

## NOTIFICATION ASSESSMENT DEEMED PERMIT REPLACEMENT WATER PERMIT

**ID Ref: A1333162** Application No(s): RM20.005.01  
**Prepared for:** Staff Consents Panel  
**Prepared by:** Kirstyn Lindsay, Consultant Planner  
**Date:** 28 February 2020

**Subject: Notification consideration for deemed permit replacement water permit**

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### 1. Purpose

To report and make recommendations on the determination of the notification decision of Resource Consent application RM20.005 in accordance with Sections 95A-G of the Resource Management Act 1991 (the Act).

### 2. Background Information

**Applicants:** Wakefield Estates Limited, Rockburn Wines Limited, Pisa Holdings Limited, Mark II Limited, Stuart Douglas and Phillipa Mary Hawker, Albany Heights Limited and Chard Farm Trustees 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 of the point of take:** Lot 3 DP 343853

**Legal description of the points of use:**

- Lot 2 DP 526279 as held in Certificate of Title 844471 (Mark II Limited, 82.6 ha)
- Lot 2 DP 490342 as held in Certificate of Title 707767 (Albany Heights Limited, 32.9 ha)
- Lot 1 DP 522616 as held in Certificate of Title 829493 (Chard Farm Trustees Limited, 20.8 ha)
- Lot 5 DP 399543 as held in Certificate of Title 397154 (Chard Farm Trustees Limited, 10.5 ha)
- Lot 1 DP 27337 as held in Certificate of Title OT19A/535 (Rockburn Wines Limited, 33.6 ha)
- Lot 4 DP 27494 as held in Certificate of Title OT19A/907 (Rabbit Enterprises Limited, 48.2 ha)
- Lot 3 DP 481936 as held in Certificate of Title 677068 (Pisa Holdings Limited, 122.5 ha)
- Lot 1 DP 453152 as held in Certificate of Title 580085 (Wakefield Estates Limited, 6 ha)
- Lot 2 DP 453152 as held in Certificate of Title 580085 (Wakefield Estates Limited, 1 ha)
- Lot 3 DP 453152 as held in Certificate of Title 580086 (Wakefield Estates Limited, 6.3 ha)
- Lot 4 DP 453152 as held in Certificate of Title 580086 (Wakefield Estates Limited, 2.3 ha)

**Map reference(s):** NZTM 2000: 1300312E 5018963N

**Consent sought:** To take and use surface water

**Purpose of take:** Irrigation, domestic, stock water and frost fighting

**Deemed permits:** 95789

### 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 non-notified basis in accordance with section 95 B of the Resource Management Act 1991, subject to the applicant obtaining the written approval of the affected parties identified in this report.

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 a deemed permit. The proposed rates are:

#### Rates and Volumes Applied For:

Rate of take: 157 L/s (calculated on hourly rate specified on 95789)

Monthly Volume: 226,439 m<sup>3</sup>/month

Annual volume: 1,808,577 m<sup>3</sup>/year

#### Details of Deemed Permits Being Replaced

The applicant is seeking to replace Deemed Permit 95789, which expires on 1 October 2021 and to transfer the consented location of water abstraction to that where the water is physically taken from.

Deemed Permit 95789 authorises the applicant to take up to 166.7 L/s from the Amisfield Burn. The deemed permit is jointly held by the following parties:

**Table 1: Shares for Deemed Permit 95789 to take water from the Amisfield Burn**

Holder	Share	L/s	L/hour	m3/month
Rockburn Wines Ltd	2/56	166.7 (calculated on hourly rate specified on 95789)	600,000	416,750
Pisa Holdings Limited	15/56			
Mark II Limited	10/56			
John Sinclair and Juliana Sinclair	2000l/day domestic use only			
Chard Farm Trustees Limited	7/56			
Stuart Douglas and Phillipa Mary Hawker	1000 l/day stockwater only			
Albany Heights Limited	8/56			
Wakefield Estates Limited	12/56			
<b>Total</b>	<b>54/56<sup>1</sup></b>	<b>166.7</b>	<b>600,000</b>	<b>416,750<sup>2</sup></b>

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 95789 until a decision on this application is made and all appeals are determined.

