

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

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

AND

IN THE MATTER of direct referral of an
application under s87G of
the RMA for resource
consents for the necessary
infrastructure and related
activities associated with
holding the America's Cup
in Auckland

BETWEEN **PANUKU
DEVELOPMENT
AUCKLAND**

(ENV-2018-AKL-000078)

Applicant

AND **AUCKLAND COUNCIL**

Regulatory Authority

**MEMORANDUM OF COUNSEL ON BEHALF OF PANUKU IN RESPONSE TO COURT'S
MINUTE ON ARRANGEMENTS FOR THE HEARING**

Dated: 3rd September 2018

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MAY IT PLEASE THE COURT

Introduction

1. This memorandum has been prepared in response to the Minute of the Environment Court regarding arrangements for the hearing, dated 31 August 2018 (the **Court's Minute**). Panuku is grateful for the Court's guidance in relation to order of hearing presentation and its identification of outstanding issues.
2. The purpose of this memorandum is to provide a further update to the Court on outstanding issues (pending exchange and receipt of rebuttal evidence) and raise the question of whether witnesses relating to matters no longer in contention between the parties should continue to plan to attend the hearing or whether their evidence is likely to be taken as read (if the Court has no questions).
3. As discussed below, counsel understand the outstanding issues to be (subject to exchange of rebuttal evidence):
 - (a) Cultural / Māori issues (*raised by mana whenua in opposition and outlined in Mr Warren's email of 29 August 2018*);
 - (b) Number of bases to be consented and / or questions about the extent of Hobson Wharf extension, Base B, duration of consent, legacy activities and security matters (*raised by Coralie van Camp, Frances Stead, and Richard Gladwell*);
 - (c) The loss of carparking in Wynyard Point (*raised by Auckland Theatre Company*);
 - (d) Urban design issues (*raised by the Challenger of Record and Richard Gladwell*); and
 - (e) Relocation of the William C Daldy Tug (*raised by Mr Ingram although this matter has progressed considerably and Panuku hopes to have a further positive update for the Court by tomorrow*).

Outstanding Issues

4. At paragraph 7 of the Court's Minute four topics were listed that appeared to the Court to remain contested:
 - (a) Urban design issues;
 - (b) Low frequency noise issues;
 - (c) Maori issues; and
 - (d) Number of bases to be consented and / or questions about the extent of Hobson Wharf extension, Base B and legacy activities.

5. In relation to urban design issues, a new Joint Witness Statement has been prepared between the urban design and landscape experts and a further updated version of the Design Requirements agreed. This new JWS was filed with the Court this morning. While this is the expert agreed position, and includes Mr Clifford the expert for both ETNZ and the Challenger of Record, and there was input into the new JWS from both Mr Green and Mr Bourke from those organisations, we understand that the Challenger of Record has yet to confirm whether it agrees that the amended Design Requirements resolve the concerns outlined in the evidence of Mr Groeschner. Mr Gladwell also raises an issue in relation to the Design Requirements (he seeks the deletion of section 2). These matters will be addressed in the rebuttal evidence on behalf of Panuku.

6. In relation to low frequency noise issues, counsel can advise that Panuku has reached agreement with The Point / VHHL / the Princes Wharf Parties on changes to the proposed conditions of consent relating to Event noise and there remain no outstanding issues between the parties on noise. The agreed amendments to the consent conditions will be addressed briefly in the rebuttal evidence on behalf of Panuku. If the Court has no questions on these changes or noise and vibration matters generally, counsel understand that this topic is no longer contested and the experts would not be required.

7. In relation to the issues raised in evidence on behalf of mana whenua, Panuku is grateful for the comments in paragraphs 8-12 of the Court's Minute. At this stage, and subject to the receipt of any rebuttal evidence, counsel anticipates these matters will require a determination from the Court. From our review of the evidence it appears there remain issues between the parties in terms of consistency of the proposal with the relevant objectives and policies, and

matters of detail relating to conditions 5-5F, the section 128 review condition, and the condition sought by mana whenua in opposition in relation to the wish of mana whenua to establish a cultural centre in central Auckland. These matters are to be addressed in the rebuttal evidence on behalf of Panuku.

