

BEFORE INDEPENDENT HEARING COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions and further submissions on
Plan Change 4 to the Canterbury Land and Water Regional
Plan

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

Dated: 28 January 2016

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 AECOM New Zealand Limited (**AECOM**) and have been employed by the company and its predecessor, URS New Zealand Limited for approximately nine years. Prior to starting with AECOM 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 NZ Transport Agency, Environment Canterbury, the Canterbury Aggregate Producers Group and ANZCO Foods Limited.
 5. I have been asked by Fulton Hogan Limited (**Fulton Hogan**) to provide evidence in relation to Plan Change 4 (Omnibus) to the Canterbury Land and Water Regional Plan (**PC4**).
 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 Canterbury Regional Policy Statement (**RPS**);
 - 7.2. Plan Change 4 (Omnibus) to the Canterbury Land and Water Regional Plan (**PC4**);
 - 7.3. the s32 Report for PC4 (**s32 Report**); and
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7.4. the s42A Report for PC4 (**s42A Report**).

Scope of evidence

8. I have been asked to present planning evidence on behalf of Fulton Hogan. Fulton Hogan's submission on PC4 sought amendments to ensure that activities within the beds of rivers, such as aggregate extraction, are not unreasonably constrained or unnecessarily affected by planning rules. Some of the matters submitted on have been addressed through the s42A report, through discussions with other parties or are simply no longer being pursued.
9. Accordingly my evidence focuses on:
 - 9.1. Inanga Spawning Sites;
 - 9.2. Rule 5.145 relating to refuelling of vehicles and machinery in the river bed; and
 - 9.3. Rules relating to vegetation clearance (Rules 5.163, 5.164, 5.168).

INANGA SPAWNING

10. PC4 delineates inanga spawning habitat and inanga spawning areas on the planning maps, defines the term 'inanga spawning habitat' and introduces policies and rules controlling works within these areas.
11. The Section 32 report¹ states that there may be areas identified on the planning maps and referred to in the rules that do not provide habitat for inanga spawning due to the limited factors used in the model to determine habitat areas. The definition of inanga spawning habitat in PC4 is:
 12. *"Inanga spawning habitat means that part of the bed and banks of a lake, river, artificial watercourse, coastal lagoon or wetland that is between mean high water springs and mean low water neaps and is within the area identified as 'Inanga Spawning Habitat' on the Planning Maps."*
13. The area delineated on the planning maps as inanga spawning habitat is far greater than the area between mean high water springs and mean low water

¹ Section 32 Evaluation Report for Plan Change 4 (Omnibus) to the Canterbury Land and Water Regional Plan, pg 34.

neaps². In addition, inanga spawning sites are marked on the planning maps outside of the area between mean high water springs and mean low water neaps. These spawning sites therefore do not meet the definition of inanga spawning habitat. The two level approach to identifying inanga spawning habitat and the fact that identified spawning sites sit outside the area defined as being spawning habitat by PC4, creates confusion as to the area that is affected by the rules.

14. The s32 report discusses higher order documents when providing a basis for the inanga spawning provisions in PC4. For example the s32 report states that Policy 11 of the NZCPS provides strong direction by requiring the avoidance of significant adverse effects on habitats in the coastal environment that are important during the vulnerable life stages of indigenous species.³ I acknowledge that a level of protection is required by these documents and therefore the stance in Fulton Hogan's submission of removing the areas of inanga spawning habitat from the planning maps is problematic.
15. However, given the low level of confidence council officers have in the modelling used to delineate inanga spawning habitat on the planning maps and the contradiction between the definition of spawning habitat and identified inanga spawning sites, my opinion is that the delineation of inanga spawning habitat should as a minimum be limited to areas between mean high water springs and mean low water neaps. This appears to be the most certain defining characteristic of potential inanga spawning habitat.⁴
16. This amendment would reduce potential confusion as to where the inanga spawning habitat rules would apply. In addition, the inanga spawning habitat definition could then be amended simply to refer to the area delineated on the planning maps. This would also aid clarity.

