

## NOTIFICATION ASSESSMENT DEEMED PERMIT REPLACEMENT WATER PERMIT

**ID Ref:** A1333171  
**Application No(s):** RM20.079.01 and RM20.079.02  
**Prepared for:** Staff Decision Panel  
**Prepared by:** Charles Horrell, Consultant Planner on behalf of Otago Regional Council  
**Date:** 11/06/2020

**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 RM20.076 in accordance with Sections 95A-G of the Resource Management Act 1991 (**“the Act”**).

### 2. Background Information

**Applicant:** Bendigo Station Limited  
**Applicant’s Agent:** Landpro  
**Site address or location:** Bendigo Creek, approximately 3 kilometres south east of the intersection of Bendigo Loop Road and York Street  
**Legal description(s) take and use:** Section 21 SO 24641  
**Map reference(s):** NZTM 2000: E1314483 N5018116  
**Consent(s) sought:**

Consent type and number	Description
Water Permit RM20.076.01	To take and use water as primary allocation from the Bendigo Creek
Water Permit RM20.076.02	To take and use water as supplementary allocation from the Bendigo Creek
Water Permit RM20.076.03	To dam, take and use water within and from a reservoir outside the bed of a watercourse

**Purpose of take:** Irrigation and stock water  
**Deemed permits:** WR1233CR and WR3908CR

### 3. Summary of Recommendation

I recommend, for the reasons outlined in this report, that this application, which is for a restricted discretionary activity, be processed on a non-notified basis in accordance with section 95B and 95E 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

Bendigo Station Limited (“**the Applicant**”) has sought three water permits to dam, take and use water from Bendigo Creek as both primary and supplementary allocation for the purpose of irrigation and stock water.

##### Rates and Volumes Applied For:

Rate of take:	160 L/s (50 L/s primary allocation and 110 L/s supplementary allocation);
Monthly Volume:	179,473 m <sup>3</sup> /month;
Annual volume:	900,601 m <sup>3</sup> /year

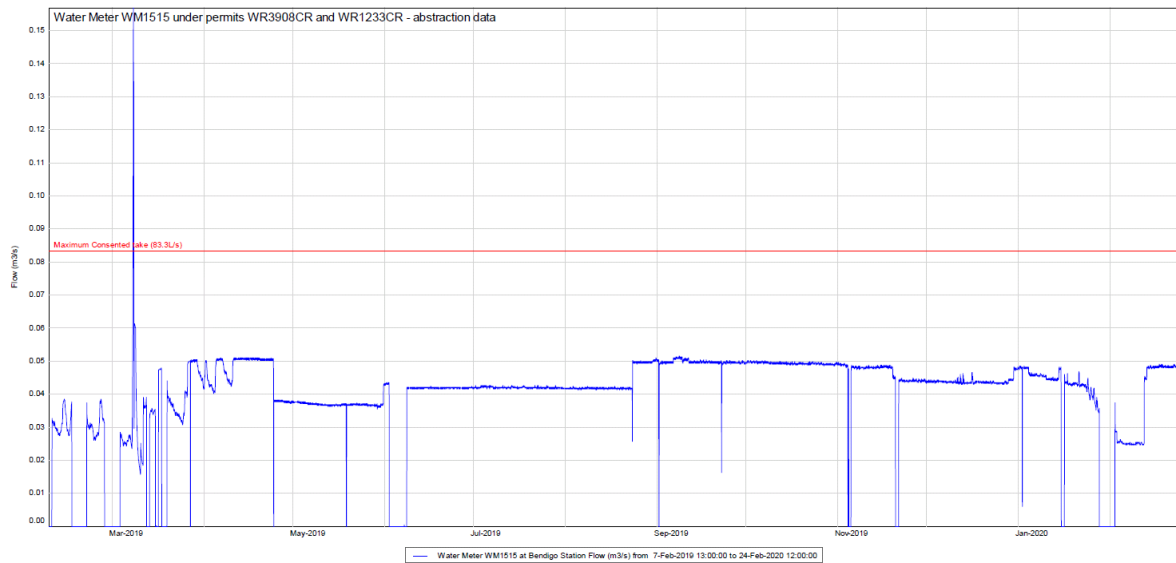
##### Details of Deemed Permits Being Replaced

