

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 – UFD-Urban Form and Development.

**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**).

Scope of evidence

- 8. Fulton Hogan lodged submissions and further submissions on a number of provisions in the PORPS. 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 on the fringe of urban areas of significant interest. Accordingly, my evidence covers a range of provisions in the LF-Land and Freshwater (**LF**), and UFD- Urban Form and Development (**UFD**) chapters of the PORPS but focuses on:
 - 8.1. The importance of quarrying in the Otago Region,
 - 8.2. Development in rural areas and the impacts on the ability for new quarries to establish (sterilisation of the aggregate resource),
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- 8.3. Development in rural areas and the impacts on existing activities (reverse sensitivity),
- 8.4. UDF-P1,
- 8.5. UFD-P4,
- 8.6. UFD-P7.

IMPORTANCE OF QUARRYING

9. In its submission, Fulton Hogan sought amendments to the significant resource management issues for the region in the form of a new statement describing the importance of quarrying to the region.¹ This was rejected by the s42A officer² based on the consultation process the issues had gone through, and the 'industry focus' of the request. Fulton Hogan also highlighted the importance of quarrying through its submission on the Land and Freshwater chapter and the Urban Form and Development chapter. The s42A officer has made amendments to provisions in this latter chapter (specifically UFD-P7):

"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..."*³

10. Clause (4)(a) recognises the role aggregate plays in delivering critical infrastructure and in activities such as housing, and assists in given effect to the NPS-UD⁴ by raising the importance of the resource at a regional level so materials supply does not impact housing supply. In terms of s32, the recommended amendments contribute to the policy's effectiveness by clearly identifying a relevant resource management issue for rural land (Objective

¹ 00322.004

² RM Overview s42A Report, paragraph 552.

³ UFD-P7 – Rural Areas (4) in PORPS version porps-supplementary-evidence-version-se-1-and-2-and-corrections-2

⁴ E.g. OC1, PD2.

UFD-O4), and its efficiency by setting clear expectations and therefore avoiding potential costs associated with land use conflict. On this basis, I am supportive of the s42A officer's recommended change to UFD-P7(4).

11. Fulton Hogan also sought that the role of aggregate in delivering infrastructure be reflected in the INF-Infrastructure chapter of the PORPS through a new policy recognising materials requirements. My opinion is that this remains a useful addition to the PORPS alongside the s42A officers recommended changes to UFD-P7 in order to clearly communicate how the aggregate resource is linked to the social and economic well-being of Otago's communities.

DEVELOPMENT IN RURAL AREAS AND THE IMPACTS ON QUARRYING

Resource Sterilisation

12. The aggregate resource is location specific and therefore quarrying can only occur where the resource exists. Urban development encroaching into rural areas therefore has the potential to foreclose access to aggregate resources that might be located in the area being developed.
 13. Fulton Hogan submitted that sterilisation of the aggregate resource is a significant issue for the aggregate industry and that Objective UFD-04 should recognise 'primary production' (as it includes quarrying activities) alongside other rural land uses in this regard. Given the importance of aggregate as outlined in UFD-P7 (as amended by the s42A officer), sterilisation of aggregate resources has the potential to be a significant issue in achieving community infrastructure aspirations and social and economic wellbeing.
 14. Following the release of the NPS-HPL, ORC has amended the PORPS to give effect to this document. In doing so, ORC has moved away from reliance on the term 'primary production' and has refocused many of the objectives and policies that address the impacts of urban development on rural land through terms used in the NPS-HPL. In my view this has resulted in a lack of attention being paid to the impacts of urban development on primary production activities that do not rely on the productive capacity of soil.
 15. Terms now relied on include 'productive capacity' and 'highly productive land'. The definition of productive capacity is:
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“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.”

16. In the context of aggregate extraction, the temporal qualification in this definition is important and assists to an extent in addressing the issues associated with this almost singular focus on soil. 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.

