

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2018-AKL-000150

**I MUA I TE KŌTI TAIAO
I TĀMAKI MAKAURAU ROHE**

IN THE MATTER of an appeal under section 156(1) of the Local
Government (Auckland Transitional Provisions) Act 2010

BETWEEN **BROOKBY QUARRIES LIMITED**
Appellant

AND **AUCKLAND COUNCIL**
Respondent

SECTION 274 NOTICE

ON BEHALF OF THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INC.

16 AUGUST 2018

To: The Registrar
Environment Court
Auckland

Introduction

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated (“**Forest and Bird**”) wishes to be a party to the appeal by Brookby Quarries Limited (“**Brookby**”) in respect of the Auckland Council’s decision on the Proposed Auckland Unitary Plan (“**Unitary Plan**”).
2. Forest and Bird:
 - a. made a submission on the matters included in this appeal; and
 - b. has an interest greater than the public generally:
 - i. Forest & Bird was the appellant in respect of Auckland Council’s decisions on the Auckland Unitary Plan that resulted in the deemed “Alternative Solution” that the Fulton Hogan appeal relates to (*Royal Forest & Bird Protection Society of New Zealand Inc v Auckland Council* [2018] NZHC 1069; *Royal Forest & Bird Protection Society of New Zealand Inc v Auckland Council* [2018] NZHC 1344).
 - ii. Forest & Bird is New Zealand’s largest nature conservation non-government organisation with more than 70,000 members and supporters; and has been active in RMA processes, including the Auckland Unitary Plan process, for many years to achieve improved outcomes for nature conservation.
3. Forest and Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Forest and Bird is interested in all of the matters appealed by Brookby.
5. Forest and Bird opposes the appeal because the grounds of appeal are unfounded. In particular:
 - a. the provisions appealed do not operate as a “form of veto” over development of the underlying land (Brookby appeal notice, paragraph 7(d));

- b. the High Court judgment did not “effectively endorse” a bespoke arrangement for removal of SEA within the Special Purpose Quarry Zone (Brookby appeal notice, paragraph 7(e)); and
 - c. Brookby’s assertion that the primary purpose of the Zone (quarrying) should “prevail” over the values recognised by the SEA overlay is inconsistent with Part 2 of the RMA and relevant Auckland Unitary Plan provisions (Brookby appeal notice, paragraph 7(e)).
- 6. Forest and Bird also opposes the appeal because the relief sought would be inconsistent with:
 - a. the Council’s obligation to maintain indigenous biodiversity (s30(1)(ga) and s31(1)(b)(iii) RMA),
 - b. the protection, as a matter of national importance, of areas of significant indigenous vegetation and significant habitats of indigenous fauna (s6(c) RMA).
 - c. Auckland Unitary Plan (regional policy statement) provisions requiring that significant ecological areas are recognised and protected.
- 7. The changes to the Unitary Plan sought in the Brookby appeal are not within the scope of appeals under s156 Local Government (Auckland Transitional Provisions) Act 2010 (“**LGATPA 2010**”).
- 8. In relation to the relief sought by Brookby at paragraph 8 of its appeal, Forest & Bird opposes the relief sought on the grounds that:
 - i. To the extent that a change is sought to the objectives and policies in Chapter D9, Forest & Bird opposes any changes because the provisions of Chapter D9 are appropriate;
 - ii. The appeal notice is deficient in that the changes sought to Chapter D9 are not identified;
 - iii. The matters of discretion in E15.8.1(3) are clear;
 - iv. The assessment criteria at E15.8.2(3) are clear and appropriate; and

v. The relief is not within the scope of s156 LGATPA 2010, nor can it be the subject of reconsideration by the Environment Court as it was not the subject of the High Court appeal.

b. Forest and Bird also opposes any consequential relief and any costs award.

9. Forest and Bird agrees to participate in mediation or other alternative dispute resolution of the proceedings.

Dated 16 August 2018

A handwritten signature in blue ink, appearing to read 'Sally Gepp' followed by a stylized flourish.

Sally Gepp / Peter Anderson

Counsel for the Royal Forest and Bird Protection Society of New Zealand Inc