

Before the Waikato District Plan Review Independent Hearings Panel

Submitter No. 827; FS 1319

UNDER the Resource Management Act 1991
IN THE MATTER of the Proposed Waikato District Plan
REGARDING Hearing 5 – Definitions

**PRIMARY STATEMENT OF EVIDENCE OF SARAH MCCARTER
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on behalf of New Zealand Steel Holdings Limited
19 November 2019**

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INTRODUCTION

- 1 My full name is Sarah Catherine McCarter.
- 2 I am a Senior Planner at Tonkin & Taylor Limited and have been with the company for six years. I have twelve years' planning experience in New Zealand. I hold the qualifications of Bachelor of Arts and Bachelor of Science from Victoria University of Wellington and a Masters of Environmental Legal Studies (Honours) from the University of Auckland. I am a Full Member of the New Zealand Planning Institute, and a member of the Resource Management Law Association.
- 3 I am familiar with the Proposed Waikato District Plan ('the Plan') and specifically the provisions relating to the submission and further submission lodged by New Zealand Steel Holdings Limited (NZ Steel). I was involved in drafting the original submission for NZ Steel.
- 4 I prepared and presented evidence at Hearing 1 (Chapter 1 Introduction) and Hearing 3 (Strategic Objectives) for the Plan .
- 5 I confirm that I have read the Code of Conduct for expert witnesses contained in the 2014 Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
- 6 I am authorised to provide expert planning evidence on behalf of NZ Steel Holdings Limited (NZ Steel).

SCOPE OF EVIDENCE

- 7 NZ Steel runs an iron sand mining and processing operation at Waikato North Head (WNH), an area also known as Maioro. My evidence for Hearings 1 and 3 provides an overview of activities undertaken at the site.
- 8 My evidence for Hearing 5 deals with definitions relating to mineral extraction in the Waikato District.

SUBMISSION POINTS IN HEARING 5

- 9 The Plan as notified includes overlapping definitions for a range of activities associated with mining and mineral extraction. 'Mineral extraction and processing', 'Aggregate Extraction Activities' and 'Extractive Industry' are all defined in the Proposed District Plan. There is

overlap between the terms and creates potential for confusion and inconsistency.

- 10 NZ Steel's primary submission sought amendments to the definitions to reduce duplication and inconsistency, particularly in relation to the definitions of 'Aggregate Extraction Activities', 'Extractive Industry' and 'Mineral Extraction and Processing'. NZ Steel sought the following relief:
 - a Delete the definition of 'Aggregate Extraction Activities', and replace references in the Plan to that term with 'Extractive Activity'.
 - b Delete the definition of 'Mineral Extraction and Processing', and replace references in the Plan to that term with 'Extractive Activity'
 - c Delete the definitions of 'Mineral Extraction Area' and 'Aggregate Extraction Area'.
 - d Rename the 'Aggregate Extraction Area' to become the 'Mineral Extraction Area'.
 - e Amend the definition of 'mineral' to cross-refer to the Crown Minerals Act 1991.
 - f Replace the definition of 'Extractive Industry' with a definition of 'Extractive Activity' (as set out in NZ Steel's submission), with consequential amendments to provisions throughout the Plan.
- 11 In addition, NZ Steel also sought changes to the definition of 'infrastructure' and to delete the definition of overlays from the Plan.
- 12 NZ Steel's original submission has been summarised under a number of submission points, three of which are covered in the section 42A report for Hearing 5, prepared by Ms Anita Copplestone and Ms Megan Yardley:
 - a Submission point 827.31: Amend the definition of "Mineral" in Chapter 13: Definitions to cross-reference the Crown Minerals Act 1991, and any other further or consequential amendments required (see Paragraph 10(e) above).
 - b Submission point 827.50: Delete the definition of "Extractive Industry" in Chapter 13 and replace it with a definition of "Extractive Activity" or similar (see Paragraph 10(f) above).
 - c Submission point 827.51: Delete the definition of the overlays from Chapter 13 Definitions.

