

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

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

**Officers' Report on  
Decisions Requested**



## Table of contents

|  |           |
|--|-----------|
| <b>1. BACKGROUND .....</b>   | <b>1</b>  |
| <b>2. ALLOCATION LIMITS and MINIMUM FLOWS.....</b>                   | <b>3</b>  |
| 2.1 ....Irrigation season primary allocation minimum flow            | 3         |
| 2.2 ....Non-irrigation season minimum flow for primary allocation    | 4         |
| 2.3 ....Limiting primary allocation                                  | 4         |
| 2.4 ....Supplementary minimum flow and allocation                    | 5         |
| <b>3. OTHER PLAN CHANGE MATTERS .....</b>                            | <b>6</b>  |
| 3.1 ....Mapped extent of Pomahaka catchment                          | 6         |
| 3.2 ....Clear specification of irrigation and non-irrigation seasons | 7         |
| 3.3 ....Provision of an alluvial ribbon aquifer                      | 8         |
| 3.4 ....Whole plan change, Maps and Minor and consequential changes  | 9         |
| <b>4. MATTERS NOT ADDRESSED IN THIS PLAN CHANGE.....</b>             | <b>10</b> |
| 4.1 ....Justification in Evaluation Report; alternatives             | 10        |
| 4.2 ....Matter beyond the scope of the plan change                   | 10        |

## 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.<br>A reference to a section of the Water Plan. |
| Section | A Section of the RMA.   |

### Note: text marking

|  |  |
|--|--|
| <del>Operative word</del> / <u>notified word</u> | Notified change, showing change proposed from the Water Plan |
| <del>Notified word</del> / <u>amended word</u>   | Amendment recommended in Officers' report                    |

## 1. BACKGROUND

The National Policy Statement for Freshwater Management (NPSFM), first released by Government in May 2011 and amended on 31 July 2014, requires the Otago Regional Council (ORC) to establish freshwater objectives and set freshwater allocation limits, amongst other matters.

In terms of Section 5 of the Resource Management Act 1991 (RMA) the Regional Plan: Water for Otago (Water Plan) manages water allocation in Otago in a way that enables activities that use water, while avoiding, remedying or mitigating adverse effects of use. The Water Plan has a stated preference in Policies 5.4.2 and 5.4.3 for avoiding adverse effects on the water resource and on existing lawful users. In keeping with this preference and recent national policy, the over-allocation of water in Otago needs to be avoided.

The physical nature of any river catchment, water quality, uses and natural values that depend on its flows, can all be adversely affected by the unrestricted taking of water.

### **Key aspects of the proposed plan change**

Proposed Plan Change 3B (Pomahaka catchment minimum flow) to the Water Plan introduces 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.

### **Notification process**

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*, which requested further submissions, was notified on Saturday 27 September 2014, with further submissions closing on Friday 10 October 2014. There were two further submissions received.

The Summary of Decisions Requested which is attached as Appendix 1, shows decisions requested in all submissions and further submissions, sorted by Water Plan provision.

### **The purpose of this report**

This report considers decisions requested by submitters and further submitters, and recommends adoption of the proposed plan change provisions to the Hearing Committee.

Provisions or amendments that did not receive submissions are not discussed, so these changes should be approved as proposed, subject to any minor changes for consistency purposes.

### **Documents referred to in this report**

This report should be read in conjunction with the following documents:

- *Proposed Plan Change 3B (Pomahaka catchment minimum flow) to the Regional Plan: Water for Otago (16 August 2014).*

- *Section 32 Evaluation Report (16 August 2014)*
- *Summary of Decisions Requested by Provision, including Submitters and Further Submitters (24 October 2014). (Appendix 1)*

## 2. ALLOCATION LIMITS AND MINIMUM FLOWS

This section provides recommendations applied to specific requests on the allocation limits and minimum flows being proposed by the Plan Change. The minimum flow regime applies to the Pomahaka catchment (including the Waipahi catchment tributary) from its confluence with the Clutha/Mata-Au to its headwaters, where it lies within the Otago region.

### 2.1 Primary allocation minimum flows

Setting an acceptable irrigation season minimum flow for primary allocation is the main focus of submissions and further submissions. The minimum flow is the river flow level below which consents to take, and some permitted activity takes may not be exercised. It applies when water is in shorter supply and greater demand.

Primary allocation minimum flows of 3,600 l/s for the period 1 October to 30 April and 7,000 l/s for the rest of the year, are proposed to be specified in Schedule 2A.