### Historic Rate and Use Data and Deemed Permit Conditions

Deemed Permit 95789 authorises the abstraction of water from the Amisfield Burn at or about NZTM 2000: 1300745E 5018568N. This point of take was relocated approximately 6,000m upstream (NZTM 2000: 1300312E 5018963N) after the 1999 flood washed out the original intake. The applicant states that this relocation was verbally approved by an ORC officer but the Deemed Permit was never modified to reflect this new point of take. The water is conveyed from the point of take via the 9 Mile Race. The race crosses multiple water courses and is piped across the Park Burn and Sawyers Gully.

Rates and volumes for this take have been records from 2015 - 2019.

### Other Activities

Some or all of the applicants are party to other water takes and/or discharge permits.

Maintenance of the intake infrastructure is a permitted activity pursuant to Rule 13.5.1 of the RPW.

<sup>1</sup> Around the time that the mining privilege was replaced by Deemed Permit 95789, 2/56 shares were transferred to contact energy. These were subsequently surrendered and allocation was reduced accordingly (see decision for 2000/191)

<sup>2</sup> Note allocated water is less than that being applied for.

The storage reservoirs do not capture natural run-off and is not located within a watercourse. It does not meet the definition of large dam under the Building Act. No approvals are required for the storage reservoir.

### 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 and Pete Ravenscroft and Cairan Campbell ORC Resource Scientists. Representatives of the applicants and the applicant's agent Will Nicholson of Landpro also attended.

A recent Compliance Audit has been undertaken by the Council's Compliance Unit.

## 5. Description of the Environment

### 5.1 Description of the Site and Surrounding Environment

The water take and conveyance infrastructure associated with Deemed Permit 95789 traverses the flanks of the Pisa Range, with the intake located at an elevation of approximately 585 masl and the lowest point of the water race network terminating at around 200masl. Most of the land on which the water is used is located between 360 and 280masl, with irrigated land owned by Wakefield Estates Limited ranging from approx. 225 to 200masl.

Water distribution and storage infrastructure relating to the application includes the intake, main water race and branch races, piped sections across watercourses, and the various storage ponds operated by the applicants. This table below taken from the application summarises the various infrastructure.

**Table 2: Water infrastructure summary**

Infrastructure	Description	Average dimensions (approx.)	Materials	Estimated efficiency
Water races	<p>9 Mile race—just over 6km, running from Amisfield Burn to the start of the Wakefield race.</p> <p>Wakefield race—just under 4km long, running from the 9 Mile race to SH6.</p>	Various	Earth/clay	≥90% (up to 10% losses)

	Branch race—approx. 3km long, from the end of the 9 Mile race to Pisa Holdings' southernmost orchard.			
Storage ponds	5 existing storage ponds operated by the applicants within the command area.	<p>Albany Heights pond: average length 69m, average width 51m, approx. max. capacity 15,000m<sup>3</sup> (Shared with Mark II &amp; Chard Farm)</p> <p>Mark II pond 2: average length 98m, average width 40m, approx. max capacity 13,000m<sup>3</sup>.</p> <p>Rockburn pond: average length 64m, average width 48m, average depth 2.5m; outlet location: NZTM13031 22E 5015958N</p> <p>PHL pond 1: 13,000m<sup>3</sup> capacity, average length 70m, average width 64m<sup>3</sup></p> <p>PHL pond 2: 12,000m<sup>3</sup> capacity,</p>	Earth/clay	≥95% (up to 5% losses)

		average length 70m, average width 55m.		
Piped race sections	In order to avoid mixing with other watercourses, the race is piped across the Park Burn and Sawyers Gully	Park Burn pipe: 300mm diameter, 20m length.  Sawyers Gully pipe: 600mm diameter, 10m length.	Park Burn pipe: steel, Sawyers pipe: iron.	95-100%

