

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*)

in the matter of: Proposed Plan Hearing Topics 006 RPS Natural Resources and 035 Air Quality

between: **New Zealand Steel Limited**
Appellant

and: **Auckland Council**
Respondent

Notice of Appeal

Dated: 16 September 2016

REFERENCE: Catherine Somerville-Frost (catherine.somerville-frost@chapmantripp.com)
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To The Registrar
Environment Court
Auckland

Introduction

- 1 New Zealand Steel Limited (*NZ Steel*) appeals against a decision of the Auckland Council (*the Council*) on the proposed Auckland Unitary Plan (*Proposed Plan*).
- 2 NZ Steel has the right to appeal part of the Council's decision under section 156(1) of the LGATPA because the Council rejected a recommendation of the Hearings Panel in relation to provisions and matters NZ Steel addressed in its submission and further submission on the Proposed Plan (submission #868, and further submission #2368). The Council decided on an alternative solution, which resulted in provisions being included in the Proposed Plan.
- 3 NZ Steel provides further details of the reasons for its appeal below.
- 4 NZ Steel is not a trade competitor for the purposes of section 308D of the RMA.
- 5 NZ Steel received notice of the decision on 19 August 2016.

Background

- 6 The Proposed Plan, as notified by the Council in September 2013, incorporated the Auckland Ambient Air Quality Standards (AAAQS). In many instances, the AAAQS set standards for contaminants that are additional to those contained in the Resource Management (National Environmental Standard for Air Quality) Regulations 2004 (*NES*), and the New Zealand Ambient Air Quality Guidelines 2002 (*Guidelines*).
- 7 NZ Steel made submissions on the Proposed Plan seeking, amongst other things, that:
 - 7.1 the 24-hour AAAQS for sulphur dioxide (SO₂) be removed from the Proposed Plan, and instead the NES/Guidelines standards for SO₂ be retained, until such time as there has been a thorough review of the appropriateness of the 24-hour SO₂ standard in the New Zealand context;¹ and
 - 7.2 references to PM_{2.5} be removed from the AAAQS and Proposed Plan.²
- 8 NZ Steel made further submissions on the Proposed Plan supporting, amongst other things, a submission to delete references to the AAAQS from the Proposed Plan in their entirety.³

¹ Submission point 868-9.

² Submission point 868-8.

- 9 NZ Steel filed evidence before the Hearings Panel seeking, as its preferred relief, that the AAAQS be deleted in their entirety.

Decision appeal

- 10 The decision that NZ Steel is appealing is:

10.1 All areas where the Council rejected the Panel's recommendations on Hearing Topics 006 (RPS Natural Resources) and 035 (Air Quality), being Council's decision to reject the Panel's recommendations to delete all references to the AAAQS from the Proposed Plan.

10.2 Specifically, the Council's decision to amend the following provisions into the Proposed Plan, by introducing and referring to the AAAQS:

(a) B7 Natural Resources:

(i) new Objective B7.5.1(4);

(ii) new Policy B7.5.2(7);

(b) E14 Air Quality:

(i) amend Objective E14.2(2);

(ii) new Policy E14.3(1);

(iii) new Table E14.3.1: "Auckland Ambient Air Quality Standards (AAAQS)"; and

(iv) new Assessment Criteria E14.8.2(1).

Reasons for the appeal

- 11 The reasons for the appeal are as follows:

11.1 NZ Steel considers that the decision appealed does not accord with the relevant requirements of the RMA and the LGATPA, and is contrary to Part 2 of the RMA. In particular, the decision appealed:

(a) Does not promote the sustainable management of natural and physical resources;

(b) Does not promote the efficient use and development of natural and physical resources;

(c) Does not result in the most appropriate plan provisions in terms of section 32 of the RMA; and

(d) Is contrary to good resource management practice.

³ See, for example, New Zealand Health Association Limited's (trading as Sanitarium) submission point 4359-17, which NZ Steel supported in its further submission (#2368).