For detail of the proposed amended policy, rule and associated provisions and the submissions received relating to this matter, refer to:

| <i>Provision code</i> | <i>Provision</i>   | <i>Page(s) of Proposed Plan Change 3B</i> | <i>Page(s) of Summary of Decisions Requested</i> |
|-----------------------|--|---|--|
| 1                     | <i>Policy 6.4.5 and Rule 12.1.4.2</i>  | 2, 4                                      |  |
| 4, 5                  | <i>Schedule 2A Minimum flows (Irrigation season and non-irrigation season)</i> | 6   |  |
| 15                    | <i>Section 32 Evaluation Report</i>  | -   |  |

#### 2.1.1 Main Issues

Those submitting on the proposed irrigation season minimum flow were generally supportive of this, but several requested a higher minimum flow be considered. The following are the main issues raised:

- An irrigation season minimum flow of 3,800 l/s (or higher) to better provide for values present.
- Catchment-wide application of the minimum flow, focusing on the confluence of the Waipahi with the Pomahaka River.
- Give serious consideration to option 3 in the Section 32 Evaluation Report.
- No requests were made to amend the proposed minimum flow for the non-irrigation season.

#### 2.1.2 Recommendation

Make no amendment to Policy 6.4.5, Rule 12.1.2.5 or Schedule 2A's minimum flows for primary allocation, as notified.

### 2.1.3 Reasons

- **Considering a higher or lower minimum flow**

There is no justification for constraining the taking of water more than under the proposed minimum flow for aquatic ecosystem values, and the requested increase in the minimum flow to 3,800 l/s would have negligible effect on natural character. Ninety percent of adult brown trout habitat is provided by a minimum flow which is 84% of MALF. A slightly higher minimum flow would provide negligible environmental benefit while further constraining taking.

Less than 90% of habitat could result in the gradual decline in the highly significant adult brown trout fishery. Any minimum flow that was lower would reduce the habitat available for trout at times of low flow and would risk maintenance of the fishery, while the resulting improvement in surety of supply to irrigation takes would benefit economic wellbeing mainly for those without storage.

- **Catchment-wide application of minimum flow**

It is expected that the minimum flow of 3,600 l/s applying to the entire catchment will provide adequately for values in all tributaries, such as the Waipahi River, given climatic and land use conditions will be similar throughout.

## 2.2 Limiting primary allocation

Primary allocation is the quantity to which the lowest minimum flows in both the irrigation and non-irrigation season apply. Setting an appropriate primary allocation limit prevents new takes that would exceed it being subject to that minimum flow. Instead they would be allocated with supplementary status, at the higher minimum flow.

In the case of the Pomahaka catchment, 1,000 l/s is proposed, for Schedule 2A that the primary allocation limit is proposed to be specified. For detail of the submissions received relating to this matter, refer to:

| <i>Provision code</i> | <i>Provision</i>                            | <i>Page(s) of Proposed Plan Change 3B</i> | <i>Page(s) of Summary of Decisions Requested</i> |
|-----------------------|---|---|--|
| 3                     | <i>Schedule 2A Primary allocation limit</i> | 6   |  |

### 2.2.1 Main Issue

The following summarises the decisions requested by submitters, regarding the primary allocation limit:

- The proposed limit of 1,000 l/s should be retained.



### 2.2.2 Recommendation

Make no amendment to Schedule 2A's primary allocation limit, as notified.

### 2.2.3 Reason

No request was received to amend the figure.

## 2.3 Supplementary minimum flow and allocation

This minimum flow would constrain taking for new allocations granted beyond the primary allocation limit. Those who wish to store water for use in the irrigation season can take to fill reservoirs whenever the flow exceeds 13,000 l/s.

For detail of the submissions received relating to this matter, refer to:

| <i>Provision code</i> | <i>Provision</i>   | <i>Page(s) of Proposed Plan Change 3B</i> | <i>Page(s) of Summary of Decisions Requested</i> |
|-----------------------|--|---|--|
| 7                     | <i>Schedule 2B<br/>Supplementary<br/>allocation minimum<br/>flow</i> | 6   |  |
| 9                     | <i>Schedule 2B<br/>Supplementary<br/>allocation block size</i>       | 6   |  |

### 2.3.1 Main Issue

The following is the decision requested by submitters:

- The proposed Schedule 2B minimum flow for supplementary allocation of 13,000 l/s and its block size of 500 l/s should be retained.

### 2.3.2 Recommendation

Make no amendment to Schedule 2B's minimum flow for supplementary allocation or its block size, as notified.