8. In response to the issues identified by the Court as “number of bases to be consented and / or questions about the extent of Hobson Wharf extension, Base B and legacy activities” counsel understands these are the matters raised in the lay evidence by Ms Coralie van Camp, Ms Frances Stead, and by Mr Richard Gladwell. These matters will be addressed in the rebuttal evidence on behalf of Panuku. Counsel advise that they do not intend to cross-examine any of these witnesses.
9. As foreshadowed in paragraph 3 above, counsel understand there to be one further matter not identified in the Court’s Minute. The evidence on behalf of Auckland Theatre Company raises concerns in relation to the loss of carparking in Wynyard Point. Panuku will respond to this matter in its rebuttal evidence. Unless Auckland Theatre Company advise to the contrary, counsel expect this issue will require a decision from the Court.

Presentation of evidence

10. With reference to paragraph 3 of the Court’s Minute and the comment that while it is a hearing at first instance “*that does not mean however that it [the Court] needs to hear from lots of witnesses in person*”, Panuku and other parties would be grateful for an early indication of those witnesses unlikely to need to be called (where they are not related to the very few outstanding issues in paragraph 3 above). For example, between Panuku and the Council alone, close to 40 witnesses filed evidence in chief, the great majority of who would not be required to be called in relation to the items in paragraph 3, absent any questions of them from the Court. Many other parties are in a similar position because of the limited number of remaining issues.
11. Counsel has prepared a list of witnesses who have filed evidence and sent this memorandum and index in draft to all remaining parties to the proceedings for comment (today). Attached as **Appendix A** to this memorandum is a table of witnesses and shows those parties that have indicated they have questions of witnesses and intend to cross-examine. As noted above the table this has been

prepared subject to parties reviewing any rebuttal evidence, and it incorporates feedback received in the time available from Auckland Council, VHHL, Kiwi Property, Sanford / AFPL, The Point Body Corporate, Vector, the Crown, Auckland Theatre Company, Kawau Island Action Incorporated Society, Willis Bond & Co, Mana Whenua in support, and Mana Whenua in opposition.

12. Counsel anticipate that some parties may wish to see any rebuttal evidence before committing to whether or not they require cross-examination. Obviously, as noted above, the Court may also have its own questions.
13. However, the extent to which the Court is able to indicate whether parties and witnesses may be required during the hearing next week, this may assist the parties, reduce costs to all parties involved and reduce the need for Court hearing time.

DATED at Auckland this 3RD day of September 2018



Derek Nolan QC / Bill Loutit / Kate Stubbing
Counsel for Panuku Development Auckland

APPENDIX A

Witnesses parties intend to cross-examine

Notes:

1. This table is prepared subject to the parties seeing rebuttal evidence.
2. This table incorporates feedback received (at the time of finalising the memorandum) from Panuku, Auckland Council, VHHL, Kiwi Property, Sanford / AFPL, The Point Body Corporate, Vector, the Crown, Auckland Theatre Company (**ATC**), Kawau Island Action Incorporated Society, Willis Bond & Co, Mana Whenua in support, and Mana Whenua in opposition.
3. Witnesses who parties intend to cross-examine at the hearing are shaded blue.

Panuku Development Auckland Ltd

Witness	Cross-examination required?	Parties intending to cross-examine
Rod Marler (Panuku Corporate)	Yes	Mana Whenua in Opposition
Fiona Knox (Corporate – Options Analysis and Engagement)	Yes	Mana Whenua in Opposition
Russell Green (Emirates Team New Zealand)		
Grant Calder (America's Cup Event Management)		
Gordon Moller (Architect)		
John Goodwin (Natural Character, Landscape and Visual Amenity)	Potentially	Mana Whenua in Opposition
Graeme McIndoe (Urban Design)		
Craig Jones (Event Legacy)	Yes	Mana Whenua in Opposition
Kurt Grant (Construction Methodology)	Potentially	Mana Whenua in Opposition
Joe Phillips (Traffic and Transport)	Yes	ATC
Craig Fitzgerald (Noise and Vibration)	Potentially	Mana Whenua in Opposition
John Mckensey (Lighting)		
Stephen Priestley (Infrastructure and Coastal Processes)		
Phillip Ware (Contaminated Land and Groundwater)	Yes	Mana Whenua in Opposition
Paul Musson (Fire Safety and Evacuation)		
Paul Kennedy (Coastal Environment)	Potentially	Mana Whenua in Opposition
Geraint Bermingham (Maritime Safety and Utility)		
Jenny Polich (Risk)		

