

**Proposed Plan Change 3B
(Pomahaka catchment
minimum flow)**

**to the
Regional Plan: Water for Otago**

**Council
Decisions**

Otago Regional Council resolved to adopt the recommendations of the Hearing Committee on Proposed Plan Change 3B (Pomahaka catchment minimum flow) at its meeting on Wednesday 11 February 2015, as follows:

That Council:

- 1. Adopt the recommendations of the Hearing Committee on Proposed Plan Change 3B (Pomahaka catchment minimum flow) to the Regional Plan: Water for Otago with tabled amendments as its decision;*
- 2. Publicly notify its decisions on Proposed Plan Change 3B (Pomahaka catchment minimum flow) to the Regional Plan: Water for Otago on Saturday 14 February 2015; and*
- 3. Notify submitters of its decision.*

All references to the recommendations of the Hearing Committee must now be read as being the decisions of Council in the following report.

This report presents the recommendations of the Hearing Committee to the Otago Regional Council on submissions and further submissions to Proposed Plan Change 3B (Pomahaka catchment minimum flow) to the Regional Plan: Water for Otago.

Hearing Committee:

Councillor Gretchen Robertson

Chairperson



Councillor Gary Kelliher



Councillor Sam Neill



28 January 2015

Abbreviations

Council	Otago Regional Council
MALF	Mean annual low flow (7-day)
NPSFM	National Policy Statement for Freshwater Management 2014
Proposed plan change / plan change	Proposed Plan Change 3B (Pomahaka catchment minimum flow) to the Regional Plan: Water for Otago
RMA	Resource Management Act 1991
Water Plan	Regional Plan: Water for Otago (operative at 1 May 2014)

Note: use of section / Section:

section	A reference to another section in this report. A reference to a section of the Water Plan.
Section	A Section of the RMA.

Note: text marking

Operative word / <u>notified word</u>	Notified change, showing change proposed from the Water Plan
Notified word / <u>amended word</u>	Amendment recommended in this report

Background

The Otago Regional Council has prepared Proposed Plan Change 3B (Pomahaka catchment minimum flow) to the Water Plan, which seeks to include in the Plan's schedules a primary and supplementary allocation and minimum flow regime, and a ribbon aquifer where the groundwater is considered as surface water.

The minimum flow will apply to some permitted takes, and consented takes other than community water supply takes specified in Schedule 1B.

The proposed plan change was publicly notified in the Otago Daily Times on Saturday 16 August 2014 and submissions closed on Friday 12 September 2014. A total of 17 submissions were received (one of which was received after the formal submission period).

The *Summary of Decisions Requested* and request for further submissions was notified on Saturday 27 September 2014, with further submissions closing on Friday 10 October 2011. There were 2 further submissions received.

The *Officer's Report on Decisions Requested*, which evaluated decisions requested by submitters and further submitters, and made recommendations to the Hearing Committee, was released on Friday 24 October 2014.

Submissions on the proposed plan change were heard on Thursday 13 October 2014 in Dunedin. Five submitters presented evidence to the Hearing Committee, while seven more submitters had a written statement of evidence tabled at the hearing.

Submitters were supportive of the plan change. The main matters raised in the submissions on Plan Change 3B broadly related to:

- Including the Waipahi Rural Stock Water Supply in Water Plan Schedule 1B
- Providing great clarity about the extent of the catchment and the timing of the irrigation season minimum flow.

We thank all of the people who have participated in this plan change process. We have read all submissions and listened to evidence presented at the hearing. In preparing our recommendations we have also been mindful of the Otago Regional Council's statutory responsibilities under the Resource Management Act 1991 (RMA), the National Policy Statement on Freshwater Management 2014 (NPSFM).

As a result of the submission and hearing process, our recommendation to the Otago Regional Council is to amend the plan change as shown in Appendix 1 to this report.

Our recommendations in detail follow.

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CHAPTER 1 – ALLOCATION LIMITS AND MINIMUM FLOWS

The notified changes to the Water Plan sought to set a primary and supplementary allocation and minimum flow regime in the Water Plan schedules.

1.1 Primary allocation minimum flows

Policy 6.4.5 and Schedule 2A

Plan Change 3B pages 2 and 6

Summary of Decisions Requested: pages 8-10; 12-18

The notified plan change proposed to set a primary allocation minimum flow of 3,600 l/s for the period 1 October to 30 April and 7,000 l/s for the rest of the year, in Water Plan Schedule 4A.

Those submitting on the proposed irrigation season minimum flow were generally supportive of this. However, several submitters requested a higher minimum flow during the irrigation season, in order to better provide for values present, while one submitter asked for other irrigation season minimum flow regimes to be given a more thorough consideration in the Section 32 Evaluation Report. Finally, one submitter also asked for a catchment-wide application of the minimum flow, focusing on the confluence of the Waipahi with the Pomahaka River

1.1.1 Recommendations

We considered the submissions and recommend the following:

- (a) Adopt Policy 6.4.5 and Rule 12.1.2.5 as notified.
- (b) Adopt the minimum flows for primary allocation in Schedule 2A as notified.