11.2 Without limiting the generality of the above, the specific reasons for this appeal are:

- (a) The AAAQS differ from the standards contained in the NES and Guidelines. There are no special circumstances in the Auckland region that would justify introducing regional air quality standards that differ from the NES and Guidelines, and having dual national and regional controls could lead to inconsistencies in the future if the national controls were to change. The NES and Guidelines are the most appropriate tool to manage air quality in Auckland.
- (b) The Council has failed to undertake an adequate assessment of the provisions, including:
 - (i) the extent to which the objectives relating to the AAAQS are the most appropriate way to achieve the purpose of the RMA; and
 - (ii) the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions relating to the AAAQS;

as required by sections 32 and 32AA of the RMA.

- (c) The AAAQS provisions in the Proposed Plan are not clear as to where, and in what circumstances, the AAAQS should be applied. While intended to be objectives and policies, they read more akin to rules. For example:
 - (i) the provisions do not specify that the AAAQS only apply where people can be exposed for the relevant averaging period, contrary to the approach taken in the NES; and
 - (ii) the objectives and policies are so directive, that they have the potential to be inappropriately applied to resource consents as "pass / fail" criteria.
- (d) In particular, in relation to the 24-hour AAAQS for SO₂ (*SO₂ Standard*):
 - (i) The SO₂ Standard is based on a World Health Organisation guideline. The World Health Organisation acknowledges the conservative basis on which this guideline value was set, and indicates that it will be reviewed as more information becomes available.
 - (ii) As acknowledged by the Panel in its Recommendations Report on Topics 006 and

035,⁴ the health benefits of the SO₂ Standard are not clear.

- (iii) There is no precautionary justification for including the SO₂ Standard, given the evidence that SO₂ levels are not high in Auckland, except near the Port. Elevated SO₂ emissions near the Port are likely to be from marine vessels, yet such emissions cannot be regulated by the Proposed Plan as they are exempt under the Resource Management Marine Pollution Regulations 1998.⁵
- (e) In relation to the annual and 24-hour AAAQSs for PM_{2.5} (*PM_{2.5} Standards*):
 - (i) Inclusion of the PM_{2.5} Standards in the Proposed Plan is not effective, as most PM_{2.5} discharges in Auckland are generated by the transport sector and from existing non-compliant domestic fires. As noted by the Panel in its Recommendations Report,⁶ discharges from the transport sector and domestic fires are unlikely to require resource consent under the Proposed Plan, meaning that industry operators would bear a disproportionate burden of the cost of complying with the PM_{2.5} Standards.
 - (ii) It is premature to adopt a regional standard for PM_{2.5}, before it has been appropriately tested and considered at a national level.

Relief sought

12 NZ Steel seeks the following relief:

- (a) Reinstate in full the Panel's recommendations on Hearings Topic 006 and Hearings Topic 035, by deleting all references to the AAAQS from the Proposed Plan;
- (b) In particular, the amendments to the Council's decision shown in **Appendix A**.
- (c) Such further or consequential relief as may be necessary to address the matters raised in NZ Steel's submissions and this appeal; and
- (d) Costs.

⁴ Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing Topics 006 and 035 – Air Quality* (July 2016), section 5.2.

⁵ See Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing Topics 006 and 035 – Air Quality* (July 2016), section 5.2.

⁶ Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing Topics 006 and 035 – Air Quality* (July 2016), section 3.2.

- 13 An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz, and the Minister of Conservation. 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.
- 14 The following documents are attached to this notice:
- (a) the specific relief sought by NZ Steel (**Appendix A**);
 - (b) a copy of the relevant decision (**Appendix B**);
 - (c) a list of names and addresses of persons served / to be served with a copy of this notice (**Appendix C**); and
 - (d) A copy of NZ Steel's submission (**Appendix D**) and further submission (**Appendix E**), with a copy of the relevant submission supported by NZ Steel's further submission (**Appendix F**).

Signed for and on behalf of New Zealand Steel Limited by its solicitors and authorised agents Chapman Tripp



Catherine Somerville-Frost
Partner
16 September 2016

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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.

APPENDIX A: SPECIFIC RELIEF SOUGHT

Amendments are shown to Council's decisions version of the Proposed Plan (additional text shown in underline, deletions in ~~strikethrough~~).

(i) **B7. Toitū te whenua, toitū te taiao – Natural resources**

...

B7.5.1. Objectives

(1) The discharge ...

