

**NOTIFICATION ASSESSMENT
DEEMED PERMIT REPLACEMENT WATER PERMIT**

ID Ref: A1328163
Application No(s): RM20.003
Prepared for: Staff Consents Panel
Prepared by: Kirstyn Lindsay, Consultant Planner
Date: 28 February 2020

Subject: Notification consideration for deemed permit replacement water permit

1. Purpose

To report and make recommendations on the determination of the notification decision of Resource Consent application RM20.003 in accordance with Sections 95A-G of the Resource Management Act 1991 (the Act).

2. Background Information

Applicant: Rockburn Wines Limited

Applicant's Agent: Will Nicholson – Landpro Ltd

Site address or location: Lower flanks of the Pisa Range approximately 1.6km northwest of Pisa Moorings.

Legal description(s) take and use:

Consent	Description	Record of Title	Land owner	S417 Instruments
98526	Take 1 and upper race	OT19A/906	Lowburn Landholdings Limited	10435540.2 and 10435540.3
98526	Take 2 (retake)	844471 and 844470	Mark II Limited	10435540.2 and 10435540.3
Water storage and use	Reservoir and irrigation	OT19A/535	Rockburn Wines Limited	
Reservoir overflow		319229	John Douglas Allison and Marilyn Elizabeth Alison	

Map reference(s):

Point 1: E1302345 N5016651

Point 2: E1302328 N5016202

Consent sought: To take and use surface water
Purpose of take: Irrigation and Frost fighting
Deemed permit: 98526.V1

3. Summary of Recommendation

I recommend, for the reasons outlined in this report, that this application, which is for a restricted discretionary activity, be processed on a non-notified basis, subject to the applicant obtaining the written approvals of the parties identified in this report, in accordance with section 95B of the Resource Management Act 1991.

Please note that this report contains the recommendations of the Consultant Planner and represents the opinion of the writer. It is not a decision on the notification of an application.

4. The Application

Consent is sought to take and use water. The water permit application is for the replacement of deemed permit. The proposed rates are:

Rates and Volumes Applied For:

Rate of take:	28 L/s
Monthly Volume:	73,000 m ³ /month
Annual volume:	237,933 m ³ /year

Details of Deemed Permits Being Replaced

The applicant is seeking to replace Deemed Permit 98526, which expires on 1 October 2021. Deemed Permit 98526 authorises the applicant to take up to 28 L/second from either of two locations. The first location is on the main trunk of the Park Burn and the second on a tributary of the Park Burn. This application was lodged with the Council at least six months before the expiry date. In accordance with Section 124 of the Act, the applicant may continue to operate under Water Permit 98526 until a decision on this application is made and all appeals are determined.

Historic Rate and Use Data and Deemed Permit Conditions

Abstraction under Deemed Permit 98526 has been recorded via WM1363 since January 2015. The applicant has met, and, at times exceeded, their authorised rate of take. Generally, exceedances arose from a mis-interpretation of condition 3 of 98526 which states that “the combined take of Water Permit 98526 and 98527 shall not exceed 112 litres per second at the water metering device location.”

Other Activities

The applicant is party to several other water takes and discharge permits. As a Shareholder in Deemed Permit 95789, the applicant is entitled to take and use water from the Park Burn. Discharge Permit 98655 authorises the applicant to discharge from the 95789 race into a tributary of the Park Burn with a subsequent downstream take via Water Permit 98527. The applicant has not exercised 98655 and 98527 as the specified discharge location would require significant infrastructure investment. WP98655 and 98527 are considered to have

lapsed. Instead the applicant has abstracted water on an as-needed basis via one of Mark II Limited's reservoirs via an internal arrangement.

Application Documents

The applicant provided the following reports in support of the application:

- Fish Survey and Residual Flow report
- Park Burn Hydrology investigation
- Aqualinc Calculations

No additional information was requested.

Site Visit

A site visit was undertaken on 7 February 2020 and attended by Kirstyn Lindsay, Consultant Planner; Pete Ravenscroft, Resource Scientist; Ciaran Campbell, Resource Scientist; the applicant's agent Will Nicholson, (Landpro Limited) and various representatives of the applicants.

5. Description of the Environment

5.1 Description of the Site and Surrounding Environment

The applicant owns approximately 34ha on the terraces above Lake Dunstan, 1.6km northwest of Pisa Moorings. The applicant's water take infrastructure and property are situated on the lower flanks of the Pisa Range, on a series of gently sloping terraces above Lake Dunstan. Elevation varies, from approximately 300 masl at 98526 Take 1, to approximately 240 masl at the bottom corner of the applicant's property.

