

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 – LF-Land and
Freshwater.

**EVIDENCE IN CHIEF OF TIMOTHY ALISTAIR DEANS ENSOR ON BEHALF OF
Fulton Hogan Limited**

Dated: 23 November 2022

INTRODUCTION

1. My full name is Timothy Alistair Deans Ensor.
 2. I hold a Bachelor of Science and a Bachelor of Arts with honours majoring in Geography, obtained from the University of Canterbury in 2002. In 2012 I graduated with a Post Graduate Diploma in Planning from Massey University. I am an associate member of the New Zealand Planning Institute.
 3. I am currently a Principal Planner with Tonkin & Taylor Limited having previously been employed by AECOM New Zealand Limited and its predecessor, URS New Zealand Limited. I have been a consultant planner for approximately 14 years. Prior to consulting I was employed by Environment Canterbury for approximately two and a half years as a consents planner.
 4. I have worked throughout the South Island assisting private and public sector clients with obtaining statutory approvals, undertaking environmental impact assessment and policy analysis for projects, and providing expert planning evidence at plan and consent hearings. These clients include the Department of Conservation, Waka Kotahi the NZ Transport Agency, Environment Canterbury, the Canterbury Aggregate Producers Group, Opuha Water Limited and the Ministry for the Environment.
 5. I am authorised to provide expert planning evidence in relation to the Proposed Otago Regional Policy Statement (**PORPS**) on behalf of Fulton Hogan Limited (**Fulton Hogan**).
 6. 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, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
 7. In preparing my evidence I have reviewed:
 - 7.1. the PORPS,
 - 7.2. the Section 32 Report for the PORPS (**s32 Report**),
 - 7.3. the Section 42A Chapter 1: Introduction and General Themes (**General s42A Report**),
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- 7.4. the Section 42A Chapter 5: Resource Management Overview (**RM Overview s42A Report**),
 - 7.5. the Section 42A Chapter 9: LF – Land and Freshwater (**Freshwater s42A Report**),
 - 7.6. the Section 42A Chapter 9: UFD – Urban Form and Development (**Urban s42A Report**),
 - 7.7. Supplementary Evidence 01 Felicity Boyd (**SE01**),
 - 7.8. Supplementary Evidence 09 Felicity Boyd (**SE09**),
 - 7.9. Second Supplementary Evidence 09 Felicity Boyd (**Second SE09**),
 - 7.10. Third Supplementary Evidence 09 Felicity Boyd (**Third SE09**),
 - 7.11. the Section 42A Chapter 15: UFD – Urban Form and Development (**Urban s42A Report**),
 - 7.12. Supplementary Evidence 15 Elizabeth White (**SE15**),
 - 7.13. Second Supplementary Evidence 15 Elizabeth White (**Second SE15**),
 - 7.14. The National Policy Statement for Highly Productive Land (**NPS-HPL**).
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Scope of evidence

8. Fulton Hogan lodged submissions and further submissions on a number of provisions in the PORPS. I have also provided evidence in relation to the UFD-Urban Form and Development (**UFD**) chapter of the PORPS.
9. A key activity undertaken by Fulton Hogan is quarrying, which due to the location of the aggregate resource generally occurs in rural environments making plan and policy provisions in rural areas, and areas where the NPS-HPL now applies areas of significant interest. Accordingly, my evidence covers provisions in the LF-Land and Freshwater (**LF**), chapter of the PORPS that have the potential to address wider rural land use issues but currently focus on soil. These are:

- 9.1. LF-LS-011 – Land and Soil,
- 9.2. LF-LS-P19 – Highly productive land.

IMPORTANCE OF QUARRYING

10. The importance of quarrying has been discussed in my evidence on the UFD chapter of the PORPS. As mentioned there, the s42A officer has made amendments Policy UFD-P7 to recognise this importance as follows:

“The management of rural areas:

[...]

(4) facilitates primary production, rural industry and supporting activities and recognises:

(a) the importance of mineral and aggregate resources for the provision of infrastructure and the social and economic well-being of Otago’s communities...”¹

11. This is important context for policy addressing quarrying throughout the PORPS including the Land and Soil chapter.

¹ UFD-P7 – Rural Areas (4) in PORPS version porps-supplementary-evidence-version-se-1-and-2-and-corrections-2

LAND AND SOIL OBJECTIVES

LF-LS-O11

12. The aggregate resource is location specific and therefore quarrying can only occur where the resource exists. This has the potential for aggregate extraction activities to conflict with other potential uses of rural land, including for land-based primary production.