### 2.3.3 Reason

No request was received to amend the figures.

### 3. OTHER PLAN CHANGE MATTERS

This section provides recommendations regarding specific requests about matters in the Plan Change that do not directly relate to the various minimum flow and allocation figures.

#### 3.1 Mapped extent of Pomahaka catchment

The minimum flows and allocation limits addressed in section 2 of this report 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.

For detail of the proposed map extent and the submissions received relating to this matter, refer to:

| <i>Provision code</i> | <i>Provision</i>     | <i>Page(s) of Proposed Plan Change 3B</i> | <i>Page(s) of Summary of Decisions Requested</i> |
|-----------------------|----------------------|---|--|
| 2                     | Maps B11, B13, B15   | Following p 9                             |  |
| 15                    | Whole of plan change | -   | 38   |

##### 3.1.1 Main Issues

Submitters requested:

- The Plan clarify that the rules apply in the catchment within Otago region.

##### 3.1.2 Recommendation

Amend column entries in Schedules 2A and 2B as shown below:

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

## 2B Schedule of supplementary allocation...

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

### 3.1.3 Reason

It is important to clarify 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.

### 3.2 Clear specification of irrigation and non-irrigation seasons

The minimum flows and allocation limits addressed in section 2 of this report apply in two mutually exclusive seasons of the year.

For detail of the proposed monthly delineation of these seasons and the submissions received relating to this matter, refer to:

| <i>Provision code</i> | <i>Provision</i>   | <i>Page(s) of Proposed Plan Change 3B</i> | <i>Page(s) of Summary of Decisions Requested</i> |
|-----------------------|--------------------|---|--|
| 17                    | All schedule dates | 6   |  |

#### 3.2.1 Main Issues

Submitters requested:

- 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.

#### 3.2.2 Recommendation

Amend column entries in Schedule 2A as shown below.

As a consequential change, this is recommended to be done consistently throughout Schedules 2A and 2B.

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

...

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

### 3.2.3 Reason

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

## 3.3 Provision of an alluvial ribbon aquifer

The Plan Change 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.

For detail of the submissions received relating to this matter, refer to:

| <i>Provision code</i> | <i>Provision</i>                         | <i>Page(s) of Proposed Plan Change 3B</i> | <i>Page(s) of Summary of Decisions Requested</i> |
|-----------------------|--|---|--|
| 10                    | <i>Schedule 2C;<br/>Maps C22 and C23</i> | 6<br><i>Following p 9-</i>                |  |

### 3.3.1 Issue

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

### 3.3.2 Recommendation

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

### 3.3.3 Reason

The amendment is supported, and it will facilitate integrated management of the catchment’s water resources.

### 3.4 Whole plan change, Maps and Minor and consequential changes

General submissions were made relating to the whole plan including continuation of primary status consents, regard to community values and uses, the new maps layout and the minor and consequential changes tabled on pages 7 and 8.

For detail of the submissions received relating to these matters, refer to:

| <i>Provision code</i> | <i>Provision</i>  | <i>Page(s) of Proposed Plan Change 3B</i> | <i>Page(s) of Summary of Decisions Requested</i> |
|-----------------------|---|---|--|
| 14                    | <i>Whole of plan change</i>                               | -   |  |
| 13                    | <i>Presentation of maps; layout and numbering changes</i> | <i>Following p 9</i>                      |  |
| 18                    | <i>Minor and consequential changes</i>                    | 7-8                                       |  |

#### 3.4.1 Issues

Submissions supported the Plan Change and sought changes consequential to the decisions requested. A submitter requests 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. The amended presentation of maps and numbering changes was supported.

#### 3.4.2 Recommendation

Make any minor and consequential amendment necessary to give effect to the proposed plan change.

#### 3.4.3 Reasons

- **Supported proposals**

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

- **Primary allocation, uses and values**

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).

This policy framework has been in place for over ten years.

## **4. MATTERS NOT ADDRESSED IN THIS PLAN CHANGE**

### **4.1 Matters beyond the scope of the plan change**

One submitter requested a take for community water supply be added to Schedule 1B of the Water Plan through this Plan Change.

Submitters requested a rule requiring consents be reviewed within 3 years to give effect to the plan change.

#### **4.1.1 Recommendation**

Make no amendment to address matters beyond the scope of this plan change.

#### **4.1.2 Reason**

- **Schedule 1B**

This plan change did not affect Schedule 1B, and any change to that schedule would need to be addressed through a separate plan change.

- **Consent review**

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.