommodate it within and around Wynyard Quarter, however, the Submitters oppose the Proposal insofar as it will generate adverse effects, including on the continuity of safe and efficient operation of east coast based fishing industry operations in Auckland that cannot be appropriately avoided, remedied or mitigated to the Submitters' satisfaction.
- (c) Sanford is an Auckland based member of the fishing industry and has operated from the Wynyard Precinct and the adjacent berthage for over 80 years. The fishing industry is a significant regional employer, contributor to Auckland's food supply and earner of foreign exchange. The industry is an important component in Auckland's regional economy.
- (d) Sanford is the owner and operator of the Sanford fish processing plant, fish market and associated buildings and activities in Wynyard Quarter, located at the western end of the block bounded by Jellicoe Street, Madden Street, Pakenham Street and Daldy Street. One of the associated buildings in this location includes Sanford's head office.
- (e) AFPL is an umbrella organisation through which the Auckland based fishing industry deals with issues of general concern. Sanford together with Moana



Pacific Fisheries Limited are the current shareholders of the company, and Sanford is the largest shareholder. AFPL has been involved in historical negotiations with local authorities, the port company and other interests relating to significant changes that have occurred in and around the Viaduct Harbour and Wynyard Quarter over the past 20 years. Berthage for the industry has been a consistent and critical issue during those various negotiations.

- (f) The fishing industry and its supporting marine related industries necessarily require access to coastal berthage for layup berthing, servicing and maintenance operations. Vehicle access, particularly heavy vehicle access, to berthage areas is also crucial to fishing industry and other marine industrial operations. Fishing industry access requirements at Wynyard Quarter currently are dictated by the weather and when laden fishing boats are otherwise able to return from sea. Accordingly, the fishing industry requires unrestricted vehicle access 24 hours per day, 7 days per week. Loading, unloading, servicing and refuelling is undertaken by a range of vehicles including large truck and trailer units, "tank wagons", mobile cranes, general trucks and various contractor vehicles.
- (g) The east coast based Auckland fishing industry has, over the past 25 years, been gradually but inexorably compressed into a relatively small and constrained area within and around the Viaduct Harbour. There is currently no suitable alternative location in the Auckland Region for the east coast based Auckland fishing industry. The Submitters' access to berthage is concentrated on the western edge of the Halsey Street Extension Wharf and the southern edge of the Western Viaduct Wharf.
- (h) The Proposal will adversely affect:
  - (i) The amount and suitability of general and exclusive berthage available to the Submitters in order to ensure the safe and efficient ongoing operation of the east coast based fishing fleet. Currently, the Proposal does not provide any certainty that an alternative berthage location exists. Redevelopment of the Auckland Waterfront has already resulted in the gradual and persistent reduction in available, accessible and exclusive berthage, as well as the introduction of potentially incompatible uses into the same areas which requires ongoing management to the detriment of safe and efficient fishing operations.

Any relocation (permanent or temporary) of fishing industry berthage associated with the Proposal must ensure that the fishing industry are “no worse off” than they are presently for the duration of the AC36 event and thereafter. Ideally, the presently compromised fishing industry conditions should be enhanced to enable the fishing industry to operate more efficiently in future and be resilient to the effects of future events or activities on the waterfront.

- (ii) Access arrangements for heavy vehicles to, from and within the location of fishing industry berthage for loading, unloading, servicing and refuelling of fishing vessels. The fishing industry requires unrestricted vehicle access 24 hours per day, 7 days per week, given that vessels may return from sea at any time of day or night. As noted above, loading, unloading, servicing and refuelling activities involve a range of large vehicles and require sufficient width of access and manoeuvring space for vehicle tracking. Manoeuvring of these vehicles to, from and within any permanent or temporary location of fishing industry berthage must be ensured to enable continuity of fishing industry operations in Wynyard Quarter;
- (iii) The ability for fishing industry vehicles, as described above, to operate without conflict with other users of any berthage area, associated wharf or land areas, and/or associated facilities and services, including other fishing industry operators, and ferry operators. Separate accesses and exclusive areas may be appropriate to avoid any conflict between the different users. Restriction or prohibition of public access in and around any permanent or temporary fishing industry berthage areas may be necessary to ensure safe and efficient use by the fishing industry;
- (iv) The ability for fishing vessels to safely and efficiently navigate to and from their berthage areas. The safety and efficiency of berthage areas is affected by:
  - Lineal metres of wharf edge available.
  - Water space adjacent to the wharf edge for berthage and manoeuvring of vessels.

