

Proposed Plan Change 4B (Groundwater allocation)

to the Regional Plan: Water for Otago

Decisions of Council

Otago Regional Council resolved to adopt the recommendations of the Hearing Committee on Proposed Plan Change 4B (Groundwater allocation) at its meeting on Wednesday 10 December 2014, as follows:

That Council:

- 1. Adopt the recommendations of the Hearing Committee on Proposed Plan Change 4B (Groundwater allocation) to the Regional Plan: Water for Otago with tabled amendments as its decision;*
- 2. Publicly notify its decisions on Proposed Plan Change 4B (Groundwater allocation) to the Regional Plan: Water for Otago on Saturday 13 December 2014; 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.

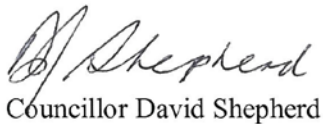
This report presents the recommendations of the Hearing Committee to the Otago Regional Council on submissions and further submissions to Proposed Plan Change 4B (Groundwater allocation) to the Regional Plan: Water for Otago.

Hearings Committee:

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Councillor Louise Croot M.N.Z.M.

Chairperson

A handwritten signature in blue ink that reads "David Shepherd". The signature is cursive and somewhat compact.

Councillor David Shepherd

A handwritten signature in blue ink that reads "Sam Neill". The signature is cursive and features a prominent loop at the end.

Councillor Sam Neill

Abbreviations

MAL	Maximum Allocation Limit (previously Maximum Allocation Volume (MAV))
MAR	Mean annual recharge
NPSFM	National Policy Statement for Freshwater Management 2014
ORC	Otago Regional Council
Proposed plan change / plan change	Proposed Plan Change 4B (Groundwater allocation) to the Regional Plan: Water for Otago
RMA	Resource Management Act 1991
Section 32 Evaluation Report	The evaluation report assessing alternatives, benefits and costs for proposed plan change 4B to the Water Plan as required by Section 32 of the RMA
Section 32AA Further Evaluation Report	The further evaluation report amending the Section 32 Evaluation, as required by Section 32AA of the RMA
SOE	State of the Environment (monitoring undertaken in accordance with Section 35(2) RMA)
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

Proposed Plan Change 4B (Groundwater allocation) to the Water Plan clarifies the controls in the Water Plan for avoiding over-allocation of groundwater in Otago, while retaining the established principles of groundwater allocation. The plan change affects all water managed as groundwater under Policy 6.4.1A.

Plan Change 4B was publicly notified in the Otago Daily Times on Saturday 17 May 2014 and submissions closed on Tuesday 17 June 2014. A total of 16 submissions were received, two of which were received late.

The *Summary of Decisions Requested* with the request for further submissions was notified on Saturday 28 June 2014, with further submissions closing on Friday 11 July 2011. There were 8 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 29 August 2014.

We heard submissions on the proposed plan change on Tuesday 16 September 2014 in Dunedin. Five submitters spoke to their submissions and we considered tabled evidence from six submitters who were absent.

The main matters raised by submitters on Plan Change 4B broadly related to:

- General support for the clarification objectives of the Plan Change; given some minor modifications for greater clarity;
- Requests that the prohibited activity to avoid over-allocation be replaced by a consenting option when an aquifer has not been investigated for inclusion in Schedule 4A's maximum allocation limits (formerly 'volumes'); and
- Concerns about determining mean annual recharge of an aquifer, and the consumptiveness of a take, if provisions based on prohibition remain unchanged.

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 adopt the plan change as proposed, with the following recommended amendments.

Our recommendations follow.

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CHAPTER 1 – A LIMIT ON GROUNDWATER ALLOCATION

The notified changes to the Water Plan sought to clarify the controls in the Water Plan for avoiding over-allocation of groundwater in Otago, while retaining the established principles of groundwater allocation.

1.1 Limiting total annual groundwater allocation

*Policies 6.4.10A, 6.4.10A1, Rule 12.0.1.3, Method 15.8.3.1, Schedule 4D, Definitions
Plan Change 4B pages 2-3, 8, 12-13,16,18
Summary of Decisions Requested: pages 11–30, 36-387*

The notified plan change proposed to amend Policy 6.4.10A, which set up the groundwater allocation framework, by establishing the concept of what is now termed the maximum allocation limit (MAL). This gives an annual volume for sustainable taking, consistent with the NPSFM. If water is already allocated to consents, any quantity remaining available is the MAL less what is currently estimated to be the assessed maximum annual take. Method 15.8.3.1 is used to estimate this aggregated quantity being taken under consents.