² For example the area delineated extends upstream of the SH1 bridge over the Waimakariri River which is inland of the furthest inland extent of mean high water springs as indicated on the Regional Coastal Environment Plan for the Canterbury Region planning maps.

³ Section 32 Evaluation Report for Plan Change 4 (Omnibus) to the Canterbury Land and Water Regional Plan, pg 27.

⁴ Section 32 Evaluation Report for Plan Change 4 (Omnibus) to the Canterbury Land and Water Regional Plan, Appendix D – Technical Reports, Predicting inanga/whitebait spawning habitat in Canterbury, Report No. R15/100, pg 2.

VEHICLE REFUELLING

17. Fulton Hogan’s submission opposed the amendment to Rule 5.145 that specifically removed the option to use drip trays to prevent spillage of fuel into the riverbed during refuelling. The amended rule instead requires refuelling to occur on an impermeable surface.

18. The s42A report states “*the requirement for impermeable surfaces is simply to enable leaks and spills to be captured, and it may be that a drip tray is adequate for this purpose*”⁵. The removal of specific reference to drip trays in the rule, which is a commonly used method for containing minor spills, makes this intention unclear. The s42A report raises a possible future interpretation issue by stating that “...it may be that a drip tray is adequate...(emphasis added)”.

19. If the intention is that a drip tray will meet the criteria of an impermeable surface, my opinion is that it would avoid confusion and a potential plan interpretation issue to retain direct reference to drip trays within the rule as follows:

“3. Refuelling occurs on an impermeable surface or drip trays are used or other spill containment equipment is installed; and...”

20. If this suggestion is adopted then Condition 4 of Rule 5.145 can be deleted to avoid duplication of the spill containment methods referred to by the rule.

VEGETATION CLEARANCE

21. Fulton Hogan’s submission raised three main issues in relation to vegetation clearance.

21.1. Vegetation clearance as it relates to inanga spawning sites (Rule 5.148 and 5.163);

21.2. Vegetation clearance and biodiversity (Rule 5.163); and

21.3. Vegetation clearance reducing the area of riverbed vegetation (Rule 5.163).

⁵ Plan Change 4 (Omnibus) – Section 42A Report, pg 151

22. Inanga spawning sites as indicated on the planning maps and in Schedule 17 are unlikely to be located in areas of interest to Fulton Hogan. On this basis this submission point will not be commented on further.
23. For the most part, the vegetation clearance required to facilitate gravel extraction and other works of interest to Fulton Hogan will be exotic vegetation species such as willow or broom. This vegetation is abundant in Canterbury's river beds⁶ therefore the clearance of this is unlikely to lead to a reduction in biodiversity. On this basis no further comment will be made in relation to vegetation clearance and biodiversity.

Reduction in area of riverbed vegetation

24. For vegetation clearance in the bed of a specific list of rivers⁷ to be a permitted activity, Condition 9 of Rule 5.163 requires no reduction in the area of existing riverbed vegetation. This condition eliminates the permitted activity rule from these rivers as any vegetation clearance at all, regardless of the type or total area removed, will reduce the area of riverbed vegetation.
25. Fulton Hogan's submission sought that Condition 9 be changed so as to only apply to indigenous vegetation to avoid any ambiguities around the intention that the rule apply to indigenous and woody vegetation⁸, and to avoid the blanket consent requirement for any vegetation removal regardless of its value.
26. The s42A report does not support restricting Condition 9 of Rule 5.163 to indigenous vegetation clearance only but does recognise that registered pest plants ought not to require resource consent to manage and that this is adequately addressed by the definition of vegetation clearance (excluding the clearance of species listed in the Biosecurity NZ Register of Unwanted Organisms or the Canterbury Pest Management Strategy).⁹ Plants such as willow, gorse and broom are listed in the Canterbury Pest Management Strategy, therefore clearance of this vegetation would be exempt from requiring consent under Rule 5.163.

⁶ Section 32 Evaluation Report for Plan Change 4 (Omnibus) to the Canterbury Land and Water Regional Plan, Appendix D – Technical Reports, Protecting the biodiversity values, ecosystem health and natural character of braided rivers, Report No. R15/101, pg 7.