17. These terms have been used in the context of Objective UFD-04 where the s42A officer has recommended that:

“Development in Otago’s rural areas occurs in a way that:

(1) avoids as a first priority, highly productive land...”⁵

18. The term highly productive land as defined in the NPS-HPL does not specifically recognise the productive value of land used for quarrying, and instead relies on a series of exceptions to the protection of highly productive land to indicate activities that might be appropriate on this land, including a consenting pathway for quarrying.⁶ The s42A officer indicates that exceptions to the ‘avoidance’ directive of Objective UFD-04 will be implemented by territorial authorities as they give effect to the NPS-HPL.⁷ While I agree with the overall approach being promoted by the s42A officer, the term “avoids as a first priority” in the absence of any discussion regarding other priorities does not provide adequate guidance as to what activities, other than land-based primary production, are contemplated.

19. While lower order priorities do not need to be listed in the objective, I am of the view that in order to make it clear that there are anticipated exceptions to the avoidance approach (in Fulton Hogan’s case a pathway for quarrying

⁵ Second SE09, paragraph 95.

⁶ For example NPS-HPL Section 3.9(2)(j)

⁷Second SE09, paragraph 94.

specifically), that reference to the NPS-HPL criteria, or to what might be an appropriate use of highly productive land (other than for land-based primary production) should be included in the PORPS.

20. As recommended by the s42A officer, Objective UFD-04 already contains details of when some activities (urban expansion) can occur (in relation to managing reverse sensitivity effects) and therefore reference to when development on highly productive land might be appropriate is not out of step with the current objective framework. In the context of my comments on the potential for 'productive capacity' to be maintained post quarrying, some explicit recognition will not detract from the PORPS giving effect to the NPS-HPL.

21. My view is that a separate clause could be added to Objective UFD-04 to articulate this as follows:

“(2) provide for the use or development of highly productive land for primary production where it is deemed appropriate in terms of the National Policy Statement for Highly Productive Land,”

22. This amendment utilises the term 'primary production' as defined by the New Zealand Planning Standards (which includes quarrying). This assists in broadening the focus of the objective from more than just soil to include other activities that necessary and appropriately occur on rural land.

23. In terms of s32 of the RMA, the inclusion of this clarification (or similar) positively contributes to the objective achieving the purpose of the RMA by clearly highlighting that there are uses of highly productive land that are not land-based primary production, but that are important in enabling communities to provide for their social and economic well-being.

24. Providing a high level of clarity in the UFD chapter is in my view particularly important for giving effect to Section 3.9 of the NPS-HPL following the s42A officers recommended changes to the LS-LF chapter of the PORPS. Recommended amendments to the LS-LF chapter, also to give effect to the NPS-HPL, leave the UFD chapter as the only location in the PORPS where the importance of quarrying, aggregates and other primary production activities, and the resource management challenges associated with these activities is recognised (other than a cross reference in Policy LF-LS-P19).

Reverse Sensitivity

Objectives

25. Another key issue for the quarry industry, is incompatible land uses encroaching on established quarries and creating reverse sensitivity effects. This issue can impact the way quarries operate and reduce the potential advantages having a local source of aggregate can have for an area. Fulton Hogan's submission on PORPS Urban Form and Development objectives, policies and methods sought that the avoidance of reverse sensitivity was included as a key consideration when locating, designing and delivering urban development.⁸
26. The s42A officer has recommended some changes that provide the relief sought in Fulton Hogan's submission. Particularly, the s42A officer has recommended changes to Objective UFD-O4 as follows:

“Development in Otago’s rural areas occurs in a way that:

[...]

(3) only provides for urban expansion, rural lifestyle development and the establishment of activities that are sensitive to primary production and rural industry, in locations identified through strategic planning or zoned within district plans as suitable for such development...”

27. The recommendation anticipates that urban and rural lifestyle expansion, and sensitive activities will only occur in rural areas where this is a strategic and/or planned outcome. My view is this is a very indirect way of addressing reverse sensitivity and the issue should be addressed head on. The PORPS should provide territorial authorities with clear direction as to what locations are 'suitable' for development. My opinion is this should include a consideration of whether establishing an activity in a location will give rise to reverse sensitivity effects.
28. On this basis I prefer the amendments advanced through Fulton Hogan's submission on Objectives UFD-O2 and UFD-O3, which are to avoid reverse sensitivity effects. Given that reverse sensitivity issues can arise from both development of urban land and the development of rural land, it would also be

⁸ UFD-O2 (00322.036), UFD-O3 (00322.037), UFD-P1 (00322.039), UFD-P4 (00322.040) UFD-P8 (00322.042), UFD-M2 (00322.043)

appropriate to include a requirement to avoid reverse sensitivity effects in UFD-O4 also.

