

BEFORE THE FRESHWATER HEARING PANEL

UNDER the Resource Management Act
1991 (the **Act**)

IN THE MATTER of an original submission on the
Freshwater Planning Instrument part
of the Proposed Regional Policy
Statement for Otago 2021 (**FPI-
RPS**)

BETWEEN **CENTRAL OTAGO
WINEGROWERS ASSOCIATION**

FPI009

AND **OTAGO REGIONAL COUNCIL**

Local Authority

**SUBMISSIONS OF COUNSEL ON BEHALF OF CENTRAL OTAGO
WINEGROWERS ASSOCIATION**

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May it please the Freshwater Hearing Panel:**Introduction**

1. Counsel acts for Central Otago Winegrowers Association (**COWA**). COWA is a collective of like-minded people across Central Otago and Queenstown Lakes who connect, enrich and promote Central Otago to strengthen its members, community, and environment for generations to come. COWA seeks to proactively encourage best practice, education and knowledge sharing, and supporting ingenuity and expertise. This mission has led to its involvement in the FPI-RPS.
2. COWA has lodged an original submission and further submission on the FPI-RPS which, in general terms, seeks a decision of the Freshwater Hearing Panel that recognises and provides for the unique properties of viticulture as a low impact user of water in Otago.
3. Mr James Dicey has lodged a brief of evidence in support of COWA's submission and appears remotely. Mr Dicey appeared for another group of submitters¹ in the non-freshwater hearing panel process and that evidence has since been supplemented with additional content relevant to those parts of the RPS pertaining to freshwater.
4. Counsel has also had the benefit of reviewing parts of the evidence of OWRUG, Federated Farmers and DairyNZ (**Farmer Submitters**) as well as attending their hearing appearance yesterday. The COWA submission shares some likeness to the OWRUG case in terms of some outcomes sought, but with a focus on viticulture.
5. These submissions will set out a high level outline of viticulture in Otago, before proceeding to consider the context of the National Policy Statement for Freshwater Management 2020 (**NPSFM**) and the relief sought by COWA.

Viticulture in Central Otago and Queenstown Lakes

6. The general proposition being advanced through the submission and evidence for COWA is that:

¹ OWRUG, Federated Farmers and DairyNZ (**Farmer Submitters**).

- (a) Viticulture is incredibly reliant on the ability to abstract water for the purpose of irrigation and frost-fighting. The consequences of not being able to abstract water for those purposes is severe;
 - (b) Viticulture, as a form of land based primary production, has an inherently low impact on the environment in terms of water quality and quantity;
 - (c) Viticulture in New Zealand is effectively self-regulating by virtue of the high membership with Sustainable Winegrowing New Zealand (**SWNZ**)² which have strict industry standards, reporting and guidelines in order to achieve certification.
7. The combination of these factors, COWA says, is such that viticulture should be recognised as a land use activity that should be directly provided for through the FPI-RPS. Notwithstanding the requirement to provide for the health of the waterbody, it also raises the question the utility of additional regulation on viticulture in Otago that has the effect of duplicating existing measures otherwise required as part of the SWNZ certification programme. The full weight of that additional regulation will not be known until the Land and Water Regional Plan is notified.
8. To that end, COWA has undertaken extensive engagement with the Regional Council as part of its Economic Work Programme which has produced a series of reports designed to support the development of the LWRP. Four reports have issued between November 2022 and as recent as this month. The reports from this month have been described by the Regional Council “as watershed reports, providing new understanding not just for the proposed Land and Water Regional Plan, but also for policy and project development throughout Otago, says ORC’s Senior Economist Dr Ann Yang”.³ The report references are described below for completeness:
- (a) Moran, E. (Ed.) (2022). *Farmers and Growers in Otago*. EM Consulting for Otago Regional Council (LWRP Economic Work Programme), Dunedin, p198.

² Of which 96-97% of vineyards in New Zealand are members; see Evidence of J Dicey at [36] and [58].

³ <https://orc.govt.nz/news-and-events/news-and-media-releases/2023/august/new-otago-economic-reports-a-first-orc>

