

**IN 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

**AND**

**IN THE MATTER**

of Topics 006 and 035 - Air Quality of the  
Proposed Auckland Unitary Plan

**BETWEEN**

**PACT GROUP (NZ) LIMITED**

**Appellant**

**AND**

**AUCKLAND COUNCIL**

**Respondent**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT BY PACT GROUP (NZ)  
LIMITED**

**16 SEPTEMBER 2016**

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**RUSSELL McVEAGH**

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**PACT GROUP (NZ) LIMITED ("Appellant")** appeals against part of the decision of the Auckland Council ("**Council**") in respect of the Proposed Auckland Unitary Plan ("**Unitary Plan**"), insofar as it relates to the rules regarding air quality.

### **Decision**

1. The Appellant has the right to appeal under section 156(1) of the LGATPA because the Council rejected a recommendation ("**Recommendation**") of the Auckland Unitary Plan Independent Hearings Panel ("**Panel**") in relation to a provision or matter that the Appellant addressed in its submission on the Unitary Plan (submission number 7109).
2. The Council rejected the Panel's Recommendation and decided on an alternative solution, which resulted in a provision being included in the Unitary Plan or a matter being excluded from the Unitary Plan.
3. The Appellant received notice of the Panel's Recommendation on the Unitary Plan on 27 July 2016, and notice of the Council's decision on the recommendation ("**Decision**") on 19 August 2016.
4. The Appellant is not a trade competitor for the purposes of section 308D of the RMA.

### **Parts of the Decision that the Appellant is appealing**

5. The Appellant appeals the part of the Decision that seeks to amend the Panel's Recommendation in relation to air quality, specifically the inclusion of the Auckland Ambient Air Quality Standards ("**AAAQS**").

### **General reasons for appeal**

6. The reasons for this appeal are that the Decision:
  - (a) will not promote the sustainable management of resources, will not achieve the purpose of the RMA, and is contrary to Part 2 and other provisions of the RMA;
  - (b) will not meet the reasonably foreseeable needs of future generations;
  - (c) does not manage the use of resources in a way that enables people and communities to provide for their social, economic or cultural well-being or their health and safety;
  - (d) is otherwise contrary to the purposes and provisions of the RMA and other relevant planning documents, including other parts of the Unitary Plan;
  - (e) does not avoid, remedy or mitigate the adverse effects on the environment; and
  - (f) is not the most appropriate way to achieve the objectives of the Unitary Plan in terms of section 32 of the RMA.

### Specific reasons for appeal

7. In particular, and without limiting the generality of paragraph 6 above, the Appellant seeks that the provisions put forward by the Panel in its Recommendation be reinstated for the reasons set out in the Recommendation, including:
- (a) the inclusion of the AAAQS in the Unitary Plan is not necessary as reliance on the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 and the New Zealand Ambient Air Quality Guidelines alone is sufficient to achieve the purpose of the RMA;
  - (b) there is no justification for the inclusion of the AAAQS under section 32 of the RMA;
  - (c) the inclusion of a PM<sub>2.5</sub> standard in the Unitary Plan is inappropriate as most fine particulates are generated from the transport sector and from existing non-compliant domestic fires, and these discharges are outside the jurisdiction of the Unitary Plan;
  - (d) exceedances of NO<sub>2</sub> standards are localised and are largely due to vehicle emissions, which are regulated by national standards and are outside the jurisdiction of the Unitary Plan;
  - (e) the health benefits of a 24-hour SO<sub>2</sub> standard are not clear, and there is no precautionary justification for it given the evidence that SO<sub>2</sub> levels are not high in Auckland; and
  - (f) the inclusion of the AAAQS will result in significant costs to industry providers associated with additional and unnecessary consenting requirements.

### Relief sought

8. The Appellant seeks:
- (a) that the air quality provisions be amended to restore the provisions as set out in the Panel's Recommendation;
  - (b) such consequential or related relief as may be necessary to give effect to its concerns; and
  - (c) costs

### Service

9. An electronic copy of this notice is being served today by email on the Auckland Council at [unitaryplan@aucklandcouncil.govt.nz](mailto: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.

### Attachments

10. Copies of the following documents are attached to this notice:

- (a) The Appellant's submission.
- (b) The relevant parts of the Panel's Recommendation.
- (c) The relevant parts of the Decision.

**PACT GROUP (NZ) LIMITED** by its solicitors  
and authorised agents Russell McVeagh:

**Signature:**



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Bronwyn Carruthers / Daniel Minhinnick

**Date:**

16 September 2016

**Address for Service:**

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TO: The Registrar of the Environment Court at Auckland.

AND TO: Auckland Council

### **Advice to recipients of copy of notice of appeal**

#### *How to become party to proceedings*

1. You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.
2. 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](mailto:unitaryplan.ecappeals@justice.govt.nz)) and serve copies of your notice by email on the Auckland Council (to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz)) and the appellant.
3. 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.
4. 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*

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

**ATTACHMENT 1**

**Appellant's submission**

**ATTACHMENT 2**

**Panel's Recommendation report for Topics 006 and 035 - Air Quality**

**ATTACHMENT 3**

**Air Quality provisions - Panel Recommendation Version**



**ATTACHMENT 4**

**Relevant parts of the Council's Decision report regarding Air Quality provisions**

**ATTACHMENT 5**

**Council's amendments to the Air Quality provisions and associated amendments**