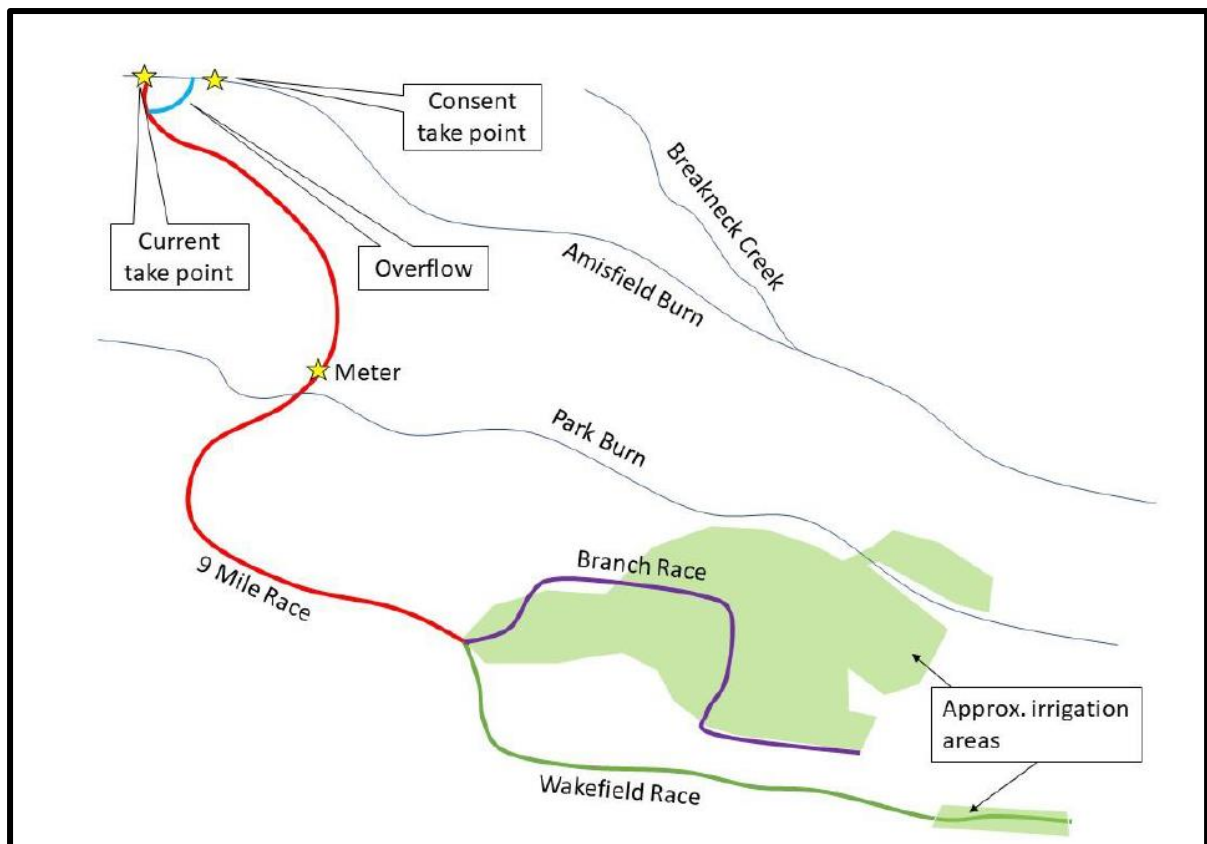


Image 1: Overview Schematic of 95789 water take and use infrastructure

Much of the land within the application area is classified within the New Zealand Land Cover Database as Low Producing Grassland, with lower elevation areas classified as High Producing Exotic Grassland and pockets of Orchards or Vineyards.

Up to 166 ha is to be irrigated under this application with a range of irrigation methods including drip irrigation for the grapes and cherries and flood irrigation for pasture. Most of the irrigation areas are already established vineyards, cherry orchards and pasture, while proposed vineyards and orchards are to be located within relatively species-poor, high producing Exotic Grassland.

With regards to the general pastoral uses, this is comparatively small-scale, supporting a few livestock and a remnant of Wakefield Estates Limited history in the area having previously been one of the largest landholdings in the region. Livestock numbers given in the application include approximately 300 sheep and 90 beef cattle.

Topography varies across the irrigation areas, with vines and cherries situated on higher terraces at the foothills of the Pisa Range overlooking Lake Dunstan. These typically occupy the northern facing slopes in order to optimise sunshine hours and maximise growing/ripening potential.

The climate around the Cromwell area can be described as a typical Central Otago semi-arid landscape, with long sunshine hours, low rainfall and high summer temperatures coupled with significant temperature inversions in winter.

