

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

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

ENV-2020-AKL-000131

UNDER the Resource Management Act 1991 ("RMA")
IN THE MATTER of an appeal under Clause 14(1) of Schedule 1 of the RMA
BETWEEN **KIWIRAIL HOLDINGS LIMITED**
Appellant
A N D **WHANGAREI DISTRICT COUNCIL**
Respondent

**NOTICE OF FOODSTUFFS NORTH ISLAND LIMITED'S WISH TO BE A
PARTY TO PROCEEDINGS**

5 AUGUST 2020

**ELLIS GOULD
LAWYERS
AUCKLAND**

REF: Douglas Allan / Alex Devine

**Level 17 Vero Centre
48 Shortland Street, Auckland
Tel: 09 307 2172 / Fax: 09 358 5215
PO Box 1509
DX CP22003
AUCKLAND**

NOTICE OF FOODSTUFFS NORTH ISLAND LIMITED'S WISH TO BE A PARTY TO PROCEEDINGS

TO: The Registrar
Environment Court
Auckland

Foodstuffs North Island Limited ("**Foodstuffs**") gives notice of its wish to be a party to the appeal ENV-2020-AKL-000131 by KiwiRail Holdings Limited against parts of the decision of Whangarei District Council on proposed Plan Changes 88A-1, 109 and 115 to the Whangarei District Plan.

1. Foodstuffs made further submission X338 about the subject matter of these proceedings.
2. Foodstuffs is also a person who has an interest in the proceedings that is greater than the interest the general public has on the grounds that it operates a supermarket (New World Regent) which falls within the 100m "buffer" area to which the relief sought by the Appellant would apply. The relief sought by the Appellant may have implications for future changes to existing activities as well as any new activities established at the site.
3. Foodstuffs is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991 ("**RMA**"). In any event, Foodstuffs is directly affected by an effect of the subject matter of the appeal that:
 - 3.1 Adversely affects the environment; and
 - 3.2 Does not relate to trade competition or the effects of trade competition.
4. While Foodstuffs is interested in all aspects of the proceedings, it has a particular interest in the relief sought to the extent that it applies to grocery stores, commercial activities, office facilities or retail activities.
5. Foodstuffs opposes the relief sought on the basis that:
 - 5.1 While Foodstuffs considers it to be unlikely that the Appellant intends for the noise attenuation requirements sought to apply to grocery stores, commercial activities, office facilities or retail

activities, the current definition of 'Noise Sensitive Activities' does not make this clear.

- 5.2 The relief sought would create additional complexities and increased development costs for future development. Despite this, the Appellant has failed to provide justification for applying such requirements to grocery stores, commercial activities, office facilities or retail activities.
- 5.3 Applying acoustic attenuation requirements to grocery stores, commercial activities, office facilities or retail activities is not the most efficient or effective approach to managing potential interface issues, places an onerous burden on landowners without an equivalent burden on the Appellant, is not justified in s32 terms and will not achieve the purpose of the RMA.
6. Foodstuffs agrees to participate in mediation or other alternative dispute resolution of the proceedings.

DATED this 5th day of August 2020

**FOODSTUFFS NORTH ISLAND
LIMITED** by its solicitors and duly
authorised agents, Ellis Gould



D A ALLAN / A K DEVINE

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) 307-2172, Facsimile: (09) 358-5215. **Attention:** Douglas Allan / Alex Devine; dallan@ellisgould.co.nz / adevine@ellisgould.co.nz.

Copy To: The Appellant
And To: Whangarei District Council
And To: Section 274 parties