29. The s42A officer commented that inclusion of the concept of reverse sensitivity, in the PORPS will assist in making it clear that strategic planning will be a key means to managing these impacts.⁹ While the officer recommends changes to Policy UFD-P1 in this regard (which I provisionally support below), no associated changes have been made to the corresponding objective. My opinion is that Objective UFD-O3 which directs strategic planning of urban areas, should include specific avoidance of reverse sensitivity. In my view specific direction is particularly important if Objective UFD-O4 as recommended by the s42A officer is advanced, as it clearly relies on a robust strategic planning process in order to determine what development is 'suitable' in a given location. Specific direction will also support spatial planning envisaged through the proposed RMA reform.

Policy UFD-P1

30. The s42A officer's recommended changes to Policy UFD-P1, leave the door open for a range of methods to "resolve ... potential conflict between incompatible activities".¹⁰ I support this flexibility provided the overall policy direction surrounding reverse sensitivity is clear that the objective is to avoid reverse sensitivity effects, and that often this requires physical separation between existing activities and sensitive receivers.

Policy UFD-P4

31. In relation to Policy UFD-P4, the s42A officer has maintained an indirect approach to managing reverse sensitivity. In locating new urban/rural zone boundaries, territorial authorities are only required to consider reverse sensitivity. Fulton Hogan sought a more directive policy in that consideration is given to the avoidance of reverse sensitivity effects.
32. My opinion is that while the s42A officer appears to recognise the importance of the aggregate resource, and that reverse sensitivity effects are a relatively important issue, the latter has not translated to a clear policy directive for when territorial authorities are considering urban expansion. This has the potential to reduce the effectiveness of the policy approach, and decrease its efficiency

⁹ Urban s42A Report

¹⁰ Policy UFD-P1(8A)

through costs associated with addressing the potential conflict between land uses at a later stage.

Policy UFD-P7

33. The s42A officer's recommended Policy UFD-P7(6) contains relatively direct guidance as to how reverse sensitivity effects will be managed through:

"The management of rural areas ... [that] restricts the establishment of non-rural activities which could adversely affect ... by way of reverse sensitivity ... primary production ... activities..."

34. I support this more direct approach but do not support its dilution by allowing activities to bypass this clause by simply 'considering' reverse sensitivity effects under Policy UFD-P4(7). The combination of Policy UFD-P7 and UFD-P4 provides a weak and uncertain framework for addressing reverse sensitivity and in my opinion is unlikely to achieve the requirement of Objective UFD-O2(6) to "minimise conflict between incompatible activities".¹¹ On this basis I believe that Policy UFD-P7(6) should stand on its own without recourse to Policy UFD-P4(7) and that this connection should be deleted.

35. In terms of s32 of the RMA, this approach would provide a much clearer pathway for considering reverse sensitivity and urban development, increasing both the efficiency and effectiveness of the policy.

CONCLUSION

36. The provisions recommended by the s42A officer generally recognise the importance of quarrying and the aggregate resource for infrastructure and in providing for the social and economic wellbeing of communities. These recommendations also partially recognise that it is an activity that occurs where the resource exists and that this is constrained. However, the attention given to quarrying as a primary production activity occurring in rural areas is lacking when compared to other primary production activities. This is exacerbated by an almost singular focus in the most recent version of the PORPS on land based primary production and highly productive land when guiding decision making about urban intensification.

¹¹ Objective UFD-O2 as recommended by the s42A officer.

37. Issues include the lack of a clear policy direction regarding sterilisation of aggregate resources, the avoidance of reverse sensitivity effects and only weak recognition of the locational constraints associated with quarrying.
38. My evidence contains amendments to key provisions that in my opinion allow UFD objectives to better achieve the purpose of the RMA, and increase the efficiency and effectiveness of the policies as they relate to quarrying.

Tim Ensor

23 November 2022