The Applicant is seeking to replace Deemed Permits WR1233CR and WR3908CR which expire on 1 October 2021. Deemed Permit WR1233CR was originally authorised on 23 December 1902 under the Mining Act 1898 to take up to 55.6 L/s for the purpose of irrigation and stock water. The mining privilege was renewed on a number of occasions and remained current when the Act was introduced thereby becoming a deemed permit. Deemed Permit WR3908CR was originally authorised on 16 June 1920 under the Mining Act 1908 to take up to 2.5 heads (69.5 L/s) for the purpose of irrigation and domestic use. The volume of water authorised was reduced on two occasions and currently authorises the take and use of up to 27.8 L/s. The two deemed permits have been exercised in conjunction with one another and in total they authorise the combined take and use of up to 83.4L/s.

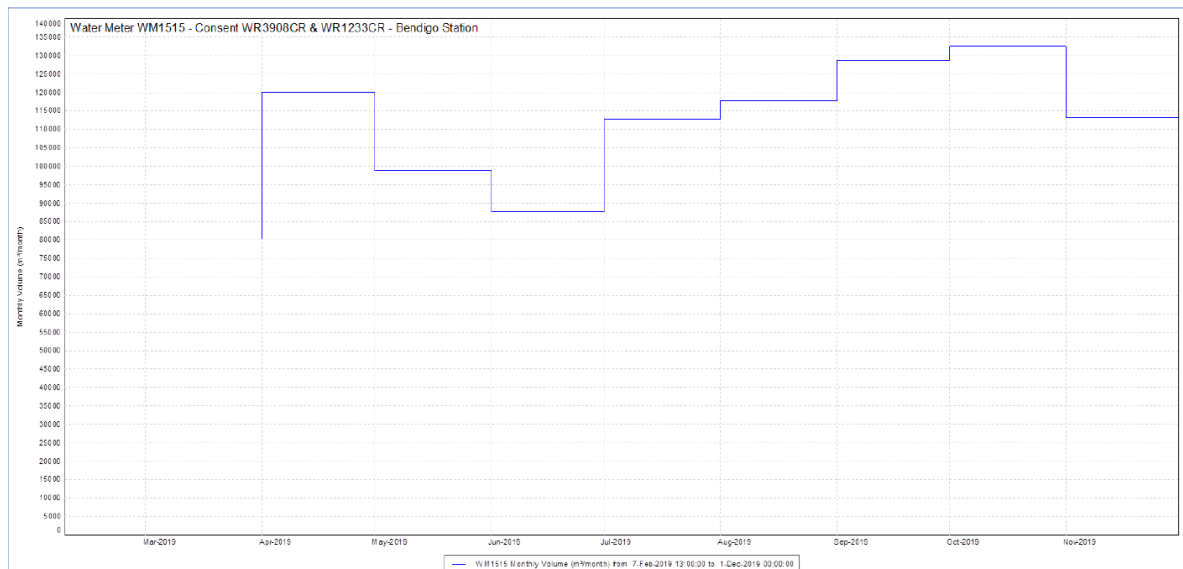
This application has been lodged with the Otago Regional Council (“**the Council**”) more than six months before the expiry of the deemed permits which it looks to replace. In accordance with Section 124 of the Act, the Applicant may continue to operate under Deemed Permit 97214 until a decision on this application is made and all appeals are determined.

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

A water meter was only installed as recently as February 2019 therefore there is just over 1 calendar year of monitoring data. **Figures 1** and **2** illustrate the rate and volume of water that has been abstracted.



