NOTIFICATION ASSESSMENT

DEEMED PERMIT REPLACEMENT WATER PERMIT

**ID Ref:** A1333167

**Application No(s):** RM19.312

**Prepared for:** Staff Consents Panel

**Prepared by:** Ethan Glover, Consultant Planner

**Date:** 20 April 2020

**Subject: Notification consideration for deemed permit replacement Water Permit RM19.312 by Queensbury Ridges Limited**

**1. Purpose**

To report and make recommendations on the determination of the notification decision of Resource Consent application RM19.312 in accordance with Sections 95A-G of the Resource Management Act 1991 (the Act).

**2. Background Information**

**Applicant:** Queensbury Ridges Limited

**Applicant’s Agent:** Will Nicolson, LandPro

**Site address or location:**

RM19.312.01: Albert Burn, approximately 800 m upstream of the Luggate-Cromwell Road, State Highway 6.

RM19.312.02: Schoolhouse Creek, approximately 550 m upstream of the Luggate-Cromwell Road, State Highway 6.

RM19.312.03: Clutha River/Mata-Au, approximately 400m upstream of the Albert Burn confluence.

**Legal descriptions at point of take:** Lot 1 DP 511969, Section 1 SO Plan 300501, Lot 1 DP 516051. Refer to application for use.

**Certificate of titles reference:** 131604, 855742, 812715

**Consents sought:**

RM19.312.01: To take and use surface water in a non-consumptive manner and as both primary allocation and supplementary allocation from the Albert Burn

RM19.312.02: To take and use surface water as primary allocation from Schoolhouse Creek

RM19.312.03: To take and use surface water from the Clutha River/Mata-Au

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

**Deemed permits being replaced:** 2002.348.V1, 2002.349.V1, 2002.351.V1, 2002.352.V1, 2002.353.V1, 2002.354.V1

**Water permit being replaced:** 2003.591.V2

**3. Summary of Recommendation**

I recommend, for the reasons outlined in this report, that this application, which is for a discretionary activity, be processed on a limited notified basis 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**

This application seeks to take surface water from the Albert Burn, Schoolhouse Creek and Clutha River/Mata-Au (Clutha River) for the purposes of irrigation, stocking drinking water and frost fighting at the rates indicated in Table 1 below. A description of each water take is provided below.

**Table 1: Proposed rates of take and maximum volumes sought.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Water body** | **Rate of take (L/s)** | **Monthly Volume (m3/month)** | **Annual Volume (m3/year)** |
| Albert Burn | 103 (with supplementary allocation of 47 L/s when Albert Burn flows >224 L/s) | 270,684\* | 3,248,208\* |
| Schoolhouse Creek | 31.5 | 82,782\* | 993,384\* |
| Clutha River | 273 | 717,444\* | 8,609,328\* |
| Total | | **696,015** | **3,648,348** |

\*denotes the theoretical maximum based on constant taking at the proposed rate.

*Albert Burn Take*

The proposal seeks to take surface water from the Albert Burn in a non-consumptive manner and as both primary and supplementary allocation. Water will be abstracted from the Albert Burn via a gravity fed pipe that will convey water to a small holding pond and weir located outside of the natural bed at NZTM 1308749E 5028096N. The pond is approximately 7 m wide and 9.5 m long with an average depth of 0.75 m, holding an estimated volume 50 m3. Water will be abstracted from the pond as both primary allocation and supplementary allocation by water overtopping the weir and entering an intake structure and distribution pipes. Excess water will be discharged back to the Albert Burn channel by overflowing the intake structure.

The intake currently feeds two pipes with diameters of 200 mm and 300 mm, respectively. The 200 mm pipe conveys water via gravity to irrigate land on the top side of State Highway 6 while the 300 mm pipe conveys water to a tank farm for storage. Both the 200 mm and 300 mm pipes are metered separately near the tank farm for which a Water Metering Exemption has been provided (WEX0293). Figure 1 below provides an overview of the proposed configuration.

The intakes will be covered by a grate to prevent the ingress of debris and fish, and to limit the amount of water abstracted. The maximum capacity of the intake structure and pipes is currently 103 L/s, as evidence by the historic use records described below. As such, the applicant seeks a primary allocation rate of 103 L/s. However, as the much greater paper allocation (237.45 L/s) has allowed the existing overflow configuration to operate, the applicant proposes to upgrade the Albert Burn intake and pipes to allow only up to 150 L/s to be abstracted. As such, the applicant seeks to take an additional 47 L/s from the Albert Burn as supplementary allocation (i.e. up to a total of 150 L/s) when Albert Burn flows are in excess of 224 L/s. This supplementary minimum flow will be determined by a water meter that will be installed immediately above the point of take.

The applicant will have the ability to plug the primary intake pipe to the pond outside of the irrigation season to ensure that all Albert Burn flows bypass the pond and follow the natural channel.



**Figure 1: Schematic showing the irrigation infrastructure for the Albert Burn and Clutha River water takes.**

*Schoolhouse Creek Take*

The proposal seeks to take surface water as primary allocation from the main stem of Schoolhouse Creek via an existing water race at a rate of up to 31.5 L/s. The water race traverses the hillside and is piped under State Highway 6 and delivered to a pond (Pond 1) that stores the abstracted water. A further water race carries overflow from this pond to an additional pond (Pond 2). Water is abstracted from the ponds and used for irrigation and stock drinking water.

Pond 2 does not have a designated spillway and excess water will generally seep out in a diffuse manner along the southeast perimeter of the pond. While the majority of the time there will be no overflow, it is possible that in some instances, overflow may enter an unnamed tributary of the Clutha River. The locations and dimensions of the applicant’s ponds are outlined in Table 2 below and Figure 2 is a schematic of the take.

Abstractions from Schoolhouse Creek have not been recorded historically, but the applicant has estimated this from a season of monthly gauging. The applicant proposes to install a telemetered water meter at or near the point of take to record the water abstracted. Metering of the takes from the storage ponds is not proposed.

