

**BEFORE THE FRESHWATER HARING PANEL CONVENED BY THE CHIEF FRESHWATER  
COMMISSIONER**

**IN THE MATTER** of the Proposed Otago Regional Policy Statement

**AND**

**IN THE MATTER** of the Re-notified Freshwater Planning Instrument

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**STATEMENT OF EVIDENCE OF RICHARD DAVID JOHNSON FOR**

- 1. STRATH CLYDE WATER LIMITED, MCARTHUR RIDGE INVESTMENT GROUP LIMITED AND MOUNT DUNSTAN ESTATES LIMITED.**
- 2. MCARTHUR RIDGE VINEYARD LIMITED.**

**Dated 28 June 2023**

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## SUMMARY STATEMENT

1. The joint McArthur Ridge Vineyard Ltd, Strath Clyde Water Limited, McArthur Ridge Investment Group Limited and Mount Dunstan Estates Limited (submission 041 the MacArthur submission) to the Re-Notified Freshwater Planning Instrument (FWPI) as part of the Proposed Otago Regional Policy Statement 2021 (PORPS) is directed at making the FWPI and PORPS more specific with respect to viticulture, more timely in addressing significant water-allocation issues in the Manuherekirohe, and to ensure the FWPI places the NPSFM policy directives in to the Otago context to address specific and significant regional issues.
2. Evidence in support of the submissions establishes that viticulture/ wine growing is a specific land use of significance in Otago. It should not be bundled within a generic primary production category of land use. Identifying viticulture in the FWPI for the third largest wine-growing region in New Zealand helps provide a policy focus for the specific relationship viticulture has with water, and how the viticulture industry is an exemplar for innovative and highly efficient water use among primary production activities. If recognised as such specifically in the FWPI it can help achieve timely and effective responses to water shortage in an over-allocated Manuherekirohe.
3. Viticulture has its own specific water use characteristics, and is a distinct land use that relies on water in a particular way not shared by most other primary production activities. These distinctions are important. They help in determining an approach to addressing over-allocation in the Manuherekirohe that focusses on innovation and efficiency measures and is consistent with Te Mana o te Wai. Such recognition aligns with the policy approaches of the planning instruments of New Zealand's two other major viticulture regions, Marlborough and Hawkes Bay. Treating viticulture separately provides an opportunity for a nuanced policy response to over-allocation rather than a sub-optimal "one-size -it- all" approach for all activities falling under the term primary production. That bundling of land uses may lead to potential inefficient water use and amplify unreliability of supply of the scarce water resource such as the Manuherekirohe that, in turn, may then jeopardise the future of viticulture in Otago.
4. The FWPI as part of the Regional Policy Statement has to give effect to the RMA and the NPSFM. In turn the FWPI should be the planning instrument that guides or directs the upcoming Regional Water Plan. A gap in present proposals is the lack of direction for decisions in plan-making and in consent decisions until the Manuherekirohe over-allocation is addressed in 2050. Specific proposals in the submission will provide a basis for regional policy direction and choices about efficient and innovative water use consistent with Hawkes Bay and Marlborough regions. The matters are drawn from the focus of the NPSFM and Te Mana o te Wai. They provide a way of aligning water use priority in any re-allocation exercise with broader Objectives and Policies in the PORPS that seek efficient and innovative water use that also helps sustain water quality.

## **INTRODUCTION**

1. My full name is Richard David Johnson
2. I hold the position of Senior Planner with Aston Consultants, Christchurch.
3. My evidence is given on behalf of Strath Clyde Water Limited, McArthur Ridge Investment Group Limited, Mount Dunstan Estates Limited and McArthur Ridge Vineyard Limited (the submitters).
4. This evidence focuses on some planning matters arising from the Re-Notified Freshwater Planning Instrument and as raised in the submission.