**Figure 1: Timeseries graph showing rate of abstraction from Deemed Permits WR1233CR and WR3908CR from February 2019 to February 2020. Source: ORC Hilltop.**



**Figure 2: Timeseries graph showing the volume of water abstracted by month from Deemed Permits WR1233CR and WR3908CR between February 2019 and February 2020. Source: ORC Hilltop.**

Based on the water use data illustrated above, the combined maximum abstraction rates and volumes for Deemed Permits WR1233CR and WR3908CR are as follows:

- A maximum instantaneous rate of 157 L/s (non-compliant) or 73.9 L/s (compliant);
- A maximum monthly volume of 132,450 m<sup>3</sup>; and
- A maximum annual volume of 1,109,361 m<sup>3</sup> (March 2019 – January 2020).

The Applicant has based the proposed rate and volumes on this data. The Applicant has acknowledged that while on occasions the rate of take is high, the majority of the time 50 L/s is required. The Applicant has subsequently requested 50 L/s as primary allocation and the remaining 110 L/s as supplementary allocation. The monthly volume sought (179,473 m<sup>3</sup>) is in excess of what has been taken but it is in line with Aqualinc; however, assuming a continuous rate of 50 L/s for the primary component, the difference would still need to be attributed to supplementary allocation.

### Other Activities

Water abstracted from the points of take is conveyed via a water race to two storage reservoirs. The system including the takes, where water is metered, the race and the storage reservoirs is shown in **Figure 1**.



*Figure 1: Annotated aerial photograph showing point of take, water conveyance and reservoirs. Source: Application.*

The two reservoirs are located directly adjacent to one another and operate together to supply water to a centre pivot which traverses the outer edge of the outer pond. The outer reservoir, referred to as the “Cherry Holdings pond” has a maximum capacity of 18,332 cubic metres (m<sup>3</sup>) of water and a depth of 3 metres (m). The inner pond, referred to as the “Bendigo Station Irrigation pond” has a capacity of 53,820 m<sup>3</sup> of water with a depth of 3 m. Both are “turkey nest” style dams which have been constructed outside the bed of a natural watercourse. An as-built engineering drawing of the reservoirs is shown in **Figure 2**.