**Table 2: Location and dimensions of storage ponds associated with the proposed Schoolhouse Creek take.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Pond** | **Inlet Location (NZTM Co-ordinates)** | **Outlet Location (NZTM Co-ordinates)** | **Approximate dimensions** |
| Pond 1 | 1309049E 5026888N | 1309031E 5026817N | width 40 m, length 68 m, depth 2 m (estimated volume 5,500 m3). |
| Pond 2 | 1309193E 5026571N | N/A (diffuse seepage) | width 25 m, length 40 m, depth 1 m (estimated volume 1000 m3) |



**Figure 2: Schematic showing the irrigation infrastructure for the Schoolhouse Creek water take.**

*Clutha River Take*

Abstraction from the Clutha River is proposed at a rate of up to 273 L/s from a small side channel off the main stem. Water will be abstracted via three pumps set as an array and will be used to supply two pivot irrigators located at the north of the property. Water will also be pumped from this location to the tank farm on an as-required basis, typically when Albert Burn flows are low. All Clutha River water is metered at the point of take.

Figure 1 provides an overview of the infrastructure configuration. The Clutha River abstractions will work together with the Albert Burn abstractions as an integrated system. When flows in the Albert Burn are high, the applicant will utilise this water to fill storage tanks and irrigate all available land via gravity feed. When flows in the Albert Burn substantially decrease and the water stored in the tank farm declines, the Clutha River abstraction will increase in order to replace the water shortfall at the tank farm. The Clutha River abstraction will automatically cease when the tank farm reaches capacity.

**Details of Deemed Permits Being Replaced**

The applicant is seeking to replace Deemed Permits 2002.348.V1, 2002.349.V1, 2002.351.V1, 2002.352.V1, 2002.353.V1, 2002.354.V1 and Water Permit 2003.591.V2, which all expire on 01 October 2021. Water Permit 2002.354.V1 authorises the applicant to take up to 4,800cubic metres (m3)/day of water from Schoolhouse Creek, at a maximum rate of 55.6litres per second (L/s). Water Permits 2002.348/349/351/352.V1 authorise the applicant to take water at various rates up to a maximum of 20,500m3/day from the Albert Burn. Water Permits 2002.353.V1 and 2003.591.V2 authorise the applicant to take up to maximum of 23,600m3/day of water from the Clutha River.

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 the above deemed permits and water permits until a decision on this application is made and all appeals are determined.

Where different deemed permits feature water takes in the same or similar locations, the applicant proposes to combine these into a single permit with a combined rate of take. This is the case for the Clutha River and Albert Burn takes. This approach is considered reasonable, given the water takes can be traced to a common point in the waterways.

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

The existing deemed permits and water permit provide for water to be taken as set out in Table 3.

**Table 3: Rates and volumes provided for by current permits.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Permit being replaced** | **Water body** | **Rate of take (L/s)** | **Monthly Volume (m3/month)** | **Annual Volume (m3/year)** |
| 2002.348.V1 | Albert Burn | 83.3 | 218,912.4 | 2,626,948.8 |
| 2002.349.V1 | Albert Burn | 14.15 | 37,186.2 | 446,234.4 |
| 2002.351.V1 | Albert Burn | 27.8 | 73,058.4 | 876,700.8 |
| 55.6 | 146,116.8 | 1,753,401.6 |
| 2002.352.V1 | Albert Burn | 28.3 | 74,372.4 | 892,468.8 |
| 28.3 | 74,372.4 | 892,468.8 |
| 2002.353.V1 | Clutha River | 83.3 | 218,912.4 | 2,626,948.8 |
| 2002.354.V1 | Schoolhouse Creek | 55.6 | 146,116.8 | 1,753,401.6 |
| 2003.591.V2 | Clutha River | 190 | 492,480 | 2,547,000 |
| Totals | Albert Burn | 237.45 | 624,018.6 | 7,488,223.2 |
| Schoolhouse Creek | 55.6 | 146,116.8 | 1,753,401.6 |
| Clutha River | 273.3 | 711,392.4 | 5,173,948.8 |
| Total | 566.35 | 1,481,527.8 | 14,415,573.6 |

The applicant has provided historic use data for the takes that is summarised in Table 4. Historically, the applicant has taken significantly less water than is provided for by the existing permits.

**Table 4: Historic use**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Deemed Permits** | **Water body** | **Maximum Rate of take (L/s)** | **Maximum Daily Volume (m3/month)** | **Monthly Volume (m3/month)** | **Annual Volume (m3/year)** |
| 2002.348.V1, 2002.349.V1, 2002.351.V1,  2002.353.V1 | Albert Burn | 103 | 8,925 | 215,885 | 1,183,765 |
| 2002.354.V1 | Schoolhouse Creek | 32 | Not Available | Not Available | Not Available |
| 2002.353V1, 2003.591.V2 | Clutha River | 153 | 13,234 | 331,946 | 1,273,935 |

**Other Activities**

There are no other consents being sought as part of this application or with respect to the take and use of water described above.

**Application Documents**

The applicant has provided the following documentation with the application:

* *Resource Consent Application Form 1*
* *Resource Consent Application Form 4*
* *Assessment of Environmental Effects prepared by LandPro Ltd, dated 8 October 2019*
* *Abstraction Records – Albert Burn*
* *Abstraction Records – Clutha River*
* *Response to further information, dated 6 December 2019*
* *Albert Burn Fisheries Values and Residual Flows – Water Ways Consulting Ltd, dated November 2019*

**Site Visit**

A site visit has not yet been undertaken in relation to the application. It is expected that a site visit will be undertaken prior to a substantive decision being issued or prior to a hearing, if there is one.