Where MAL for a specific aquifer has been determined through a RMA Schedule 1 process, it is shown in Plan Schedule 4A. A default MAL can be determined on a case-by-case basis as 50% of the mean annual recharge (MAR). MAR is estimated by a calculation guided by the factors in Plan Schedule 4D. Once MAR is calculated, the default MAL is a fixed quantity used for determining consents. It may change when a MAL is specified in Schedule 4A, through a subsequent plan change process.

Most submitters supported the overall objective of sustainable allocation and use of Otago groundwater. The following are the main issues raised:

- Allocation status should be available on-line and should make clear what quantity is available, as opposed to the total that can be allocated.
- Allocation should be based on demand, considering location, soils and the nature of the activity, rather than on the aquifer's supply, and take account of permitted activity takes, avoiding over-estimating actual takes, and the method used for quantity estimation to be confirmed through ground-truthing.
- The Plan should express how over-allocation will be managed through phased reduction to MAL.
- Delay policies coming into effect while consent holders measure water usage and collect data including measuring consumptive and non-consumptive aspects of take.
- Abandon the plan change until ORC knows Otago aquifers thoroughly.

1.1.1 Recommendations

We considered the submissions and recommend the following:

Amend Note box in 12.0 as shown below

The Otago Regional Council will use its website www.orc.govt.nz to notify an up-to-date allocation status for aquifers, showing how current allocation compares to the scheduled or default maximum allocation limit (MAL) and will, upon request, advise the applicant of the aquifer's current allocation status before any application is made.

1.1.2 Reasons

- Clarifying groundwater availability and permitted takes

There is no need to further amend these policies because the heading “Groundwater Takes” before Policy 6.4.10A means this section cannot relate to anything but the *groundwater* in an aquifer. If there is any water currently allocated to consents, that will be deducted to quantify how much remains available.

The quantity of water available in an aquifer is a matter of physical supply, not a matter of demand.

Takes with no more than minor effect are permitted under Rules in 12.2.2, and information about the quantity taken is not provided to ORC. Permitted activity takes are not included in the calculation of take volumes under consents.

- Making the aquifer status available on-line

Publicly-available on-line data on aquifer status can be revisited periodically as investigation and calculations become more thorough or sophisticated.

- Calculating aquifer allocation limits, using the interim Method 15.8.3.1

Method 15.8.3.1 is designed to calculate a maximum annual consented allocation volume for an aquifer until all consents stipulate a maximum annual take volume. It represents the potential annual maximum volume taken by all consents, and is not an estimate of actual water use which needs “ground-truthing”. Consent take volume is the starting point because it could potentially all be used, for example if the consent allows for transfer of location of use, or land use activity changes to greater reliance on irrigation. In the short term, difficulty in renewing a consent may occur because of over-estimation using this method, but this will be rectified once all consents have a maximum annual take stipulated. The NPSFM requires decisions not be made that allows total take to exceed allocation limits.

- Volume of water taken historically

This is dealt with more fully in section 3.1.

A distinction needs to be made between an aquifer's allocation limit and the limits on a consent.

All of the matters listed in Rule 12.2.3.4 are used to determine a consent for a new or re-consented take, and in setting appropriate conditions. Volume of water taken historically is just one consideration, requiring a formal policy direction on which to base consent decisions. The National Environmental Standard on Ecological Flows and Water Levels will provide data on takes where no such requirement is within current consent conditions.

- A potential new policy for reducing taking to the maximum allocation limit

The Plan provides the mechanisms of consent surrender, expiry, cancellation or lapse, with no further allocation until taking is under the limit again; reduction to that actually used historically (*notified as* Policy 6.4.10A2, *now* 6.4.10A4); takes cannot exceed quantity required for the purpose of use (Policy 6.4.0A). This policy framework has been in place for over ten years. In any plan change introducing a new MAL to Schedule 4A, the extent of any over-allocation in the particular aquifer will be considered, as set out in Schedule 4C.

- Timely action to avoid or address over-allocation

No water source should be adversely affected while consent holders carry out legally-required measurement of takes.

A programme of adding the MAL for aquifers to the Water Plan should continue if required and as sufficient information is obtained to validate the work.

Any delay in implementing this plan change would not meet NPSFM requirements.

1.2 New consents – consumptiveness of takes

*Rule 12.0.1.3, Method 15.8.3.1
Plan Change 4B page 8, 12-13
Summary of Decisions Requested: pages 16-21, 25-30*

Consumptiveness is a measure of the degree to which water use results in a net loss of water from a source water body.

