

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 – Freshwater Planning Instrument Parts.

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

Dated: 28 July 2023

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 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.
 7. In preparing my evidence I have reviewed:
 - 7.1. the PORPS,
 - 7.2. the Section 32 Report for the PORPS (**s32 Report**),
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- 7.3. the Section 42A Report – Parts considered to be a Freshwater Planning Instrument under section 80A of the Resource Management Act 1991 (**s42A Report**),
- 7.4. The National Policy Statement for Freshwater Management 2020 (Updated February 2023) (**NPSFM**).

Scope of evidence

8. Fulton Hogan lodged submissions and further submissions on a number of provisions in the PORPS across both the Freshwater Planning Instrument (**FPI**) and non-FPI parts. A key activity undertaken by Fulton Hogan is quarrying and river based aggregate extraction, which due to the location of the aggregate resource, generally occurs in rural or river environments making plan and policy provisions relating to freshwater management of significant interest. Fulton Hogan has provided evidence on the non-FPI parts of the PORPS including in relation to the importance of aggregate and quarrying to the social and economic wellbeing,¹ the locational constraints of the resource,² and the role national planning documents have in providing consenting pathways for Quarrying Activities.³ Accordingly, my evidence will not traverse these matters any more than is necessary and will focus on:

- 8.1. SRMR – Significant resource management issues for the region,
- 8.2. LF–WAI–P1 – Prioritisation,
- 8.3. Objectives - FMU Visions,
- 8.4. LF–FW–O9 – Natural wetlands, and
- 8.5. LF–FW–P9 – Protecting natural wetlands.

SRMR – SIGNIFICANT RESOURCE MANGEMENT ISSUES

9. Through a further submission, Fulton Hogan supported the submission of the Otago Fish and Game Council, and Central South Island Fish and Game Council (**Fish and Game**), seeking to recognise that the social, cultural and economic wellbeing of Otago’s communities depends on the use and development of

¹ Evidence in Chief of Timothy Alistair Deans Ensor on the Proposed Otago Regional Policy Statement – UFD-Urban Form and Development, para 9.

² Ibid. para 12.

³ Ibid. para 18.

natural and physical resources.⁴ This issue was the subject of expert conferencing through the non-FPI stage of the PORPS hearing. Consequently, this submission point will not be traversed here except to note that the new Significant Resource Management Issue presented via a joint witness statement to the hearing panel as part of the Urban Form and Development hearing (dated 29 March 2023), is relevant to the FPI parts of the PORPS as well as the non-FPI parts.

LF-WAI-P1 – PRIORITISATION

10. Fulton Hogan submitted that “*Policy LF-WAI-P1 – Prioritisation, provides very little additional guidance to that provided by the Objective of the NPSFM*”, and that “*LF-WAI-P1 sets in place priorities but does not provide policy guidance for how activities that sit under each level of the hierarchy will be managed, or even what these activities might actually be.*”⁵
11. The S42A Officer has rejected this submission on the basis that “*There will be different types of competition for water depending on the context. In my view, managing uses of water (including competing demands) are best managed in the LWRP [Land and Water Regional Plan, (LWRP)] as part of implementing the NOF, where different approaches can be taken in different FMUs and parts of FMUs.*”⁶
12. I agree that in some cases conflict will need to be addressed at a catchment or FMU level. However, providing no guidance at the regional policy level will guarantee a catchment-by-catchment debate as to how conflict is addressed. One example of where clarity might be appropriate in the PORPS is how drinking water (or other second order priority uses) that is mixed with third order priority uses through reticulation be addressed in regional plans. This was certainly a live question during Plan Change 7 to the Regional Plan: Water for Otago process.
13. The S42A officer also identifies areas where some clarity at a regional policy statement level might be of assistance when stating: “*I recognise that the third priority set out in clause (3) covers a wide range of activities and that there may be good reasons for prioritising some uses over others within that third priority.*”⁷

⁴ FPI037.006

⁵ FPI033.010

⁶ S42A Report, para 281.

⁷ S42A Report, para 832.

14. In relation to this comment the S42A officer has stated: *“Although there are submissions seeking clarification of the priorities, and on resolving conflicts between them, no submitters have sought this specific relief as a way to address these concerns. Those submitters with an interest in the scope of the priorities, and the resolution of conflicts, may wish to address this in their evidence.”*
15. Clause 3.2 of the NPSFM puts the onus on Regional Councils to engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region, and to give effect to Te Mana o te Wai. It is assumed that this responsibility has been delegated in this way so that a comprehensive and wholistic approach to determining what Te Mana o te Wai means and how it is to be applied in Otago (in this case) is taken as opposed to relying on individual submitters to present their version.
16. While Fulton Hogan certainly has an interest in understanding how the NPSFM Objective will be applied in Otago, my view is that it is not efficient, nor is it the method envisaged by Clause 3.2 of the NPSFM for Fulton Hogan and others to try and resolve all (or even some) of the possible conflicts that might exist under LF–WAI–P1 – Prioritisation, without first understanding the community and tangata whenua’s view on the matter. As noted above, areas of conflict have been identified through other planning processes in the region and the S42A Officer alludes to other situations where conflict might be present. Consequently, my opinion is that ORC needs to undertake the work required by Clause 3.2 of the NPSFM and include the appropriate direction in this Regional Policy Statement as envisaged through Clause 3.2(2) of the NPSFM.

