

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions and further submissions on the
Proposed Otago Regional Policy Statement – ECO –
Ecosystems and indigenous biodiversity

**EVIDENCE IN CHIEF OF KRISTINA RUTH MEAD ON BEHALF OF
Fulton Hogan Limited**

Dated: 23 November 2022

QUALIFICATIONS AND EXPERIENCE

1. My full name is Kristina Ruth Mead. I am employed by Tonkin & Taylor Limited (Tonkin & Taylor) as a Senior Planner based in Christchurch. I hold a Bachelor of Resource and Environmental Planning (Ecology) with First Class Honours from Massey University, Palmerston North. I am an intermediate member of the New Zealand Planning Institute.
 2. I have over 13 years' experience in planning practice both in New Zealand and the United Kingdom, primarily as a consultant planner, during which time I have undertaken both consenting and policy planning work. I have prepared numerous applications for resource consents and notices of requirement for designations and have made submissions on plans and policy statements for various clients, primarily in the South Island.
 3. I have been engaged by Fulton Hogan Limited (Fulton Hogan) to assist in its review of the Proposed Otago Regional Policy Statement (PORPS). In this capacity I have:
 - a. assisted with the preparation of Fulton Hogan's further submissions, and
 - b. participated in dialogue with Otago Regional Council (ORC) during pre-hearing discussions.
 4. In preparing my evidence I have reviewed:
 - a. Fulton Hogan's submission dated 6 September 2021,
 - b. the PORPS, dated 31 October 2022,
 - c. the Section 32 Report for the PORPS (**s32 Report**) dated May 2021,
 - d. the Section 42A Chapter 10: ECO – Ecosystems and indigenous biodiversity (**s42A Report ECO**) dated 4 May 2022,
 - e. Supplementary Evidence of Melanie Kate Hardiman ECO – Ecosystems and indigenous biodiversity dated 11 October 2022 (**SE10**),
 - f. Statement of Evidence of Kelvin Michael Lloyd dated 29 September 2022 (**SE Kelvin Lloyd**),
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- g. Statement of Evidence of Ciaran Sewell Merrick Campbell dated 30 September 2022 (**SE Ciaran Campbell**),
- h. Statement of Evidence of Scott William Jarvie dated 20 September 2022 (**SE Scott Jarvie**),
- i. The Exposure Draft National Policy Statement for Indigenous Biodiversity dated June 2022 (Exposure Draft **NPSIB**).

CODE OF CONDUCT

- 5. I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. I agree to comply with this Code of Conduct. This evidence is within my expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

SCOPE OF EVIDENCE

- 6. Fulton Hogan lodged submissions and further submissions on a number of provisions in the PORPS. My evidence primarily addresses Fulton Hogan's submissions on the provisions in the ECO – Ecosystems and indigenous biodiversity (**ECO**) chapters of the PORPS, with specific reference to the relief sought in relation to ECO-P2 - Identifying significant natural areas and taoka, ECO-P3 - Protecting significant natural areas and taoka, and ECO-P6 - Maintaining indigenous biodiversity.
- 7. My evidence also addresses ECO-P4 – Provision for new activities. Although Fulton Hogan's submission did not directly seek relief in relation to this policy, it is interlinked with ECO-P3 and ECO-P6, establishing scope for its consideration. I consider the effects management hierarchy (in relation to indigenous biodiversity) in the context of ECO-P3, ECO-P4 and ECO-P6.
- 8. For ease of reference, the order of my evidence generally follows that within the s42A Report ECO.

EXPOSURE DRAFT NATIONAL POLICY STATEMENT ON INDIGENOUS BIODIVERSITY

- 9. In relation to the NPSIB, the s42A Report ECO states at paragraph 48:
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... the provisions of the ECO chapter were drafted to more closely align with the policy framework of the draft NPSIB, rather than reflect its direction in its entirety as it has no legal weight until it is gazetted:

'...and aligning the policy framework more closely with the draft NPSIB. It is acknowledged that this document is currently in draft form and has no legal weight, however it does indicate the Government's most recent policy position on managing indigenous biodiversity and has been developed over many years within input from a range of stakeholders and experts.'