## **QUALIFICATIONS**

5. I have a Master's Degree in Geography from Canterbury University. I have 43 years' post graduate experience in district and regional planning.
6. I am a Retired Member of the New Zealand Planning Institute and a full member of the Resource Management Law Association.
7. My experience includes eight years at the Nelson City Council as Divisional Manager Planning and Consents responsible for all district and regional council regulatory functions and policy development for the same. I was closely involved with the preparation, hearings and appeals for the Nelson City Unitary Plan relating to the water and air quality chapters of that Plan.
8. I was the foundation Manager of the EEZ Applications team at the Environmental Protection Authority implementing the Exclusive Economic Zone (Environmental Effects) Act 2020, and led a team that developed the planning and consenting processes for the Fast Track legislation working with the Ministry for the Environment.

## **CODE OF CONDUCT**

9. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express and that, except where I state I am relying on information provided by another party, the content of this evidence is within my area of expertise.

## SCOPE OF EVIDENCE

10. The submitters have filed submissions on the Re-Notified Freshwater Planning Instrument and I have been asked by them to provide expert evidence in relation to the planning matters arising.
11. In this brief of evidence I address the following matters:
  - a) Specificity and clarity over terms.
  - b) The need to differentiate viticulture in the FWPI/PORPS as a specific form of primary production and how it has a specific relationship with water as recognised in the Marlborough and Hawkes Bay combined Policy Statements and Regional Plans.
  - c) The need for more urgency in addressing over-allocation in the Manuherehia rohe.
  - d) The policy relationship of the NPSFM to the FWPI and the upcoming Land and Water Regional Plan.
12. The McArthur Ridge vineyard development encompasses the McArthur Ridge Vineyard and Mount Dunstan Estates Vineyard near Alexandra, Central Otago. The two vineyards are operated independently other than in respect of water which is supplied by Strath Clyde Water Limited that owns and operates the water infrastructure.
13. The key documents I have used, or referred to, in forming my view while preparing this evidence are:
  - a) The Re-Notified Freshwater Planning Instrument (FWPI).
  - b) The s42A Report on submissions to the FWPI.
  - c) Proposed Marlborough Environment Plan (Appeals Version).
  - d) Hawkes Bay Resource Management Plan 2006.
  - e) The section 32 evaluation report that accompanies the FWPI.
  - f) National Policy Statement on Freshwater Management 2020 (NPS-FM).

## SPECIFICITY AND CLARITY OVER TERMS

14. The McArthur submission pointed to an inconsistency in the use of terms used to describe types of primary production. In my view key terms should be defined and consistently applied through a statutory document. Various the re-notified FWPI had used “agriculture”, “food” and “primary production” in different sections.
15. The McArthur submission has been satisfactorily addressed in the s42A Report where it recommends amending SRMR-15 to use “primary production” instead of “agriculture” in the

economic snapshot. That in my view is appropriate as primary production is defined in the National Planning Standards, and I accept the position at para 25 of the s42A Report that:

*Given that the purpose of the SRMR chapter is to outline the issues at a high level, the issue statements are not meant to provide extensive detail or reference specific industries that can be discussed more appropriately elsewhere. For this reason, in most cases, I do not recommend adopting submissions seeking more extensive detail, including reference to specific industries.*

16. That said, I also prefer that regional policy objectives and policies leading to regional plan content use terms that clearly establish what falls under each level of policy and plan provision. Provided the successively more specific terms are nested under the general term then the policy/ plan provisions will have a logic and a relationship that assist in policy and plan interpretation and administration.
17. That is why in the next part of my evidence I believe there is a case to be made for viticulture to be appropriately referenced in objectives and policies as a specific primary production land use that has its own specific relationship with water that can be provided for in the FWPI and the subsequent Regional Water Plan.
18. I note that the term “food” has been removed from the FWPI because the clause in LF-VM-O2 – Clutha Mata-au FMU vision in which it is used is recommended for deletion in the s42A Report as part of the reporting officer recommendations to combine the LF-VM and LF-FW provisions as notified (para 877 and 893).