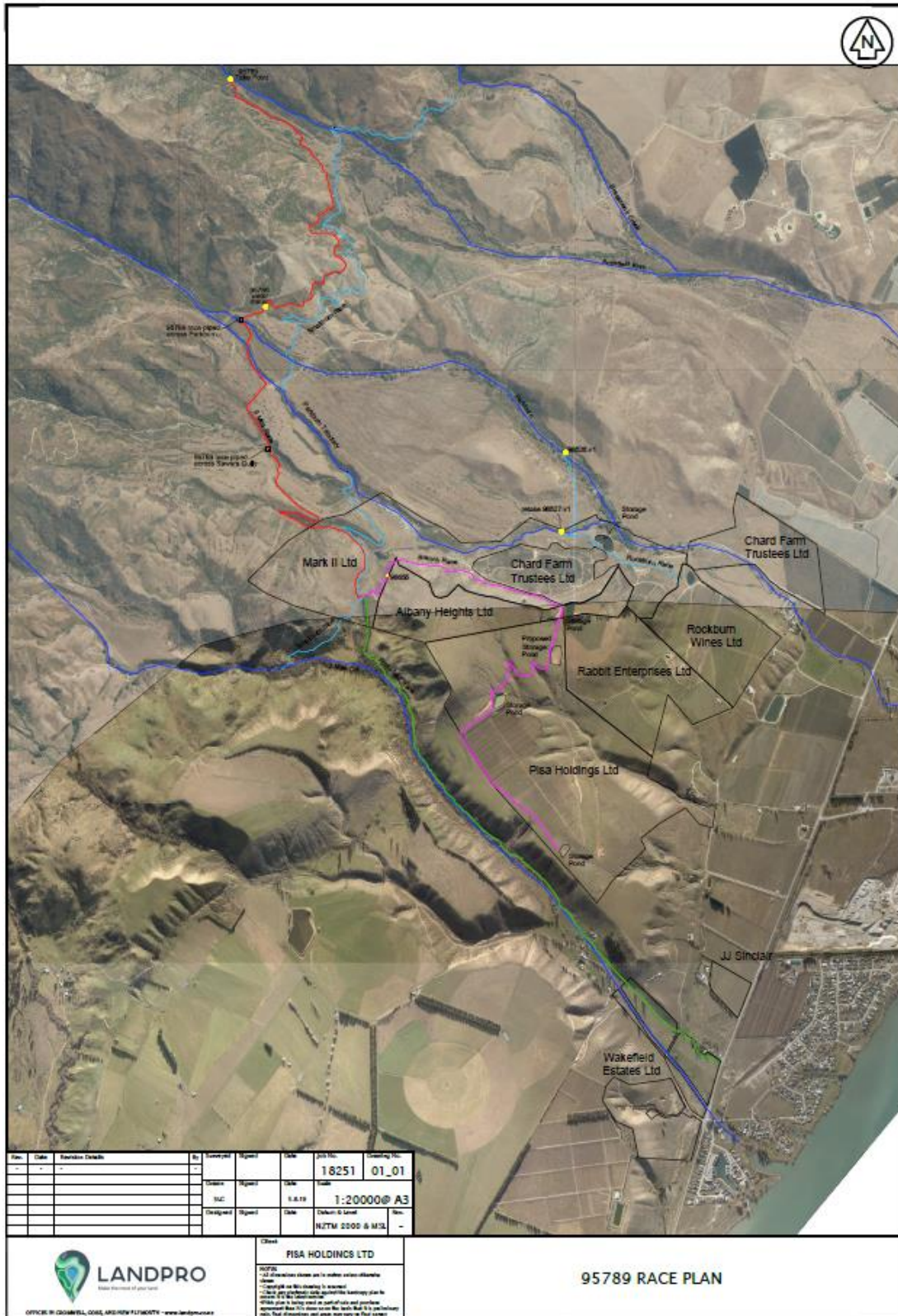


Image 2: 95789 Race Plan



Aqualinc mean annual rainfall (MAR) classes across the application site ranges from with the 650 mm/year band at the intake site, 650 mm/year down to 350 mm/year across the length of the race and 450 mm/year band to 350 mm/year for the irrigation land.

Potential evapotranspiration during the growing season is given as approximately 620-640 mm between September and April according to GrowOtago. However, when compared with the NIWA evapotranspiration records the applicant considers that this may be a under estimation. According to modelling by NIWA undertaken in 2015, the site and surrounding area experience approximately 110-120 days per year of soil moisture deficit.

Frost is a significant issue for both cherries and grapes. GrowOtago indicates that most of the properties serviced by 95789 experience approximately 9-12 spring frosts each year.

The GNS Science New Zealand Geology Web Map indicates that virtually all of the land within the irrigation areas is underlain by either Middle Quaternary glacial outwash deposits(muddy to sandy gravel), Manuherikia Group claystone and siltstone, or Early Quaternary till deposits(pebbly to boulder gravel, sand, silt and mud). The geology uphill of the irrigated areas is primarily composed of much older Wanaka lithologic association TZIV schist.

