

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2016-AKL-

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 section 156(1) of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (Hearings Panel) on the proposed Auckland Unitary Plan (Proposed Plan)

AND

IN THE MATTER

of Proposed Plan Hearing Topics 006 and 035 (Air Quality)

BETWEEN

NEW ZEALAND STARCH LIMITED

Appellant

AND

AUCKLAND COUNCIL

Respondent

**NOTICE OF APPEAL
Dated 16 September 2016**

**ANDERSON LLOYD
LAWYERS
DUNEDIN**

Solicitor: Stephen Christensen/ Rosie Hill

Level 10, Otago House
Cnr Moray & Princes Street,
Private Bag 1959,
DUNEDIN 9054
Tel 03 477 3973
Fax 03 477 3184

TO: The Registrar
Environment Court

Auckland

1. New Zealand Starch Limited ("**NZ Starch**") appeals against parts of a decision of Auckland Council on the Proposed Auckland Unitary Plan ("**Proposed Plan**").
2. NZ Starch has the right to appeal the Council's decision-
 - (a) Under section 156(1) of the LGATPA because the Council rejected a recommendation of the Hearings Panel in relation to a provision or matter NZ Starch addressed in its submission on the Proposed Plan (Submission 3230 and FS2984). The Council decided on an alternative solution, which resulted in a provision being included in the Proposed Plan or a matter being excluded from the Proposed Plan:
3. NZ Starch has provided further details of the reasons for its appeal below.
4. NZ Starch is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**the Act**).
5. NZ Starch received notice of the decision on 19 August 2016.
6. The parts of the decision that NZ Starch is appealing relate to:
 - (a) Topics 006 and 035 (B7 Natural Resources and E14 Air Quality).
7. NZ Starch appeals part of the decision recorded in the Decisions of the Auckland Council on recommendations by the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on submissions and further submissions to the Proposed Auckland Unitary Plan (Attachment A-alternative solutions prepared by the council for any rejected recommendations) (**Council Report**).
8. The particular parts of the decision appealed are the decision to adopt the AAAQS in Table E14.3.1 and the decision to adopt these as standards rather than guidelines; the decision to include a new 24-hour standard for SO₂ as part of the Auckland Ambient Air Quality Standards (**AAAQS**); and associated amendments to objectives, policies and assessment matters in the Proposed Plan, as set out in the Council Report.
9. The particular provisions being appealed are as follows:

- (a) B7.5.1 (Objective (4))
 - (b) B7.5.2 (Policy (7))
 - (c) E14.2 (Objective (2))
 - (d) Table E14.3.1 (AAAQS)
 - (e) E14.8.2 (Assessment Criteria (1))
10. **Reasons for Appeal**
11. The Hearings Panel found on the evidence that the new 24-hour SO₂ standard should not be included in the Unitary Plan because¹:
- (a) The health benefits of a 24-hour SO₂ standard are not clear; and
 - (b) There is no precautionary justification for it given the evidence that SO₂ levels in Auckland are not high, other than near the Port where they are associated with emissions from vessels which cannot be regulated by the Unitary Plan.
12. The Auckland Council has not adequately undertaken a section 32 analysis in accordance with the Act to justify the SO₂ standards in the AAAQS for the Auckland Region. In particular Auckland Council has provided no adequate justification to deviate from the Hearings Panel recommendations in respect of this matter.
13. The section 32AA assessment report prepared by the Council which supports the decision to include the 24-hour SO₂ standard provides no analysis to suggest that the Hearing Panel's assessment of the evidence was wrong, and the section 32AA report provides no new information on the appropriateness of the 24-hour SO₂ standard in addition to that considered by the Hearings Panel.
14. The 24-hour SO₂ standard presents a significant departure from the way SO₂ is managed under the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (**NESAQ**) and is likely to be more stringent or restrictive than the NESAQ.

¹ Hearings Panel Report to Auckland Council Hearing topics 006 and 025 Air Quality, 22 July 2016, Section 5, page 11

15. The 24-hour SO₂ standard has not been adopted in other jurisdictions, largely for the same reasons as determined by the Hearings Panel.
16. The NESAQ and Ambient Air Quality Guidelines² provide appropriate standards and guidelines (respectively) for SO₂ and other contaminant emissions across the country, and deviation from the standards contained in the NESAQ will create undesirable national inconsistency.
17. The 24-hour SO₂ standard is not necessary to achieve the higher order objectives and policies of Chapter B7.5 and E14.2.
18. The adverse health effects caused by SO₂ emissions are best controlled by prescribing appropriate limits of emissions over short durations (1-hour) rather than over longer periods (24-hour). The NESAQ already provides appropriate controls for adverse effects from emissions over short durations.
19. Inclusion of the AAAQS in the Proposed Plan will create unjustifiable restrictions on industry operations in the Auckland Region, without resulting in any additional health benefits.
20. If the AAAQS is to be included in the Proposed Plan, it would be more appropriate that they are used as guidelines rather than standards which set specific limits and have direct regulatory effect. The AAAQS is not appropriate to be used other than as a guideline for best practice, having regard to the higher order provisions of chapters B7 and E14. Even if the AAAQS is to be included as a guideline, it should not include the 24-hour SO₂ standard for the reasons set out above.
21. **Relief sought**
22. NZ Starch seeks the following relief:
 - (a) Deletion of the AAAQS within the Proposed Plan, and replacement of the provisions relating to Topic 006 and 035 (Air Quality) as recommended by the Hearings Panel; or in the alternative
 - (b) Amendment of the AAAQS to provide that they are to operate as guideline values and not standards, together with deletion of the SO₂ 24-hour limit within the AAAQS as included in the Proposed Plan and

² Ministry for the Environment, 2002

consequential amendments to the relevant objectives, policies and assessment criteria; or in the alternative

- (c) Deletion of the SO₂ 24-hour limit within the AAAQS as included in the Proposed Plan; and
- (d) Such other relief as the Court considers appropriate in order to achieve the above intended objectives; and
- (e) Costs.

23. **Service**

24. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

25. **Attachments**

26. The following documents* are attached to this notice:

- (a) A copy of the relevant parts of the decision;
- (b) A copy of the NZ Starch submission and further submission on the Proposed Plan;
- (c) A list of names and addresses of persons to be served with this notice.

*Copies of these documents may be obtained, on request, from the appellant.

DATED this 16th day of September 2016



S W Christensen
Counsel for NZ Starch

Address for service of appellant:

Anderson Lloyd

Barristers and Solicitors

Private Bag 1959

Dunedin

Phone: 03 4773973

Fax: 03 477 3184

Contact person: Stephen Christensen/ Rosie Hill

Email: Stephen.christensen@andersonlloyd.co.nz/ rosie.hill@andersonlloyd.co.nz

Advice to recipients of copy of notice of appeal*How to become party to proceedings*

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to unitaryplan.ecappeals@justice.govt.nz) and serve copies of your notice by email on the Auckland Council (to unitaryplan@aucklandcouncil.govt.nz) and the appellant.

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 RMA.

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 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

Advice

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