**5. Description of the Environment**

**5.1 Description of the Site and Surrounding Environment**

The applicant’s proposed command area encompasses approximately 963 hectares (ha) of the terraces between the flanks of the Pisa Range and the Clutha River. While approximately only 393 ha of this area is reliant on the water sought by this application, the applicant is proposing to increase the irrigable area to the southwest of the command area. Aqualinc reports a Mean Annual Rainfall of 550 mm/year for the irrigable land areas reliant on this application.

Much of the command area is classified in the New Zealand Land Cover Database as high producing exotic grassland with smaller areas of low producing grassland. Most of the land has been cleared of native vegetation, however pockets of matagouri, *coprosma spp.* and kanuka/manuka persist in some less accessible areas. S-Map designated soils within the command area are summarised in Appendix A to the application.

Frosts are common during winter, but typically only impact cherry and grape growing in the early part of the growing season (i.e. spring). Some harvests of late-season wine crops like Pinot Noir may be affected by frosts in late April or May, however the likelihood of this occurring is much lower than in spring. *GrowOtago* indicates a median of ~9-10 spring frosts per year (September-November). This is comparable to NIWA data for air frosts at Alexandra (mean 9.5 frosts September-November each year, with up to a mean of 7 frosts in September alone) and Wanaka Airport (11).

**5.2 Description of Surface Water Body**

**Albert Burn**

The Albert Burn flows from the steep eastern face of the Pisa Range towards the Clutha River. The headwaters originate at an elevation of around 1,395m above sea level towards the northern end of the Pisa Range. Several small tributaries (including Alfern Creek) join the Albert Burn before it crosses the Queensbury Terraces and joins the Clutha River.

Albert Burn flows are not currently monitored and there are no historic flow records. Landpro Ltd conducted stream gauging in January, 2019 which indicated that the lower reach of the Albert Burn naturally dries in the summer. This view is supported by Council’s Resource Science Unit (“RSU”) who consider the Albert Burn to be hydrologically similar to the neighbouring Schoolhouse Creek, which is naturally ephemeral. Council’s RSU estimated MALF at 23 L/s in accordance with NIWA’s Shiny model. The MALF records provided by the Shiny model are consistent with those from the neighbouring Schoolhouse Creek catchment that are based on historic flow data.

While records from the New Zealand Freshwater Fish Database (NZFFD) are sparse, these show that brown trout is the only fish species recorded in this catchment. A thorough survey of the Albert Burn and Alfern Creek led by Richard Allibone (Waterways Consulting Ltd) was supplied by the applicant as further information to the consent application. This revealed the instream values are confined to a stunted and relatively disconnected population of brown trout.

The applicant is the only water user on the Albert Burn and no recreational uses are supported.

**Schoolhouse Creek**

Schoolhouse Creek is similar in nature to the Albert Burn, although it drains a smaller catchment. The headwaters of the creek originate at approximately 1,220m above sea level, with the channel winding down the steep eastern face of the Pisa Range before opening out onto an unconfined channel on the Queensberry terraces. After passing under SH6, Schoolhouse Creek is piped under a centre pivot before flowing over an area of farmland to join the Clutha River.

The Regional Council has had a flow recorder established upstream of the applicant’s take since 2014. Based on approximately six seasons of flow recording, 7-day MALF was calculated to be 12 L/s.

Schoolhouse Creek has been the subject of over 20 fish surveys from 1995 through to 2010, all of which were conducted by the Department of Conservation. From the extensive fish surveys and historic observations, RSU note that it is highly unlikely that Schoolhouse Creek would flow much further than State Highway 6 and would not often connect with the Clutha River. Therefore, the natural character of this stream is described as ephemeral.

NZFFD records confirm the presence of Clutha flathead galaxias in the upper reaches of the creek and a relatively static population of brown trout has also been observed over the years. Given the small size class of the brown trout surveyed and the ephemeral nature of the Schoolhouse Creek, it is likely that this an isolated resident population cut off from the Clutha River fishery.

There are also records of introduced brown trout in the lower reaches of Schoolhouse Creek and in the applicant’s water race. However, the Department of Conservation has led a trout removal project to protect the Schoolhouse Creek population of Clutha flathead galaxias. The status of that project is believed to be successful, with no brown trout observed during recent fishing surveys, and Clutha flathead galaxias re-establishing throughout the lower reaches.

The applicant is the only water user on the Albert Burn and no recreational uses are supported.

**Clutha River**

The proposed take is located on a small side channel off the main stem of the Clutha River. The closest ORC flow monitoring station is located approximately 30 km upstream of the take point where MALF is reported to be 121 m3/s. For the reach of the Clutha River in the vicinity of the proposed take, NIWA’s Shiny model estimates MALF at 84.6m3/s.

Numerous fish surveys are listed in the NZFFD, however only a select few have been undertaken in the vicinity of the proposed point of take. NZFFD records confirm the presence of brown trout, upland bully, common bully and longfin eel. The applicant also notes that a presence of rainbow trout and salmon are assumed in the vicinity of the take.

The Clutha River supports various recreational values including kayaking and boating and is important for electricity generation.

**6. Regional Planning Context**

**6.1 Regional Plan: Water**

**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 Schoolhouse Creek, Albert Burn and Clutha River are identified as having the following values:

*Albert Burn*

* No Schedule 1A values

*Schoolhouse Creek*

* Absence of aquatic pest plants identified in the Pest Plant Management Strategy for the Otago Region.
* Presence of indigenous fish species threatened with extinction.

*Clutha River*

* Large water body supporting high numbers of particular species, or habitat variety, which can provide for diverse life cycle requirements of a particular species, or a range of species.
* Gravel/rock bed composition of importance to resident biota.
* Presence of significant fish spawning areas for trout and salmon.
* Presence of significant areas for development of juvenile trout and salmon.
* Presence of riparian vegetation of significance to aquatic habitats.
* Presence of indigenous fish species threatened with extinction.
* Significant presence of trout, salmon and eel.
* Presence of a significant range of indigenous waterfowl threatened.