~~(b) in the Dunstan, Manuherehia and Roxburgh rohe: 1037~~

~~(i) flows in water bodies sustain and, wherever possible, restore the natural form and function of main stems and tributaries to support Kāi Tahu values and practices, and~~

~~(ii) innovative and sustainable land and water management practices support food production in the area and reduce discharges of nutrients and other contaminants to water bodies so that they are safe for human contact, and~~

~~—(iii) sustainable abstraction occurs from main stems or groundwater in preference to tributaries,~~

## RECOGNITION OF VITICULTURE

19. The submission seeks to amend Objective LF-VM-02-(7)(b) Clutha Mata-au FMU to delete the generic “food” term and replace with specific land use activity terms, including viticulture, to better capture rural production activities that rely on water, so that it reads:

*In the Clutha Mata-au FMU:*

*7. in addition to (1) to (6) above:*

*(a) in the Upper Lakes rohe, the high quality waters of the lakes and their tributaries are protected, recognising the significance of the purity of these waters to Kāi Tahu and to the wider community,*

*(b) in the Dunstan, Manuherehia and Roxburgh rohe:*

- i. *flows in water bodies sustain and, wherever possible, restore the natural form and function of main stems and tributaries to support Kāi Tahu values and practices, and*
  - ii. *innovative and sustainable land and water management practices support ~~food~~ **agricultural, pastoral, horticultural and viticultural** production in the area and reduce discharges of nutrients and other contaminants to water bodies so that they are safe for human contact, and*
  - iii. *sustainable abstraction occurs from main stems or groundwater in preference to tributaries,*
20. The objective as notified seeks to favour food production as a priority primary production activity for water use for innovative and sustainable land and water management practices in the Dunstan, Manuherekia and Roxburgh rohe. It appears to me that it attempts to use “food” to try and narrow down or limit the scope of “agriculture (including irrigation)” as used in the FWPI at SRMR-15.
21. The reporting officer has accepted the McArthur submission point in replacing “agriculture” with “primary production” in SRMR-15 and discards the term “food” in her re-focussing of the relevant Vision and Objectives.
22. I support a level of specificity in terms so regional policies are capable of the most effective interventions and are sufficiently directive between land uses that may otherwise belong to the same family of uses, such as primary production, but which are quite distinctive in their relationship with water, in this case. Specifying viticulture as a land use, and adding to the National Planning Standards definition is appropriate when the context is around freshwater. I consider it is even more appropriate when the new recommended policies such as LF-FW-P7A are focussed on providing direction and priorities over how to approach, avoid or phase out over-allocation.
23. A core thrust of the McArthur submission was to highlight the significance of viticulture both in economic terms (in support of the regional economic snapshot) but also in its relationship with water.
24. Viticulture is a significant and a distinctive land use in Otago. As a significant land use ranking as the third largest wine growing region in New Zealand by area in vineyards, it would seem odd to me that the PORPS would not single it out for specific provisions. In terms of land area, economic contribution including employment, and contribution to New Zealand’s wine output, Central Otago’s viticulture land use activity may not be well served by being bundled as a land use activity amongst the very different activities (agriculture, pastoral) that fall also as primary production. When decisions are to be made on water allocation priorities and water management methods a “one-size-fits-all” approach will almost inevitably create significant risks to the future viability of viticulture in Otago.