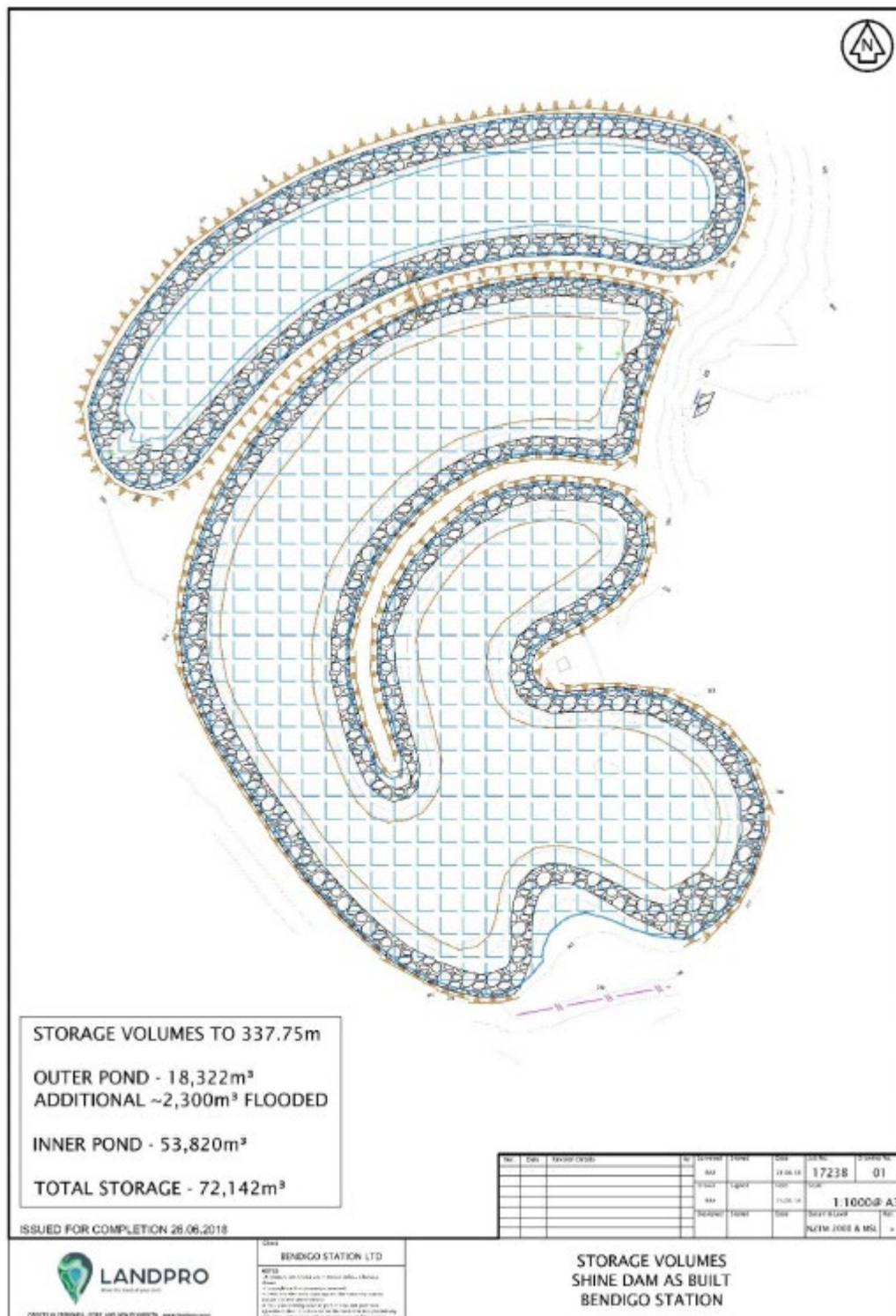


Figure 2: As built engineering drawing of two reservoirs. Source: Application.

The Bendigo Station pond has an operational spillway located in the south-eastern corner that moderates flows. Where water exceeds the capacity of the pond it flows through the spillway and re-enters Bendigo Creek via an overflow channel. A photograph of the spillway is shown in **Figure 3** and an annotated aerial photograph showing the flow path of water from the spill is shown in **Figure 4**.



*Figure 3: Photograph of operation spillway on Bendigo Station Pond. Source: Application.*



*Figure 4: Annotated aerial photograph showing flow path from Bendigo Station pond to Bendigo Creek via the spillway. Source: Application.*

The dam is assessed as being of Low Potential Impact in accordance with the New Zealand Society for Large Dam Guidelines 2015.

## Application Documents

The application was lodged with the Council on 10 March 2020 and accepted for processing on 12 March 2020. The following information was provided with the application:

- Completed Otago Regional Council forms 1, and 4;
- Resource Consent Application and Assessment of Environmental Effects prepared by Landpro, dated 27 February 2020;
- Ecological assessment memo prepared by Waterways Consulting Limited, dated 10 January 2020; and
- Record of titles.

Following a request in accordance with Section 92 of the Act, the Applicant provided additional information in relation to:

- Effects on Regionally Significant Wetlands;
- Details on water conveyance and storage means;
- Efficiency of use;
- How supplementary allocation will meet Policy 6.4.9;
- Effects on aquatic ecology; and
- Further assessment against planning provisions (proposed Plan Change 7).

A complete response to this request was received on 14 May 2020.

After it was discovered that one of the reservoirs where water is stored does not meet the permitted activity requirements, an additional consent was sought in accordance with Section 91 of the Act. The Applicant provided the following document to fulfil this request on 26 May 2020:

- Completed Otago Regional Council form 2; and
- Assessment of Environmental Effects prepared by Landpro, dated 26 May 2020.

## Site Visit

A site visit has not been undertaken for this application.

## 5. Description of the Environment

### 5.1 Description of the Site and Surrounding Environment

The point of take for the permits is located in the mid reaches of Bendigo Creek, approximately 11 km south of Tarras is Central Otago. The land where the point of take is located is legally described as Section 21 SO 24641 which is owned by Department of Conservation. The surrounding land is rural in nature. The location of the point of take is shown in **Figure 5** below.