- Water depths for berthage and manoeuvring areas, affecting the accessibility of berthage on lower tides.
  - Exposure to weather, and particular wind and wave action.
  - Accessibility of water, wharf or land based areas and facilities by the public or other CMA or land users, which may conflict with safe and efficient fishing industry operations.
- (v) Traffic conditions and congestion within the Wynyard Quarter transportation network, and potentially beyond. The Submitters are concerned to ensure that traffic arrangements, conditions and congestion throughout Wynyard Quarter and the broader network, in particular inasmuch as they may affect access to, from and between the berthage facilities and the Submitters' other existing Wynyard Quarter investments and activities, are appropriate and ensure continuity of safe and efficient fishing industry activities in Wynyard Quarter;
- (vi) The ability for vessels to use berthage areas on any tide. The Submitters' current berthage is available on all tides given water depth adjacent to these relevant wharves. Any alternative berthage facilities, whether permanent or temporary, may not provide sufficient water depths for larger fishing vessels at lower tides. The Submitters are concerned to ensure that safe and efficient fishing industry operations can continue 24 hours per day; and
- (vii) Access to services. Fishing industry vessels presently rely on access to good services, including electricity, water and fibre networks through WiFi, to enable efficient loading and unloading of vessels and communications with other parts of the relevant businesses. The Submitters are concerned to ensure that these services and other relevant facilities are provided as part of any alternative berthage location, to ensure continued safe and efficient fishing industry operations.
- (i) The Proposal contains no detail as to the location or suitability of alternative berthage, or the likely adverse flow on effects on the fishing industry or the broader receiving environment. Accordingly, none of the potential adverse effects identified above have been properly identified and assessed.

5. The Submitters seek the following relief:
  - (a) That the Proposal be declined consent in its entirety unless:
    - (i) A permanent, fit for purpose facility which provides for safe and efficient berthage, loading, unloading, servicing, maintenance and refuelling of fishing vessels is constructed and made available to the Submitters, enabling the permanent rather than temporary relocation of the Submitters as part of the Proposal; or
    - (ii) In the event that the Court is not minded either to decline consent or to require a permanent relocation option for the Submitters, that conditions are imposed on any consent granted to the Proposal requiring the provision of alternative berthage and facilities, in a location and manner that addresses the Submitters' concerns expressed in this submission to their satisfaction. The Submitters' concerns in respect of their berthage requirements could be addressed by the imposition, as a minimum and by way of example, the conditions contained in **Annexure A**; and
    - (iii) Conditions are imposed that address the other concerns expressed by the Submitters in this submission to their satisfaction. Such conditions would require assessment and appropriate avoidance, remediation or mitigation of the effects of the Proposal on the Submitters' operations, and may require amendment of the conditions relating to, by way of example and without limitation, the Construction Environmental Management Plan, Construction Traffic Management Plan, Event Management Plan.
  - (b) Such alternative or other relief or consequential amendments as are considered appropriate or necessary to address the concerns set out in this submission.
6. The Submitters wish to be heard in support of its submission.

7. If others make a similar submission, the Submitters will consider presenting a joint case with them at a hearing.

**DATED** this 28<sup>th</sup> day of May 2018



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**Daniel Sadler**  
Counsel for **SANFORD LIMITED AND AUCKLAND FISHING PORT 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) 306-0748, Facsimile: (09) 358-5215. Contact: Daniel Sadler. Email: dsadler@ellisgould.co.nz

## APPENDIX A – REQUESTED CONDITIONS OF CONSENT

### GENERAL CONDITIONS

#### Removal of structures

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- 7A No later than 30 April 2021, Sanford Limited and Auckland Fishing Port Limited shall be reinstated to their existing berthage locations on the western edge of the Halsey Street Extension Wharf and the southern edge of the Western Viaduct Wharf, on terms no more onerous than existed at the date of commencement of this consent. For the avoidance of doubt, but without limitation, the consent holder shall remove any structures and ensure that any new activities taking place within the waterspace and wharf space in these locations are removed or ceased to ensure that Sanford Limited and Auckland Fishing Port Limited can recommence fishing industry operations that were occurring prior to commencement of this consent.