1.1.2 Reasons

- Ninety percent of adult brown trout habitat is provided by the proposed irrigation season minimum flow of 3,600 l/s. Any minimum flow that was lower would reduce the habitat available for trout at times of low flow and could result in the gradual decline in the highly significant adult brown trout fishery.
- A slightly higher irrigation season minimum flow than 3,600 l/s would have negligible effect on natural character and aquatic ecosystem values, while further constraining water taking.
- The proposed minimum flow of 3,600 l/s will provide adequately for values in all tributaries, such as the Waipahi River, given climatic and land use conditions will be similar throughout.

1.2 Limiting primary allocation

Rule 12.1.4.2 and Schedule 2A

Plan Change 4C page 4 and 6

Summary of Decisions Requested: pages 8-10; 19-20

The notified plan change proposes to set a primary allocation limit of 1,000 l/s for the Pomahaka catchment in Schedule 2A of the Water Plan.

All submitters were in support of the proposed primary allocation limit.

1.2.1 Recommendation

We considered the submissions and recommend the following:

- (a) Adopt the primary allocation limit in Schedule 2A as notified.

1.2.2 Reasons

- The proposed primary allocation limit of 1,000 l/s the river will protect aquatic ecosystems and other instream values, including recreational and amenity values, while also providing for a reasonable reliability of supply to current consent holders.
- No requests were received to amend the proposed primary allocation limit.

1.3 Supplementary minimum flow and allocation

Schedule 2B

Plan Change 4C page 6

Summary of Decisions Requested: pages 20-22

The notified plan change proposes to set a supplementary allocation minimum flow of 13,000 l/s and a supplementary allocation block size of 500 l/s for the Pomahaka catchment in Schedule 2B of the Water Plan.

All submitters were in support of the proposed supplementary allocation minimum flow and block size, or were neutral.

1.3.1 Recommendation

We considered the submissions and recommend the following:

- (a) Adopt the supplementary allocation minimum flow and block size as notified.

1.3.2 Reasons

- The proposed supplementary allocation minimum flow gives a reasonable surety of access to water for future consent holders, who will need to store taken water to ensure a guaranteed supply. The proposed supplementary allocation minimum flow and block size are adequate to ensure supplementary taking does not impact on the adult brown trout fishery.
- No requests were received to amend the proposed supplementary allocation minimum flow and block size.

CHAPTER 2 –OTHER PLAN CHANGE MATTERS

2.1 Mapped extent of Pomahaka catchment

Notified Maps B11, 13, 15

Plan Change 4C page 9 and Notified B-series Maps

Summary of Decisions Requested: pages 11-12

The proposed minimum flows and allocation limits apply within the Pomahaka catchment and its Waipahi River tributary, noting the Council has no jurisdiction to apply policies or rules on those parts of the catchment that lie outside Otago region.

Some submitters requested greater clarity within the Water Plan that the rules apply in the catchment within Otago region.

2.1.1 Recommendations

We considered the submissions and recommend the following:

(a) Amend the column entries in Schedules 2A and 2B as shown below:

2A Schedule of specific minimum flows for primary allocation ...			
...			
Catchment See Maps B1- B516	Monitoring Site (with MS number) See Maps B1- B516	Minimum flow (litres per second – instantaneous flow)	Primary Allocation Limits in accord with Policy 6.4.2(a) (litres per second – instantaneous flow)
<u>Pomahaka catchment (within Otago region)</u>	<u>Burkes Ford (MS 15)</u>	<u>3,600 (October to April)</u> <u>7,000 (May to September)</u>	<u>1,000</u> <u>Pomahaka catchment from confluence with Clutha/Mata-Au to headwaters (within Otago region)</u>
...			

2B Schedule of supplementary allocation...

Catchment (See Maps B1–B516) & Supplementary Block Number	Minimum Flow (litres per second – instantaneous flow) at the monitoring site(s) (See Maps B1–B516)	Supplementary Allocation Block (litres per second – instantaneous flow)
<u>Pomahaka catchment (within Otago region) (first supplementary allocation block)</u>	<u>13,000</u> At Burkes Ford (MS 15)	<u>500</u>

2.1.2 Reasons

- The amendments will further assist with clarifying that the jurisdiction of the Water Plan cannot apply outside of Otago’s regional boundary.
- The achievement of the Plan’s objectives, policies and rules in the Pomahaka also relies on provisions for water quantity management on land outside Otago, and managed by Environment Southland.

2.2 Clear specification of irrigation and non-irrigation seasons

Schedule 2A

Plan Change 4C page 6

Summary of Decisions Requested: page 19

The notified plan change proposes to set primary allocation minimum flows that apply in two mutually exclusive seasons of the year.

A number of submitters requested that the Plan clarify that the seasons commence on the first day of the given month and end on the last day of the given month.

2.2.2 Recommendation

We considered the submissions and recommend the following:

- (a) Amend column entries in Schedule 2A as shown below and make this amendment, as a consequential change, throughout Schedules 2A and 2B.