Approximately 24ha of this land has been converted to vineyard with plans to convert a further 1.7ha. Vineyard irrigation is via a drip irrigation which will be continued across the next 1.7ha. Currently the applicant relies on helicopters for frost fighting purposes but intends to install overhead sprinklers in the future.

The applicant's primary source of water is from the Park Burn, as authorised by 98526. Vegetation at the take points is predominantly exotic grasses and willows. The water take occurs from either of two locations. The first location is on the main trunk of the Park Burn and the second on a tributary of the Park Burn. Both intakes are open channels diversions. Both intakes are controlled by a sluice gate.

The applicant's main race runs from the upper 98526 intake to their north-western property boundary where it is then piped for approximately 60m into a storage pond. The main race crosses a tributary of the Park Burn via a perched pipe.

Water, abstracted from the second take point, flows down a branch race for approximately 80m before joining up with the main race. A race overflow and telemetry station are located approximately 70m and 110m downstream of this race junction respectively. WEX0164 provides for the downstream location of the telemeter.

All of the applicant's water feeds into a reservoir at the northern corner of their property form which is then used to irrigate the entire vineyard. A spillway directs excess clean water into a channel which discharges it back into the Park Burn.

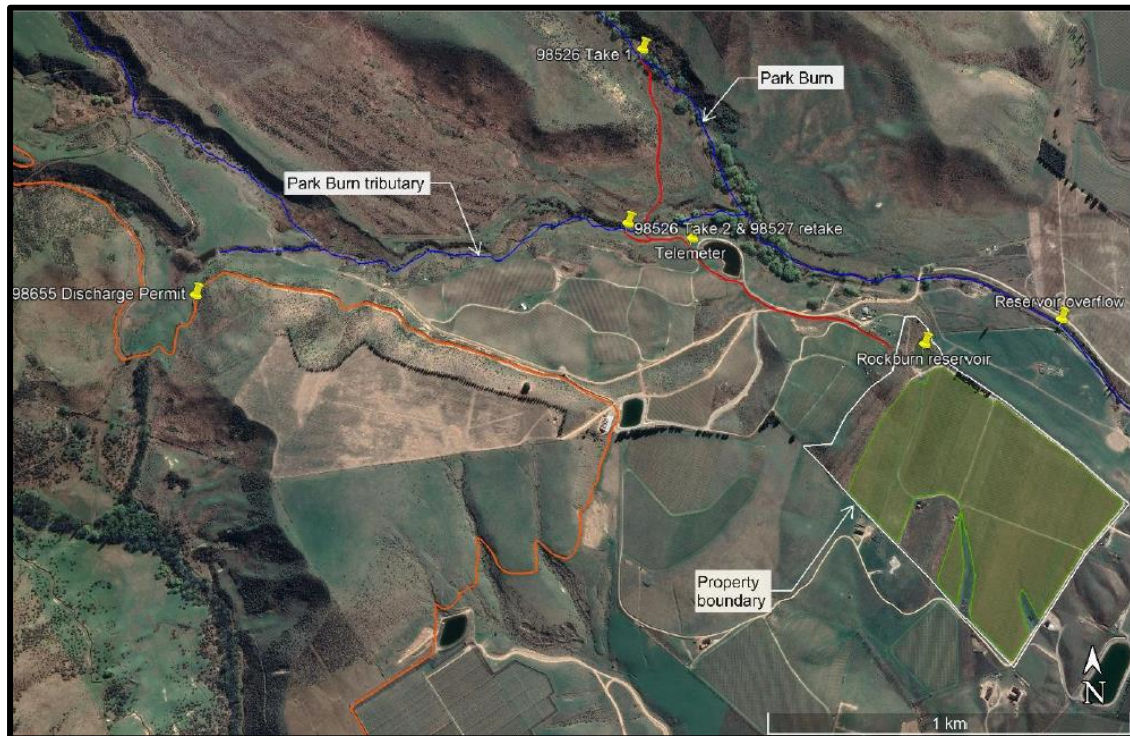


Image 1: Overview of Rockburn Wines water take and use. The red line represents the applicant's Park Burn race, while the orange line represents the 95789 race (maintained by the applicant and others, not part of this application).