Schedule 1AA of the RPW identifies Otago resident native freshwater fish and their threat status.  Schoolhouse Creek and the Clutha River (tributaries) are known to provide habitat for the Clutha flathead galaxiid (*Galaxias* sp. D.), which are listed as “nationally vulnerable” within this schedule.

Schedule 1B of the RPW identifies water takes used for public supply purposes (current at the time the RPW was notified in 1998), while Schedule 1C identifies registered historic places which occur in, on, under or over the beds or margins of lakes and rivers. The Clyde Water Supply (at G42:199521) and Cromwell Water Supply (at G41:120670) are listed in Schedule 1B within the Clutha River. There are no 1C values in the RPW listed in close proximity to the proposed activity.

Schedule 1D of the RPW identifies the spiritual and cultural beliefs, values and uses associated with water bodies of significance to Kai Tahu. The Clutha River (between Alexandra and Lake Wanaka) 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).*

Schoolhouse Creek and the Albert Burn are not specifically mentioned in this schedule.

**Schedule 2 of the Regional Plan: Water**

The provisions of Schedule 2A-2D do not apply to this application.

**Regionally Significant Wetlands**

No Regionally Significant Wetlands will be affected by the take or use. The closest is the Bendigo Wetland located a minimum of 7 km downstream from the take point on the Clutha River.

**6.2 Proposed Plan Change 7 (Water Permits)**

Plan Change 7 (Water Permits) (“PPC7”) was notified for submissions on 18 March 2020.

PPC7 provides an interim regulatory framework for the assessment of applications to renew deemed permits expiring in 2021, and any other water permits expiring prior to 31 December 2025. It also establishes a requirement for short duration consents for all new water permits.

For applications to renew deemed permits expiring in 2021, and any other water permits expiring prior to 31 December 2025, PPC7 establishes a controlled activity consenting framework for short duration consents which comply with the controlled activity conditions. PPC7 also establishes a non-complying consenting framework for consents where a longer duration is proposed or where the application fails to meet one or more of the controlled activity conditions.

As this application was received prior to notification of PPC7, as required by section 88A of the Act, the activity status of the application is determined in accordance with the Regional Plan: Water. However, the activity status in PPC7 and the objectives and policies are relevant to assessing the application under section 104(1)(b) as a relevant provision of a proposed plan.

**7. Status of Application**

Resource consent is required under the RPW. The taking and use of surface water originally applied for prior to 28 February 1998 as existing primary allocation from catchments not listed inSchedule 2A of the RPW is a ***restricted discretionary*** activity under Rule 12.1.4.5 of the RPW. The matters to which the Council has restricted discretion are listed in Rule 12.1.4.8 of the RPW. This rule applies to the two primary allocation water takes from the Albert Burn and Schoolhouse Creek.

***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:*

1. *The primary and supplementary allocation limits for the catchment; and*
2. *Whether the proposed take is primary or supplementary allocation for the catchment; and*
3. *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*

1. *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.*

In addition to the above, the application also seeks to take surface water from the Albert Burn as supplementary allocation. As such, Rule 12.1.4.7 is also relevant. There is no existing supplementary allocation from the Albert Burn catchment and the applicant is proposing to take water above the natural mean flow.

***Restricted Discretionary Activity Rule 12.1.4.7***

*Taking and use of surface water as supplementary allocation in any catchment other than a Schedule 2B catchment:*

*(i) This rule applies to the taking of surface water as supplementary allocation for any catchment area, except for any Schedule 2C catchment as set out in clause (ii) below, subject to the minimum flow set in paragraph (iii) below.*

*(ii) This rule does not apply to the taking of any surface water that is in addition to the first supplementary allocation provided for by Schedule 2B, for any catchment area in Rule 12.1.4.3.*

*(iii) The taking of surface water as supplementary allocation for any catchment is subject to a minimum flow which is not less than either:*

*(a) 50% of the natural flow at the point of take, or, if a resource consent so provides, not less than 50% of the natural flow at a point specified in the resource consent; or*

*(b) The natural mean flow at the point of take, or, if a resource consent so provides, not less than the natural mean flow at a point specified in the resource consent,*

*as the Otago Regional Council determines in granting a resource consent.*

*(iv) 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, and is subject to Rule 12.1.4.9. The matters to which the Otago Regional Council has restricted the exercise of its discretion are set out in Rule 12.1.4.8.*

*(v) 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 and is subject to Rule 12.1.4.9. The matters to which the Otago Regional Council has restricted the exercise of its discretion are set out in Rule 12.1.4.8.*

*(vi) This rule shall affect the exercise of any resource consent which was either:*

*(a) Granted before 28 February 1998; or*

*(b) Granted after 28 February 1998 but was applied for prior to 28 February 1998,*

*for the taking of surface water where a condition on the consent requires the take to be suspended at a minimum flow higher than that which would be set by Schedule 2A.*

*(vii) The conditions of all such resource consents will be reviewed under Sections 128 to 132 of the Act to enable the minimum flows in paragraph (iii)(a) or (iii)(b) of this rule to be met, the volume and rate of take to be measured in accordance with Policy 6.4.16 and the taking to be subject to Rule 12.1.4.9, as soon as practicable after the Plan becomes operative.*

*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.*

With respect to the proposed takes from the Albert Burn and Schoolhouse Creek, in both cases water passes through a pipe before being stored in ponds for subsequent use. As water in a pipe is not water under the RMA but the water in a pond is considered to be water, additional water permits are required to take water from the storage ponds. These water permits are essentially for the taking of water delivered to the ponds. Therefore, in addition to the primary and supplementary allocation takes of water provided for by the above rules, the taking of water from storage ponds requires resource consent in accordance with Rule 12.1.5.1. Where multiple water permits are required for contiguous takes, these can be considered on the same consent.

Likewise, the proposed non-consumptive component of the Albert Burn takes and the proposed take from the Clutha River are also considered under Rule 12.1.5.1.

