

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14 of the First
Schedule of the Act

BETWEEN P J & A M NEAME LIMITED
(ENV-2015-CHC-86)
OTAGO FISH AND GAME COUNCIL
(ENV-2015-CHC-89)

Appellants

AND OTAGO REGIONAL COUNCIL

Respondent

Environment Judge J R Jackson sitting alone pursuant to section 279 of the Act

In Chambers at Christchurch

CONSENT ORDER

[A] Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeals are allowed to the extent that the Otago Regional Council is directed to amend proposed Plan Change 3C as shown in Appendix 1, attached to and forming part of this order ;
- (2) the appeals are otherwise dismissed.

[B] Under section 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

[1] These two appeals are against the Otago Regional Council's decision on proposed Plan Change 3C (Waiwera Catchment Minimum Flow) to the Regional Plan: Water for Otago.

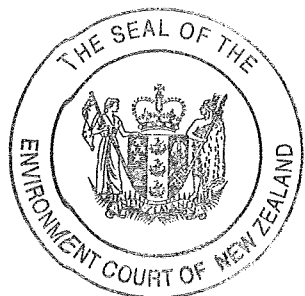
[2] Proposed Plan Change 3C ("PC 3C") introduces a primary and supplementary allocation and minimum flow regime. As notified, PC 3C had a primary allocation volume of 150 litres per second, subject to a minimum flow of 260 litres per second. PC 3C also included a supplementary allocation block of 100 litres per second, subject to a minimum flow of 500 litres per second.

[3] P J and A M Neame Limited, which had made a submission, lodged an appeal seeking to reinstate a minimum flow of 260 litres per second for the primary allocation takes.

[4] The Otago Fish and Game Council, which had also made a submission, lodged an appeal seeking to increase the minimum flow for the secondary allocation block from 500 litres per second to 800 litres per second.

[5] Following mediation, the parties agreed that the minimum flow for the primary allocation for the period 1 October to 30 April be 280 litres per second, with a further condition that if the 280 litres per second minimum flow is breached by abstraction, flow must return to 310 litres per second before taking can re-commence. It is agreed that the minimum flow for the first supplementary allocation block be 600 litres per second, not 500 litres per second.

[6] The court has now read and considered the consent memorandum of the parties dated 9 December 2015 which proposes to resolve these appeals.



Other relevant matters

[7] Tony Anderson, Otago Fish and Game Council, Ken Telford and the Waiwera Catchment Group have given notice of an intention to become a party to the Neame appeal under section 274 of the Resource Management Act 1991 (“the RMA”) and have signed the memorandum setting out the relief sought.

[8] P J and A M Neame Limited have given notice of an intention to become a party to the Otago Fish and Games Council appeal under section 274 of the RMA and have signed the memorandum setting out the relief sought.

[9] I record that the statement that the statement: “...all matters proposed for the court’s endorsement fall within the court’s jurisdiction, and conform to the relevant requirements and objectives of the Resource Management Act, including in particular Part 2” is not in the consent memorandum lodged with the court. While it is included in the draft consent order it is good practice to include the statement in the consent memorandum since that is the agreement signed by all parties. Further, the court is always reassured to know and record that the agreed solution is a more efficient (i.e. better) use of the resources involved than the original Council decision.

Orders

[10] The court is making this order under section 279(1)(b) of the RMA, that is the order is made by consent and is not a decision or determination on the merits pursuant to section 290.

DATED at Christchurch 17 December 2015



J R Jackson
Environment Judge



Issued: **17 DEC 2015**

Appendix 1

Proposed Plan Change 3C (Waiwera catchment minimum flow)

Regional Plan: Water for Otago

Incorporating Decisions of Council
AND RESOLUTION OF APPEALS

MODIFIED FROM ISBN 978-0-908324-16-3



1 DECEMBER 2015

Introduction

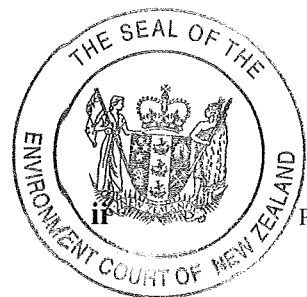
The Otago Regional Council has prepared Proposed Plan Change 3C (Waiwera catchment minimum flow) to the Regional Plan: Water for Otago. It proposes to establish minimum flows, allocation limits, and monitoring sites for the Waiwera River.