**5.2 Description of Surface Water Body**

The headwaters of the Amisfield Burn originate in the Pisa Range at an elevation of approximately 1880masl, just adjacent to the Pisa Range Ridge Track. The Amisfield Burn picks up numerous small tributaries as it descends the steep eastern face of the Pisa Range, with the formerly confined bedrock channel opening out into a shallower-gradient channel composed of loose gravels on the terraces and alluvial fans above Lake Dunstan.

Breakneck Creek joins the Amisfield Burn approximately 3.5 km upstream of the Lake Dunstan confluence.

There are two other permits downstream of the applicants' water take: one held by Smallburn Limited (96321.V1) and one held by Lowburn Landholdings Limited Partnership (97232). All three parties (combined consent holders of 97589 as one party) share Amisfield Burn water, as dictated by the historic priorities. Permit 95789 holds the highest priority, however water has historically been allowed to flow past the intake in order to provide for downstream users Smallburn Limited and Lowburn Landholdings Limited Partnership. All of the water users on the Amisfield Burn have prepared their deemed permit replacement applications concurrently to facilitate a streamlined approach to discussions around water sharing in the catchment.

**Table 3: Summary of other water users on the Breakneck Creek, the Amisfield Burn and the Park Burn**

Permit No.	Creek	Location	Rate of take (L/s)	Primary consent holder	Current application lodged with ORC
97358	Breakneck Creek	Approximately the same location as the 96320 take.	55.6	LLHLP	Identified as "not to be renewed" in RM20.020

95789	Amisfield Burn	Approx. 680 m u/s of the 96321 take.	166.7	Pisa Holdings Limited	RM20.005
97232	Amisfield Burn	Approx. 2.4 km d/s of the 96321 take.	83.3	Lowburn Land Holdings LP	RM20.020
98526	Park Burn	Approx. 2.5 km d/s of the RM15.007.01/ 94394 take.	27.8	Rockburn Wines Limited	RM20.007
93177	Park Burn	Approx. 1.3 km d/s of the RM15.007.01/ 94394 take.	55.6	Mark II	unexercised

The Council has maintained a flow monitoring station just upstream of the 95789 take point since October 2013. This continuous record, demonstrates a typical steep headwater stream, with rapid response event-specific hydrographs. In winter and through to the end of spring, the creek is fed primarily by snowmelt. Based on the ORC monitoring results, the 7-day mean annual low flow (MALF) for the Amisfield Burn upstream of all abstractions is 65 L/s, with a mean flow of 162 L/s.

Stream gauging was undertaken by the applicant's agent in January 2019 to determine the natural flow conditions of the Amisfield Burn throughout its lower reaches. Five gauging sites were selected on the main stem of the Amisfield Burn, with the first gauging site located 3metres upstream from the 95789 point of take. All abstractions on the Amisfield Burn and associated tributaries ceased 24 hours prior to, and during, the gauging exercise. The result showed that the Amisfield Burn was a naturally losing stream with a net loss of 210 l/s between the Amisfield Burn /Breakneck Creek confluence and the final gauging station located well above lake Dunstan where the creek ran dry.

The New Zealand Freshwater Fish Database has eight records for the Amisfield Burn:

- The earliest three (1996) records report brown trout at all three sites, a single large koaro at the middle site, and a single upland bully in a lower tributary of the Amisfield Burn.
- 2001 surveys reported no fish at State Highway 6 and brown trout and a single koaro were present at the same site as the koaro was found in 1996.
- In 2018, three Amisfield Burn sites were fished with brown trout present at the lower two sites, upland bully at the lowest site, and no fish recorded at the uppermost survey site.

In April 2019, Water Ways Consulting Ltd also conducted three surveys on the Amisfield Burn and Breakneck Creek. The surveys found brown trout at two Breakneck Creek sites, while the Amisfield Burn survey site (just upstream of the point of take) did not record any fish. No additional surveys of the lower reaches of the creek were possible, as the creek bed was dry at State Highway 6.

There are no Water Conservation Orders for the Amisfield Burn.

## 6. Regional Planning Context

### 6.1 Schedule 1 of the Regional Plan: Water

Schedule 1A of the Regional Plan: Water for Otago (RPW) outlines the natural and human use values of Otago's surface water bodies.

The Amisfield Burn is identified in Schedule 1A with the following values listed:

- Weedfree (absence of aquatic pest plants)
- Rarefish (presence of indigenous fish species threatened with extinction).