***Discretionary Activity Rule 12.1.5.1***

*Except as provided for by Rules 12.1.1.1 to 12.1.4.7, the taking and use of surface water is a discretionary activity.*

The proposed activity also involves the discharge of overflow from the Albert Burn pond and weir back to the Albert Burn. Likewise, overflow from Pond 2 in the Schoolhouse Creek catchment is discharged to an unnamed tributary of the Clutha River. The unnamed tributary is noted as being located within the same catchment as Schoolhouse Creek in Schedule 16 of the RPW. Therefore, both discharges comply with the following permitted activity rule.

***Permitted Activity Rule 12.C.1.1***

*The discharge of water or any contaminant to water, or onto or into land in circumstances which may result in a contaminant entering water, is a permitted activity, providing:*

*(a) The discharge does not result in flooding, erosion, land instability or property damage; and.*

*(b) There is no discharge of water from one catchment to water in another catchment; and*

*(c) The discharge does not change the water level range or hydrological function of any Regionally Significant Wetland; and*

*(d) When the discharge, including any discharge from a drain or water race, enters water in any lake, river, wetland or the coastal marine area; the discharge:*

*(i) Does not result in:*

*(1) A conspicuous change in colour or visual clarity; or*

*(2) A noticeable increase in local sedimentation, in the receiving water (refer to Figure 5); and*

*(ii) Does not have floatable or suspended organic materials; and*

*(iii) Does not have an odour, oil or grease film, scum or foam; and*

*(e) When the discharge enters water in any drain that goes to a lake, river, wetland, or the coastal marine area, the discharge:*

*(i) Does not result in:*

*(1) A conspicuous change in colour or visual clarity; or*

*(2) A noticeable increase in local sedimentation, in the lake, river, wetland or the coastal marine area (refer to Figure 6); and*

*(ii) Does not result in the production of conspicuous floatable or suspended organic materials in the drain at the first of:*

*(1) The downstream boundary of the landholding where the discharge occurs; or*

*(2) Immediately before the drain enters a river, lake, wetland or the coastal marine area; and*

*(iii) Does not have an odour, oil or grease film, scum or foam; and*

*(f) When the discharge enters water in any water race5 that goes to a lake, river, wetland, or the coastal marine area, the discharge:*

*(i) Does not result in:*

*(1) A conspicuous change in colour or visual clarity; or*

*(2) A noticeable increase in local sedimentation, in the water race (refer to Figure 7);*

*(ii) Does not result in the production of conspicuous floatable or suspended organic materials in the race at the first of:*

*(1) The downstream boundary of the landholding where the discharge occurs; or*

*(2) Immediately before the race enters a river, lake, wetland or the coastal marine area; and*

*(iii) Does not have an odour, oil or grease film, scum or foam; and*

*(g) From 1 April 2020, the discharge also complies with 12.C.1.1A.*

While, the proposed primary and supplementary takes from the Albert Burn and Schoolhouse Creek are restricted discretionary activities under the RPW, the proposed take from the Clutha River and pond takes from the Albert Burn and Schoolhouse Creek schemes are considered discretionary activities. As the pond takes relate to the overall operation and are inextricably linked, it is appropriate that these applications are bundled. Further the Clutha and Albert Burn schemes provide water for the same irrigation area and the restricted discretionary considerations are wide. Given the above, bundling of the applications is considered appropriate and consent is required for a **discretionary** activity under the RPW.

Resource consent is also required under PPC7, however the activity status of the application in accordance with PPC7 does not yet apply. The activity status of **discretionary** in the RPW continues to apply. Notwithstanding this, the rule in PPC7 is still a relevant consideration when assessing the application under section 104(1)(b) as a relevant provision of a proposed plan.

As the application seeks a consent term longer than six years and proposes to increase the land area under irrigation, the application does not achieve the conditions pertaining to Rule 10A.3.1 under PPC7. Therefore, resource consent is required in accordance with Rule 10A.3.2

***10A.3.1 Controlled activity: Resource consent required***

*10A.3.1.1 Despite any other rule or rules in this Plan;*

1. *any activity that is currently authorised under a Deemed Permit; or*
2. *the take and use of surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) that is currently authorised by an existing water permit where that water permit expires prior to 31 December 2025;*

*is a controlled activity provided the following conditions are met:*

1. *The consent duration sought is no more than six years; and*
2. *The deemed permit or water permit that is being replaced is a valid permit; and*
3. *The application demonstrates that the total land area under irrigation does not exceed that irrigated in the 2017-2018 irrigation season, if the abstracted water is used for irrigation; and*
4. *The rate of take shall be no more than the average maximum rate of take limit recorded during the period 1 July 2012 – 30 June 2017 and calculated in accordance with the method in Schedule 10A.4; and*
5. *Any existing residual flow, minimum flow, or take cessation condition (whichever is applicable) is included in the application for resource consent; and*
6. *The volume of water taken shall be no more than the average maximum of the daily volume limit, or monthly volume limit, or annual volume limit (whichever one or more are applicable) recorded during the period 1 July 2012 – 30 June 2017, and calculated in accordance with the method in Schedule 10A.4.*

***10A.3.2 Non-complying activity: Resource consent required***

*10A.3.2.1 Despite any other rule or rules in this Plan:*

1. *any activity that is the replacement of an activity authorised under a Deemed Permit; or*
2. *the take and use of surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) that is the replacement of a take and use authorised by an existing water permit where that water permit expires prior to 31 December 2025;*

*that does not meet any one or more of the conditions of Rule 10A.3.1.1 is a non - complying activity.*

Overall, the application is considered to be a **discretionary** activity.

Unless discussed above, all 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***

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

Yes, a request for further information was made under section 92(1). The applicant provided further information, satisfying the request. Therefore, the application **need not** be publicly notified in accordance with section 95C of the RMA.

The answer to step 1 is no.

***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:

*(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 public notification:*

*(b) the application is for a resource consent for 1 or more of the following, but no other, activities:*

*(i) a controlled activity:*

*(iv) a prescribed activity (see section 360H(1)(a)(i)).*

The application is for a discretionary activity and public notification is not precluded by a rule or national environmental standard. Therefore, 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):

1. *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.