10. These comments were made in relation to the draft NPSIB 2019. It is true that the NPSIB carries no legal weight, however since the s42A Report ECO was released, the Exposure Draft NPSIB has also been released. The Exposure Draft NPSIB incorporates feedback from public consultation and hui held in 2019 and 2020, and its purpose is to test the workability of its provisions. Gazettal of the NPSIB is anticipated in December 2022¹.
11. In my opinion, while the Exposure Draft NPSIB currently carries no weight, it would be prudent to avoid conflicts between provisions in the PORPS and the Exposure Draft NPSIB.

ECO-P3 – PROTECTING SIGNIFICANT NATURAL AREAS AND TAOKA

12. ECO-P3 seeks to protect both significant natural areas and indigenous species and ecosystems that are taoka. In its submission, Fulton Hogan sought a number of amendments to the notified version of ECO P3.
13. In relation to ECO-P3(1)(a), Fulton Hogan's submission sought that consideration should be limited to a net loss of the values identified under ECO-P2(1), rather than consideration of any reduction of the area or values (even if those values are not themselves significant) identified under ECO-P2(1). Aggregate resources are location specific and therefore quarrying can only occur where these resources exist. This sometimes coincides with areas of indigenous biodiversity and when undertaken within these areas quarrying may result in a reduction of the physical extent of the significant natural area (**SNA**), albeit temporarily. The intent of Fulton Hogan's submission was to allow for locationally constrained activities to occur within SNAs, provided they are

¹ Retrieved November 2022 from <https://environment.govt.nz/acts-and-regulations/national-policy-statements/proposed-nps-indigenous-biodiversity/>

managed in such a way as to result in no net loss of identified indigenous biodiversity values.

14. In its submission Fulton Hogan considered that avoiding effects on values that are not significant is not required in order to achieve s6(c) of the RMA and the duties under sections 30 and 31 of the RMA do not require effects on significant natural areas be avoided.
15. The s42A Report ECO did not recommend accepting Fulton Hogan's submission and considered that amending ECO-P3(1)(a) as sought would weaken the provisions as it would allow remediation, mitigation, offsetting and compensation to be used to address any loss to the area of a SNA².
16. I agree with the submission that requiring activities to avoid, as a first step, any reduction in the area or values identified under ECO P(2)1 is not required to satisfy s6(c) or s30 or s31 of the RMA. I also consider this position does not align with ECO-O1 or ECO-O2 which seek respectively "... any net decline in quality condition, quantity and diversity is halted." and "Restoration or and enhancement activities result in a net increase in the extent and occupancy of Otago's indigenous biodiversity...."
17. The s42A Report ECO notes that ECO-P3, ECO-P4 and ECO-P5 operate together as an effects management framework that address the management of effects on indigenous biodiversity and cross-refer to each other³. As described in the s42A Report ECO⁴. "*ECO-P4 sets out what new activities are allowed to take place in SNAs and areas with indigenous biodiversity that are taoka, provided the sequential steps in ECO-P6 are followed*"
18. Rather than amendments to ECO-P3(1)(a), an alternative to recognising the locational constraints of quarrying might be to include quarrying activities, which is defined within the National Planning Standards, within the list of activities provided a pathway under ECO-P4 – provision for new activities. A similar approach was sought by Oceana Gold (New Zealand) Ltd and several other submitters⁵ and is provided within the Exposure Draft NPSIB at clause 3.11(2).

² S42A Report ECO paragraph 173

³ S42A Report ECO paragraph 139 and 160

⁴ S42A Report ECO paragraph 178

⁵ S42A Report ECO paragraph 190

19. On this basis, I propose amending ECO-P4 to provide a pathway for quarrying activities within SNAs, as follows:

...or where they may adversely affect indigenous species and ecosystems that are taoka:....

(6) Quarrying activities that provide significant national or regional public benefit.