*Figure 5: Site location. Source: ESRI Arc GIS.*

Water is taken for the purpose of stockwater and irrigation. Once the water is abstracted at the point of take via an open pipe, it is conveyed 2 kilometres across the Applicant's property to two storage reservoirs where it is then distributed for either irrigation or stockwater use. The reservoirs as shown in **Figures 1** and **2** are located on land legally described as Lot 8 DP 517385 which is currently owned by the Applicant. The surrounding land is rural in nature.

The Applicant proposes to use water for the irrigation of approximately 182.4 hectares of land. Irrigation would be required for pasture, viticulture and a cherry orchard. The irrigation infrastructure consists of a centre pivot, drip lines and K-Lines. The irrigated areas and the method of irrigation is shown in **Figure 6**.



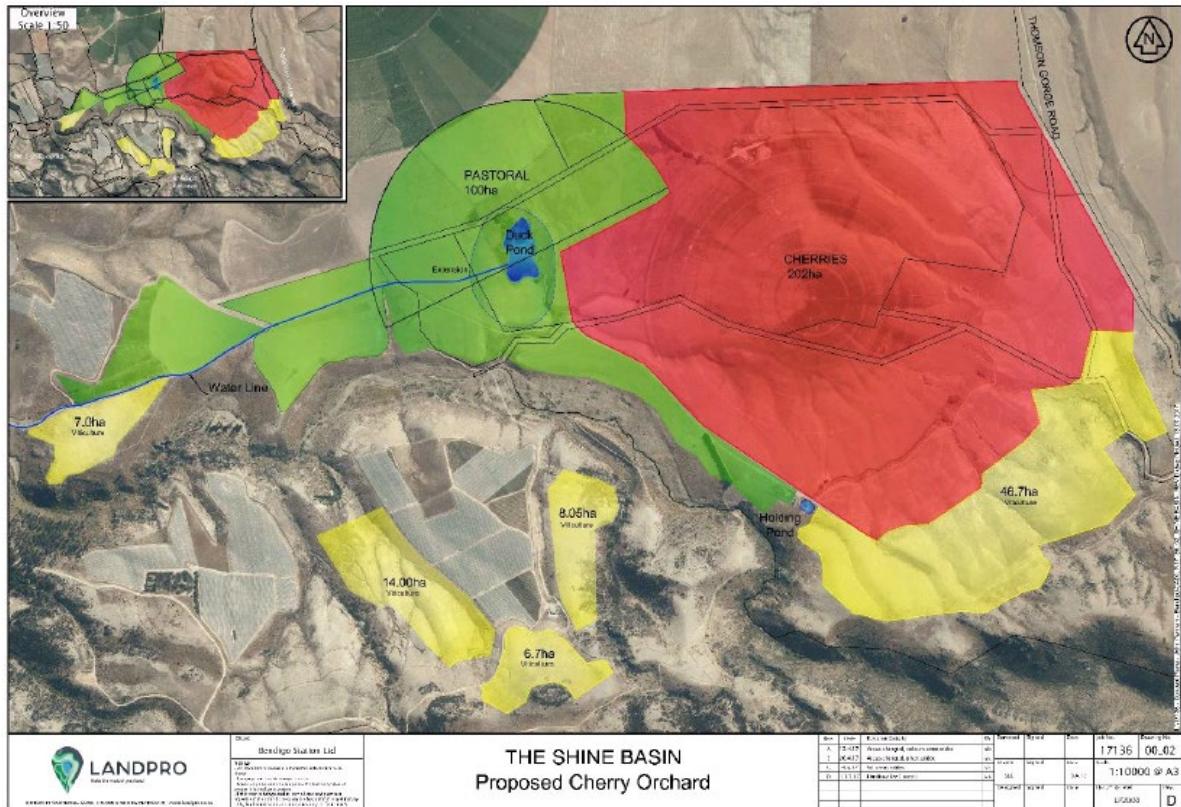


Figure 6: Proposed irrigable land and irrigation methods. Source: Application.

It is noted that the Applicant to date has only used water for the irrigation of pasture, however proposes to convert to 202 ha to a cherry orchard and 82.4 ha to a vineyard.