This document should be read in conjunction with:

- Section 32 Evaluation Report; and
- Section 32AA Further Evaluation Report
- The Regional Plan: Water for Otago operative as at 1 September 2015.

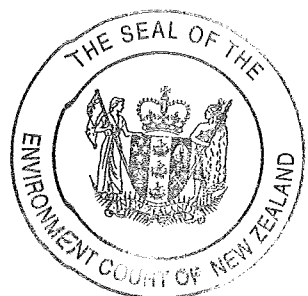
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Policy 6.4.5 (page 6-21 of Plan*)	2
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Water Quantity



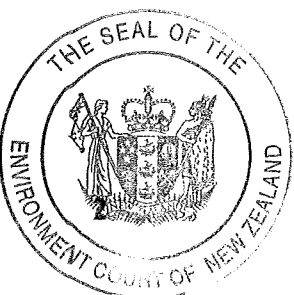
...

6.4 Policies applying to the management of the taking of water

[Index... – Policy 6.4.4 unchanged]

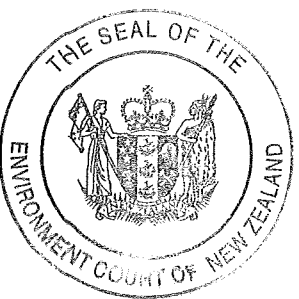
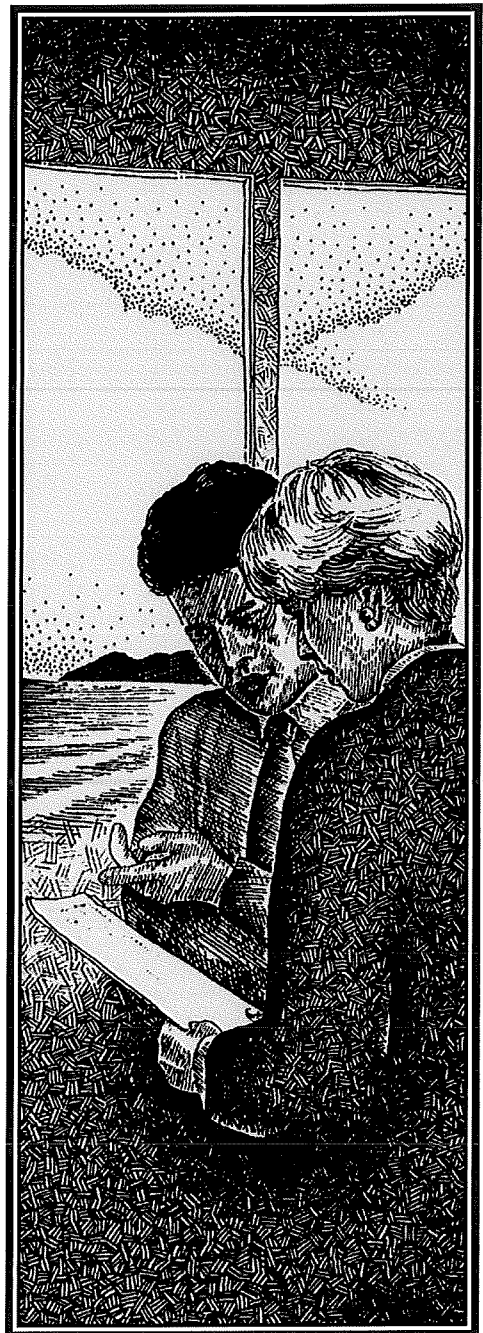
6.4.5 The minimum flows established by Policies 6.4.3, 6.4.4, 6.4.6, 6.4.9 and 6.4.10 will apply to resource consents for the taking of water, as follows:

- (a) In the case of new takes applied for after 28 February 1998, upon granting of the consent; and**
- (b) In the case of any resource consent to take water from within the Taieri above Paerau and between Sutton and Outram, Welcome Creek, Shag, Kakanui, Water of Leith, Lake Hayes, Waitahuna, Trotters, Waianakarua, Pomahaka, Waiwera and Lake Tuakitoto catchment areas as defined in Schedule 2A, subject to the review of consent conditions under Sections 128 to 132 of the Resource Management Act; and**
- (c) ...**



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Rules: Water Take, Use and Management



...

12.1 The taking and use of surface water

[12.1.1 - 12.1.4.1 unchanged]

12.1.4.2 Taking and use of surface water as primary allocation in the following Schedule 2A catchment areas, shown on the B-series maps:

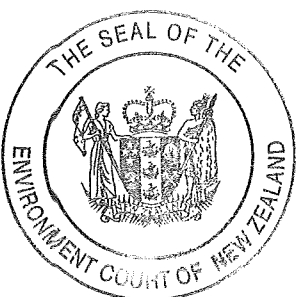
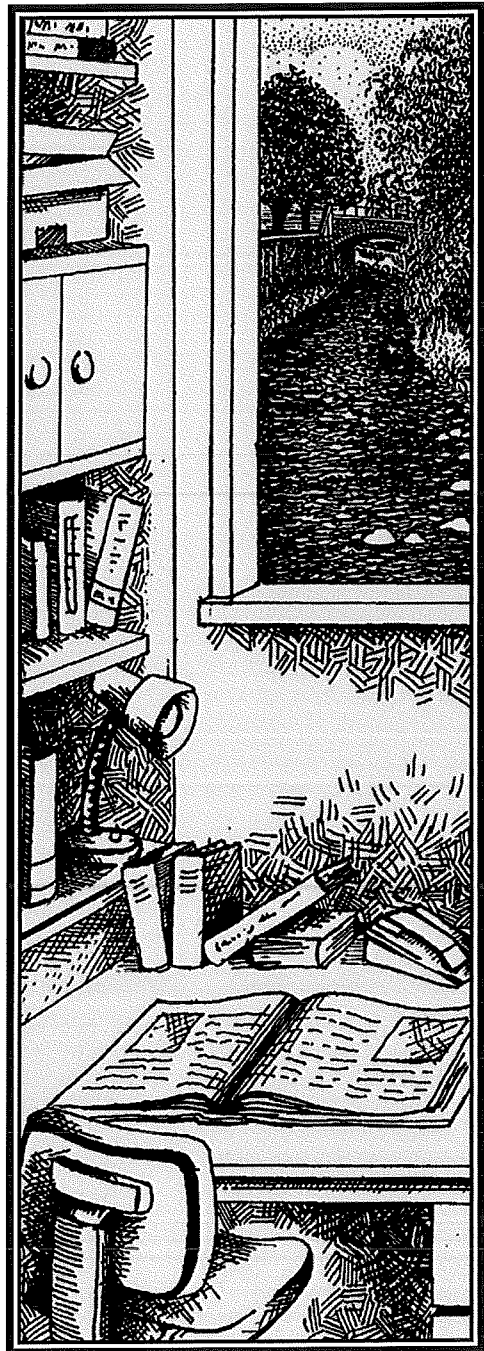
Kakanui,
Lake Hayes,
Lake Tuakitoto,
Pomahaka,
Shag,
Taieri Catchment upstream of Paerau,
Taieri Catchment Sutton to Outram,
Trotters,
Waianakarua,
Waitahuna,
Waiwera,
Water of Leith, and
Welcome Creek:

...