20. Specifically in relation to Oceana Gold’s submission seeking inclusion of a pathway for mineral and aggregate extraction, the s42A Report ECO states⁶: *“While I acknowledge that mining has a functional and operational need to locate where the resource is present, ECO-P4 applies to SNAs which are of the highest importance to maintaining Otago’s indigenous biodiversity and so require the highest practicable level of protection.”* In relation to similar relief sought by other submitters, the s42A Report ECO states⁷: *“I do not consider it appropriate to create a planning pathway for these activities. To do so, in my view, will weaken the key purpose of the provision which is to “maintain Otago’s indigenous biodiversity”. Widening the planning pathway in the manner requested could increase the risk of biodiversity loss and cumulative effects and will jeopardise ECO-O1 being achieved.”*

21. The Government published the National Policy Statement for Highly Productive Land 2022 (NPSHPL) in September 2022. Clause 3.9(2)(j)(iv) of the NPSHPL provides a consenting pathway for aggregate extraction in relation to the use of highly productive land and its protection from inappropriate use and development. Given this very recent evidence of the Government’s position on aggregate extraction and the requirement that a consenting pathway be provided within highly productive land it is logical that the approach may be taken in relation to SNAs. As it stands, Clause 3.11(2) of the Exposure Draft NPSIB provides a very similar pathway, as does Clause 3.22(2)(d) of the Exposure Draft of amendments to the National Policy Statement for Freshwater Management (Exposure Draft NPSFM). The Government’s direction on quarrying is becoming increasingly clear.

22. In terms of section 32 of the RMA, I consider that the amendments to provide a consenting pathway for quarrying activities will provide benefits by enabling the

⁶ S42A Report ECO paragraph 194

⁷ S42A Report ECO paragraph 190

people and communities of Otago to provide for their social and economic wellbeing by providing for a secure, cost-effective supply of aggregate for regionally and nationally significant projects. I consider that the costs associated with implementing the amendments will be limited, as there is still a requirement for no net loss of values and a case-by-case assessment of the effects of a proposal is still enabled (i.e. it does not mean a proposal will be granted consent).

23. In relation to ECO-P3(1)(b), Fulton Hogan's submission sought that reference to Kai Tahu values be replaced with taoka values, the reasoning being that Kai tahu values are potentially broader. The s42A Report ECO recommended amending Eco P3(1)(b) to refer to taoka values, which I support.

EFFECTS MANAGEMENT HEIRACHY (IN RELATION TO INDIGENOUS BIODIVERSITY)

24. ECO-P6 sets out the effects management hierarchy (in relation to indigenous biodiversity), which is applied in ECO-P3, ECO-P4 and ECO-P6. In its submission, Fulton Hogan sought that reference to the effects management hierarchy be removed from ECO-P3(2) and ECO-P6. The rationale for this relief was as follows:

- a. that the effects hierarchy is relatively well understood and therefore does not need to be included in the PROPS for it to be available as an effects management approach for applicants and decision makers.
- b. That as notified, ECO-P6 is inflexible and provides no allowance for deviation from the sequential approach.
- c. That the first step to 'avoid adverse effects as the first priority' could be interpreted as simply not undertaking the activity in the first place.

25. In relation to ECO-P3(2), the s42A Hearing Report did not directly address Fulton Hogan's rationale but did not accept the submission.

26. I agree with Fulton Hogan's submission that, as a concept, the effects management hierarchy is well known and does not need to be referenced to be used by decision makers. However, I am of the opinion that in this case the specific wording of the effects management hierarchy is critical.
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27. I agree with the submission that the first step could be interpreted as requiring avoidance outright and in my opinion the qualifier of 'where practicable' is necessary to clearly provide for activities to progress through the hierarchy.
28. I also consider the final step of the effects management hierarchy (in relation to indigenous biodiversity), that if residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided, is overly onerous. These residual adverse effects could be minor or less than minor, and to effectively seek to prohibit activities with this level of residual adverse effect on indigenous biodiversity goes beyond what is necessary to satisfy s6(c) of the RMA, in my opinion. This becomes even more onerous in circumstances where the effects management hierarchy (in relation to indigenous biodiversity) is applied beyond SNAs, as envisaged in ECO-P6.
29. I note that clause 1.5(4) of the Exposure Draft NPSIB provides a definition of the effects management hierarchy which would avoid the problems that bookend the approach set out under ECO-P6 and I therefore consider ECO-P6(1)-(5) should be amended to reflect Clause 1.5(4)(a)-(f) of the Exposure Draft NPSIB as follows:

...in decision-making on applications for resource consent and notices of requirement:

- (1) *Avoid adverse effects where practicable ~~as the first priority~~,*
 - (2) *Where adverse effects demonstrably cannot be completely avoided, they are remedied where practicable,*
 - (3) *Where adverse effects demonstrably cannot be completely avoided or remedied, they are mitigated where practicable,*
 - (4) *Where there are more than minor residual adverse effects after avoidance, remediation, and mitigation, then the more than minor residual adverse effects are offset in accordance with APP3 where possible, and*
 - (5) *If biodiversity offsetting of more than minor residual adverse effects is not possible, then:*
 - (a) *The more than minor residual adverse effects are compensated for in accordance with APP4 where possible, and*
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(b) *If the more than minor residual adverse effects cannot be compensated for in accordance with APP4, the activity is avoided.*

30. The s42A Report ECO does not support a submission by Meridian to amend 'residual adverse effects' to 'significant adverse effects'⁸ "...because the current terminology in ECO-P6 is similar to what is used in the Operative West Coast RPS and the Draft NPSIB." I note that in clause 1.5(4) the Exposure Draft NPSIB uses the term 'more than minor residual adverse effects'.

ECO-P6 – MAINTAINING INDIGENOUS BIODIVERSITY

31. In terms of the application of the effects management hierarchy (in relation to indigenous biodiversity) under ECO-P6, Fulton Hogan's submission considered that applying the effects management hierarchy to areas with values that are not necessarily significant goes far beyond what is required to achieve s6(c) of the RMA. S6(c) of the RMA seeks that the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna be recognised and provided for.

32. Application of the effects management hierarchy (in relation to indigenous biodiversity) as it is currently worded in ECO-P6 seeks to avoid any residual adverse effects on indigenous biodiversity, even if these residual effects are minor and even if the indigenous biodiversity in question is not significant. I agree with Fulton Hogan's submission that s6(c) of the RMA does not require this level of protection be afforded to indigenous biodiversity that is not significant.

33. In my opinion applying the effects management hierarchy (in relation to indigenous biodiversity) as envisaged under ECO-P6 (i.e. in all circumstances where there may be effects on indigenous biodiversity, but not on SNAs) may not be appropriate in situations that are not SNAs. I agree with Fulton Hogan's submission that this approach does not provide flexibility for the applicant or decision maker, and that the effects management hierarchy can be used as a decision-making tool, without prescribing its use in all circumstances. I am therefore of the opinion that ECO-P6 should be amended to qualify that it applies to decision-making only where appropriate, as follows:

⁸ S42A Report ECO paragraph 261

“...by applying the following ~~biodiversity~~ effects management hierarchy in relation to indigenous biodiversity in decision-making on applications for resource consent and notices of requirement, where appropriate:

ECO-P2 IDENTIFYING SIGNIFICANT NATURAL AREAS AND TAOKA & APP2 SIGNIFICANCE CRITERIA FOR INDIGENOUS BIODIVERSITY

34. In its submission Fulton Hogan sought to delete ECO-P2 and APP2. The rationale for this relief was that the application of APP2 as prescribed under ECO-P2 has the potential to identify very large areas of SNAs across the region and the costs and benefits of doing so are not known.
35. I agree with Fulton Hogan’s submission that at this stage the scale of possible SNAs is unknown but could be significant, and without understanding the geographic scale it is impossible to understand the costs and benefits of the related policies, including ECO-P3, ECO-P4 and ECO-P5.

CONCLUSION

36. As notified the Ecosystems and indigenous biodiversity provisions of the PROPS do not recognise the locational constraints of aggregate resources or the importance of quarrying activities to infrastructure delivery.
37. The provisions apply the effects management hierarchy to all decision-making affecting indigenous biodiversity, including in relation to activities whose effects are minor or less than minor, creating an inflexible effects management framework.
38. My evidence contains amendments that, in my opinion, would better enable the PROPS to achieve the purpose of the RMA. The amendments would providing social and economic benefits through enabling provisions for a local, cost-effective supply of aggregate for Otago, while costs associated with implementing the amendments would be limited.

Kristina Ruth Mead

23 November 2022