25. The approaches taken by Marlborough and Hawkes Bay Councils was provided by way of example in the submission and are set out in Attachment 1 to this evidence. They show how it is possible to craft provisions recognising an important activity in the primary production sector and also to provide clarity around decision-making where there is a contest for water allocation.
26. As set out in the submission and with which I concur:
- Both the Hawkes Bay Regional Resource Management Plan (that includes the RPS), and the Proposed Marlborough Environment Plan (includes the RPS and regional plans) approaches provide definite and unambiguous provisions for supporting the viticulture industry which has crop management issues unlike other primary production activities.*
- This provides the viticulture industry with much more certainty over investment and management of their valuable resource.*
- Potential adverse effects include severe year-on-year and seasonal impacts on a crop through an inability to provide water as part of husbandry practices and especially for frost fighting. There is also a very significant potential adverse impact on the long term viability and expansion of the wine growing industry in the region if viticulture's water needs are not specifically provided for in regional policies and the subsequent Regional Plan. It is appropriate to identify viticulture's specific needs in a Regional Policy Statement (RPS) as that directs the content of the regional Land and Water Plan (LWP)...*
- The focus on frost fighting addresses the Achilles heel of viticulture in part as it is the key management tool to protect crops and rootstock.*
27. Dr Jordan's evidence, which I adopt, sets out the distinctive water use characteristics of viticulture that provide justification for, and that support, a specific regional policy response to those characteristics. As Dr Jordan sets out in his evidence water is pivotal to crop yield in the growing season, and to crop survival (frost fighting) at critical parts of the growing cycle. Both elements are recognised and provided for the Marlborough and Hawkes Bay plans/policy statements.
28. In terms of its specific husbandry characteristics as explained by Dr Jordan in his brief of evidence, it has a relationship with water unlike pastoral or agricultural (and many horticultural) activities. It requires a highly reliable supply of water, it uses small quantities of water in relation to productive outputs, and it uses highly efficient water and nutrient application methods (drip fed at each plant). It has a specific need for water when it is used as the only viable alternative for frost fighting in spring and autumn.
29. The inclusion of water for frost fighting addresses a critical consideration for viticulture as it is a key management tool to protect current season crops and the viability of the vines.

30. As Dr Jordan explains, the very nature of a grape crop is that it can be wiped out for a season if water is not available when needed to fight frosts. It is almost a binary option: protect against frost and ensure a crop, or fail to fight frost/ fight it ineffectively because of a shortage of water and lose a crop.
31. I also understand from Dr Jordan's evidence that viticulture has a specific and distinctive relationship with water use in terms of efficiency, effectiveness of its application, impacts on water quality, the value of the produced crops in relation to volumes of water used. These characteristics can be taken in to account in the FWPI regional policies and in doing so translate the SRMR – 15 issue into clear direction for decision-makers. In doing so it will also address one of the Skelton criticisms of the 2019 PORPS and the focus on outcomes not actions.
32. The expert evidence shows another key feature of viticulture not shared by other land uses, particularly pastoral use. Vineyards cannot de-stock or use supplementary feed to manage situations during drought conditions where water is short and irrigation has not maintained pasture growth to meet the needs of stock.

#### **OVERALLOCATION**

33. As noted at my para 18 above, the reporting officer is recommending a significant reorganisation of the Freshwater provisions and a re-write of the Clutha Mata-au FMU Vision.
34. The s42A Report at para 891 identifies a lack of clarity about the relationship between the LF-VM and LF-FW sections. She holds a view at para 892 that:
- ...there is an unhelpful division between the LF-VM and LF-FW sections which are, it appears, intended to be read together as one policy framework. I consider it is preferable to have a 'suite' of provisions (i.e. all relevant objectives, policies, and methods) sitting together rather than separately.*
35. I agree with her assessment, and the logic behind having all freshwater provisions held together as one policy framework in the FWPI. But this is more than a re-ordering of provisions. There is a recommended significant re-casting or re-working of the provisions so that they are structured from the very general regional objectives, to the FMU visions, to the more specific policies in the freshwater chapter. For example, elements of the Clutha Mata-au FMU Vision are now found in the regional objectives.
36. The effect of re-casting the region-wide objective, and the Clutha Mata-au FMU Vision, is to generalise the objectives to, inter alia, focus on the health and well-being of freshwater ecosystems. I have no issue with that. Innovative and sustainable land and water management practices are to provide for those environmental outcomes; the focus is not on the economic



outcomes to be pursued in the production of “food” as originally proposed (or ~~food~~ **agricultural, pastoral, horticultural and viticultural production** as set out in the submission) by innovative and sustainable water management practices. That, as I understand it, sits well with the NPSFM direction.