Objectives – FMU Visions

17. Fulton Hogan also submitted on the FMU Visions Objective due to its connection to LF–WAI–P1 – Prioritisation in that it states: *fresh water is managed in accordance with the LF–WAI objectives and policies.*” The S42A Officer has accepted Fulton Hogan’s relief to delete this reference from the Objective. However, this only partially addresses the underlying issue the relief sought to address, as LF–WAI–P1 – Prioritisation does not provide the direction necessary to provide a regional context to the priorities set out in the NPSFM Objective.
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LF-FW-09 – NATURAL WETLANDS

18. Fulton Hogan sought changes to LF-FW-09 – Natural wetlands, in order to align the Objective with Clause 3.22 of the NPSFM, specifically to clarify that that reference to “no decrease” or “no reduction” in LF-FW-09 (2) and (3) is to be achieved on a regional scale as opposed to at an individual wetland scale.
19. LF-FW-09 gives effect to the NPSFM and provides regional context to the regulations contained in the National Environmental Standards for Freshwater. Policy 6 of the NPSFM states “*There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*” Clause 3.22 of the NPSFM sets out a consenting pathway for certain activities which may result in the loss of extent of natural wetlands or affect their values. Consent may be granted provided the regional council is satisfied that (amongst other matters) the effects of the activity are managed through applying the effects management hierarchy. As recognised by the S42A Officer,⁸ amendments to the NPSFM made in December 2022, provides further detail on exceptions to Policy 6 of the NPSFM. Of particular relevance to Fulton Hogan is Clause 3.22(1)(d) that provides an exception for quarrying under certain circumstances.
20. Consequently, while the NPSFM seeks to prevent a loss of extent of wetlands generally, a loss in extent for a specific wetland may occur under certain circumstances. Therefore, my opinion is that the PORPS (and subordinate regional planning documents) cannot be absolute in its avoidance of wetland loss, and needs to recognise the exceptions that might exist, provided there is no net loss of extent of natural inland wetlands on a regional basis.
21. In rejecting Fulton Hogan’s submission, the S42A Officer discusses the effects management hierarchy and appears to cite this as a reason why the submission (and that of others) does not give effect to the NPSFM. While the effects management hierarchy is a tool that will need to be utilised for achieving the objective, my view is the objective itself should be clear as to the outcomes sought (no net loss of the wetland values identified in LF-FW-09 (2) and (3) in Otago), rather than relying on policy to backfill this intent through reference to the NPSFM. In addition, the effects management hierarchy includes compensation. This contemplates a situation where for a particular project or activity a net loss of wetland extent or values may occur. Objective LF-FW-09

⁸ S42A Report, para 1331.

therefore needs to reflect the outcomes sought for the region while factoring in the potential that loss may occur. If LF–FW–O9 is not clear that the outcomes sought are regional, I could envisage a consenting situation where a specific activity (for example quarrying) resulting in wetland loss could be assessed as inconsistent with this objective if compensation needs to be relied on.

22. In my view a true reflection of the objective for wetlands is best achieved through the amendments to LF–FW–O9 proposed by Fulton Hogan in its submission, particularly specific reference to the regional extent and values of wetlands when seeking ‘no net loss’ or ‘no net reduction’ for natural wetlands. This ensures that the exceptions provided through the NPSFM are more clearly reflected in the PORPS, and that all aspects of the effects management hierarchy are available.

LF–FW–P9 – PROTECTING NATURAL WETLANDS

23. Fulton Hogan submitted that the consenting pathway in the then Exposure Draft of the NPSFM (amended to include the pathway in December 2022) should be specifically referenced in LF-FW-P9. This submission is similar to a matter discussed through my evidence on the consenting pathway for Quarrying Activities contained in the National Policy Statement for Highly Productive Land (**NPS-HPL**) in relation to the non-FPI part of the PORPS.⁹ In that context, my opinion is that rather than include the pathway within the objective verbatim, the objective should just reference the NPS-HPL. This approach was adopted by the S42A Officer in relation to the NPS-HPL and has also been adopted in relation to wetlands and the NPSFW in this hearing.¹⁰
24. Provided Objective LF–FW–O9 is amended as discussed above, I am supportive of simply referring to the relevant part of the NPSFM as the S42A Officer suggests.
25. Fulton Hogan also submitted in support of LF-FW-AER11 on the basis that it supports Objective LF–FW–O9 as amended through the relief sought by Fulton Hogan. I am supportive of retaining LF-FW-AER11 provided the regional approach discussed above is adopted.

⁹ Evidence in Chief of Timothy Alistair Deans Ensor on the Proposed Otago Regional Policy Statement – UFD-Urban Form and Development, para 21

¹⁰ S42A Report, para 1454.

CONCLUSION

26. The FPI part of the PORPS provides a great opportunity to guide the future LWRP process and avoid catchment or FMU level debate regarding issues that could benefit from a regional solution. It also provides an opportunity to provide region specific guidance on the application of national policy direction more generally.
27. My evidence contains amendments to key provisions that in my opinion allow the FPI parts of the PORPS to better give effect to the NPSFM and better achieve the purpose of the RMA.

Tim Ensor

28 July 2023