The following is the main issue raised, regarding how Rule 12.0.1.3 addresses the degree of consumptiveness of a take from an aquifer:

- Allocation status should exclude non-consumptive taking, temporary dewatering, and any quantity which returns water to the aquifer.

1.2.1 Recommendations

We considered the submissions and recommend the following:

- (a) Amend Rule 12.0.1.3 as shown below

(2) <u>Is taken for temporary dewatering at a site for to allow a construction or repair of a structure maintenance activity.</u>
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- (b) Amend Method 15.8.3.1 as shown below

(c) less any quantity specified in a consent as non-consumptive ~~where all of the water taken is immediately returned to the aquifer or connected surface water body.~~

(c) Adopt a new definition in the Glossary as shown below

Non-consumptive take⁺ A take is non-consumptive when:

- (1) The same amount of water is returned to the same water body at or near the location from which it was taken; and
- (2) There is no significant delay between the taking and the returning of the water.

⁺ as defined in the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010

1.2.2 Reasons

- Managing consumptive and non-consumptive takes; return flow

Non-consumptive takes are excluded from aquifer allocation by Policy 6.4.10A1 as notified (*now* Policy 6.4.10A3 as recommended in section 2.1.1(d) below), and by Method 15.8.3.1. A definition on Non-consumptive take is useful for clarity, and ensures accepted usage in the 2010 measurement and reporting regulations is followed.

Non-consumptive uses of water, or temporary takes, cannot deplete the volume available for annual allocation. Depletion of an aquifer's annual volume is not sustainable, although short-term fluctuations may be acceptable, where a restriction level is in place and is not breached.

Takes associated with structure repair work are expected to result in no significant net loss of water to the aquifer, so it is appropriate to excluded them in Rule 12.0.1.3(2).

Consumptiveness will be examined through case-by-case consideration of applications, where the applicant can demonstrate non-consumptiveness, and the duration of temporary effects. Degree of consumptiveness will be investigated to ensure that no user or value reliant on the groundwater levels in an aquifer is affected by the take. This therefore needs to be reflected under (c) in Method 15.8.3.1 regarding return of water to an aquifer. With respect to Schedule 4D, ORC in calculating MAR will include consideration of efficient irrigation return flows where they are known with sufficient certainty.

CHAPTER 2 – CONSENTS IN OVER-ALLOCATED AQUIFERS

2.1 Prohibiting unsustainable taking

Rule 12.0.1.3, Rules in 12.2
Plan Change 4B pages 8-9
Summary of Decisions Requested: pages 24-30

While several submitters supported the need to avoid new or further over-allocation situations, some submitters sought:

- A resource consent option to allow consideration of a take that could go beyond the allocation limit for an aquifer, e.g. when there is doubt over the degree of consumptiveness of a take.
- A policy on phased reduction to MAL in over-allocated aquifers, with extra matters of discretion added to Rule 12.2.3.4 to allow consideration of: the volume taken in the last 5 years; effects of take on surface flows; any Schedule 4A MAL.

2.1.1 Recommendations

We considered the submissions and recommend the following:

(a) Amend Rule 12.0.1.3, as shown below:

12.0.1.3	<p>An <u>The application to take groundwater for a consumptive use within the maximum allocation volume in an aquifer where Policy 6.4.10A(a)(i)(2) or (a)(ii)(2) applies, by a person who does not hold the existing resource consent to take that water, <u>from an aquifer identified in Schedule 4A where the assessed maximum annual take:</u></u></p> <p>(i) <u>Exceeds the aquifer's maximum allocation limit; or</u></p> <p>(ii) <u>Would exceed the aquifer's maximum allocation limit as a result of this take,</u></p> <p>is a <i>prohibited</i> activity, <u>unless all of the water taken:</u></p> <p>(1) <u>Is allocated as surface water under Policy 6.4.1A; or</u></p> <p>(2) <u>Is taken for temporary dewatering at a site for to allow a construction or repair of a structure maintenance activity.</u></p>
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(b) Add new Rule 12.2.1A.3, as shown below:

12.2.1A.3	<p><u>The taking of groundwater for a consumptive use by a person who does not hold the existing resource consent to take that water, from an aquifer not identified in Schedule 4A, where the assessed maximum annual take:</u></p> <p>(i) <u>Exceeds the aquifer's maximum allocation limit; or</u></p> <p>(ii) <u>Would exceed the aquifer's maximum allocation limit as a result of this take,</u></p> <p><u>is a <i>non-complying</i> activity, unless all of the water taken:</u></p>
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- (1) Is allocated as surface water under Policy 6.4.1A; or
- (2) Is taken for temporary dewatering at a site for construction of a structure or repair of that structure.