37. The reporting officer’s recommended region-wide objectives at LF-FW-O1A include:
- 7) innovative and sustainable land and water management practices provide for the health and well-being of water bodies and freshwater ecosystems and improve resilience to the effects of climate change, and...*
38. That objective can speak to over allocation in so far as an over allocated water resource may not have the health and well-being status of a sustainably managed water resource. However, it does not, as I see it, have an accompanying fresh water policy in LF-FW-P7. So to my mind it is moot what is meant by “*innovative and sustainable land and water management practices*” or how that term can be applied in decisions.
- The new recommended LF-FW-P7A makes no connection between innovation and sustainable land and water management practices and water allocation decisions; its focus seems to be on allocating fresh water efficiently, connecting abstraction volumes to intended uses, efficiency in extraction, storage and conveyancing, and water sharing.
39. With this gap, it is my experience that there is no policy weight given to innovative and sustainable land and water management practices in decisions. That seems a gap in the logic of drafting plan policies when policies give effect to objectives. This gap will potentially limit options at regional plan level.
40. The McArthur submission attempted to fill this gap by suggesting provisions on which allocation decisions can be based, and that are consistent with the recommended regional objective focus on innovation and sustainable practices. I discuss these at para 44 of this evidence.
41. The Clutha Mata-au FMU Vision as recommended to be amended by the reporting officer singles out two activities for recognition as productive use of water in the FMU. Power generation and recreation must be recognised in the management of the FMU, but there is no reference to land-based primary production. The economic snapshot suggests that primary production is a big part of the Otago economy. Dr Jordan’s evidence shows the significant place of the viticulture industry within that primary production sector. I would have thought that either the regional objectives, or the Clutha Mata-au FMU Vision, would have acknowledged the dependency of lawfully established land uses, and the investment associated with that, on water. This relationship, in my view, is fundamental to fleshing out and responding to a significant regional issue for Otago that has been identified at SRMR-15

that “*Freshwater demands exceeds capacity in some places.*” Past patterns of water use do not chart a path to future water use, and future decisions on water, will need to start from the base of, where relevant, a position of over-allocation or water degradation. That is recognised in the notified FWPI at page 74:

*Freshwater resources in some places are reaching, or are beyond, their sustainable abstraction limits. However, there continues to be debate in the community about how historical freshwater allocations can be adjusted to achieve a balance of economic, environmental, social and cultural needs.*

42. In my view there seems to be policy framework disconnect here. A regional issue of over-allocation is identified; there is no regional objective relating to such in the new recommended LF-FW-O1A – Region-wide objective for fresh water; the Vision is silent on the issue; but the reporting officer recommends retaining the notified policy LF-FW-P7 - Fresh water (5) that *existing over-allocation is phased out and future over-allocation is avoided*; and there is a new recommended specific regional policy LF-FW-P7A – *Water allocation and use* that provides direction for how *within limits and in accordance with any relevant environmental flows and levels, the benefits of using fresh water are recognised and over-allocation is either phased out or avoided.*
43. From my perspective I see the logic in the re-organising of policy material into a consolidated fresh water chapter, and helpfully LF-FW-P7A is centred on limits, environmental flows and well-being of people and communities prioritising drinking water supplies, electricity generation and land-based primary production. It also helpfully includes principles to apply to choices in water allocation and water sharing.
44. Providing a bespoke policy to address over-allocation goes some way to addressing the McArthur submission. The issue I see in the recommended LF-FW-P7A is that it will be applied to all forms of primary production as though they are the one and the same thing in terms of water allocation. Dr Jordan’s evidence in comparing water use between productive land based activities, which I adopt, clearly establishes that not all primary production activities’ need for, use of, and reliance on water are the same. It follows in my mind that decision-makers relying on this regional policy will not have sufficient direction from this Policy to compare the benefits of water use, nor to assess whether the most efficient use of water will be consented.
45. In my opinion the recommended Policy LF-FW-P7A (2) is problematic (emphasis added).