Landcare Research S-Map designated soils identifies that the soils on the site comprise:

- Waenga_5a.3 on the gentler-sloping sections, which make up the front of the property and support all of the existing vineyard. These are shallow, moderately well drained loams.
- Moly_10a.1 at the northwest section of the site. This area is steeper sloping and includes the existing reservoir and proposed future vines. These are well drained, moderately stony, sandy loams

The vineyard is located within the 350mm/year rainfall class band. GrowOtago calculated the potential evapotranspiration rate at the site between 620-635mm from September to April. However, the applicant suggests that when comparing these figures to the NIWA evapotranspiration records for Alexandra and Queenstown, this may be a significant underestimation. Modelling undertaken by NIWA in 2015 shows the site and surrounding area experience approximately 110-120 days per year of soil moisture deficit. The property also experiences 9-12 spring frosts every year which can damage young vine shoots and flowers.

5.2 Description of Surface Water Body

The headwaters of the Park Burn begin at around 1800masl on the Pisa Range. The channel gradient is steep at this elevation with the gradient easing at around 650masl. Below this, several tributaries enter into the main trunk. Take 2 for 98526 is located on the largest of these tributaries. Below this tributary confluence the Park Burn drops down onto the Dunstan Flats before passing under SH6 and discharging to Lake Dunstan.

The following parties also have water takes from the Park Burn.:

Permit No.	Creek	Location	Rate of take (L/s)	Primary consent holder
RM15.007.01 & 94394	Park Burn	Approx. 2.5 km u/s of 98526 Take 1.	250	Smallburn Limited
93177	Park Burn	Approx. 1 km d/s of the 98526 Take 2.	55.6 (unexercised)	Mark II Limited

There is no flow monitoring data for the Park Burn. Gauging at various sites throughout the Park Burn catchment was undertaken by the applicant's agent on 16 January 2019. For the duration of the survey and for 24 hours prior, the applicant ceased taking water. The gauging showed a net loss of 70L/second between site 2 (113.5L/s) and site 6 (43.5L/s).

The New Zealand Freshwater Fish Database has three records for Park Burn. All three surveys found brown trout only with no other species present. Waterways consulting conducted further aquatic surveys in April 2019. No native fish were identified in the survey but brown trout ranging from 67mm to 219mm were observed and a single rainbow trout (127mm in length).

There are no Water Conservation Orders for the Park Burn.

6. Regional Planning Context

Schedule 1A of the Regional Plan: Water for Otago (RPW) outlines the natural and human use values of Otago's surface water bodies. The Park Burn is not listed in Schedule 1A of the RPW.

The Park Burn is a tributary of Lake Dunstan/Te Wairere which is part of the Clutha River/Mata-Au catchment. The following Schedule 1A values are identified for Clutha River/Mata-Au:

- Size (large waterbody supporting high numbers of particular species or a variety of habitats)
- Bedrock and gravel beds
- Areas for spawning and juvenile fish development for trout and salmon
- Riparian vegetation
- Significant presence of trout, eel and salmon
- Presence of indigenous fish species.
- Significant habitat for flathead galaxid
- Presence of a significant range of indigenous waterfowl.

Schedule 1B of the RPW identifies water takes used for public supply purposes (current at the time the RPW was notified in 1998). The Park Burn is not identified in Schedule 1B. However, Site 13 (Clyde Water Supply) and Site 14 (Cromwell Water Supply) of Schedule 1B are both within the Clutha River/Mata Au catchment downstream of the confluence of the Park Burn and the Clutha River/Mata Au.

Schedule 1C identifies registered historic places which occur in, on, under or over the beds or margins of lakes and rivers. The Park Burn is not identified in Schedule 1B. However, the Cromwell Bridge located downstream of the confluence of the Park Burn and the Lake Dunstan/Te Wairere is a registered historic place.

Schedule 1D of the RPW identifies the spiritual and cultural beliefs, values and uses associated with water bodies of significance to Kai Tahu. The Park Burn is not listed within this Schedule, however the Clutha River/Mata Au (to which the watercourse flows) is identified as having the following values:

- **Kaitiakitanga:** the exercise of guardianship by Kai Tahu, including the ethic of stewardship.
- **Mauri:** life force.
- **Waahi tapu and/or Waiwhakaheke:** sacred places; sites, areas and values of spiritual values of importance to Kai Tahu.
- **Waahi taoka:** treasured resource; values, sites and resources that are valued.
- **Mahika kai:** places where food is procured or produced.
- **Kohanga:** important nursery/spawning areas for native fisheries and/or breeding grounds for birds.
- **Trails:** sites and water bodies which formed part of traditional routes, including tauraka waka (landing place for canoes).
- **Cultural materials:** water bodies that are sources of traditional weaving materials (such as raupo and paru) and rongoa (medicines).