In relation to the "rarefish" designation, the Amisfield Burn is identified within the Schedule as "significant habitat for koaro."

The Amisfield 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 Amisfield 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 Amisfield 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 Amisfield Burn is not identified in Schedule 1B. However, the Cromwell Bridge located downstream of the confluence of the Amisfield Burn and the Clutha River/Mata Au. 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 Amisfield 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 Amisfield 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 (95789) 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 considered to be a **restricted discretionary** activity. All other relevant permitted activity rules are complied with.

## 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**

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.*

Notification is not precluded in terms of section 95A(5). The answer to step 2 is no.

Therefore step 3 must be considered.

### Step 3

Step 3 sets out two circumstances where the Council must publicly notify an application in terms of section 95A(8):

- (a) *the application is for a resource consent for 1 or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification:*

There are no applicable rules or national environmental standard that requires public notification.

- (b) *the consent authority decides, in accordance with section 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor.*

The Council, in deciding whether an activity will have or is likely to have adverse effects on the environment that are more than minor, for the purposes of public notification, must disregard:

- *any effects on persons who own or occupy the land in, on, or over which the activity will occur, or any land adjacent to that land;*
- *trade competition and the effects of trade competition; and*
- *any effect on a person who has given written approval to the application.*

The Council may disregard an adverse effect of the activity for the purposes of deciding whether an activity has adverse effects on the environment that are more than minor for the purposes of public notification, if a rule or national environmental standard permits an activity with that effect.

As a restricted discretionary activity, the Council must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard restricts discretion.

Having regard to the planning framework as set out above, I consider that the adverse effects of the activity on the environment relate to:

- Allocation availability
- Minimum flows
- Instream values
- Downstream users and competing demand for water

### **Comparison with Adverse Effects of Permitted Activities**

Permitted water takes and uses are provided for by Rule 12.1.2 of the RPW. It is the effects beyond these permitted takes and uses which are critical for the assessment of this application.

### **Effects on the Environment**

The adverse effects on the environment identified above are assessed for the purposes of public notification below:

#### Surface Water Allocation Availability

Primary allocation is defined by Policy 6.4.2(b) of the RPW:

*“To define the primary allocation limit for each catchment, from which surface water takes and connected groundwater takes may be granted, as the greater of:*

- (a) That specified in Schedule 2A, but where no limit is specified in Schedule 2A, 50% of the 7-day mean annual low flow; or*
- (b) The sum of consented maximum instantaneous, or consented 7-day, takes of:*
  - (i) Surface water as at: 19 February 2005 in the Welcome Creek catchment; or 7 July 2000 in the Waianakarua catchment; or 28 February 1998 in any other catchment; and*
  - (ii) Connected groundwater as at 10 April 2010,*  
*less any quantity in a consent where:*
    - (1) In a catchment in Schedule 2A, the consent has a minimum flow that was set higher than that required by Schedule 2A.*
    - (2) All of the water taken is immediately returned to the source water body.*
    - (3) All of the water being taken had been delivered to the source water body for the purpose of the subsequent take.*
    - (4) The consent has been surrendered or has expired (except for the quantity granted to the existing consent holder in a new consent).*
    - (5) The consent has been cancelled (except where the quantity has been transferred to a new consent under Section 136(5)).*
    - (6) The consent has lapsed.”*

The consent that this application seeks to replace was originally granted prior to 28 February 1998, and because the applicant has applied to replace this consent within the statutory timeframes given in Section 124 of the Act, this take will retain its primary allocation status. It is noted that the allocation sought is lower than the paper allocation available to 95789.

- **Minimum Flows**

Minimum flows may be set for a river or catchment for the purpose of restricting primary allocation takes of water. A minimum flow provides for the maintenance of aquatic ecosystem and natural character values of water bodies, while providing for the sustainable taking of water for use. Once set in Schedule 2A of the RPW, they are imposed on all relevant consents in that catchment. When a minimum flow is breached, all consents to take water as primary allocation (with some exceptions), must cease.

Policy 6.4.4 of the RPW states that in the case of existing resource consents to take water outside of Schedule 2A catchments, any proposed minimum flows must be set in Schedule 2A by a plan change before it can be applied to any consent in accordance with Policy 6.4.5(d). No minimum flow has yet been set for the Amisfield Burn catchment. Any relevant consent within that catchment may be reviewed under Section 128 of the Act in order to impose conditions that will allow the minimum flow to be met.