**LF-FW-P7A – Water allocation and use<sup>1099</sup>**

*Within limits and in accordance with any relevant environmental flows and levels, the benefits of using fresh water are recognised and over-allocation is either phased out or avoided by:*

*(1) allocating fresh water efficiently to support the social, economic, and cultural well-being of people and communities to the extent possible within limits, including for:*

- (a) community drinking water supplies,*
- (b) renewable electricity generation, and*
- (c) land-based primary production,*
- (2) ensuring that no more fresh water is abstracted than is necessary for its intended use,*
- (3) ensuring that the efficiency of freshwater abstraction, storage, and conveyancing infrastructure is improved, including by providing for off-stream storage capacity, and...*

Where there is a contest for water allocation, or where water is scarce because of an over-allocation issue, the policy requires no more than any use of the water abstracts no more than necessary for its intended use. Together with Policy LF-FW-P7A (3) which does not provide for efficiency in actual use (and returns on that use) I consider the Policy may not provide a sound basis for assessing what is the most beneficial or efficient use of that water; Dr Jordan's evidence clearly shows that viticulture is parsimonious with water but has significant returns on each litre applied compared to pastoral or horticultural irrigation uses. Applicants will certainly demonstrate benefits for any particular use of water but how does that assist with phasing out or avoiding over-allocation when water is short if it has no comparative basis on which to make an allocation decision?

46. The McArthur submission proposed quite directive matters for decisions, but which I consider are helpful propositions, to be applied to water allocation decisions. They set out matters of innovation and sustainable management that sit well with the region-wide objective LF-FW-O1A. In my view, these will provide a necessary focus on regional allocation priorities consistent with the objective where choices have to be made in decisions where water over-allocation is an issue. If adopted this specificity will provide appropriate granularity, at the regional policy level, to be adopted by, but not to be left to, a future regional water plan.
47. There is a sound technical and science basis to the matters as supported by the brief of evidence from Dr Jordan. I have amended (iii) so that economic assessment is calculated at the time of application, not any nominal outer date.
48. Dr Jordan in his evidence addresses why in any allocation process reliability of supply is so key to viticulture on a year to year, and a long-run, basis to underpin the viability of the industry in Central Otago. As I understand that evidence the reliability issue has both a crop growing component, and a frost fighting component. I accept that the detailed methods to provide for frost fighting may be better addressed in the Regional Plan but it needs to be backed up by FWPI policies. The FWPI can identify viticulture as a specific land use activity, so it is not lost in the bundling of a range of activities as part of primary production, enabling its characteristic water use to be clearly linked.
49. The matters that could be used in decisions include:

Optimise reliability of primary allocation, with priority given to water uses that generally:  
(i) have a small environmental footprint in terms of greenhouse gas emissions, nutrient loss, sediment loss and microbial contaminant loss;  
(ii) use less water per hectare than other uses;  
(iii) provide greater economic return and associated employment per volume of water used at the time that the allocation is being considered;  
(iv) are able to use less water at times that coincide with seasonal low flows.

