

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 RPS Natural Resources and 035 Air Quality

between: **New Zealand Steel Limited**
Appellant

and: **Auckland Council**
Respondent

Notice of ACI Operations New Zealand Limited's, trading as O-I New Zealand, wish to be party to proceedings

Dated: 7 October 2016

REFERENCE: Paula Brosnahan (Paula.Brosnahan@chapmantripp.com)
Joanna Bain (Joanna.Bain@chapmantripp.com)

Chapman Tripp
T: +64 9 357 9000
F: +64 9 357 9099

23 Albert Street
PO Box 2206, Auckland 1140
New Zealand

www.chapmantripp.com
Auckland, Wellington,
Christchurch



NOTICE OF PERSON'S WISH TO BE PARTY TO PROCEEDINGS

Section 274, Resource Management Act 1991

- To** The Registrar
Environment Court
Auckland
- 1 ACI Operations New Zealand Limited, trading as O-I New Zealand (*O-I*) wishes to be a party to the following proceedings: *ENV-2016-AKL-000233 New Zealand Steel Limited v Auckland Council*.
 - 2 O-I is a person who made a submission and further submissions about the subject matter of the proceedings (submission #852, and further submission #2229).
 - 3 O-I is not a trade competitor for the purposes of section 308C of the Resource Management Act 1991.
 - 4 O-I is interested in all of the proceedings.
 - 5 O-I is interested in the following particular issue: The Auckland Council's decision to reject the Hearings Panel's recommendations to delete all references to the Auckland Ambient Air Quality Standards (AAAQS) from the Proposed Plan.
 - 6 O-I has lodged a notice of appeal against Auckland Council's decision in respect of Hearing Topics 006 and 035 of the Proposed Plan, seeking similar relief to that sought by the Appellant.
 - 7 O-I supports the relief sought in paragraph 12 of the Appeal for the following reasons:
 - 7.1 The AAAQS differ from the standards contained in the Resource Management (National Environmental Standards for Air Quality) Regulations 2004 (*NES*). There are no special circumstances in the Auckland region that would justify introducing regional air quality standards that differ from the New Zealand standards and guidelines. The NES is the most appropriate tool to manage air quality in Auckland.
 - 7.2 The Panel determined that there was "insufficient justification" for including the AAAQS in the Proposed Plan, and that ..."reliance on national standards [provides] sufficient regulation for management of air quality in Auckland".¹

¹ Auckland Unitary Plan Independent Hearings Panel "Report to Auckland Council Hearing Topics 006 and 035 – Air Quality" (July 2016), Section 2.2.

- 7.3 The AAAQS provisions in the Proposed Plan are unclear as to where, and in what circumstances, the AAAQS should be applied. While intended to be objectives and policies, the provisions read more akin to rules. For example:
- (a) They do not specify that the AAAQS only apply where people can be exposed for the relevant averaging period (i.e. continuously for 24 hours), contrary to the approach taken in the NES; and
 - (b) The objectives and policies are so directive that they have the potential to be inappropriately applied to resource consent applications as “pass/fail” criteria.
- 7.4 The Council has failed to undertake an adequate assessment of the provisions, including the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, as required by sections 32 and 32AA of the RMA.
- 7.5 In particular, in relation to the AAAQS for sulphur dioxide (SO₂):
- (a) The Panel determined that the health benefits of a 24-hour SO₂ standard are not clear and there is no precautionary justification for such a standard, given the evidence that SO₂ levels are not high in Auckland, except near the Port.²
 - (b) The AAAQS for SO₂ is based on the World Health Organisation guideline. The World Health Organisation acknowledges the conservative basis on which the guideline value was set and indicates that it will be reviewed as more information becomes available. It is therefore not appropriate to include this standard in the Unitary Plan, which has a life of at least 10 years.

² Auckland Unitary Plan Independent Hearings Panel “Report to Auckland Council Hearing Topics 006 and 035 – Air Quality” (July 2016), Section 5.2.

8 O-I agrees to participate in mediation or other alternative dispute resolution of the proceedings.

Signed for and on behalf of ACI Operations New Zealand Limited, trading as O-I New Zealand by its solicitors and authorised agents Chapman Tripp



Paula Brosnahan
Partner
7 October 2016

Address for service of person:
O-I New Zealand
c/- Paula Brosnahan / Jo Bain
Chapman Tripp
Level 38, 23 Albert St
PO Box 2206, Auckland 1140
Auckland
Email address: Paula.Brosnahan@chapmantripp.com /
jo.bain@chapmantripp.com
Telephone: 09 357 9253 / 09 357 9886

Advice

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