## 5.2 Description of Surface Water Body

Water is abstracted from Bendigo Creek which flows into the headwaters of Lake Dunstan. The headwaters of Bendigo Creek begin towards the top of the Dunstan Mountains, at an elevation of approx. 1560 masl. The initial stretch of the creek is divided into two branches (Bendigo Creek Right Branch and Bendigo Creek Left Branch) which then join into one branch, after which the creek enters a moderately incised gorge. The Applicant's intake is located towards the end of this gorge, with the creek flowing onto the flats and the channel opening out shortly thereafter. **Figure 6** shows photographs of Bendigo Creek at and in close proximity to the point of take.



*Figure 6: Photographs of Bendigo Creek: Top left shows upstream of point of take; right shows downstream of point of take; and bottom left shows location the pipeline from the point of take. Source: Application.*

Bendigo Station is a highly diversified enterprise, with activities on the property including merino farming, angus breeding cows, trading steers, finishing beef calves, and viticulture. Much of the land on the hillsides above the flats which would otherwise provide relatively poor grazing has or is being converted into world class vineyards.

### 5.2.1 Hydrology

There is no flow monitoring data for Bendigo Creek, however MfE flow modelling estimates the mean flow of Bendigo Creek in the vicinity of the intake to be 243 L/s and the mean annual low flow (MALF) to be 63 L/s. The Applicant commissioned Landpro to undertake stream gauging on January 16th 2020 (see Appendix C of the Application). The Applicant's abstraction from the creek was ceased 24 hours prior to the survey, to allow the creek to assume a naturalised flow. **Figure 7** below is extracted from the report and shows the survey locations which indicates that the creek dries up relatively quickly between Sites 3 and 4.



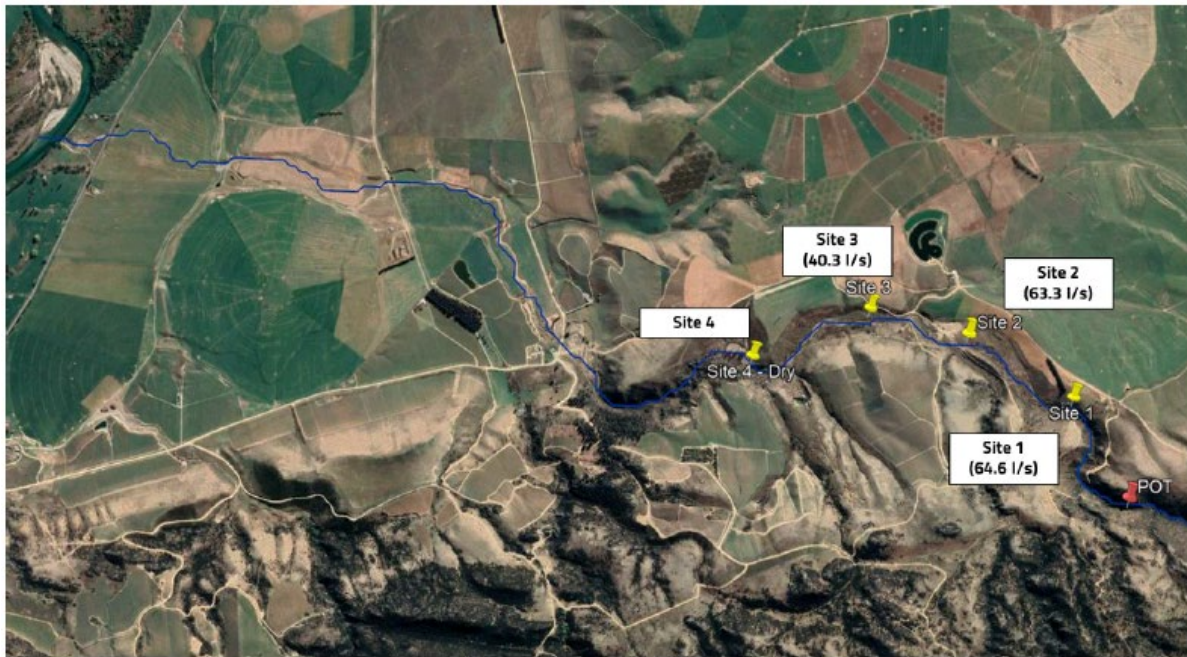


Figure 7: Location and results of gauging. Note: Site 4 was dry during the gauging. Source: Application.