50. These matters all have a sound and rational husbandry and technical basis as set out in the brief of evidence of Dr Jordan. The matters may appear to favour viticulture or horticulture rather than broad acre irrigation for lesser valued crops or outputs, but all land uses that use water should be assessed against them. The matters are entirely consistent with the FWPI focus on giving effect to Te Mana o te Wai (LF-WAI-P4 p122), the regional objectives in LF-FW-O1, and Policy LF-FW-P7-Freshwater, and LF-FW-P7A – Water allocation and use.
51. My conclusion having read Dr Jordan’s evidence is that I’m uncertain that Policy LF-FW-P7A as recommended by the reporting officer will provide the granularity over land uses demands for water that will assist in best application of the Policy.
52. In my assessment I think the amended recommended policy proposals are a big improvement on the notified policy. That said, over-allocation as a regional issue is not fully worked through the recommended policy framework and is left without the specificity to really assist decision-makers between now and when the over-allocation issue is addressed for Manuherekia by 2050. Over-allocation is a potentially significant rub point for economic activity and ecosystems and requires a detailed, focussed policy response which, in my view, we do not yet have in the recommended FWPI. This is important given the planned responses to over allocation in the Manuherekia rohe will not be settled until 2050 as proposed.
53. I am led to the conclusion that viticulture faces a quite uncertain contest for the scarce water resource of the Manuherekia rohe, and a contest in addressing priorities in re-allocating that resource. That contest is not sufficiently nuanced while viticulture is left to be bundled as part of primary production, or even as a subset of horticulture. Being bundled in any of these ways, in my view, fails to make suitable provision for the characteristics of the wine growing industry including its specific need for and use of water.
54. My conclusion is that the purposes of the FWPI is better served by specifically recognising a key Central Otago land use activity with its quite specific relationship with water, and making necessary references to viticulture in its own right.

## THE NATIONAL POLICY STATEMENT – FRESHWATER 2020 (NPSFM) AND TIMEFRAMES

55. The NPSFM is founded on the concept of Te Mana o te Wai which refers to the fundamental importance of water. It is based on six principles and perhaps the three most pertinent to these submissions are:
- (d) Governance: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future*
- (e) Stewardship: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations*
- (f) Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation*
56. To my mind these speak respectively to policy and plan making as in this FWPI process; to users of water such as the submitters to use science and good husbandry techniques to look after the water to which they have access; and to manage and use water in a way that fosters human and economic health.
57. A hierarchy of obligations in Te Mana o te Wai that are reflected in the recommended FWPI relate to:
- (a) first, the health and well-being of water bodies and freshwater ecosystems*
- (b) second, the health needs of people (such as drinking water)*
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*
58. These are given effect to, relevantly for these submissions, by these policies:
- Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.*
- Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*
- Policy 5: Freshwater is managed through a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.*
- Policy 11: Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided.*
- Policy 15: Communities are enabled to provide for their social, economic, and cultural wellbeing in a way that is consistent with this National Policy Statement.*
59. Part 3 Implementation of the NPSFM states that nothing in Part 3:
- (a) prevents a local authority adopting more stringent measures than required by this National Policy Statement; or*

*(b) limits a local authority's functions and duties under the Act in relation to freshwater.*

60. The NPSFM is setting out a base position for freshwater and a base set of obligations on a Council. More stringent measures in a policy or plan could relate to supporting policies that constrain or enable decisions, attributes and qualities of water, to timeframes, to taking a fine-grained approach to land uses and their water use reflecting the circumstances and characteristics of that land use and its region.
61. The policy decisions made on the FWPI are a core component of regional planning policy decisions. It is pivotal in directing the relevant regional plans. The FWPI must be consistent with the NPSFM. In my experience if certain decisions are not taken now, or in this process, then the proposals, the debate, the resolution of the freshwater issues of Otago will reach a long time in to the future. In fact that is the position reached in the FWPI with respect to the existing issue of over-allocation of water in the Manuherekia catchment. This issue of over-allocation which directly affects the submitters is not timetabled for resolution until 2050. This is a long way out, extending over more than three statutory plan review cycles, even for setting policy directions. And all the while viticulture, a key regional primary production land use, will be operating under a situation of policy uncertainty. Its future viability is therefore made uncertain. That, I would argue, works against sound resource management. Such timeframes seem at odds with the Council's statutory obligations to promote sustainable management of resources notwithstanding the case made in the s32 Report about complexity of science and issues in the Manuherekia rohe, and not having staff to do the work.
62. That said, I can understand why the FWPI has left so much to the upcoming regional plan. The NPSFM seems to provide a lot of direction as to the content of regional plans such as 3.9 Identifying values as objectives (4), 3.12 How to achieve target attribute states (1)(a), 3.16 Setting environmental flows (1) , 3.17 Identifying take limits (1)(b), and 3.28 Water allocation.
63. It has much less direction, if any, for regional policies such as required for the FWPI.
64. The issue here for me is that the NPSFM has left a policy gap. It provides no national policy direction about efficiency, reasonable use or priority uses at the national level. It steps directly to 3.28 Water allocation in regional plans:
- (1) Every regional council must make or change its regional plan(s) to include criteria for:*
- (a) deciding applications to approve transfers of water take permits; and*
- (b) deciding how to improve and maximise the efficient allocation of water (which includes economic, technical, and dynamic efficiency).*

