

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

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

ENV-2020-AKL-000126

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

AND

IN THE MATTER of an appeal under clause 14(1) of Schedule 1 of the
RMA

AND

IN THE MATTER of an application under section 274 of the RMA

BETWEEN **THE NEW ZEALAND REFINING COMPANY
LIMITED**

Appellant

AND

WHANGAREI DISTRICT COUNCIL

Respondent

**NOTICE OF INTENTION BY THE NEW ZEALAND TRANSPORT AGENCY TO
BE A PARTY TO THE PROCEEDINGS UNDER SECTION 274**

Dated 5 August 2020

BUDDLE FINDLAY
NEW ZEALAND LAWYERS

Solicitor Acting: **Patrick Mulligan / Mathew Gribben**
Email: mathew.gribben@buddlefindlay.com
Tel 64 9 358 2555 Fax 64 9 358 2055
PO Box 1433 DX CP24024 Auckland 1140

TO: the Registrar
Environment Court
Auckland

1. The New Zealand Transport Agency ("**Transport Agency**") wishes to be a party to the following proceedings under s 274 of the Resource Management Act 1991 ("**RMA**"):

The New Zealand Refining Company Limited v Whangarei District Council (ENV-2020-AKL-000126).

2. The proceedings concern an appeal lodged by The New Zealand Refining Company Limited, trading as Refining NZ ("**Refining NZ**") against part of the decision of the Whangarei District Council ("**Council**") to approve the proposed plan changes – Urban and Services – to the Whangarei District Plan ("**Plan Changes**"). The Council's decision was publicly notified on 3 June 2020 ("**Decision**").

Nature of interest in the proceedings

3. The Transport Agency made a submission about the subject matter of the proceedings and lodged its own appeal on the same subject matter.
4. The Transport Agency also has an interest in the proceedings that is greater than the interest that the general public has because the Transport Agency has a number of improvements and projects within Northland and Whangarei, and more may be required to service anticipated growth. The existing State highway network also needs to be maintained and upgraded in places. Therefore, the Transport Agency is particularly concerned with the regionally significant infrastructure ("**RSI**") provisions.
5. The statutory planning documents are of critical importance to the Transport Agency. Its statutory objective under the Land Transport Management Act 2003 is to undertake its function in a way that contributes to an effective, efficient and safe land transport system in the public interest.
6. The Transport Agency is not a trade competitor for the purposes of sections 308C or 308CA of the RMA.

Extent of interest in the proceedings

7. The Transport Agency is interested in part of the proceedings.

8. The part of the proceedings that the Transport Agency is interested in relates to the RSI provisions contained within the District Growth and Development (“**DGD**”) Chapter of the Decision, specifically:
 - (a) the requested amendment to objective DGD-O15 (Adverse Effects) to delete the requirement to “*avoid, remedy, mitigate or offset*” adverse effects arising from the development, operation, maintenance and upgrading of RSI;
 - (b) the requested amendment to DGD-P15 (Benefits of RSI) to delete the text which states that the benefits of RSI will be recognised and provided for “*where adverse effects can be avoided, remedied, mitigated or off set (when offered or agreed to)*”; and
 - (c) any changes or relief that is associated or consequential to the provisions sought by the Appellant in relation to the DGD Chapter.

9. The Transport Agency supports the relief sought by the Appellant in relation to the provisions identified above for the reasons outlined in the appeal by Refining NZ and the Transport Agency’s own appeal, as well as the following:
 - (a) it is critical that the Whangarei District Plan allows for maintenance and upgrades to the existing State highway network and also for new improvements and projects likely to be required to service anticipated growth;
 - (b) the proposed amendments will provide a clear consenting pathway and ensure that the provisions do not unintentionally create environmental bottom lines;
 - (c) the proposed amendments recognise that new RSI and major upgrades can generate adverse effects, but that this should be weighed against the benefits of RSI; and
 - (d) the proposed amendments will give effect to the Northland Regional Policy Statement, particularly Policy 5.3.3.

Alternative Dispute Resolution

10. The Transport Agency agrees to participate in mediation or other alternative dispute resolution of the proceedings.

DATED this 5th day of August 2020

NEW ZEALAND TRANSPORT AGENCY

by its solicitors and authorised agents

Buddle Findlay:



Mathew Gribben

Address for service of person wishing to be a party:

New Zealand Transport Agency
c/- Mathew Gribben
Buddle Findlay
Level 17
188 Quay Street
PO Box 1433, DX CP24024
Auckland 1140

Phone: 64 9 358 2555
Facsimile: 64 9 358 2055
Email: mathew.gribben@buddlefindlay.com

Names and addresses of persons to be served with a copy of this notice:

The New Zealand Refining Company Ltd
c/- Chris Simmons and Ebony Ellis
ChanceryGreen
PO Box 47516, Ponsonby
Auckland 1144

Phone: (09) 357 0600
Email: chris.simmons@chancerygreen.com
ebony.ellis@chancerygreen.com

Whangarei District Council
c/- Sarah Shaw
PO Box 4146, Kamo 0141

Email: sarah@sarahshaw.co.nz
mailroom@wdc.govt.nz

Note to person wishing to be a party

You must lodge the original and one copy of this notice with the Environment Court within 15 working days after:

- (a) the period for lodging a notice of appeal ends, if the proceedings are an appeal; or
- (b) the decision to hold an inquiry, if the proceedings are an inquiry; or
- (c) the proceedings are commenced, in any other case.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

The notice must be signed by you or on your behalf.

You must serve a copy of this notice on the relevant local authority and the person who commenced the proceedings within the same 15 working day period and serve copies of this notice on all other parties within 5 working days after that period ends.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice

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