6.2 Schedule 2 of the Regional Plan: Water

The Park Burn is not listed in Schedule 2 of the RPW.

6.3 Regionally Significant Wetlands

There are no regionally significant wetlands identified within or near this watercourse.

7. Status of Application

Resource consent is required under the RPW.

As the original permit (96208) was granted prior to 28 February 1998 and the applicant has applied more than 6 months prior to the consent expiring, the water take retains primary allocation status in accordance with Policy 6.4.2.

Restricted Discretionary Activity Rule 12.1.4.5

Taking and use of surface water as primary allocation applied for prior to 28 February 1998 in catchments not listed in Schedule 2A:

- (i) *This rule applies to the taking of surface water, as primary allocation, in catchment areas not listed in Schedule 2A, if the taking was the subject of a resource consent or other authority:*
 - (a) *Granted before 28 February 1998; or*
 - (b) *Granted after 28 February 1998, but was applied for prior to 28 February 1998; or*
 - (c) *Granted to replace a resource consent or authority of the kind referred to in paragraph (a) or (b).*

- (ii) *Unless covered by Rule 12.1.1A.1, the taking and use of surface water to which this rule applies is a restricted discretionary activity. The matters to which the Otago Regional Council has restricted the exercise of its discretion are set out in Rule 12.1.4.8.*
- (iii) *Unless covered by Rule 12.1.1A.1, the taking and use of surface water in the Waitaki catchment to which this rule applies is a restricted discretionary activity provided that by itself or in combination with any other take, use, dam, or diversions, the sum of the annual volumes authorised by resource consent, does not exceed the allocation to activities set out in Table 12.1.4.2. The matters to which the Otago Regional Council has restricted the exercise of its discretion are set out in Rule 12.1.4.8.*
- (iv) *Takes to which this rule applies will not be subject to a minimum flow condition until the minimum flow has been determined by investigation and added to Schedule 2A by a plan change.*

Note: If a minimum flow has been determined for a catchment previously not listed in Schedule 2A, and that minimum flow has been set by a plan change, the catchment will then be listed in Schedule 2A and Rule 12.1.4.2 or Rule 12.1.4.4 will apply.

Rule 12.1.4.8 Restricted Discretionary Activity considerations

In considering any resource consent for the taking and use of water in terms of Rules 12.1.4.2 to 12.1.4.7 and 12.2.3.1A, the Otago Regional Council will restrict the exercise of its discretion to the following:

- (i) *The primary and supplementary allocation limits for the catchment; and*
- (ii) *Whether the proposed take is primary or supplementary allocation for the catchment; and*
- (iii) *The rate, volume, timing and frequency of water to be taken and used; and*
- (iv) *The proposed methods of take, delivery and application of the water taken; and*
- (iv) *The source of water available to be taken; and*
- (vi) *The location of the use of the water, when it will be taken out of a local catchment; and*
- (vii) *Competing lawful local demand for that water; and*
- (viii) *The minimum flow to be applied to the take of water, if consent is granted; and*
- (ix) *Where the minimum flow is to be measured, if consent is granted; and*
- (x) *The consent being exercised or suspended in accordance with any Council approved rationing regime; and*
- (xi) *Any need for a residual flow at the point of take; and*
- (xii) *Any need to prevent fish entering the intake and to locate new points of take to avoid adverse effects on fish spawning sites; and*
- (xiii) *Any effect on any Regionally Significant Wetland or on any regionally significant wetland value; and*
- (xiv) *Any financial contribution for regionally significant wetland values or Regionally Significant Wetlands that are adversely affected; and*
- (xv) *Any actual or potential effects on any groundwater body; and*

- (xvi) Any adverse effect on any lawful take of water, if consent is granted, including potential bore interference; and*
- (xvii) Whether the taking of water under a water permit should be restricted to allow the exercise of another water permit; and*
- (xviii) Any arrangement for cooperation with other takers or users; and*
- (xix) Any water storage facility available for the water taken, and its capacity; and*
- (xx) The duration of the resource consent; and*
- (xxi) The information, monitoring and metering requirements; and*
- (xxii) Any bond; and*
- (xxiii) The review of conditions of the resource consent; and*
- (xxiv) For resource consents in the Waitaki catchment the matters in (i) to (xxiii) above, as well as matters in Policies 6.6A.1 to 6.6A.6.*

Overall, the application is a **restricted discretionary** activity. All other relevant permitted activity rules are complied with.