The Otago Regional Council will use its website www.orc.govt.nz to notify an up-to-date allocation status for aquifers, showing how current allocation compares to the scheduled or default maximum allocation limit (MAL) and will, upon request, advise the applicant of the aquifer's current allocation status before any application is made.

(c) Amend Rule 12.2.3.2A to begin: "Except as provided for by 12.0.1.3, 12.2.1A.3 and 12.2.3.1A, the...

(d) Amend Policy 6.4.10A1 and add new Policy 6.4.10A3, as shown below:

6.4.10A1 Define the maximum allocation limit for an aquifer as:

- (a) That specified in Schedule 4A; or**
- (b) For aquifers not in Schedule 4A, 50% of the mean annual recharge calculated under Schedule 4D,**
and, beyond that maximum, avoid allocating for a consumptive use any water not previously taken under a resource consent.

6.4.10A3 For any aquifer, avoid allocating beyond the maximum allocation limit, unless the water:

- (a) Is for a non-consumptive take; or**
- (b) Has been previously taken under a resource consent; or.**
- (c) Is for a new, consumptive take of a temporary nature that is necessary for construction or repair of a structure.**

2.1.2 Reasons

- Prohibit taking from an aquifer that is or would become over-allocated, where the aquifer has been included in Schedule 4A.

It would be inconsistent with the NPSFM to grant taking which is not sustainable. The ORC would not grant an application for a take that would reduce the annual volume of an aquifer, so there is little point applying for, or considering one, and the prohibited activity status sends a clear message to the community that over-allocation will not be perpetuated.

- Make taking from an aquifer that is or would become over-allocated, where the aquifer has not been included in Schedule 4A, subject to a resource consent application as a non-complying activity.

While it would be inconsistent with the NPSFM to grant taking which is not sustainable, a policy approach to allow fuller investigation of the allocation status of an aquifer is appropriate. Avoiding prohibition on applications, where an aquifer has not been investigated and included on Schedule 4A allows closer examination of recharge characteristics. Policies to avoid consumptive takes which have more than minor effects or are not temporary are also appropriate. To give effect to the NPSFM, the ORC could not grant an application for a take that may reduce the annual volume of an aquifer.

- Non-consumptive takes

An application to take that is totally non-consumptive can be considered. In considering the degree of consumptiveness, some minor losses such as through evaporation may be considered insignificant. The definition of “Non-consumptive take” recommended for inclusion in section 1.2.1(c) above is added for clarity and consistency with regulations on take measurement.

- Sampling or other investigation wells, pits and bores

Bores, under the Plan definition, do not include sampling bores or piezometers, and small takes are permitted by Rule 12.2.2.

- Phased reduction of over-allocation

The Plan provides the mechanisms of consent surrender, expiry, cancellation or lapse, with no further allocation until taking is under the limit again; reduction to that actually used historically (Policy 6.4.10A2 *now* 6.4.10A4); takes cannot exceed quantity required for the purpose of use (Policy 6.4.0A). This policy framework has been in place for over ten years. In any plan change introducing a new MAL to Schedule 4A, the extent of any over-allocation in the particular aquifer will be considered, as set out in Schedule 4C.

The matters of discretion in Rule 12.2.3.4 cover matters for which imposition of a consent condition may need to be considered.

A future plan change is likely to consider a more explicit policy in order to give effect to the NPSFM.

2.2 Replacement consents

Policy 6.4.10A2

Plan Change 4B pages 4-5

Summary of Decisions Requested: pages 30-36, 38

While several submitters supported the need to limit taking under replacement consents, some submitters sought:

- Reconsideration of reliance on historical use over at least the preceding five years.

- Consideration of the needs of private residential development with expansion plans, or those who can justify being granted a higher volume.
- Allowance for consents to be renewed and extended.
- Consideration of the highest actual uses in the past 10 years.
- Reduction to 2 years of record as 5 years is an onerous information requirement.
- Other considerations be used when determining re-consented amount.
- Different measures be used to assess how much water is appropriate to grant.
- An equitable cut-back for all permit holders.

2.1.1 Recommendations

We considered the submissions and recommend no amendment to Policy 6.4.10A2 as notified (*now* 6.4.10A4).

2.1.2 Reasons

- Reasonably anticipated growth

Increase in actual taking within reasonably anticipated growth can be described in an application for consent replacement, and considered. Residential development may be able to qualify for registration as a community drinking water supply, if the supply serves a community of more than 25 people for more than 60 days a year.