1. *the consent authority decides, in accordance with**[section 95D](http://www.legislation.govt.nz/act/public/1991/0069/latest/link.aspx?id=DLM2416412" \l "DLM2416412), 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 discretionary activity, the Council's assessment is unrestricted and all actual and potential effects of this application must be considered.

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

* Effects of surface water allocation
* Effects on ecological and instream values.
* Effects on other water users
* Effects on cultural values

**Comparison with Adverse Effects of Permitted Activities**

The taking of surface water up to 100 L/s and 1,000 m3 per day from the main stem of the Clutha River is a permitted activity in accordance with Rule 12.1.2.2 of the RPW. The proposal seeks to take water from the Clutha River far in excess of the permitted activity limits, with a take of up to 23,587m3 per day proposed. Therefore, while it is appropriate to consider the permitted baseline relevant to this application, disregarding the adverse effects of permitted activities will not alter the effects conclusion.

**Effects on the Environment**

I consider whether or not the adverse effects on the environment that I have identified will be, or are likely to be more than minor, for the purposes of public notification, below.

**Effects on Surface Water Allocation**

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*

1. *The sum of consented maximum instantaneous, or consented 7-day, takes of:*
2. *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*
3. *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 7-day mean annual low flow (MALF) for the Albert Burn and Schoolhouse Creek have been calculated by the Council’s RSU and are reported in Table 5 below. In accordance with Policy 6.4.2(a), total theoretical primary allocation is also reported in Table 5. The current paper allocation of these waterways is also calculated in accordance with Policy 6.4.2(b).

**Table 5: Primary allocation determination**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Waterway** | **Mean Annual Low Flow (MALF) (L/s)** | **Theoretical Primary Allocation (L/s)** | **Current Paper Allocation (L/s)** | **Allocation Status** |
| Albert Burn | 23 | 11.5 | 237.45 | Fully Allocated |
| Schoolhouse Creek | 12 | 6 | 55.6 | Fully Allocated |

While the status of the Albert Burn and Schoolhouse Creek catchments are fully-allocated, because the consents that this application seeks to replace were 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, the proposed takes will retain their primary allocation status.

In addition to the primary allocation sought, the applicant proposes to take water from the Albert Burn as supplementary allocation in accordance with Policy 6.4.10. While there is no existing supplementary allocation from the Albert Burn, the proposed primary and supplementary allocations are less than the current primary paper allocation. As such, the application seeks to take a volume less than the total volume of water defined as the primary allocation limit by Policy 6.4.2(b)(i). Overall, including the proposed supplementary allocation, less water than was consented at 28 February 1998 is being sought.

In terms of the Clutha River, the RPW provides for management of the taking of surface water by defining allocation quantities able to be taken, while providing for water body levels, however, these restrictions do not apply to the Clutha River main stem*,* nor minimum and residual flows,because of the large volumes of water available to be taken. Likewise, the above allocation determination does not apply to the takes from storage ponds.

**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 Albert Burn or Schoolhouse Creek.. 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.

As the applicant seeks to take water from the Albert Burn as supplementary allocation in addition to the primary allocation sought, consideration of a supplementary minimum flow is required. Section 15.8.1A of the Regional Plan: Water (RPW) provides guidance to determine the setting of supplementary allocation blocks and supplementary minimum flows. In accordance with 15.8.1A.2 any supplementary take from the Albert Burn requires a supplementary minimum flow of at least 203 L/s. Given the applicant has proposed a supplementary minimum flow of 224 L/s, provided this is imposed, any adverse effects of supplementary taking at the rates proposed will be less than minor.

**Effects on Fish and Instream Values**

*Albert Burn*

The application provides an assessment of the instream values that is consistent with that provided by Council’s RSU. The Albert Burn supports a small and stunted population of brown trout that very rarely has connection with main stem of the Clutha River.

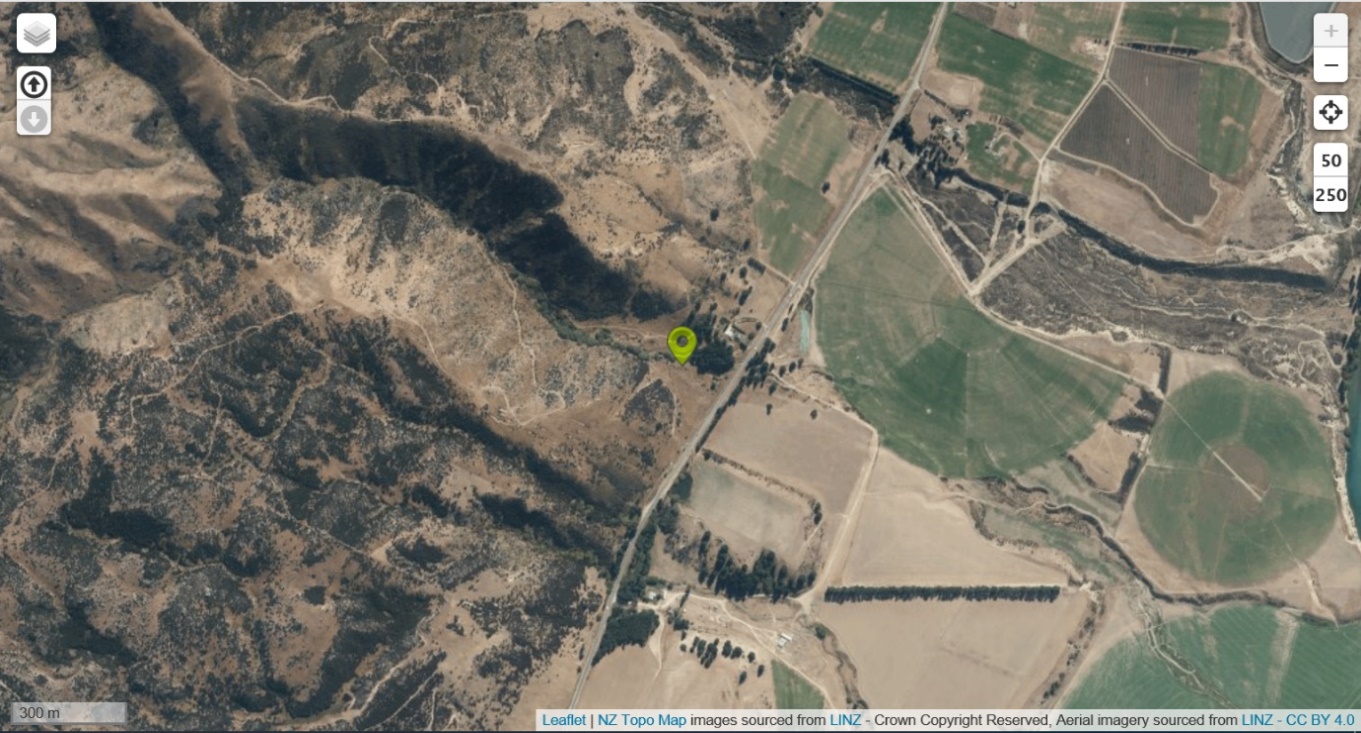
In addition to a minimum flow, a residual flow may be set at the point of take, for the purpose of providing for instream values of the source water body. The applicant has not proposed a residual flow and Council’s RSU have not recommended a residual flow be required. This is due to the naturally ephemeral nature of the Albert Burn and the limited values supported.