- (b) Reilly, K (2023). *Otago Catchment Stories Summary Report*. Landpro for Otago Regional Council (LWRP Economic Work Programme), Dunedin.
 - (c) Moran, E. (Ed.). (June, 2023). *Otago's rural businesses and environmental actions for fresh water*. Otago Regional Council (LWRP Economic Work Programme), Dunedin.
9. The focus of the reports is on the impacts of actions relevant to the development of the new LWRP in giving effect to the NPSFM. That is largely what the submissions for COWA, the Farmer Submitters and Viticulture Submitters have said as well. For that reason, direct reference to those reports may not be necessary (to the extent that they are outside of evidence) but are relevant as background to bolster the submissions.
 10. It is clear from the reports outlined above, and the evidence for COWA and the Viticulture Submitters is that water quantity is the critical issue that affects their ability to sustain operations as opposed to water quality. Water quality is provided for by consequence of additional filtering that is undertaken on-site to ensure quality levels remain to the levels stipulated by SWNZ.
 11. The impacts of insufficient water can have severe economic consequences to the viability of a vineyard. A vine can typically be economically productive over 100 years investment horizon, but the payback for initial investment can range between 15-20 years. While this might seem to be a reasonably good period of time to obtain a return there is no certainty that the vines will survive to get through the break-even period. Growers will always be working against the weather, with a number of factors outside their control. However, through this process, there is an ability to provide for certainty and surety to growers in terms of longer term consents and through recognition of the importance of water to the ongoing viability of viticulture.
 12. In respect of irrigation, the evidence, provides a strong evidential basis that viticulture only uses as much water as is needed – which is not very much. Unlike other forms of agriculture, there is an inverse relationship between crop yield and quality, where a higher crop yield can lead to a

poorer quality end product. Winemakers are therefore incentivised, by the nature of their business (which is high and premium quality wine) to build in systems and processes for the precise application of water. The risk of poorly managed water allocation is therefore very low for the simple fact that applying too much will affect the bottom line.

13. Investment into water storage ensures water will be available when needed to frost-fight or for irrigation where water is short. Investment into infrastructure requires certainty, which is noted as a concern in *Otago Catchment Stories Summary Report* where:⁴

In water-short areas in particular, it was noted that while there was physical growth potential for some sectors, such as viticulture and cropping, these could not be realised due to restrictions on consent terms for water use under Plan Change 7, which wasn't sufficient to enable funding. It was considered a gamble to invest multi millions of dollars and not know if water could be accessed beyond six years; it was also noted that being constrained to water previously used made vineyard expansion difficult.

14. Water storage system together with infrastructure for frost-fighting (so that the water can be used) is a significant investment and can cost upwards of be expensive and upwards of \$435k relying on the assumptions in Mr Dicey's evidence.⁵ Given the proportion of small vineyard operations in Central Otago it is not obvious that the investment can be justified.
15. The impacts from viticulture is monitored through SWNZ – a process outside of the RMA which monitors (among other things) water and nutrient usage. The evidence of Mr Dicey is that the SWNZ supports sustainability and innovation in the sector whereby vineyards undertake extensive monitoring and testing of soil and water quality as well as water quantity – including a growing trend of organically certified vineyards with an average of 24% of vineyards, beating out the 10% national average.

⁴ Reilly, K (2023). *Otago Catchment Stories Summary Report*. Landpro for Otago Regional Council (LWRP Economic Work Programme), Dunedin at Page 22.

⁵ Evidence of James Dicey at [52].

16. Although not mandatory, there is a high degree of certification at 96%. Counsel submits that the high degree of voluntary compliance demonstrates that the sector has a willingness to go beyond baseline regulation and land uses to be industry leaders in sustainable practices.

Te Mana o Te Wai

17. Counsel has had the benefit of reviewing the submissions for the Farmer Submitters, and viewed that presentation yesterday.⁶ COWA supports those submissions and simply adds to them for context to their interests.
18. The FPI-RPS has been notified to give effect to the National Policy Statement for Freshwater Management 2020 (**NPSFM**).
19. The NPSFM has a single objective, 15 policies and various prescriptive clauses as to how that is to occur. The NPSFM is a creature of statute, and by consequence, gives effect to Part 2 of the RMA. It follows that through compliance with the NPSFM, one achieves sustainable management.
20. The NPSFM is underpinned by the fundamental concept of Te Mana o te Wai (**TMOTW**) as described at Clause 1.3. There can be no simple answer for what is required by TMOTW nor what it means, except to say that the concept appears to filter throughout the entire NPSFM, including the National Objectives Framework and setting out what is required in a Regional Policy Statement. TMOTW is inherently water-centric and is about *“restoring and preserving the balance between the water, the wider environment, and the community.”*
21. However, Clause 1.3(2) is clear that TMOTW is “relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in [the NPSFM].”
22. This suggests a broader inquiry beyond just the health of the water and the direct connection between people and water – i.e. human contact and human drinking water. Freshwater management has an impact on the wider environment, not just the waterbody that it is located. It requires integrated management: *ki uta ki tai*, that recognises the

⁶ Submissions of Counsel for Farmer Submitters from [46] to [63].

connection from mountains to the sea, including as required by Clause 3.5 of the NPSFM.