- 13 NZ Steel made a number of further submissions on the definitions, including the following which are included in the section 42A report for Hearing 5:
- a FS1319.22: support for McPherson Resources Limited (submission number 691.1) to delete the definitions for "Aggregate Extraction Activities", "Extractive Industry", "Mineral Extraction and Processing" from Chapter 13 Definitions and add a replacement definition for "Mineral and Aggregate Extraction Activities".
 - b FS1319.30: support for Waikato District Council (submission number 697.384) to amend the definition of 'extractive industries' and replace "aggregate extraction activities" and "mineral extraction and processing" with the term "Extractive industries" throughout the rules of the Proposed District Plan,
 - c FS1319.36: support in part for Fonterra Limited (submission number 797.20) to add a definition of "productive rural activities" to Chapter 13 definitions as follows (or words to similar effect): farming, forestry, horticulture and mineral extraction and any consequential amendments or further relief to give effect to the concerns raised in the submission,
 - d FS1319.37: oppose in part to Fonterra Limited's request to add a definition of reverse sensitivity (submission number 797.21),
 - e FS1319.38: support in part for Aggregate and Quarry Association (AQA) and Straterra (submission number 860.18) to amend the definition of 'extractive industry' to be more comprehensive.
- 14 A number of submission points related to the primary submission set out in paragraphs 10 and 11 above will be heard in Hearing 21 and Hearing 23. At this stage, this includes the points summarised in Paragraph 10 (a-d) above and NZ Steel's submission on definition of infrastructure.
- 15 I consider only those submission points which have been addressed in the Hearing 5 section 42A Report in this brief of evidence however, for clarity, the submission point was intended to be read as a whole, and there is overlap between the points summarised in Paragraph 10 (a), (b) and (f) above. Therefore, I will present evidence on issues related to definitions in further detail in Hearings 21 and 23, where the substantial part of NZ Steel's submission will be presented.

SUBMISSION POINT 827.31: AMEND THE DEFINITION OF ‘MINERAL’

- 16 Ms Copplestone and Ms Yardley have recommended that NZ Steel’s submission to amend the definition of ‘mineral’ to cross-reference the definition in the Crown Minerals Act 1991 (CM Act) be accepted. The reasons for NZ Steel’s submission point, which I support, were made in the context of the wider submission point set out in paragraph 10 above. NZ Steel noted that ‘Coal Mining Area’ was separately defined in the Plan and included reference to the CM Act, although the other definitions do not. Cross referencing to the definition in the CM Act is clearer in this context, to ensure alignment if the definition in the main Act changes for any reason. I also note that the recommended amendment to include reference to the CM Act does not result in a substantive change to the definition as notified.

SUBMISSION POINT 827.50: EXTRACTIVE ACTIVITY DEFINITION

- 17 As set out in paragraph 10, a number of changes were sought in the NZ Steel submission to streamline terms relating to mining and extraction within the Plan. NZ Steel also made further submissions on similar matters (FS1319.22, 1319.30, 1319.38).
- 18 The section 42A report prepared by Ms Copplestone and Ms Yardley recommends that several of NZ Steel’s changes be accepted, namely:
- a Removal of definitions of ‘aggregate extraction activities’ and ‘mineral extraction and processing activities’; and,
 - b Replacement of the definition of ‘extractive industry’ with a definition of ‘extractive activity’.
- 19 I support streamlining of the definitions to provide for efficient and consistent regulation and assessment of mining activities. However, I note that some aspects of the changes sought by NZ Steel in relation to the definition of ‘extractive activities’ have not been recommended by the Reporting Officer.
- 20 The recommendation of the Reporting Officer is to specifically reject the following parts of the definition proposed by NZ Steel (and others):
- a Inclusion of ‘residential accommodation necessary for security purposes’ on the basis that this is not particularly precise, and could potentially enable residential development in close proximity to industrial uses, thereby creating unwanted reverse sensitivity

issues. The section 42A report states that this would be better addressed via the Plan rules.¹