- **Effects on Fish and Instream Values**

With regard to the effects on the instream values of a surface water body, only the following can be considered under the restricted discretionary considerations listed by Rules 12.1.4.8 and 12.2.3.2A:

- the need for a residual flow at the point of take;
- the rate, volume, timing and frequency of water to be taken and used;
- the proposed methods of take;



- the need to prevent fish entering the intake and to locate new points of take to avoid adverse effects on fish spawning sites; and
- any effect on any Regionally Significant Wetland or on any regionally significant wetland value.

In addition to a minimum flow, a residual flow may be set at the point of take, for the purpose of providing for instream values of the source water body. As discussed in Section 6.1 the Amisfield Burn has instream values.

Council's Resource Science Unit (RSU) assessed the application and agrees with the Waterways Consulting Limited report submitted with the application and the supplementary assessment from Waterways Consulting Limited provided in response to RSU's request that the applicant provide a residual flow downstream of their takes. RSU agrees with the applicant that roughly 50% as a visual residual flow is appropriate, in this case, due to the difficult nature of quantifying these. RSU agree with the proposed consent condition requiring the applicant to leave approximately 50% of the natural flow in the creek downstream of their take.

RSU agree with the findings of the ecological data submitted with the application that the brown trout population is stunted and isolated due to the lack of connection to Lake Dunstan in the lower reaches. There are no sports fishery values, due to the limited trout population and lack of public access to the Amisfield Burn. It is noted that the Amisfield Burn is identified in Schedule 1A of the RPW as having significant koaro habitat values, However, only a limited number of koaro have been surveyed in the Amisfield Burn,

There are no Regionally Significant Wetlands or any known regionally significant wetland values that will be affected by the proposed water take.

Overall, RSU consider the effects of the proposed water take on the fish and instream values will be no more than minor. The RSU assessment is adopted for the purposes of this report and it is considered that the effects of the proposed water take on fish and instream values will be no more than minor.

- Effects on Other Water Users

The following water users are considered affected by the proposed water take and these are located downstream of the point of take:

- Smallburn Limited - 96321.V1
- Lowburn Land Holdings Limited

The current water permit 95789 has priority over 96321.V1 and 97232. However, the applicant states that, although unlikely due to the applicant not being able to take all of the water from the Amisfield Burn and the parties acting in a co-ordinated manner to ensure that flow is left in the Amisfield Burn during critical periods, the water take does have the potential to adversely affect these takes. However, a residual flow is proposed to ensure that flow is retained in the Amisfield Burn, such that the wider effects on other water users are assessed as no more than minor but not less than minor.

### Conclusion as to effects

I consider that the adverse effects of the activity on the environment will not be more than minor, providing the written approvals of the identified affected parties (identified below) are provided and effects on those parties are able to be disregarded. Therefore, the answer to step 3 is no, and Step 4 is applied.

### 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, there is nothing exceptional or unusual about the application and it is considered that the application will not 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 Amisfield Burn is a tributary of the Clutha River/ Mata Au which is a statutory acknowledgement 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:

<b>Party</b>	<b>Why affected</b>	<b>Why the effect is more than minor</b>
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 Amisfield 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 Amisfield Burn is identified as a significant habitat for koaro. Furthermore, the invertebrate values have not been defined for the Amisfield Burn. DOC who represent the Director General of Conservation have a statutory	The applicant is proposing to take a high volume of water from Amisfield Burn and the adverse effects on invertebrates and the value of the habitat for koaro is unquantified and may result in a more than minor effect.

	responsibility to manage freshwater fish habitats. Because of the unquantified effects on the invertebrate values of the watercourse and the value of the habitat for koaro, along with the Department's requirement to protect significant habitats of indigenous fauna DoC is considered an affected person.	
Smallburn Limited	Holder of water take 96321.V1	96321.V1 is 700m downstream of 95789
Lowburn Land Holdings Limited	Holder of 97232	97232 is 3km downstream of 95789

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. The trout population is assessed as stunted and isolated due to the lack of surface connection to Lake Dunstan in the lower reaches. No spawning values are identified for the Amisfield Burn and Breakneck Creek.
- Forest and Bird – there are no regionally significant wetlands in proximity to the takes

**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
- Lowburn Land Holdings Limited
- Smallburn Limited

I am satisfied that it is not unreasonable in the circumstances for the applicant to seek the written approval of the above parties.

