

**BEFORE THE FRESHWATER HEARING 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

MEMORANDUM OF COUNSEL ON BEHALF OF:

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

(Submitter ID: FPI041)

Dated 14 September 2023

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MAY IT PLEASE THE PANEL

1. This Memorandum is filed on behalf of:
 - (a) Strath Clyde Water Limited, McArthur Ridge Investment Group Limited, and Mount Dunstan Estates Limited; and
 - (b) McArthur Ridge Vineyard Limited;

(Submitter ID: FPI041) – collectively referred to as **McArthur Ridge**¹ in this Memorandum.
2. McArthur Ridge appeared before the Commissioners on 6 September. During that hearing the Commissioners explored a number of issues, including the planning provisions suggested by Mr Johnson (consultant planning expert for McArthur Ridge). In the course of that questioning, Commissioner Cubitt asked Mr Johnson how the Commissioners might deal with the fact his suggested text would be a region-wide policy that might potentially have unintended consequences.
3. Mr Johnson has advised McArthur Ridge he continued to ponder this issue after the appearance, because it was not something he had specifically devoted attention to prior to appearing. As a result, Mr Johnson now has some additional thoughts on that question and provided these to McArthur Ridge.
4. McArthur Ridge acknowledges its appearance and opportunity to speak to the Commissioners has passed. However, the hearing has not closed yet and it is understood the Council Officer's are not presenting until Monday the 18th. Given this and given also that the Commissioners might find Mr Johnson's thoughts of some use, they are provided under cover of this Memorandum.
5. Mr Johnson's response to the query from Commissioner Cubitt is as follows:
 - (a) To avoid inadvertently applying to all catchments, the notified Policy addressing over-allocation or my suggested Policy could be prefaced to ensure it only applies to either named FMUs/catchments that are in fact determined to be over-allocated. This would be my preference.
 - (b) Alternatively, the relevant Policy could generically reference "over-allocated catchments" as follows (or words of similar effect):

¹ For simplicity, this is the same abbreviation as used by the Reporting Officer.

LF-FW-P7 - Fresh water

Environmental outcomes, attribute states (including target attribute states), environmental flows and levels,¹⁰⁹³ and limits ensure that:

- (1) the health and well-being of water bodies is maintained or, if degraded, improved,*
- (2) the habitats of indigenous freshwater species associated with water bodies¹⁰⁹⁴ are protected and sustained,¹⁰⁹⁵ including by providing for fish passage,*
- (2A) the habitats of trout and salmon are protected insofar as this is consistent with (2),¹⁰⁹⁶*
- (3) specified rivers and lakes are suitable for primary contact within the following timeframes: (a) by 2030, 90% of rivers and 98% of lakes, and (b) by 2040, 95% of rivers and 100% of lakes, and*
- (4) resources harvested from water bodies including¹⁰⁹⁷ mahika kai and drinking water are safe for human consumption,*
- (5) existing over-allocation is phased out and future over-allocation is avoided in [named catchment/s] by requiring applicants to 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; and.²*
- (6) fresh water is allocated within environmental limits and used efficiently.¹⁰⁹⁸*

6. Leave to adduce this additional evidence is respectfully sought – primarily on the basis no party will be prejudiced by this and certainly not to any extent that would outweigh the potential utility of a more considered answer.

Dated this 14th day of September 2023



Alanya Limmer

Counsel for Strath Clyde Water Limited, McArthur Ridge Investment Group Limited and Mount Dunstan Estates Limited; and McArthur Ridge Vineyard Limited

² Underlined text was included in Mr Johnson's pre-circulated evidence. Italicised text is new.