The applicant has proposed that the current fish screen be maintained. RSU have noted that a 3 mm fish screen between the pond and pipes is required to prevent fish entrapment and fatalities. With appropriate fish screening, the effects on the environment resulting from the applicant’s proposed take from the Albert Burn are considered to be less than minor.

*Schoolhouse Creek*

Schoolhouse Creek is abundant with Clutha flathead galaxia, a nationally critical indigenous species, with the upper reaches clearly being an important habitat for native fish. The applicant has highlighted that a lack of connection between the upper reaches of the creek and the Clutha River could be beneficial to one of New Zealand’s most endangered fish species by preventing the up-migration and spawning of predatory sportfish in the creek. The applicant has proposed that a fish screen be installed on the water race to prevent the ingress and entrapment of fish.

RSU have concluded that with a visual residual flow maintained between the point of take and where Schoolhouse Creek passes the point E1309017 N5027188 NZTM (refer to green waypoint on Figure 3 below), the effects of this take will be no more than minor. As the applicant has agreed to adopt this mitigation (refer A1341231), the effects of this take on the environment are considered to be no more than minor.



**Point of take**

**Figure 3: Aerial imagery of Schoolhouse Creek and the applicants point of take. Green waypoint indicates where a visual residual flow should be maintained, approximately 200 m downstream of the point of take.**

*Clutha River*

The applicant has sought a maximum rate of take of 273 L/s from the Clutha River. The applicant has proposed that the current fish screens be maintained on the intake infrastructure. RSU have noted that a 3 mm fish screen attached to the point of take is required to prevent fish entrapment and fatalities. With appropriate fish screening, the effects on the environment resulting from the applicant’s proposed take from the Clutha River are considered to be no more than minor. The Applicant has not confirmed if they will adopt this recommendation.

Overall, the proposed takes will not have adverse effects on aquatic ecosystems that are more than minor.

**Effects on Other Water Users**

There are no other surface water users on the Albert Burn or Schoolhouse Creek. The Albert Burn and Schoolhouse Creek hold little recreational value due to the limited size and accessibility of the waterways. While the Clutha River supports many water users, the points of take are located on a small branch of the Clutha River that is accessible only by boat, and the scale and position of the intakes are unlikely to compromise the ability of recreational boaters or fishers to enjoy the river. It is therefore considered that the proposed takes are not likely to have an adverse effect on any other water takes or recreational users.

Existing groundwater takes in the vicinity of the proposal are owned by the applicant. While the taking of surface water is expected to reduce groundwater recharge, given the distance to any neighbouring bores (>2km), no adverse effects on these bores are expected.

**Effects on Cultural Values**

The applicant provides an assessment against the provisions of the Kai Tahu ki Otago Natural Resources Management Plan (“**NRMP**”) that is adopted here. As the application seeks a 25 year consent term, an appropriate volume of water based on efficient use and proposes fish screening on all takes, the application is considered to be broadly consistent with the NRMP. Likewise, these attributes of the application are consistent with the provisions of The Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 - The Cry of the People, Te Tangi a Tauira.

However, as indicated above, Schoolhouse Creek supports a significant population of nationally critical fish on which the application may have a minor effect. As such, the kohanga values of Schoolhouse Creek may be adversely affected by the proposal. Furthermore, as the proposal seeks to take water from the Albert Burn and Schoolhouse Creek at rates greater than the MALF with no residual flow, the proposal may adversely affect the mauri of the water.

Cultural effects on the main stem of the Clutha River are considered to be less than minor as the volume of water sought is significantly less than the overall volumes in the river at the point of take.

**Conclusion as to effects**

The applicant proposes to take considerably less water than is currently allocated and proposes to screen all intakes to prevent the entrapment of fish. No other water takes, or water users will be adversely affected by the proposed takes and there are no Regionally Significant Wetlands that will be affected, adversely or otherwise, by the proposed water takes. The proposal may have minor, but not more than minor adverse effects on native fish values and cultural values.