The discharge of water back into the Park Burn is a permitted activity pursuant to Rule 12.C.1.1 of the RPW.

Maintenance of the intake infrastructure is a permitted activity pursuant to Rule 13.5.1 of the RPW and its ongoing use is permitted by Rule 13.1.1

The storage reservoir does not capture natural run-off and is not located within a watercourse and, as such, is not considered to be damming of water. It does not meet the definition of large dam under the Building Act.

8. Statutory Considerations

8.1 Public Notification (Section 95A)

Section 95A(1) requires the consent authority to follow the various steps set out in section 95A in order to determine whether to publicly notify an application.

Step 1 is addressed in section 95A(2)-(3).

Has the applicant requested public notification?

No

Has any further information been requested or report been commissioned? (Section 95C)

No.

Is the application made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977?

No

The application does not need to be publicly notified under Step 1.

Step 2

Step 2

If public notification is not required under step 1, the consent authority must proceed to step 2. Step 2 is articulated in section 95A(4)-(5) and provides that in certain circumstances, public notification will be precluded. Those circumstances are:

Rule 12.1.4.8 of the Otago Water Plan (Plan) provides that:

12.1.4.8 Restricted discretionary activity considerations

... the Consent Authority is precluded from giving public notification, if the application is to take and use water from:

- (i) A river for which a minimum flow has been set by or under this Plan; or*
- (ii) A river for which it is not necessary for the Council to consider whether, if consent is granted, the taking should be subject to a condition requiring a residual flow to remain in the river at the point of take, or a condition requiring other provision for native fish, other than a condition requiring fish screening.*

The application has been assessed by the Council's Resource Science Unit (RSU) and made the following comments:

"We agree with the applicant's assessment of instream values, that the population of brown trout is small and stunted and very rarely has connection with mainstem Clutha River/Mata-Au.

Due to the hydrology and ecological values in Park Burn, there is limited value in setting a residual flow. The Park Burn is ephemeral based on Council's calculations therefore the Natural Character of the stream is one that dries naturally, however water abstraction will increase the frequency and duration and length of drying reach, but it is difficult to quantify this."

The answer to step 2 is yes, therefore step 3 does not apply and step 4 must be considered.

Step 3

Step 3 does not apply.

Step 4

Step 4 requires the consent authority to consider if special circumstances exist. Section 95A(9) states an application for resource consent must be notified if it is considered that special circumstances exist. In this case, it is not considered that the application will give rise to special circumstances.

The answer to step 4 is no.

Accordingly, it is considered that this application must not be publicly notified.

8.2 Recommendation as to public notification

For the reasons outlined above, I recommend that the application is not **publicly notified** in accordance with section 95, 95A or 95C of the RMA.

8.3 Limited notification (Section 95B)

Having established that the application need not be publicly notified under section 95A, the consent authority must consider under section 95B, whether there are any affected persons to whom limited notification must be given. The consent authority must follow the steps in section 95B to determine whether to give limited notification of the application.

Step 1

Step 1 requires determination whether there are any –

- (a) affected protected customary rights groups; or*
- (b) affected customary marine title groups (in the case of an application for a resource consent for an accommodated activity).*

And determination of –

- (a) whether the proposed activity is on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in [Schedule 11](#); and*
- (b) whether the person to whom the statutory acknowledgement is made is an affected person under [section 95E](#).*

There are the following affected persons/groups who need to be notified under section 95B(3):

- Te Runanga o Ngai Tahu - as the Park Burn is a tributary of Lake Dunstan which is a Statutory Acknowledgment area.

Step 2

Step 2 (section 95B(5)-(6)) provides that limited notification may be precluded in certain circumstances, as follows:

- (a) the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes limited notification:*
- (b) the application is for a resource consent for ...*
 - (ii) a prescribed activity (see section 360H(1)(a)(ii)).*

There are no relevant rules that preclude limited notification or any prescribed activities. The answer to step 2 is no, therefore step 3 applies.