13. The NPS-HPL includes the term ‘productive capacity’. The definition of productive capacity is:

*“**productive capacity** in relation to land, means the ability of the land to support land-based primary production over the long term, based on an assessment of:*
(a) physical characteristics (such as soil type, properties, and versatility); and
(b) legal constraints (such as consent notices, local authority covenants, and easements); and
(c) the size and shape of existing and proposed land parcels.”

14. In the context of aggregate extraction, the temporal qualification in this definition is important. Because quarrying activities seek to extract material below the soil, topsoil can be removed prior to quarrying occurring, and managed for future use. This can be done with input from a soil scientist and therefore it is possible for quarried land to support land-based primary production over the long term once quarrying has finished.

15. Fulton Hogan made a submission on Objective LF-LS-O11.² The s42A officer has recommended splitting Objective LF-LS-O11 into two objectives; one addressing the life supporting capacity of soil more generally (LF-LS-O11), and a second addressing highly productive land (LF-LS-O11A). Both of these objectives focus on soil. Fulton Hogan’s submission on Objective LF-LS-O11 sought that the focus of this objective is broadened to consider the value of land more generally.

16. Following the release of the NPS-HPL, there is clearly a need to include specific reference to soil in the context of highly productive land in the LF-LS chapter of the PORPS in order to give effect to this document. However, as discussed in my evidence on the UFD chapter of the PORPS and in Fulton Hogan’s

² 00322.021, 00322.022

submission, sterilisation of aggregate resources by encroaching urban or rural residential land use is a key issue for quarrying land uses and that this does not necessarily centre on soil. The UFD chapter provides some potential for addressing this issue but also focuses heavily on 'highly productive land' and 'land-based primary production' (and therefore soil) without clear direction for other rural land use.

17. Consequently, my view is that the issue raised in Fulton Hogan's submission on Objective LF-LS-O11 is still 'live'. With some clarity being provided by the s42A officer regarding the role of the LF-LS chapter within the PORPS in addressing conflicting land use issues, the LF-LS chapter may not be the most appropriate location to include the relief sought. However, if the lack of acknowledgement of quarrying in the UFD chapter remains, a specific objective addressing primary production activities in the LF-LS chapter is in my view necessary in order to capture primary production activities that are not land-based primary production.
18. There is now clarification around the role 'highly productive land' plays, and Objective LF-LS-O11 (as amended by the s42A officer) comprehensively addresses soil. Therefore an additional objective should in my view focus specifically on primary productive land use:

LF-LS-OX

The availability of rural land for primary production is maintained now and for future generations.

19. Fulton Hogan also submitted on Policy LF-LS-P19 in order to achieve the relief sought through the requested changes to Objective LF-LS-O11. If the approach outlined above is adopted, a corresponding policy will be required. For example:

LF-LS-PXX – Primary production

Maintain the availability of rural land for primary production by prioritising the use of rural land for primary production ahead of urban land uses

20. Associated amendments to LF-LS-E4-Explanation, and LF-LS-PR4-Principal reasons, may also be required to align these statements with the proposed amendments.
 21. In terms of s32 of the RMA, providing clarity regarding the use of rural land for primary production through an objective (either in the UFD or LF-LS chapter)
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contributes to achieving the purpose of the RMA by clearly highlighting that there are uses of rural land that are not land-based primary production, but that are important in enabling communities to provide for their social and economic well-being.

CONCLUSION

22. The focus of the LF-LS chapter on soil, and a lack of clear direction in the UFD chapter regarding rural land uses other than land based primary production, has the potential to leave a policy gap for activities such as quarrying.
23. In my view this gap needs addressing through either the UFD or LF-LS chapters so as to avoid sterilisation of aggregate resources, and the avoidance of reverse sensitivity effects that are clearly linked to the locational constraints associated with quarrying.
24. My evidence contains amendments to key provisions that in my opinion allow this gap to be filled, and the PORPS to better achieve the purpose of the RMA.

Tim Ensor

23 November 2022