In relation to the apparent losing nature of Bendigo Creek, Landpro in their hydrology report noted the following:

*Results of the flow gauging's undertaken suggest that flow downstream of the Bendigo Station Ltd abstraction point interact with the hyporheic zone and fine loose alluvial gravels, and that this provides a mechanism for water loss to the sub-surface zone. The survey identified a net loss of 64.6 L/s between the abstraction point, and a site located approx. 2km downstream (Figure 1) where Bendigo Creek ran dry at a gorge where the creek was constrained by bedrock and pools and dense vegetation.*

In order to better understand the hydrology of Bendigo Creek and determine the effects of abstraction on the creek, the Applicant has commissioned installation of a flow monitoring station on the watercourse. The meter was installed in early February 2020 and is now capturing data.

Tonkin and Taylor (“**T&T**”) have assessed this hydrology report on behalf of Council’s Resource Science Unit and have advised that the assessment undertaken for hydrology is appropriate to understand the hydrological context.

### 5.2.2 Aquatic Ecology

There are no New Zealand Freshwater Fish Database (“**NZFFD**”) records for Bendigo Creek. The Applicant however commissioned a fish survey of Bendigo Creek which was undertaken by Water Ways Consulting Ltd (“**Water Ways**”) in December, 2019. The results of this fish survey and a discussion Water Ways is contained within Appendix D of the Application. In summary, 3 sites were electric fished upstream of the intake and 2 sites downstream. The only fish encountered were found at the lowermost site (site 5): five brown trout, consisting of 4 fry hatched earlier in 2019 and 1 160mm individual. Water Ways noted the following in their report:



*“Larval galaxiid surveys at Sites 3, 4 and 5 saw no larval galaxiids. Given the lack of any adult galaxiids at any of the survey sites, even when no salmonids were present, this indicates that Bendigo Creek is unlikely to contain the rare Clutha flathead, and there is certainly no evidence it is present at the water take or downstream of that point. The lack of fish at the upstream Sites 2 to 4 indicates there is a barrier to fish movement from the lower reaches at Site 5 to Sites 3 and 4. The reach in between Sites 4 and 5 is steep and bedrock bluffs are common (Figure 6). It is expected in this reach there is a waterfall barrier or barriers that prevent upstream fish movement.”*

T&T also reviewed Water Ways report and advised that the assessment undertaken is robust and provides an accurate account of the ecological values present.

### 5.2.3 Other users

Bendigo Creek is not known for recreational values, and given the lower reaches are located on privately owned land it is fairly inaccessible to the general public.

It is well established through case law<sup>1</sup> that the ‘environment’ includes the foreseeable future state of the environment as it might be modified by lawful activities (permitted or consented). A review of Council’s database indicates there are no other consented activities within Bendigo Creek. It is also unlikely that any other permitted activities are being undertaken given the Applicant operates a station that occupies the majority of the catchment with the exception of the upper reaches which is Conservation land.

## 6. Regional Planning Context

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

Schedule 1 of the Regional Plan: Water for Otago (“**RPW**”) outlines the natural and human use values of lakes and rivers throughout the Otago Region. This schedule is split into 4 parts: Schedule 1A – Natural Values; Schedule 1B – Water Supply Values; Schedule 1C – Registered Historic Places and Schedule 1D – Cultural Values. Regard must be given to these values when considering an activity that may affect a lake or river identified in the Schedule. Bendigo Creek is not identified within Schedule 1.

### 6.2 Schedule 2 of the Regional Plan: Water

Bendigo Creek nor the wider catchment (Clutha River/Mata Au) is not identified within Schedule 2 of the RPW.