~~(4) The Auckland Ambient Air Quality Standards are met and priority is given to meeting the annual average standards for fine particles (PM₁₀ and PM_{2.5}) and nitrogen dioxide.~~

(ii) **B7.5.2. Policies**

Manage discharge of contaminants to air from use and development to:

(1) avoid significant ...

(6) enable the operation and development of infrastructure, industrial activities and rural production activities that discharge contaminants into air, by providing for low air quality amenity in appropriate locations;

~~(7) meet Auckland Ambient Air Quality Standards by giving priority to reducing PM₁₀ and PM_{2.5} discharges from combustion sources, such as domestic fires and motor vehicle emissions and industrial discharges to air.~~

(iii) **E14. Air quality**

...

E14.2. Objectives [rcp/rp]

(1) Air quality ...

(2) Air discharges from use and development meet national air quality standards ~~Auckland Ambient Air Quality Standards.~~

(3) Human health, ...

(iv) **E14.3 Policies [rcp/rp]**

(1) — Protect human health by requiring that air discharges do not cause ambient air quality to exceed the Auckland Ambient Air Quality Standards in Table E14.3.1 for the specified contaminants.

(2)(1) Manage the ...

(v) **Table E14.3.1 Auckland Ambient Air Quality Standards (AAAQS)**

~~Table E14.3.1 Auckland Ambient Air Quality Standards (AAAQS)~~

Contaminant	Standard	Averaging Time	Number of permissible exceedances per year
Particles less than 10 microns (PM ₁₀)	50 µg/m ^{3*}	24 hour	1
-	20 µg/m ³	Annual	0
Particles less than 2.5 microns (PM _{2.5})	25 µg/m ³	24 hour	0
-	10 µg/m ³	Annual	0
Nitrogen dioxide (NO ₂)	200 µg/m ^{3*}	1 hour	9
-	100 µg/m ³	24 hour	0
-	40 µg/m ³	Annual	0
Carbon monoxide (CO)	10 mg/m ^{3*}	8 hours (running mean)	one 8-hour period
-	30 mg/m ³	1 hour	0
Sulphur dioxide (SO ₂)	350 µg/m ^{3*}	1 hour	9
-	570 µg/m ^{3*}	1 hour	0
-	20 µg/m ³	24 hour	0
Ozone (O ₃)	150 µg/m ^{3*}	1 hour	0
-	100 µg/m ³	8 hour	0
Lead	0.2 µg/m ³	3-month moving average calculated monthly	0
Benzene	3.6 µg/m ³	Annual	0
Benzo[a]pyrene	0.0003 µg/m ³	Annual	0
1,3-Butadiene	2.4 µg/m ³	Annual	0
Formaldehyde	100 µg/m ³	30 minutes	0
Acetaldehyde	30 µg/m ³	Annual	0
Mercury	0.33 µg/m ³	Annual	0

(inorganic)			
Mercury (organic)	0.13 µg/m ³	Annual	0
Chromium VI	0.0011 µg/m ³	Annual	0
Chromium metal and Chromium III	0.11 µg/m ³	Annual	0
Arsenic (inorganic)	0.0055 µg/m ³	Annual	0
Arsine	0.055 µg/m ³	Annual	0

Asterisk * = AAAQS taken from the NES

(vi) **E14.8 Assessment – restricted discretionary activities**

...

E14.8.2 Assessment criteria

The Council will consider the relevant assessment criteria below for restricted discretionary activities

(1) — The degree to which Auckland Ambient Air Quality Standards are likely to be met.

~~(2)~~(1) Whether the ...

APPENDIX B: A COPY OF COUNCIL'S DECISION

**APPENDIX C: A LIST OF NAMES AND ADDRESSES OF
PERSONS TO BE SERVED WITH A COPY OF THIS NOTICE**

Name	Address for service
Auckland Council	unitaryplan@aucklandcouncil.govt.nz
Minister of Conservation c/- Department of Conservation	tcrossen@doc.govt.nz cstaite@doc.govt.nz

APPENDIX D: NZ STEEL'S PRIMARY SUBMISSION

APPENDIX E: NZ STEEL'S FURTHER SUBMISSION

**APPENDIX F: A COPY OF THE RELEVANT SUBMISSION
SUPPORTED BY NZ STEEL'S FURTHER SUBMISSION**