I consider that the adverse effects of the activity on the environment will not be more than minor. 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 exists. 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](http://www.legislation.govt.nz/act/public/1991/0069/latest/link.aspx?id=DLM242504" \l "DLM242504); and*

##### *(b)**whether the person to whom the statutory acknowledgement is made is an affected person under**[section 95E](http://www.legislation.govt.nz/act/public/1991/0069/latest/link.aspx?id=DLM2416413" \l "DLM2416413).*

The application is within and adjacent to land that is subject to a statutory acknowledgement made to Te Runanga o Ngai Tahu, being Mata-au (Clutha River) (refer Schedule 40 of the Ngai Tahu Claims Settlement Act 1998). Te Runanga o Ngai Tahu were advised of the receipt of the application in writing and their feedback was sought. No response to the request for feedback has been received.

The cultural effects assessment provided above indicates that there may be minor adverse effects on the kohanga values of Schoolhouse Creek and adverse effects on the mauri of both Schoolhouse Creek and the Albert Burn. These waterways rarely connect with the Clutha River and are therefore not considered to affect land subject to the statutory acknowledgement area.

Additionally, no adverse cultural effects are anticipated on the Clutha River main stem.

On this basis, no adverse effects are anticipated on the 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:

|  |  |  |
| --- | --- | --- |
| **Party** | **Address** | **Why the party is considered affected** |
| Department of Conservation on behalf of the Director General of Conservation (DOC) | PO Box 176  Alexandra 9340 | Schoolhouse Creek supports a significant population of Clutha flathead galaxia identified as nationally vulnerable in Schedule 1AA. DOC, who represent the Director General of Conservation have a statutory responsibility to manage native freshwater fish habitats. Council’s RSU have noted that with a visual residual flow provided below the proposed water take, the effects on native fish values will not be more than minor. The proposal may still have a minor adverse effect on the conservation values of Schoolhouse Creek. |
| Contact Energy Limited | PO Box 10742  Wellington 6143 | The applicant is proposing to take up to 23,587m3 of water per day from the main stem of the Clutha River. This volume far exceeds the quantity that is permitted under the RPW (1,000m3 per day). The proposal may have a minor adverse effect on electricity generation. The proposed take from the Albert Burn and Schoolhouse Creek is not considered to have an effect on electricity generation as these waterways are naturally ephemeral. |
| Te Ao Marama Incorporated on behalf of Waihopai | PO Box 7078  Invercargill 9844 | The consumptive take of water may have a minor adverse effect on the kohanga values of Schoolhouse Creek and adverse effects on the mauri of both Schoolhouse Creek and the Albert Burn. |
| Aukaha on behalf of Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou | PO Box 446  Dunedin 9054 | The consumptive take of water may have a minor adverse effect on the kohanga values of Schoolhouse Creek and adverse effects on the mauri of both Schoolhouse Creek and the Albert Burn. |

The following parties have been assessed and are not considered to be affected by the application:

|  |  |
| --- | --- |
| **Party** | **Why the party is not considered to be affected** |
| **Landowners other than the applicant** | The infrastructure associated with the take and use of water is located over land not owned by the applicant. This includes private properties, State Highway 6 and Crown land. Given the applicant holds a Section 417 certificate or other private easement over these areas, there are no adverse effects on these landowners. Notwithstanding this, property rights issues and are not considered under the Resource Management Act 1991. No other neighbours or landowners are considered to be affected by the proposal as the proposal does not interfere with any other land. |
| **Otago Fish and Game Council (Fish and Game)** | The Albert Burn and Schoolhouse Creek support little sports fish value and are naturally ephemeral. The applicant has proposed fish screening on all takes. The effects of the application on Fish and Game are therefore less than minor.  The proposed take from the Clutha River will be screened and will not have adverse effects on trout populations within the Clutha River. |
| **Te Runanga o Ngai Tahu** | Te Runanga o Ngai Tahu were advised of the receipt of the application in writing and their feedback was sought. No response to the request for feedback has been received. The cultural effects assessment provided above indicates that there may be minor adverse effects on the kohanga values of Schoolhouse Creek and adverse effects on the mauri of both Schoolhouse Creek and the Albert Burn. These waterways rarely connect with the Clutha River and are therefore not considered to affect land subject to the statutory acknowledgement area. Consideration of Te Ao Marama Inc. and Aukaha as affected parties ensures the interest of iwi are appropriately accounted for. |

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

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

* Department of Conservation on behalf of the Director General of Conservation (DoC);
* Contact Energy Limited;
* Aukaha on behalf of Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou; and
* Te Ao Marama Incorporate on behalf of Waihopai

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

Therefore, there are affected persons in relation to the activity.

***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.

Therefore, I consider that this application should be limited notified.

**8.4 Recommendation as to Limited Notification**

For the reasons outlined above, I recommend that the application **is** **limited notified** in accordance with section 95 and 95B of the RMA to the following affected parties who have not provided their written approval:

**9. Notification Recommendation**

Pursuant to sections 95A-95E, I recommend this application be processed on a limited notified basis as:

* 1. in accordance with section 95A the application is not likely to have adverse effects on the environment that are more than minor.
  2. in accordance with section 95B affected persons have been identified in relation to the proposed activity.
  3. in accordance with section 95C the applicant has not failed or refused to provide further information.
  4. in accordance with section 95D the application is not likely to have adverse effects on the environment that are more than minor.
  5. in accordance with section 95E the application will have minor or more than minor adverse effects on the following affected parties whose written approval has not been obtained.
* Department of Conservation on behalf of the Director General of Conservation (DoC);
* Contact Energy Limited;
* Aukaha on behalf of Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou.
* Te Ao Marama Incorporated on behalf of Waihopai.

Ethan Glover

**Consultant Planner**

**20 April 2020**

|  |  |
| --- | --- |
|  | **Decision on notification**  ***Sections 95A to 95G of the Resource Management Act 1991***  **Date:** 20 April 2020  **Application No:** RM19.312  **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 **limited 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 by Ethan Glover on 20 April 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 **limited notified** basis in accordance with sections 95A to 95G of the Resource Management Act 1991. This decision is made under delegated authority by:

****

Manager Consents

20 April 2020



……………………………..…

Peter Christophers

Principal Consents Officer

20 April 2020