- b Inclusion of 'storage, management and disposal of tailings' in the definition of extractive activities, on the basis that there are often chemical processes associated with the management and disposal of tailings, and these activities potentially go beyond the effects anticipated in the extractive process, but would be considered through the consent process.²
 - c Inclusion of 'at or near the site where the minerals have been taken, won or excavated' on the basis that it would potentially go beyond the effects anticipated in the extractive process. This matter is to be considered further in the Rural, Industrial and Heavy Industrial zone hearings.³
- 21 My opinion is that the definition of 'extractive activity' should, as far as possible, clearly cover expected activities. This does not prevent Plan rules from managing the effects of these activities e.g. reverse sensitivity associated with workers accommodation or chemical processes associated with storage, management and disposal of tailings. In particular, I consider that :
- a Ms Copplestone and Ms Yardley's concerns relating to the broadness of 'residential accommodation necessary for security purposes' could be addressed by re-wording the clause as 'workers accommodation' or similar i.e. clarifying the intent is to allow for a dwelling for people associated with the activity, whose duties require them to live on-site⁴;
 - b In relation to the 'storage, management and disposal of tailings', I note that this activity is a fundamental component of extractive activities and in my opinion, excluding this from the definition would lead to an incomplete description of the activity. I note that

¹ Ibid at [714]-[715]

² Ibid at [716]

³ Ibid at [722]

⁴ A definition of 'workers accommodation' is included in the Auckland Unitary Plan – Operative in Part, being 'A dwelling for people whose duties require them to live on-site, and in the rural zones for people who work on the site or in the surrounding rural area. Includes accommodation for rangers, artists in residence, farm managers and workers, and staff' (minor modifications proposed through Plan Change 16).

discharges associated with tailings would be covered under regional planning rules rather than district planning rules.

- c The inclusion 'at or near the site where the minerals have been taken, won or excavated' effectively restricts the location of the extractive activity i.e. it confines the location-specific effects by requiring it to be located 'at or near' the mining site, rather than increasing the level of effects anticipated in the extractive process.
- 22 Ms Copplestone and Ms Yardley have also suggested that evidence on the practical implications of the inclusion or exclusion of 'ancillary earthworks' in the definition of 'extractive activity' would be of assistance.⁵
- 23 In this regard, it is my opinion that ancillary earthworks form part of, and are indistinguishable in practice from, the activity of mineral or aggregate extraction. In many circumstances the surrounding or overlying soil will be disturbed in the process of extracting minerals or aggregate. To define these as separate activities would create an artificial distinction which would not reflect the reality of how these activities occur, potentially creating duplication in regulation of the same activities. I agree with Ms Copplestone and Ms Yardley that the rules for extractive activities should cover the effects of the ancillary earthworks.
- 24 In summary, I consider that ancillary earthworks form part of 'extractive activities' and should be included in the definition. I consider this includes activities related to the removal and stockpiling of overburden.
- 25 I note this is generally consistent with the recommended definition contained in the National Planning standards for 'quarrying activities', which includes ancillary earthworks in the form of overburden activities, rehabilitation, landscaping and cleanfilling:⁶

Quarrying activities means the extraction, processing (including crushing, screening, washing, blending), transport, storage, sale and recycling of aggregates (clay, silt, rock, sand), the deposition of overburden material, rehabilitation, landscaping and cleanfilling of the quarry, and the use of land and accessory buildings for offices,

⁵ Ibid at [713]

⁶ Ministry for the Environment, *21 Definitions Standard: Recommendations on Submissions Report for the first set of National Planning Standards*, April 2019

workshops and car parking areas associated with the operation of the quarry.

- 26 Taking the above into account, NZ Steel's proposed changes to the definition recommended in the section 42A report are set out below (additions underlined and deletions struck-through):⁷

Means taking, winning or extracting by whatever means, the naturally-occurring minerals (including but not limited to coal, rock, sand, and gravel) and peat from under or on the land surface, at or near the site where the minerals have been taken, won or excavated. This may include one or more of the following:

- excavation, blasting, processing (crushing, screening, washing, chemical separation and blending);*
- the storage, distribution and sale of aggregates and mineral products;*
- the removal, stockpiling and deposition of overburden;*
- treatment of stormwater and wastewater;*
- landscaping and rehabilitation works including cleanfilling;*
- ancillary earthworks, including stockpiling;*
- storage, management and disposal of tailings;*
- ancillary buildings and structures, such as weighbridges, laboratories and site offices;*
- worker's accommodation; and*
- internal roads and access tracks.*

SUBMISSION POINT 827.51: OVERLAYS

- 27 Ms Copplestone and Ms Yardley have recommended rejection of NZ Steel's submission that the definition of 'overlay' should be deleted. Whilst I continue to be of the opinion that the definition is not necessary, on the basis that an explanation of overlays and their role should be provided within the body of the Plan, I agree that its inclusion in the definitions is unlikely to create problems with the implementation of the Plan.

