

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.

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

Dated: 21 April 2023

INTRODUCTION

1. My full name is Timothy Alistair Deans Ensor.
2. My qualifications and experience are outlined in my evidence in chief dated 23 November 2022.
3. 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**).
4. I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2022. 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.
5. In preparing my evidence I have reviewed:
 - 5.1. The redrafted Chapter 15 of the pRPS dated 30 March 2023,
 - 5.2. The third brief of supplementary evidence of Elizabeth Jane White, and
 - 5.3. Second Supplementary Evidence of Felicity Boyd.

Scope of evidence

6. Fulton Hogan lodged submissions, further submissions, and provided evidence on several provisions in the UFD- Urban Form and Development (**UFD**) chapter of the PORPS that have been subject to the 'Chapter 15 redraft' (**the redraft**). As set out in Minute 7 of the hearing panel, this supplementary evidence provides a response to the redraft. Based on the interest of Fulton Hogan in the UFD topic, this evidence focuses on:
 - 6.1. Objective UFD-O4,
 - 6.2. UFD-P7(3),
 - 6.3. UFD-P7(4).
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OBJECTIVE UFD-O4

7. The s42A officer has recommended significant changes to Objective UFD-O4. In general, these changes provide the relief sought in Fulton Hogan's submission. Particularly, the s42A officer has recommended changes to Objective UFD-O4 so it reads:¹

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

(4) provides for the ongoing use of rural areas for primary production, supported by rural industry in appropriate locations, and

(4A) does not compromise the productive capacity, and long-term viability of the rural sector and rural communities.”

8. The recommended amendment relies on the term ‘primary production’ which is a term defined in the national planning standards and includes quarrying activities. The use of this term is supported over reference to highly productive land which has the potential to be interpreted in a narrower way and therefore exclude activities that rely on rural land but are not farming.
9. Fulton Hogan's submission supported Objective UFD-O4(3) as notified as it set expectations regarding urban, rural residential and rural lifestyle development in terms of creating potential reverse sensitivity effects. The redrafted Objective UFD-O4(4) contains an assumption that by “*provid[ing] for the ongoing use of rural areas for primary production*” that reverse sensitivity effects will need to be factored into decision making. As set out in my evidence in chief (**EIC**), my view is that addressing reverse sensitivity effects from development is a necessary component of the UFD Chapter. Through the redraft, Objective UFD-O4(4) is supported through Policy UFD-P4(7) that requires that urban expansion only occurs where the expansion: “*...considers adverse effects, particularly reverse sensitivity effects...*”
10. As expressed in my EIC, my preference is that potential reverse sensitivity effects are addressed more directly within the RPS, specifically that direction is provided requiring that reverse sensitivity effects are avoided. Amending Policy UFD-P4(7) to require that reverse sensitivity effects are avoided would clarify

¹ The subclause numbering in the clean version of the redraft has been used although it is assumed the subclauses should be numbered 1 and 2 rather than 4 and 4A.

the assumption within Objective UFD-O4(4), and increase the effectiveness of the Objective by making the outcome sought more certain.

11. Possible drafting of Policy UFD-P4(7) to reflect this increase in certainty is:

“(7) avoids reverse sensitivity effects and considers other adverse effects, particularly reverse sensitivity effects, on existing and anticipated primary production or rural industry activities when determining the location of the new urban/rural boundary.”

12. .

Policy UFD-P7(3)

13. The s42A officer’s recommended change to Policy UFD-P7(3) introduces a critical qualification to the phrase *“prioritises land-based primary production on highly productive land...”*. The redrafted Policy UFD-P7(3) provides much needed guidance for activities on highly productive land that are not land-based primary production by referencing the National Policy Statement for Highly Productive Land (**NPS-HPL**). The NPS-HPL contains a consenting pathway for quarrying activities on highly productive land that was potentially foreclosed through the notified drafting of the UFD Chapter. As discussed in my EIC,² it is my opinion that it is important that this consenting pathway is identified within the RPS either directly, or through reference to the NPS-HPL in order to describe what other activities, other than land-based primary production, are contemplated, and also to give effect to the NPS-HPL.

14. On this basis I am supportive of the inclusion of reference to the NPS-HPL in Policy UFD-P7(3).

Policy UFD-P7(4)

15. The s42A officer has redrafted Policy UFD-P7(4) to explicitly provide for *“primary production, rural industry and supporting activities”* rather than just *“facilitating rural industry and supporting activities”* as per the notified policy. This terminology better reflects the range of activities occurring in rural areas and utilises a term defined by the national planning standards definition standard which provides clarity of interp[retation]. On this basis, I support the amendment.

² From paragraph 18.

16. The redrafted Policy UFD-P7(4) also addresses two important points for Fulton Hogan. First, that the importance of aggregate for the provision of infrastructure and the social and economic well-being of Otago's communities is recognised. And second, that it is recognised that aggregate extraction activities can only be located where the aggregate resource is present.
17. Both these points were addressed in my EIC and have formed a component of the new Significant Resource Management Issue for users of natural and physical resources prepared in response to Hearing Minute 6 and presented via a joint witness statement (**JWS**) dated 29 March 2023. As indicated through this previous evidence and through my support of the JWS, I am supportive of the explicit inclusion of Policy UFD-P7(4)(a) and (b).

CONCLUSION

18. The redrafted provisions discussed above provide greater recognition of the role aggregate plays in supporting community wellbeing, recognise the locational constraints of aggregate, and seek to address reverse sensitivity effects of urban development on the aggregate resource. Provided the UFD chapter requires the explicit avoidance of reverse sensitivity effects when considering urban development, it is my opinion that the amendments proffered through the redraft will be more efficient and effective than the notified provisions, and better achieve the purpose of the RMA.

Tim Ensor

21 April 2022