23. The priorities under the sole objective has been the subject of inquiry in this process. In terms of application of the hierarchy, Counsel says they should be applied in the manner described in the text, namely as a hierarchy from (a) to (c) and prioritising accordingly.
24. The interpretation exercise becomes more difficult when trying to ascertain the scope of each priority, particularly with respect to the second priority as to the health needs of people. The NPSFM provides little direction on what those health needs might be. The term “needs” suggests it is something more than a ‘want’ and so it might be too tenuous to suggest that wine is a need as opposed to a want.
25. However, clearly it is something that supports human health. So, if a connection can be made between the activity and the health need, then it must come within the second priority. To the extent that there is an associated economic benefit, then that will come within the third priority.
26. Counsel submits that all priorities need to be considered together through the FPI-RPS but provided for in the relevant sequence. This recognises the inter-connectedness between waterbody, the wider environment and community. By that Counsel means that in considering the extent to which the health and well-being of water bodies and freshwater ecosystems it is relevant to consider how that interacts with the second and third priorities. For a health waterbody contributes to the health of people and both cascade into the ability for people and communities to provide for their provide for their social, economic, and cultural well-being. The need to consider all priorities together is emphasised through Subpart 1 of the NPSFM regarding approaches to implementation, which requires:
 - (a) Long-term visions for freshwater, obtained through a process of consultation and engagement with communities and tangata whenua (Clause 3.3).
 - (b) Integrated management, ki uta ki tai, recognising the interconnectedness of the whole environment and requiring

management of freshwater, and land use and development (Clause 3.5(1)).

- (c) By changing the regional policy statement to the extent needed to provide for the integrated management of the effects of the use and development of land on freshwater and on receiving environments (Clause 3.5(2)).
27. All of this suggests an approach which considers the connection between land uses (ostensibly priority 3) subject to the health and wellbeing of the water body and of people (Priority 1 and 2). It is artificial to consider each priority in isolation by simply providing for the first priority only and then assuming the second and third priorities follow. If that were the case, then there would not need to be a second and third priority.

COWA Submission

28. COWA says that the FPI-RPS could be improved through an increased recognition of the people and communities that it represents in the viticulture sector.
29. It is against this background that COWA sought recognition of viticulture as a land use that is a 'high achiever' in terms of freshwater management across water quantity and water quality but which is so heavily reliant on the availability of water to survive. It also sought to set itself apart from other forms of land based primary production, which through no fault of their own, are inherently less efficient.
30. The rationale for those changes, as against the notified, s 42A Report Version of the FPI-RPS is a lack of provision for land uses as part of freshwater management or recognition that land uses should be provided for, where over-allocation has been avoided and environmental limits met.
31. That is the point developed by Counsel for OWRUG which is that the vision statements do not reflect engagement with the community and what is necessary to provide for their social, economic, and cultural wellbeing in a way that is consistent with the NPSFM. Counsel agrees

with Counsel for ORC that any deficiency in process can be remedied through this hearing process.

LF – Land and Freshwater

32. COWA's submission on respect of LF-WAI sought to remove reference to *mauri* align the objective with the first priority of the objective to the NPSFM. In respect of the use of the term *mauri* Counsel adopts the submissions for the farmer submitters at [60]-[63].
33. COWA's submission on the visions (LF-VM-O2) was focussed on the Clutha Mata-Au FMU which is where its members water takes are derived. It sought to recognise water allocation to viticulture that water be allocated "to viticulture to support sustainable production and to provide for the social and economic wellbeing of people and communities". It also sought that sustainable and innovative land and water be *enabled* to support viticulture and food production.
34. The relief has largely been rejected by the s 42A Report Author through the proposed Region-wide objective for freshwater⁷ which recognises innovative and sustainable land and water management practices which provide for the health and well-being of water bodies. That reference is supported by COWA to the extent that viticulture is a demonstrated land use which can achieve those measures. Counsel submits that the proposed objective does not go far enough and that those measures should be *enabled* through the FPI-RPS (and by extension the LWRP).
35. There is some importance in the difference between something that is "enabled" and a requirement that an activity "provide for" an outcome. *Enabled* in the context of that provision will favour and advance those activities which can demonstrate sustainability and innovation. Whereas *provide for* in the context of the provision simply seeks that if sustainable and innovative practices are being advanced that they provide for an outcome.
36. It is submitted that the reference to *enabled* provides an opportunity to align the objective with Policy 15 of the NPSFM: Communities are

⁷ LF-FW-O1A(7).

enabled to provide for their social, economic, and cultural wellbeing in a way that is consistent with this National Policy Statement.