⁷ See section 42A Report at [727]

FS1319.37: 'REVERSE SENSITIVITY'

28 A number of submitters have requested a definition for 'reverse sensitivity'. NZ Steel opposed this on the basis it is not necessary. I agree that it is not necessary, and I also agree with the position of Ms Copplestone and Ms Yardley that a definition for reverse sensitivity is potentially problematic given the case-law on this matter is still evolving.

29 I note that a definition of 'reverse sensitivity' was proposed in the draft National Planning Standards, but was rejected because of a range of difficulties with drafting the definition⁸. In making this decision, the Ministry for the Environment also referenced the Auckland Unitary Plan Independent Hearings Panel who concluded:⁹

Reverse sensitivity has been identified in case law as a type of effect. While the proposed definition does describe the nature of that effect, the Panel does not consider it appropriate to include a definition of this in the Plan as it is not a thing which can be specified by these words for types of cases and all the circumstances that may arise. The Panel recommends that a better approach to informing people about the issue of reverse sensitivity would be by way of guidance material outside the Plan itself. Such material could be adapted to suit the needs of particular users and be kept up to date in the event of new case law that affects the way in which reverse sensitivity effects are considered.

30 I also consider that a definition of 'reverse sensitivity' should not be included in the Plan.

FS1319.36: 'PRODUCTIVE RURAL ACTIVITIES'

31 NZ Steel submitted in partial support of Fonterra Limited (submission number 797.20) to add a definition of "productive rural activities" to Chapter 13 definitions as follows (or words to similar effect): "farming, forestry, horticulture and mineral extraction" and any consequential amendments or further relief to give effect to the concerns raised in the submission. In particular, NZ Steel did not see the need for a definition of

⁸ Ministry for the Environment, "21 Definitions Standard: Recommendations on Submissions Report for the first set of National Planning Standards", April 2019, pp187-191

⁹ Ibid., p190

'productive rural activities', but supports the references in Section 1.4.3 to productive rural activities including mining.

- 32 As noted in my evidence for Hearing 3, mining is clearly included in productive rural activities in Section 1.4.3. In this regard, if a definition was considered necessary, I consider that the definition should be consistent with Clause 1.4.3.1(a) in the notified Plan:

Productive rural activities are those activities that use rural resources for economic gain or which cannot be carried out easily or appropriately in an urban setting. Farming activities, including dairy, dry stock, horse breeding/training, honey production, horticulture, pig and poultry, mining, and forestry are all significant industries in economic terms for the Waikato district.

CONCLUSION

- 33 In summary, I support changes to the definitions to simplify and clarify terminology relevant to mining. In particular, I consider that ancillary earthworks should be included in the definition of 'extractive activities'. I note that changes to definitions will be further considered as part of the Hearings on the Rural, Industrial and Heavy Industry zones, to ensure the definitions will not have unintended consequences. I support this approach and note that NZ Steel will present evidence in Hearings 21 and 23 in this regard.

Sarah McCarter

19 November 2019

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Appendix A: NZ Steel proposed changes to Council redline

Amend the definition of 'extractive activity' as follows:

Means taking, winning or extracting by whatever means, the naturally-occurring minerals (including but not limited to coal, rock, sand, and gravel) and peat from under or on the land surface, at or near the site where the minerals have been taken, won or excavated. This may include one or more of the following:

- *excavation, blasting, processing (crushing, screening, washing, chemical separation and blending);*
- *the storage, distribution and sale of aggregates and mineral products;*
- *the removal, stockpiling and deposition of overburden;*
- *treatment of stormwater and wastewater;*
- *landscaping and rehabilitation works including cleanfilling;*
- *ancillary earthworks, including stockpiling;*
- *storage, management and disposal of tailings;*
- *ancillary buildings and structures, such as weighbridges, laboratories and site offices;*
- *worker's accommodation; and*
- *internal roads and access tracks.*