⁷ The Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata, and the Waitaki Rivers.

⁸ Section 32 Evaluation Report for Plan Change 4 (Omnibus) to the Canterbury Land and Water Regional Plan, pg 45.

⁹ Plan Change 4 (Omnibus) – Section 42A Report, pg 111

27. The definition of vegetation clearance, Policy 4.85A and Rule 5.163 do not, in my opinion, provide a coherent framework for addressing exotic vegetation clearance within a river bed. Specifically:

27.1. The definition of vegetation clearance excludes the clearance of species listed in the Biosecurity NZ Register of Unwanted Organisms or the Canterbury Pest Management Strategy;

27.2. Policy 4.85A provides for vegetation clearance when it is for the purpose of pest management; and

27.3. Rule 5.163 relies on the definition of vegetation clearance and therefore allows the clearance of vegetation if it is listed in the Biosecurity NZ Register of Unwanted Organisms or the Canterbury Pest Management Strategy regardless of whether the clearance is for pest management purposes or not.

28. My opinion is that this should be clarified through an amendment to Policy 4.85A as follows:

[...]

unless the vegetation clearance is for the purpose of pest management of a species listed in the Biosecurity NZ Register of Unwanted Organisms or the Canterbury Pest Management Strategy, or for habitat restoration, flood control purposes, the operation, maintenance or repair of structures or network utilities, or maintenance of public access.

29. While a number of the exotic species that would likely be cleared so as to allow Fulton Hogan to undertake its activities within river beds will be unwanted or pest species, it is possible that not all exotic vegetation will fall into this category. Consequently resource consent would be required for potentially very minor exotic vegetation clearance.

30. My view is that Rule 5.163 as notified relies unnecessarily on the resource consent process. I accept that there is specific value in retaining indigenous vegetation and agree that exotic vegetation provides habitat, shade and biodiversity value. However, the braided river technical report appended to the

s32 report¹⁰ appears to be largely concerned with the encroachment of activities onto the braidplain (agricultural land development is specifically mentioned) with subsequent loss of associated values. The summary to the introduction to this report states: *“The natural character, ecosystem health and biodiversity values of braided rivers are dependent on the river’s ability to migrate across its braidplain; creating and destroying habitat as it goes.”*

31. The clearance of relatively small areas of exotic vegetation for, as an example, access to a river gravel resource is unlikely to significantly impact on a river’s ability to migrate across its braidplain. On this basis my view is that a permitted activity rule is appropriate for this type of activity. This is especially the case if species such as gorse, broom and lupins are able to be cleared as a permitted activity. To ensure that vegetation clearance does not then lead to significant encroachment into the braidplain by other activities, a limit on the area of exotic vegetation that is permitted to be cleared may be appropriate.

32. An amendment to Condition 9 that would provide for this is:

“From 5 September 2015, and within the bed of the Clarence, Waiau, Hurunui, Waimakariri, Rakaia, Rangitata, and the Waitaki rivers the vegetation clearance does not result in a reduction in the area or diversity of existing indigenous riverbed vegetation or exotic vegetation clearance greater than 500m²; and ...”

33. An area of 500m² provides for the formation of tracks or small staging areas but is unlikely to enable the conversion of the braidplain to another land use such as agriculture.

Conclusion

34. Fulton Hogan regularly undertakes activities in the beds and margins of rivers giving rise to the economic and social benefits associated with gravel extraction. While some controls on these activities are warranted given the values associated with this environment, unnecessary controls or a lack of clarity as to their application reduces the efficiency of the planning process.

35. I consider that the amendments outlined in this evidence are necessary to provide clarity as to the areas affected by the inanga spawning habitat

¹⁰ Protecting the biodiversity values, ecosystem health and natural character of braided rivers Report No. R15/101

provisions and rules associated with vehicle refuelling and to ensure the plan does not rely unnecessarily on the resource consent process in relation to the clearance of exotic vegetation.



Tim Ensor

28 January 2016