37. Water resources are finite and future over-allocation is to be avoided in accordance with Policy 11 of the NPSFM. In a race for finite resource within environmental limits, those activities which are demonstrated to be innovative and sustainable should therefore be favoured over those that do not.
38. Counsel has reviewed the evidence in chief of Ms Claire Perkins for the Farmer Submitters which proposes a new sub-clause (6B) and (6C). For completeness, COWA supports the relief for the reasons advanced by Ms Perkins.⁸
39. COWA has also lodged a submission on *SRMR-16 – Context* which sought to recognise that some of the biggest impacts on water quality in Otago are considered to come from poorly managed agriculture. The amendment has not been supported on the basis that there is no evidence that it is only poorly managed land uses that impact on water quality. In questioning, it seems that Ms Boyd's concern was that even well-managed land uses can lead to impacts on water quality.
40. Counsel accepts the issue as capitulated on Monday. The rationale of the submission point remains that it may be some agricultural land uses, and not all, that may contribute to declining water quality. COWA takes issue with being lumped in with all agriculture which, given its low impact on the land, is unlikely to lead to declining water quality. The relief may be better framed as: some forms of agriculture.

LF-FW Freshwater

41. One of the main changes to LF-FW is the proposed region-wide objective for Freshwater LF-FW-O1A. The new objective appears to be to remove duplication across the notified visions and condensing into one place. COWA's remaining issue with the proposed objective, including the reframed Vision for the Clutha River / Mata Au FMU is that it does not recognise the importance of the use of water to provide for

⁸ Evidence in Chief of Claire Perkins at Page 81, LF-VM-O2 Clutha Mata-au FMU Vision.

the social, economic and cultural wellbeing of people and communities, particularly viticulture as being of unique importance and value to the Clutha River / Mata Au FMU. The evidence of Mr Dicey, together with the Economic Working Group Reports referred earlier is evidence of a desire for the continued use of water for viticulture.

42. The objectives also present a vertical integration issue (in respect of the extent to which policies give effect to objectives) which could present interpretation issues throughout the life of the FPI-RPS. The issue is most stark through a comparison of LF-FW-O1A with proposed LF-FW-P7A regarding water allocation and use which arose because of concern by the s 42A Report Author that the notified provisions regarding the take and use of water was at a very basic and high level.⁹ The quote from the s 42A Report is produced below for convenience and because it provides a succinct summary of COWA's concerns with the notified policies:

[1407] Having reflected on these submissions, as well as many of the more general submission points on the importance of water to rural sectors in particular, I consider that LF-FWP7(6) is the main direction regarding the use of water and that it only does so at a very basic and high level. Given there are pressing issues with the availability of water in parts of Otago, and the impacts of climate change are likely to result in some parts becoming even drier, I agree with submitters that the FPI should include more direction on allocative and technical efficiency, as well as the benefits to be derived from using water (where there is water available for use). I am also conscious of the submission points throughout the FPI seeking improved recognition of, and provision for, water storage infrastructure. I agree that is likely to be a key method for assisting to resolve any over-allocation while mitigating impacts on reliability of supply for irrigators

43. Unfortunately, the s 42A Report Author does not consider how this new policy is reflected in the higher order provisions in the FPI-RPS, particularly through the visions and objectives. It therefore remains unclear what objective this policy will give effect to. In respect of COWA's submission, this was part of the reason for seeking relief that sought to: *Enable people and communities to provide for their social,*

⁹ Section 42A Report at [1407].

economic, and cultural wellbeing through environmental outcomes, attribute states and limits.

44. Therefore, while COWA supports the proposed policy LF-FW-P7A there is a need to integrate this provision across the higher order provisions, not just in isolation through a single policy.

Recognition of SWNZ – LF-FW

45. The COWA submission also seeks recognition through LF-FW-M6-Regional Plans of the SWNZ Certification Programme. The SWNZ Certification Programme is not regulated by the RMA but covers many aspects which are relevant to, or overlap with requirements that might otherwise be contained in a Freshwater Farm Plan, which will shortly be required in Otago in accordance with the Resource Management (Freshwater Farm Plans) Regulations 2023.
46. The Farmer Submitters have sought recognition of Freshwater Farm Plans through the FPI-RPS. COWA's interest aligns with the Farmer Submitters in this respect and can be distilled into a desire to avoid duplication of processes where that can be achieved, or to recognise the SWNZ as a certification programme through the Regional Planning Process. The methods of the FPI-RPS are an appropriate mechanism to recognise those additional voluntary programmes.

Witness

47. COWA will call Mr James Dicey to speak to his evidence.

Dated 30 August 2023



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