2A Schedule of specific minimum flows for primary allocation ...

...

Catchment See Maps B1-B516	Monitoring Site (with MS number) See Maps B1-B516	Minimum flow (litres per second – instantaneous flow)	Primary Allocation Limits in accord with Policy 6.4.2(a) (litres per second – instantaneous flow)
<u>Pomahaka catchment</u>	Burkes Ford (MS 15)	3,600 (1 October to 30 April) 7,000 (1 May to 30 September)	1,000 <i>Pomahaka catchment from confluence with Clutha/Mata-Au to headwaters.</i>

2.2.3 Reason

- The phrase “1 October to 30 April” is more precise than “October to April”.

2.3 Provision of an alluvial ribbon aquifer

*Maps C13 and C14; Notified Maps C22 and C23
Plan Change 4C page 9 and Notified C-series Maps
Summary of submissions: Pages 22-23.*

The Plan Change as notified deletes reference to the Pomahaka Basin Aquifer and replaces it with a ribbon aquifer, identified in Schedule 2C and Maps C22 and C23, where the groundwater can be considered as surface water, due to connectivity.

All submitters supported the proposed change to groundwater management through the identification of the ribbon aquifer as notified.

2.3.1 Recommendation

We considered the submissions and recommend the following:

- Adopt the Schedule 2C identification of the Pomahaka Alluvial Ribbon Aquifer and its mapping on Maps C22 and C23.

2.3.3 Reason

- The identification of the Pomahaka Alluvial Ribbon Aquifer and its mapping on Maps C22 and C23 will facilitate integrated management of the catchment’s water resources.

2.4 Schedule 1B community water supply takes

Schedule 1B

Summary of Decisions Requested: pages 30-31

The minimum flow does not apply to community water supply takes specified in Schedule 1B. One submitter requested for the Waipahi Rural Stock Water Supply to be included in Schedule 1B.

2.4.1 Recommendation

We considered the submissions and recommend the following:

- (a) Amend Schedule 1B to include the Waipahi Rural Stock Water Supply.

2.4.2 Reasons

- Animal welfare is dependent on a reasonable supply of water and imposing minimum flows on existing stock water supplies may compromise animal welfare unnecessarily.
- RMA Section 14(3) allows individuals to take freshwater for the purpose of domestic use or stock drinking water purposes as long as the take does not, or is not likely to, have an adverse effect on the environment.

2.5 Protection for existing users

Policy 6.4.5; Rule 12.1.4.2; Schedule 2A; 2B and 2C; B-series and C-series Water Plan Maps

Plan Change 4C pages 2, 4 and 6

Summary of Decisions Requested: pages 23-24

While submitters were in support of the proposed plan change, one submitter requested that primary status consents should be able to continue enjoying that status even if a catchment is over-allocated, and the community's values and uses be given due regard.

2.5.1 Recommendation

We considered the submissions and recommend the following:

- (a) Adopt the plan change as notified, subject to the amendment outlined in section 2.4.1 of this report.

2.5.2 Reasons

- In principle, Water Plan provisions allow for current primary allocation status to remain at the time of consent renewal unless the water has been taken at higher flows only or has been used inefficiently. Any effect on uses and values resulting from present primary allocation will be addressed through the Plan's existing mechanisms of:
 - Consent surrender, expiry, cancellation or lapse, with no further primary allocation until taking is under the primary allocation limit again;
 - Reduction to that actually used historically (Policy 6.4.2A);

- Takes cannot exceed quantity required for the purpose of use (Policy 6.4.0A).
 - Consider granting renewal consents as supplementary allocation, where water has been taking at higher flows (Policy 6.4.2AA).
- The proposal has been developed in consultation with relevant stakeholders, including consent holders. This process ensures community's values and uses have been given due regard.

2.6 Minor and consequential amendments

Chronicle of Key Events, Section 1.4, Schedule 4B
Plan Change 4C page 2
Summary of Decisions Requested: page 16

The plan change proposes a number of minor and consequential changes, including amendments to the presentation of the maps and numbering changes. These changes were all supported.

2.6.1 Recommendation

We considered the submissions and recommend the following:

- (a) Adopt any other minor and consequential changes as notified.

2.6.2 Reason

- Clause 10(2) of Schedule 1 RMA provides for any necessary consequential alterations.

CHAPTER 3 – MATTERS NOT ADDRESSED IN THIS PLAN CHANGE

3.1 Beyond the scope of the plan change

Rule 12.1.4.3 and 12.1.4.3

Summary of Decisions Requested: pages 29-30

Matters that were raised during the submissions and hearing process and that are considered beyond the scope of Plan Change 3B include requests for inclusion of a rule in the Water Plan requiring consents be reviewed within 3 years to give effect to the plan change.

3.1.1 Recommendation

We considered the submissions and recommend the following:

- (a) Make no amendment to address matters beyond the scope of this plan change

3.1.2 Reason

- Policies or rules for reviewing consents to address over-allocation need to be considered carefully in the context of all Otago catchments, and would need consultation before proposing.