

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 Waimakariri District Plan – Stream 4: Natural Features and Landscapes and Natural Character of Freshwater Bodies.

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

Dated: 30 June 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 15 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 Waimakariri District Plan (**pWDP**) 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 pWDP;
 - 7.2. the Section 42A Report for Stream 4 – Natural Features and Landscapes of the pWDP (**NFL S42A Report**);
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- 7.3. the Section 42A Report for Stream 4 – Natural Character of Freshwater bodies of the pWDP (**NC S42A Report**) and
- 7.4. Proposed Waimakariri District Plan Section 32 (Natural Features and Landscapes) (**S32 Report**).

Scope of evidence

- 8. Fulton Hogan lodged submissions focused on activities potentially affecting Quarrying or Gravel Extraction Activities in sensitive landscape environments. Accordingly, my evidence focuses on:
 - 8.1. Definitions affecting Quarrying Activities being heard through this hearing stream,
 - 8.2. Quarrying Activities and Outstanding Natural Features (**ONF**), Outstanding Natural Landscapes (**ONL**) and Significant Amenity Landscapes (**SAL**), and
 - 8.3. Activities that have a functional or operational need to occur in water body setbacks.

RURAL PRODUCTION AND ONL, ONF and SAL

- 9. Fulton Hogan’s submission on NFL-P3 and NFL-P4 centres on the definitions of Primary Production, a definition contained in the National Planning Standards – Definition Standard (**NPS definitions**), and Rural Production, a definition introduced via the pWDP. This is a matter I traversed in evidence during Hearing Stream 1, so I will only discuss matters relevant to Fulton Hogan’s submission on NFL-P3 and NFL-P4.
- 10. In response to the submission, the NFL S42A Report states that “*While consistency with the National Planning Standards definitions is optimal, the inclusion of quarrying activities within ‘primary production’ means it is inappropriate in relation to the ONFs, ONL, and SAL*”.¹ In drawing this conclusion the S42A Officer appears to be of the view that Quarrying Activities are inappropriate in ONFs, ONLs, and SALs regardless of whether or not the activity will “*detract from the identified values.*”²

¹ NFL Section 42A Report, Para 148

² NFL-P3(5), NFL-P4(7)

11. This qualifier is key to NFL-P3 and NFL-P4 achieving Section 6(a) and (b), and Section 7(c) of the RMA regardless of whether Quarrying Activities are included in the policies or not. It is possible that some activities defined as 'Rural Production' could also be inappropriate if they detract from the values that contribute to the status of the place as an ONF, ONL, or SAL. The important consideration is the effects of the activity on the values that contribute to the landscape.
 12. As discussed in my evidence for Hearing Stream 1, modifying definitions through comprehensive policy drafting (as opposed to including slight modifications of NPS definitions, allows the full implications of definition modifications to be understood within the context in which they will be implemented. My opinion is that in the case of NFL-P3 and NFL-P4, this context has been lost and as a result the policies focus on activities rather than effects. While Quarrying Activities may have greater potential to impact an ONF, ONL or SAL, than some other Primary Production activity, Policy NFL-P3 and NFL-P4 contain the appropriate backstop for managing the risk for all.
 13. Creating a new definition that simply excludes an activity from the definition of Primary Production ignores the intent of the NPS definition of Primary Production (that Quarrying Activities are to be recognised as Primary Production alongside agricultural, pastoral, horticultural, mining, forestry and woodlot activities). In addition, my opinion is that the intent of Chapter 14.1(a) of the National Planning Standards Definition Standard when providing for sub-categories or definitions with a narrower application, was not to simply replicate an existing definition with select activities removed. A clear decision was made to include Quarrying Activities in the definition of Primary Production and a departure from this significantly changes the meaning of this definition. My opinion is that including the definition of Rural Production is inappropriate, and in my view is supported by the caveat for departures from the NPS Definitions that states: "*any such definitions must be consistent with the higher level definition in the Definitions List.*"
 14. My opinion is that Policies NFL-P3 and NFL-P4 should utilise the definition of Primary Production, and that whether Quarrying Activities, and other Primary Production activities are inappropriate should be assessed on their merits as to whether they "*detract from the identified values [associated with an ONF, ONL or SAL].*"
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15. As stated through Hearing Stream 1, my opinion remains that the definition of Rural Production should be deleted, and Primary Production should be relied on instead.
16. Fulton Hogan's submission also sought the expansion of NFL-P4 to provide for new and existing Primary Production activities in SAL where this does not detract from the identified values.³ The S42A Officer has rejected the relief sought on the basis that the purpose of NFL-P4(7) is to support Rules NFL-R1 and NFL-R3. The default activity status for Quarrying Activities in a SAL is non-complying. Fulton Hogan also submitted that due to the requirement within NFL-P4 to "*not detract from the identified values*" (which is not opposed by Fulton Hogan), non-complying activity status is unnecessary as the policy limb of the s104D test is focussed on effects essentially creating two effects-based gateways.⁴
17. While the intent of NFL-P4(7) may be to support Rules NFL-R1 and NFL-R3, the policy would also apply to Quarrying Activities in a SAL (only existing activities as per the notified version). Therefore, any Quarrying Activity in a SAL would need to demonstrate that it will "*not detract from the identified values*". Given SAL are a 'lower tier' landscape class in the pWDP, provided the requirement to "*not detract from the identified values*" can be met by these activities, Objective NFL-O3⁵ will be achieved. Therefore, my view is that a new Quarrying Activity should have the opportunity to be assessed on its merits as a discretionary activity. This approach minimises the costs associated with a potentially more protracted consent process, while achieving the environmental benefits set out in the objective and sought via NFL-P4(7). This will assist with efficiency and maintain effectiveness in terms of S32 of the RMA.
18. The approach discussed above also aligns with Policy NATC-P5 that enables activities that have a functional need to be located within the freshwater body setbacks, provided that adverse effects on natural character values are avoided, remedied or mitigated. Gravel Extraction activities currently occur within the Waimakariri River ONL and the Rakahuri / Ashley River SAL. This is also the most likely location for future gravel extraction activities. Given that natural character values of these rivers is likely to contribute significantly to the

