

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2018-AKL-000150**

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

**IN THE MATTER** of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) and the Resource Management Act 1991 (**RMA**)

**AND**

**IN THE MATTER** of an appeal under s156(1) LGATPA

**BETWEEN** **BROOKBY QUARRIES LIMITED**

**Appellant**

**AND** **AUCKLAND COUNCIL**

**Respondent**

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**NOTICE OF ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED'S WISH TO  
BECOME A PARTY TO PROCEEDINGS PURSANT TO SECTION 274 RESOURCE  
MANAGEMENT ACT 1991**

**16 AUGUST 2018**

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**NOTICE OF WISH TO BE A PARTY TO PROCEEDINGS UNDER S274 RMA BY THE ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED**

**TO:** The Registrar  
Environment Court  
AUCKLAND

1. The Environmental Defence Society Incorporated (**EDS**) wishes to be party to notice of appeal ENV-2018-AKL-000150 dated 26 July 2018 by Brookby Quarries Limited (**Appellant**) to the Environment Court (**Appeal**) against a decision of Auckland Council (**Respondent**) on the Proposed Auckland Unitary Plan (**PAUP**).

**Appeal**

2. The Appeal concerns the objectives, policies, and rules applying to vegetation clearance in identified Significant Ecological Areas (**SEA**) in areas where the SEA is located in the Special Purpose Quarry Zone, reinstated by virtue of the High Court's decision in *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 1244 (**High Court Decision**).

**Interest**

3. EDS was a submitter<sup>1</sup> and a further submitter<sup>2</sup> on the PAUP. It specifically addressed protection of Auckland's SEAs.
4. EDS was a s301 party to the subsequent High Court appeal by Royal Forest & Bird Protection Society Inc (**F&B**) of the Respondent's decision to delete identified SEAs where they occurred within the Special Purpose Quarry Zone.

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<sup>1</sup> Submission number 4735.

<sup>2</sup> Further submission number 1974.

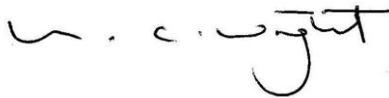
5. EDS has an interest in the proceedings that is greater than that of the general public:
  - a. EDS is a not-for-profit national environmental advocacy group. It was established in 1971 with the objective of bringing together the disciplines of law, science, and planning to advocate for better environmental outcomes in resource management matters. It has been active in assessing the effectiveness of the RMA and statutory planning documents in addressing key environmental issues.
  - b. F&B's appeal of the Respondent's decision to delete identified SEAs where they occurred within the Special Purpose Quarry Zone was successful. As a result, those SEAs were reinstated in the PAUP overlay maps. EDS was a s301 party supporting that outcome. The Appeal has been filed in light of the High Court Decision which upheld F&B's appeal.
6. EDS is not a trade competitor for the purposes of s308C or s308CA RMA.

**Position & Reasons**

7. EDS is interested in and opposes the Appeal in its entirety.
8. The reasons for EDS's position are:
  - a. The Appellant's contention that the provisions appealed could "effectively sterilise aggregate resource" (NOA at [7(c)]) and "form a veto over development of the underlying land" (NOA at [7(d)]) are overstated and unfounded. The provisions appealed do not prohibit removal of SEA (i.e vegetation clearance); rather resource consent is required.
  - b. The High Court judgement did not "effectively endorse" a bespoke arrangement for removal of SEA within the Special Purpose Quarry Zone (NOA at [7(e)]).

- c. The Appellant's contention that the primary purpose of the underlying zone, the Special Purpose Quarry Zone, should "prevail" over an areas SEA values (NOA at [7(e)]) is inconsistent with Part 2 RMA, in particular protection of significant indigenous vegetation and habitats of indigenous fauna as a matter of national importance, and with the relevant PAUP provisions.
  - d. The changes sought by the Appellant are not within the scope of s156 LGATPA, nor can it be the subject of reconsideration by the Environment Court, as it was not the subject of F&B's High Court appeal.
  - e. The relief sought would be inconsistent with:
    - i. Safeguarding the life supporting capacity of ecosystems under s5(2) RMA;
    - ii. The protection, as a matter of national importance, of areas of significant indigenous vegetation and significant habitats of indigenous fauna under s6(c) RMA;
    - iii. Council's obligation to maintain indigenous biological diversity under ss 30 and 31 RMA; and
    - iv. The relevant PAUP provisions requiring that SEAs are identified recognised and protected.
9. EDS agrees to participate in mediation or other alternative dispute resolution of the proceedings.

**DATED** at Auckland this 16<sup>th</sup> day of August 2018



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**Madeleine C Wright**  
**Solicitor for EDS**

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**Advice to recipients**

If you have any questions about this notice, contact the Environment Court in Auckland.