

In the matter of: Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) and the Resource Management Act 1991 (**RMA**) - Appeal against decision about designation in Auckland combined plan – s 157(1) of the LGATPA – State Highway 1 – Newmarket Viaduct Height Restriction (6727)

And: **Dilworth Trust Board**

Appellant

And: **New Zealand Transport Agency**

Requiring Authority

And: **Auckland Council**

Local Authority

And: **Tram Lease Ltd**

Section 274 Party

Notice of person's wish to be party to proceedings

Dated: 17 January 2017



TREVOR DAYA-WINTERBOTTOM
MA IN ENVIRONMENTAL LAW *Barrister*

Form 33

**NOTICE OF PERSON'S WISH TO BE PARTY TO
PROCEEDINGS**

Section 274, Resource Management Act 1991

To: The Registrar

Environment Court

Auckland

- 1 Tram Lease Ltd (**TLL**) wishes to be party to the following proceedings:
 - 1.1 Appeal filed by Dilworth Trust Board (**DLT**) against a decision of New Zealand Transport Agency (**NZTA**) about a designation, namely, State Highway 1 - Newmarket Viaduct Height Restriction (6727).
- 2 TLL is a person who made a submission about the subject matter of the proceedings.
- 3 TLL is not a trade competitor for the purposes of s 308D of the RMA.
- 4 TLL is interested in all of the proceedings.
- 5 TLL is interested in the following particular issues:
 - 5.1 Condition 2 and advice notes 1(c) and (d) pertaining to the building materials and signs.
- 6 TLL supports the relief sought (so far as this is consistent with its own appeal) because:

- 6.1 The decision will not promote the sustainable management of natural and physical resources.
- 6.2 The designation as confirmed (condition 2) requires the approval of NZTA in relation to the development and use of private land, and includes a series of advice notes to provide guidance for owners and occupiers when seeking such written consent from NZTA. In essence these advice notes correspond to conditions which an applicant would need to satisfy to obtain NZTA's approval
- 6.3 Advice note 1.c. pertains to reflective building materials. The advice note as confirmed is unreasonable and unwarranted because:
 - (a) It is subjective and the level of proof required from owners and occupiers to satisfy these requirements is not readily capable of being quantified in any reasonable way.
 - (b) It relates to the motorway network as a whole, rather than being confined to the spatial extent of the designated area or works.
 - (c) It is uncertain, in that it is unclear whether it relates to all buildings on private land in the vicinity of the designated area, or only those buildings that exceed 12.2m and the height of the level of the viaduct carriageway within the spatial extent of the designated area.
- 6.4 Advice note 1.d. pertains to signs. The advice note as confirmed is unreasonable and unwarranted because:
 - (a) It purports to control signs below the level of the viaduct carriageway.

- (b) It unreasonably restricts the use of video screens and digital displays.
- (c) It unnecessarily duplicates controls regarding reflective materials.
- (d) It is subjective, and fails to articulate any objective criteria to discern which signs could cause confusion, alarm, or unduly distract attention.
- (e) It unreasonably precludes the display of more than one building identification sign, and in doing so precludes the display of advertising signage.

6.5 As a result, the designation as confirmed will prevent the reasonable use of private land.

- 7 TLL agrees to participate in mediation or other alternative dispute resolution.

Trevor Daya-Winterbottom

Trevor Daya-Winterbottom

Counsel for Tram Lease Ltd

17 January 2017

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