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Schedules



SCHEDULE 2: SPECIFIED RESTRICTIONS ON THE EXERCISE OF PERMITS TO TAKE WATER

...

2 Schedule of specified restrictions on the exercise of permits to take surface water

...

2A Schedule of specific minimum flows for primary allocation takes in accordance with Policy 6.4.3, and primary allocation limits in accordance with Policies 6.4.2(a) and 6.4.1A

The following schedule:

...

Catchment See the B-series maps	Monitoring Site (with MS number) See the B-series maps	Minimum flow (litres per second – instantaneous flow)	Primary Allocation Limits in accord with Policy 6.4.2(a) (litres per second – instantaneous flow)
Waiwera catchment	Maws Farm (MS 16)	280 (1 October to 30 April) If 280 is breached by taking, flow must return to 310 before taking can recommence. 400 (1 May to 30 September)	150 <i>Waiwera catchment from confluence with Clutha/Mata-Au to headwaters</i>

...

2B Schedule of supplementary allocation blocks and specific minimum flows in accordance with Policy 6.4.9(c)

Catchment (See the B-series maps) & Supplementary Block Number	Minimum Flow (litres per second – instantaneous flow) at the monitoring site(s) (See the B-series maps)	Supplementary Allocation Block (litres per second – instantaneous flow)
Waiwera catchment (first supplementary allocation block)	600 At Maws Farm (MS 16)	100

...

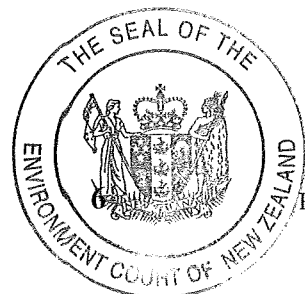


Table of minor and consequential changes

Plan Provision	Detail of proposed change								
Page numbers	Update page numbers.								
Footers	Change footer to read “Regional Plan: Water for Otago (Updated to <date to be inserted>)”.								
Title page	Change the date to read “Updated to <date to be inserted>”.								
ISBN number	Obtain new ISBN numbers for Regional Plan: Water for Otago, if necessary.								
Chronicle of key events	<p>Add the following to the end of the table:</p> <table border="1"> <thead> <tr> <th>Key event</th> <th>Date notified</th> <th>Date decisions released</th> <th>Date operative</th> </tr> </thead> <tbody> <tr> <td>Plan Change 3C (Waiwera catchment minimum flow) to the Regional Plan: Water</td> <td>13 December 2014</td> <td>8 August 2015</td> <td><Date to be inserted></td> </tr> </tbody> </table>	Key event	Date notified	Date decisions released	Date operative	Plan Change 3C (Waiwera catchment minimum flow) to the Regional Plan: Water	13 December 2014	8 August 2015	<Date to be inserted>
Key event	Date notified	Date decisions released	Date operative						
Plan Change 3C (Waiwera catchment minimum flow) to the Regional Plan: Water	13 December 2014	8 August 2015	<Date to be inserted>						
section 1.4	<p>...</p> <p>Proposed Plan Change 6A...</p> <p>Proposed Plan Change 3C (Waiwera catchment minimum flow) was notified on 13 December 2014 to introduce a minimum flow and allocation regime with monitoring site for the Waiwera catchment. A total of six submissions and two further submissions were received. Following the hearing, decisions on submissions received were released on 8 August 2015. Following appeal resolution, Plan Change 3C was made operative on</p> <p>...</p>								
Tables of contents [on pages viii and 20-2]	Update page numbers, if necessary.								
Map Index (section B)	Update section B maps and Index, as a consequence of the plan change.								



M A P S

Maps: Maps B13 and B15 showing Waiwera catchment and proposed minimum flow site at Maws Farm (MS 16)

Maps, which use the numbering introduced by Plan Change 3B (Pomahaka catchment minimum flow), are attached as follows:

Map B - Index: Minimum Flow Catchment Boundaries and Monitoring Sites
B13
B15