**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:

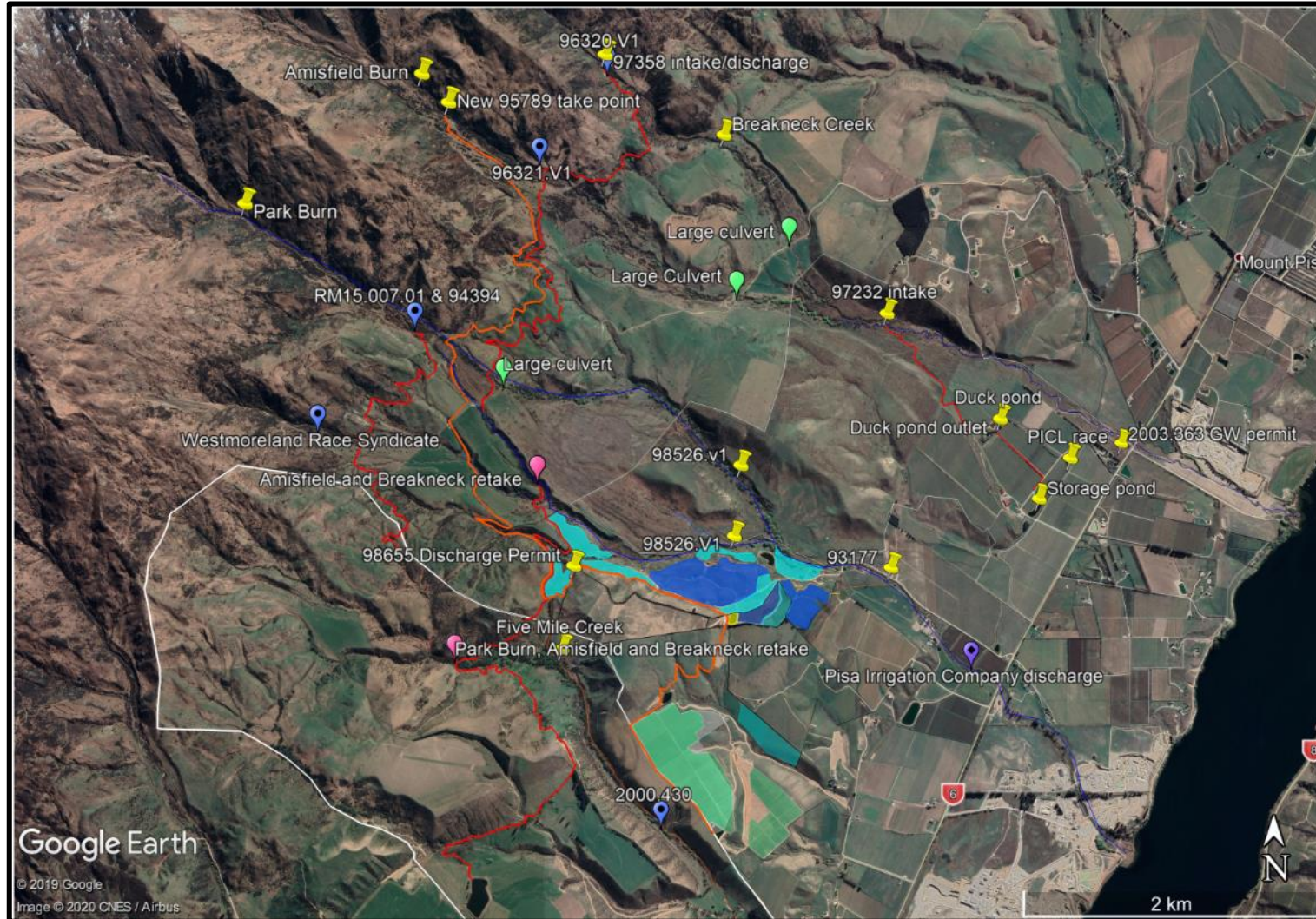
- a. in accordance with section 95A, the application is precluded from public notification.
- b. in accordance with section 95B, the application need not be publicly notified under section 95A, the consent authority must consider under section 95B, whether there are any affected persons to whom limited 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**

**16 March 2020**

**Appendix 1 – Overview of the Amisfield Burn – Park Burn water takes**



### Decision on notification

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

**Date:** 17 March 2020

**Application No:** RM20.005

**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** 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 on 17 March 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**<sup>3</sup> 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



Team Leader Consents  
17 March 2020