Karl Cooke / Vijay Lala (Planning)	Yes	ATC Mana Whenua in Opposition
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Auckland Council

Witness	Cross-examination required?	Parties intending to cross-examine
Dr Kala Sivaguru (Ecology / Coastal Environment)	Potentially	Mana Whenua in Opposition
Sam Morgan (Coastal Processes)		
Ross Roberts (Geotechnical)		
Peter Kensington (Landscape and Visual)		
Rebecca Skidmore (Urban Design)	Potentially	Mana Whenua in Opposition
Gemma Chuah (Stormwater and ITAs)		
Jon Styles (Acoustics and Vibration)		
Rob Van de Munckhof (Hazardous substances / Risk and Contamination (NES: Soil))		
Marija Jukic (Contaminant discharges)		
Ahad Khan (Development Engineering)		
Bronwyn Coomer-Smit (Traffic)	Yes	ATC
Mitchel Tse (Traffic – Auckland Transport)		
Richard Simonds (Groundwater)	Potentially	Mana Whenua in Opposition
Glen Wright (Lighting)		
Christiaan Moss (Navigation)		
Matt Byrne (Earthworks)		
Adrian Lamont (Aboriculture)		
Paul Crimmins (Air discharges)		
Myfanwy Eaves (Historic Heritage)		
Nicola Broadbent (Planning)	Yes	ATC Mana Whenua in Opposition

Section 274 Parties

Witness	Cross-examination required?	Parties intending to cross-examine
Coralie van Camp		
Frances Stead		
<i>Sail World NZ Ltd</i>		
Richard Gladwell	Potentially	VHHL
<i>The Crown</i>		
Heather Kirkham	Yes	Mana Whenua in Opposition
<i>Challenger of Record America's Cup 36</i>		
Mirko Groeschner	Potentially	VHHL
<i>Emirates Team New Zealand Ltd, America's Cup Event Ltd and Challenger of Record America's Cup 36</i>		
Patrick Clifford (Architecture)		
<i>Emirates Team New Zealand Ltd and Challenger of Record America's Cup 36</i>		
Russell Green		
<i>The Combined Owners and Residents of Apartments in Sheds 19, 20, 22, 23 & 24, Princes Wharf (Princes Wharf Group)</i>		
David Ramsay		
<i>Sealink Travel Group New Zealand Ltd</i>		
Bob Hawkins (Nautical)		
Mark Gibson (Corporate)		
<i>Auckland Theatre Company</i>		
Lester McGrath (Corporate)	Yes	Panuku
John Parlane (Traffic)	Yes	Council Panuku
<i>Viaduct Harbour Holdings Ltd</i>		
Angela Bull (Corporate)		
John Parlane (Traffic)		
Ian Munro (Urban Design)		
Vaughan Smith (Planning)		
<i>Sanford Ltd</i>		
Colin Williams (Navigation)		
Philip Brown (Planning)		

<i>Body Corporate 199318 (The Point)</i>		
Richard Finley (Noise and Acoustics)		
<i>Tug William C Daldy Preservation Society</i>		
Keith Ingram		
<i>Evidence of Mana Whenua in support*</i>		
<i>Ngāti Whātua Orākei Whaia Maia Ltd and supporting Mana Whenua</i>		
Ngarimu Blair		
Professor David Williams		
Dr Malcolm Patterson		
Andrew Brown (Planning)		
<i>Ngāti Paoa Iwi Trust and supporting Mana Whenua</i>		
Morehu Wilson		
<i>Te Kawerau Iwi Tribunal Authority Inc and supporting Mana Whenua</i>		
Edward Ashby		
<i>Evidence of Mana Whenua in opposition</i>		
<i>Te Ākitai Waiohū</i>		
Karen Wilson		
<i>Ngaati Whanaunga</i>		
Martin Te Moni		
<i>Ngaati Te Ata Claims Support Whaanau</i>		
Marian Smith and Josephine Peita		
<i>Ngāti Tamaoho</i>		
Dennis Kirkwood		
<i>Ngāi Tai ki Tāmaki</i>		
Zaelene Maxwell-Butler		
<i>On behalf of Mana Whenua in opposition</i>		
Luke Faithful (Planning)	Yes	Panuku Mana whenua in support

* Counsel for Mana Whanua in opposition advise that they are considering the evidence of Mana Whenua in support in light of the recent Minute issued by the Court.