*(2) Every regional council must include methods in its regional plan(s) to encourage the efficient use of water.*

65. A regional plan must be consistent with its parent RPS and in this case the FWPI. Yet the NPSFM is silent on the role of a RPS as far as I can tell. The Otago approach as notified was, it seemed to me, to step from the NPSFM to a Regional Plan. Yet the point of a RPS/ FWPI as I understand its role, is, at least in part, to provide a regional focus with regionally significant issues, a regional approach to policy choices and actions consistent with the NPSFM that will direct the regional plan.
66. In the case of the FWPI as recommended to be amended by the reporting officer, there is now regional policy content on how 3.28 Water Allocation (NPSFM) will be approached through Policy LF-FW-P7A. In my opinion such a policy was essential, but I am less certain that it will prove an effective basis for decision-making where water is at a premium and businesses will be seeking certainty of supply if their business growth requires additional water in an over-allocated rohe.

## Attachment 1 Provisions from Marlborough and Hawkes Bay Policies and plans

Hawkes Bay Regional Resource Management Plan (2006).

Policy POL TT9 Implementing Minimum Flow Regime and Allocation Limits (emphasis added) states:

*(iv) Takes for frost protection and takes for filling agrichemical spray tanks shall continue to be allowed without further restriction;*

*(iva) The taking of water authorised for the sole purpose of avoiding the death of horticultural or viticultural root stock or crops shall be allowed to occur to any extent allowed by conditions of consent as follows:*

*3. Access to the water shall be provided as a first priority to the protection of the root stock of permanent horticulture such as orchards and viticulture; and*

The Marlborough Regional Environment Plan (noting it is at the appeal stage) specific provisions for frost fighting. (emphasis added)

Issue 5G – *Allocating more water than is actually required for any use creates the potential for inefficient use of water. This can compromise the sustainability of the resource and prevent other users accessing water.*

*Objective 5.7 – To achieve efficient water use for any given activity*

*Policy 5.7.1 – When resource consent is to be granted to use water, every proposed use will be authorised by a separate water permit. Categories include municipal, irrigation, industrial, residential, commercial and frost fighting.*

*Policy 5.7.2 – To allocate water on the basis of reasonable demand given the intended use.*

*Policy 5.7.6 – Have regard to the efficiency of the proposed method of distribution and/or irrigation in determining resource consent applications to use water for irrigation purposes.*

*Policy 5.7.8 – 5.7.11 are a suite of policies specifically directed at management of water for frost fighting purposes.*

*Policy 5.7.8 – Approve applications to take and use water for frost fighting purposes only where there are no effective alternative methods for frost control on the property.*

*Policy 5.7.9 – A limitation will be imposed on the maximum rate of use of water for frost fighting purposes of 44 cubic metres per hour per hectare.*

*Policy 5.7.10 – Avoid taking water for frost fighting purposes during periods of peak irrigation demand (1 January to 30 April in any calendar year)*

*Policy 5.7.11 – Where water is to be stored for the purpose of frost fighting, require a minimum storage volume equivalent to three days of frost fighting demand. In addition, where water is proposed to be taken to replenish stored water used during a frost event, have regard to effect of the rate of refill on other water permit holders and the natural and human use values supported by the source waterbody.*