### PRE-CONSTRUCTION CONDITIONS

- [A] The consent holder shall provide, or otherwise procure the provision of, suitable alternative berthage for Sanford Limited and Auckland Fishing Port Limited, from no later than commencement of construction to that date after conclusion of the AC36 event that the western face of Halsey Street Wharf and the southern face of Western Viaduct Wharf are available again to the fishing industry in a manner no less constrained than at the date the application for this consent was lodged.
- [B] Alternative berthage provided in accordance condition [A] above must satisfy the following criteria:
- (a) Berthage allocated to each of Sanford Limited and Auckland Fishing Port Limited respectively must be contiguous, and must be the same or greater length than enjoyed by each entity prior to the relocation, when measured in lineal metres.
  - (b) Berthage must be located within 4 kilometres of the existing berthage areas and available exclusively for use by Sanford Limited and Auckland Fishing Port Limited.
  - (c) Unobstructed waterspace adjacent to the wharf edge of berthage in (a) above must also be allocated for the exclusive use of Sanford Limited and Auckland Fishing Port Limited, measuring no less than 20m perpendicular to the wharf face along its entire length.
  - (d) The waterspace area required by (b) above shall have water depths below mean low water springs that are no less than currently enjoyed by Sanford Limited and Auckland Fishing Port Limited in their current berthage areas.
  - (e) The berthage areas shall provide reasonable shelter from wave action, and in particular shall be located in no worse wave climate than the existing berthage areas enjoyed by Sanford Limited and Auckland Fishing Port Limited.
  - (f) Sufficient wharf and/or land area must be provided adjacent to the berthage area for the exclusive use of the berthholders adjacent for the purposes of

loading, unloading, servicing, maintaining and refuelling of fishing vessels. This area must be a minimum of 20m in width measured perpendicular from any point along the wharf edge.

- (g) All necessary facilities and equipment must be provided to enable safe berthage, loading, unloading, servicing, maintenance and refuelling of fishing vessels, including, but not limited to:
    - (i) Fenders and any other relevant marine and port accessory structures and services.
    - (ii) Ladders for access to and from vessels, and any other relevant safety facilities/equipment.
  - (h) The wharf and/or land areas must contain an area sufficient and available for parking the vehicles of fishing industry skippers and crew, in a location that does not interfere with fishing industry activities referred to above.
  - (i) Access to and from the berthage area and associated wharf and/or land area must be maintained 24 hours per day, 7 days per week, for all fishing industry-related vehicle movements, including all classes of heavy vehicles.
  - (j) Public access shall be excluded from the areas required under (a) – (d) above, unless otherwise agreed in advance by Sanford Limited and Auckland Fishing Port Limited.
  - (k) In addition to the waterspace required by (b) above, sufficient navigable water space must be retained to ensure the safe navigation of fishing vessels to and from the berthage area and to avoid any potential for conflict between navigating fishing vessels and other users of the water space.
  - (l) All appropriate services must be available to berthing fishing vessels and any relevant land or wharf-based facilities, including at a minimum electricity, fresh water and high speed internet connectivity.
- [C] At least 20 working days prior to Commencement of Construction, the Consent Holder shall submit details demonstrating how conditions [A] and [B] will be complied with, including detailed drawings and records of consultation with Sanford Limited and Auckland Fishing Port Limited to establish their requirements, to the Team Leader – Central Monitoring for certification of compliance conditions [A] and [B]. The Consent Holder will then implement any or all requirements or details contained in those detailed reports and/or drawings prior to commencement of construction and until such time as relocation of Sanford and Auckland Fishing Port Limited from their current berthage locations is no longer required.
- [D] The Consent Holder shall meet all costs, including any increased or additional operational and other business costs, associated with the temporary relocation of Sanford Limited and Auckland Fishing Port Limited pursuant to conditions [A] – [C] above. Increased or additional operational and business costs shall be payable by the Consent Holder on receipt of an appropriately detailed invoice, certified by or on behalf of Sanford Limited or Auckland Fishing Port Limited as costs greater than or additional to the costs associated with existing operations in Wynyard Quarter.