³ 41.26

⁴ 41.27

⁵ NFL-O3, the values of significant amenity landscapes are maintained.

ONL or SAL status, my view is that Fulton Hogan's submission is not out of step with Policy NATC-P5.

19. Policy NATC-P5 and the S42A Officer's support for it is discussed later in this evidence.
20. The S32 Report assessed the scale and significance of the effects of the ONF, ONL and SAL on those with specific interests (this includes industry groups) as low.⁶ This assessment fails to mention the potential for aggregate extraction from Rakahuri / Ashley River for example. I assume that this has influenced the approach taken to activities in these overlays. There are reasons why it is advantageous to provide for new river-based extraction activities provided effects are managed appropriately. For example, for natural hazard management purposes, or to protect public and council assets.

GRAVEL EXTRACTION

21. Fulton Hogan's submission sought that the term 'Gravel Extraction' is replaced with Quarrying Activities. The S42A Officer has rejected this relief as the definition of Quarrying Activities opens up specific earthworks exemptions to a much broader range of activities than Gravel Extraction, with clean filling cited as an example.
22. While clean filling is not an activity that is likely to be undertaken in the riverbed, the impact of the use of the term Gravel Extraction is of limited consequence to Fulton Hogan, and I accept the S42A Officer's concern that expanding permissive rules in this way is potentially inappropriate.

⁶ S32 Report page 26.

ACTIVITIES THAT HAVE A FUNCTIONAL OR OPERATIONAL NEED TO OCCUR IN WATER BODY SETBACKS

23. Fulton Hogan supported NATC-P5⁷ on the basis that Gravel Extraction activities would be enabled by the policy as they have a Functional Need⁸ to occur in freshwater body setbacks.⁹ The S42A Officer has accepted Fulton Hogan's submission that Gravel Extraction is an activity that has a Functional Need to occur within these setbacks, a view that I agree with.
24. Gravel Extraction activities have a Functional Need to occur in river environments but also have the potential for adverse effects. It is therefore important that enabling the activity is paired with a requirement to address effects as appropriate for the situation.
25. The title of NATC-P5 refers to "Structures within surface freshwater body setbacks" whereas the policy itself refers to "activities". While I support retaining the body of NATC-P5, there is potential to clarify the application of the policy by amending the title to refer to activities rather than structures. This would align with the S42A Officers view that activities such as Gravel Extraction are addressed by this policy.

CONCLUSION

26. The pWDP utilises definitions that are similar to definitions contained in the NPS Definition Standard but exclude specific activities (Quarrying Activities in this instance). This creates a scenario where the intention of the NPS definition is undermined based on perceived environmental risk. My view is this risk can be appropriately managed through the existing policy framework and there is no need to rely on a new definition to protect 'identified values' of ONF, ONL and SAL.
27. This policy framework also makes the non-complying activity status for Quarrying Activities in ONF, ONL and SAL largely redundant in that it introduces two effects-based tests under S104D of the RMA. A fully discretionary activity status will ensure relevant effects are addressed, while

⁷ Enable activities that have a functional need or operational need to be located within the freshwater body setbacks, provided that adverse effects on natural character values are avoided, remedied or mitigated.

⁸ Functional need - means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.

⁹ 41.53

simplifying the consenting process. This is especially the case for Gravel Extraction activities in the context of Policy NATC-P5 that “*Enables activities that have a functional need or operational need to be located within the freshwater body setbacks...*” given the main river based aggregate sources in the district are either ONL or SAL.

28. The amendments suggested in this evidence will assist in improving the efficiency and effectiveness of the pWDP and will better achieve the purpose of the RMA.

Tim Ensor

30 June 2023