Step 3

Step 3 requires determination whether a person is an affected person in accordance with section 95E.

I consider that the following parties are affected:

Party	Why affected	Why the effect is more than minor
Aukaha Limited	Cultural values in the area that may be affected by the activity. This is because the taking of water may affect the mauri of the water and or the recognised cultural values of the water	The removal of water from the river as a consumptive take has a more than minor effect on the mauri of the water.
Te Ao Marama	Cultural values in the area that may be affected by the activity. This is because the taking of water may affect the mauri of the water and or the recognised cultural values of the water	The removal of water from the river as a consumptive take has a more than minor effect on the mauri of the water.
Te Runanga o Ngai Tahu	The Park Burn is a Statutory Acknowledgment area.	The removal of water from the river as a consumptive take has a more than minor effect on the cultural and spiritual values of the water.
Department of Conservation	The invertebrate values have not been defined for the Park Burn. DOC who represent the Director General of Conservation have a statutory responsibility to manage freshwater fish habitats. Because of the unquantified effects on the invertebrate values of the watercourse and the Department's requirement to protect significant habitats of indigenous fauna DoC is considered an affected person.	The applicant is proposing to take a high volume of water from Park Burn and the adverse effects on invertebrates is unquantified and may result in a more than minor effect.
Mark II Limited	Downstream user on the Park Burn (Deemed permit 93177)	While the application states that this take is unexercised, the applicant is proposing to take a high volume of water from the Park Burn which could potentially have a

		more than minor effect on the downstream user's ability to take water.
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The following parties have been assessed and are not considered to be affected by the application:

- Otago Fish and Game - There are no sports fishery value or public access to the Park Burn.
- Forest and Bird – there are no regionally significant wetlands in proximity to the takes
- Smallburn Limited – Water takes RM 15.007.01 and 94394 are upstream of the applicant's take.

Has written approval been obtained from every person considered adversely affected? (Section 95E(3))

Written approval has not been obtained by any person who is considered to be adversely affected by the activity. Therefore, the following persons are affected persons in relation to the activity and from whom written approval has not be obtained:

- Aukaha
- Te Ao Marama
- Te Runanga o Ngai Tahu
- Department of Conservation
- Mark II Limited

I am satisfied that it is not unreasonable in the circumstances for the applicant to seek the person's written approval.

Step 4

The fourth step in section 95B(10) requires the consent authority to determine whether special circumstances warrant notification (excluding persons assessed under s95E as not being affected persons).

There are no special circumstances that warrant notification of the application to any persons.

8.4 Recommendation as to Limited Notification

For the reasons outlined above, I recommend that the application is **non notified**, subject to the applicant obtaining the written approvals of the affected parties identified above.

9. Notification Recommendation

Pursuant to sections 95A-95E, I recommend that the application is processed as non-notified as:

- a. in accordance with section 95A, the application is precluded from public notification.
- b. in accordance with section 95B, the application need not be publicly notified under section 95A, the consent authority must consider under section 95B, whether there are any affected persons to whom limited notification must be given. There are affected parties who have not given written approval.
- c. in accordance with section 95C no further information has been requested or report commissioned.
- d. in accordance with section 95D adverse effects due to the application are likely to be no more than minor.
- e. in accordance with section 95E the application is not precluded from notification, there are affected parties and approvals have not been obtained from these parties.



Kirstyn Lindsay
Consultant Planner

27 February 2020

Decision on notification

Sections 95A to 95G of the Resource Management Act 1991

Date: 2 March 2020

Application No: RM20.003

Subject: *Decision on notification of resource consent application under delegated authority*

Summary of Decision

The Otago Regional Council decides that the application is to be processed on a **non-notified**¹ basis in accordance with sections 95A to 95G of the Resource Management Act 1991.

The above decision adopts the recommendations and reasons outlined in the Notification Report prepared by Kirstyn Lindsay on 26 February 2020 in relation to this application.

I have considered the information provided, reasons and recommendations in the above report. I agree with those reasons and adopt them.

Decision under delegated authority

The Otago Regional Council decides that this resource consent application is to be processed on a **non-notified** basis in accordance with sections 95A to 95G of the Resource Management Act 1991. This decision is made under delegated authority by:



Joanna Gilroy
Manager Consents

2 March 2020

¹ Provided that all written approvals are supplied. If these approvals are not supplied then the application will proceed on a limited notified basis.



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Peter Christophers
Principal Consents Officer

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2 March 2020