- Wet or dry seasons, realistic requirements

If there have been no very wet or very dry years in the 5 years, an applicant can always furnish evidence from a longer period of typical usage, to make their case. The ORC will have records of wet or dry years. Users who can demonstrate best industry practice efficiency in a typical dry season may be in a strong position to justify applying for water volumes considered necessary for their activity.

The Policy is about considering evidence of need for water (including information about climate, soil and crops), not about a potential requirement for water (which is dealt with in justifying a take application).

Two years of evidence may not be enough to give a realistic picture of typical taking. It is up to the applicant to provide sufficient evidence to justify an application. The National Environmental Standard on Ecological Flows and Water Levels will ensure take data is collected and provided.

- Consistent implementation of groundwater taking provisions

Replacement consents to take need consistent treatment. Increases to existing taking under current consented takes may adversely affect values and uses of aquifers that are fully- or over-allocated. Consents in other aquifers can be renewed and extended, if justified. Policies such as 6.4.10A2 (*now* 6.4.10A4) follow basic principles that have

been established for some years and remain the foundation for the consistent implementation of the Water Plan.

- Equitable treatment of applicants

All applicants for replacement consents in an over-allocated aquifer will be treated equitably, as the same considerations will be applied and each, over time, will eventually be subjected to the same need to justify their application.

- Matters of discretion

All of the matters listed in Rule 12.2.3.4 are used to determine a consent for a new or re-consented take, and in setting appropriate conditions. Volume of water taken historically is just one consideration, but it requires the direction of Policy 6.4.10A2 on which to base consent decisions.

CHAPTER 3 – RECOMMENDATIONS ON OTHER PLAN CHANGE MATTERS

3.1 Policy 6.4.10A3 (now 6.4.10A5)

*Policy 6.4.10A3
Plan Change 4B page 5
Summary of Decisions Requested: pages 23-24*

This provision provides policy guidance on other matters relating to groundwater consenting. Some submitters sought:

- The need for Policy 6.4.10A3 to clearly relate to groundwater takes only.

3.1.1 Recommendations

We considered the submissions and recommend amending Policy 6.4.10A3 (now 6.4.10A5) as shown below

<p><u>6.4.10A35</u> [Moved from Policy 6.4.10A(c) and (d)] <u>In managing the taking of groundwater, avoid in any aquifer:</u></p> <p><u>(a) Contamination of groundwater or surface water; and</u></p> <p><u>(b) Permanent aquifer compaction.</u></p>

3.1.2 Reasons

- Policy 6.4.10A3 (now 6.4.10A5) sits in the Groundwater Takes section, but for certainty the words that headed former Policy 6.4.10A can be reinstated.

3.2 Simplification and streamlining

*Removal of explanations and Principal reasons
Plan Change 4B page 3-5, 8
Summary of Decisions Requested: page 36*

A submission requested the retention of explanations and principal reasons for adopting due to the helpful information and useful context they provide.

3.2.1 Recommendations

We considered the submission and recommend deletion of the specified explanations and principal reasons for adopting.

3.2.2 Reasons

- The deletion of these provisions simplifies the Water Plan. Only objectives, policies and rules are required in a regional plan; explanations are optional. Provisions need to be able to be read without the need for explanation. The ORC continues to produce a range of supporting documents, including the SOE reports, brochures and guidelines on using the Water Plan, and website material.

3.3 Minor and consequential amendments

*Table of minor and consequential amendments
Plan Change 4B pages 19-20
Summary of Decisions Requested: page 37*

The plan change proposes a number of minor and consequential changes. A submission sought changes consequential to the decisions requested.

3.3.1 Recommendations

We considered the submissions and recommend adoption of minor and consequential changes as notified.

3.3.2 Reasons

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

CHAPTER 4 – MATTERS NOT ADDRESSED IN THIS PLAN CHANGE

4.1 Matter beyond the scope of the plan change

Summary of Decisions Requested: page 16

One submitter requested an aquifer in the Middlemarch area be identified through this Plan Change and that it be a groundwater protection zone.

3.1.1 Recommendations

We considered the submissions and recommend making no amendment to address matters beyond the scope of this plan change

3.1.2 Reasons

- This plan change did not undertake a comprehensive evaluation of the need for groundwater protection zones, and land use controls are not relevant to groundwater allocation. The matter of protecting groundwater quality from leachate has been addressed through Plan Change 6A (Water Quality) and any aquifer-specific water quality issues would need to be managed through a separate plan change.