

**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF  
OF THE OTAGO REGIONAL COUNCIL**

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

**IN THE MATTER** of an original submission on the  
Proposed Regional Policy  
Statement for Otago 2021  
(**PRPS**)

**BETWEEN** **OTAGO WATER RESOURCE  
USER GROUP (OWRUG)**

**Submitter OS00235 and  
FS00235**

**FEDERATED FARMERS NZ  
INC**

**Submitter OS00235 and  
FS00235**

**DAIRY NZ**

**Submitter FS00601**

**AND** **OTAGO REGIONAL COUNCIL**

**Local Authority**

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**MEMORANDUM OF COUNSEL IN RESPONSE TO NOTICE OF HEARING  
AND DIRECTIONS FOR OWRUG, FEDERATED FARMERS, AND  
DAIRYNZ**

**DATED 9 DECEMBER 2022**

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**MEMORANDUM OF COUNSEL IN RESPONSE TO NOTICE OF HEARING  
AND DIRECTIONS FOR OWRUG, FEDERATED FARMERS, AND  
DAIRYNZ**

**May it please the Commissioners:**

1. This memorandum seeks a variation to the way in which the commissioners propose to structure the order of hearing. The parties represented by counsel propose to present a joint case. Counsel filed 22 briefs of evidence which are designed and intended to address the reasons why we submit that the RPS is deficient from the outset and why this in turn will have an impact on the domain-specific chapters (the freshwater provisions of which are not the subject of the current hearings). Nevertheless, the evidence and the submissions will be structured to explain why it is that the RPS is materially deficient and why additional policy is required to address the importance of food and fibre production in Otago and access to the resources that sustain them.
2. Counsel proposes that the hearings for these parties be presented as a single presentation in the 26 April to 9 May window rather than split over the course of some 4 months of hearings where counsel, witnesses, and parties are required to return multiple times to present the case in a piecemeal way. That is not a criticism of the panel or its directions, but rather addresses the complexity and reality of how the submitters are able to resource engaging with the process. Most of the submitters' members and witnesses live rurally or at some distance from the hearing venue in Central Otago and wish to be present in person. Travelling backwards and forwards frequently is problematic.
3. At a personal level, this counsel has a personal commitment overseas from 23 January to 6 February so cannot appear then in any case.
4. Responding to paragraph 6 of the Notice of Hearing, Counsel signals that a legal issue will be raised as foreshadowed in the planning evidence of Mr Mike Freeman. The submission will be that there has been a fundamental failure of this proposed RPS to deal with all the issues that the Act requires the Council to address. In particular, that

there has been a failure to address the Council's function under section 30(1)(b) of the Act:

*“the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance”*

5. It will be submitted that there has been a failure to assess and prepare objectives and policies to address the effects of the use of land and freshwater for food and fibre production to the people, communities, and economy of Otago. And for that reason, there has been a failure to assess the costs and benefits of the provisions of the proposed RPS on those matters, as section 32 requires.
6. Counsel does not submit that this submission needs to be addressed as a preliminary matter, but the submission is signalled now in case the Panel has a different view.
7. The parties represented therefore seek the following directions:
  - (a) That the submitters' case be presented as a single block of submissions and evidence.
  - (b) That the presentation be scheduled between 26 April and 9 May given the relationship that the submitters' interests and evidence has to land and freshwater matters. I should signal that one expert witness, Ms Susie McKeague is overseas during this period so we may need to seek that her evidence is taken out of order. Her evidence addresses operational reasons why irrigators and farmers face challenges in altering their systems to meet regulatory changes and thus why the proposed RPS should make express provision for long transition times to achieve Rohe visions.
  - (c) That 1 full day be allowed. Counsel expects to present legal submissions for 3 submitters (1.5 hours) and call 11 experts. Although the time allowance would suggest 4.25 hours should be sufficient (not allowing any time at all for questions of the 11 lay witnesses), it is submitted from experience that the logistics of

shuffling 11 expert witnesses and allowance for questions will practically mean that a whole sitting day will be consumed.

Dated 9 December 2022

A handwritten signature in blue ink, appearing to read 'Phil Page', with a stylized flourish at the end.

**Phil Page**

Counsel for OWRUG, Federated Farmers, and DairyNZ