### 6.3 Regionally Significant Wetlands

The Bendigo Wetland is a Regionally Significant Wetland which is located approximately 8 km west and downstream of the point of the take. The Bendigo Wetland is approximately 240 hectares in area and is located at the head of Lake Dustan. The Bendigo Wetland is identified as containing Scheduled values that are summarised in **Table 1**. In addition to these values, the wetland is known to support recreational values such as boating, water sports, angling and seasonal game hunting.

**Table 1: Bendigo Wetland Schedule 9 values. Source: Schedule 9, Regional Plan: Water for Otago.**

<sup>1</sup> *Queenstown Lakes District Council v Hawthron Estate Ltd* [2006] NZRMA 424 (CA) is the leading case

Value	Description
A1	Habitat for nationally or internationally rare or threatened species or communities. Habitat for threatened swamp bird Crested Grebe ( <i>Podiceps cristatus</i> ).
A3	High diversity of wetland habitat types. The slow infilling of the lake has provided a wide range of habitat types for a large range of wetland and aquatic plant species.
A7	High diversity of indigenous wetland flora and fauna. The head of Lake Dunstan contains significant habitat for native fish, such as longfin eels and bullies, as well as sports fish, including brown trout, rainbow trout and salmon. Important feeding and breeding sites for water fowl such as Paradise Shelduck ( <i>Tadorna variegata</i> ), Mallard ( <i>Anas platyrhynchos</i> ), Black Swan ( <i>Cygnus atratus</i> ), New Zealand Scaup ( <i>Aythya novaeseelandiae</i> ), Canada Goose ( <i>Branta canadensis</i> ), as well as for Pied Stilt ( <i>Himantopus himantopus</i> ) and other waders.
A8	Regionally significant wetland habitat for waterfowl. Regionally important habitat for waterfowl, including Black Swan, Paradise Shelduck, Mallard, Geese and New Zealand Scaup.
A2, A4-A6, A9	No relevant information is currently held by the ORC.

## 7. Status of Application

Resource consents are required under the Regional Plan: Water (“RPW”). It is noted that there are applicable rules under both the operative RPW and a proposed plan change to the RPW. I will discuss relevant provisions of each below followed by the overall status.

### 7.1 Operative Regional Plan: Water for Otago

#### **Primary Allocation**

The proposal seeks to replace existing deemed permits and has not proposed to increase the rate of abstraction for primary allocation. As Bendigo Creek is not identified in Schedule 2A of the RPW, the proposed replacement of the deemed permits WR1233CR and WR3908CR is a **restricted discretionary** activity in accordance with Rule 12.1.4.5 of the RPW:

#### **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.*

The Council may restrict its discretion to matters identified in Rule 12.1.4.8 of the RPW:

**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.*

### **Supplementary allocation**

The proposal looks to take and use up to 110 L/s for supplementary allocation in accordance with Policy 6.4.9 and **restricted discretionary** Rule 12.1.4.7 of the RPW:

#### **Restricted Discretionary Rule 12.1.4.7**

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

- (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*
- (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.*

The Council may exercise its discretion to matters identified in Rule 12.1.4.8 out outlined above.

### **Damming of water**

Part of the proposal includes the damming of water in two reservoirs. Both reservoirs are located outside the bed of a lake or river. The RPW does not contain specific rules relating to the damming of water outside the bed of a watercourse, however permitted activity rule 12.3.2.1 of the RPW authorises the damming of water in small catchments and where the dam is over a certain size:

#### **Permitted Activity Rule 12.3.2.1:**

*Unless prohibited by Rules 12.3.1.1 to 12.3.1.4, the damming or diversion of water is a permitted activity, providing:*

- (a) *The size of the catchment upstream of the dam, weir or diversion is no more than 50 hectares in area; and*
- (b) *In the case of damming, the water immediately upstream of the dam is no more than 3 metres deep, and the volume of water stored by the dam is no more than 20,000 cubic metres; and*
- (c) *In the case of diversion, the water is conveyed from one part of any lake or river, or its tributary, to another part of the same lake, river or tributary; and*
- (d) *No lawful take of water is adversely affected as a result of the damming or diversion; and*
- (e) *Any damming or diversion within a Regionally Significant Wetland was lawfully established prior to 2 July 2011; and*
- (f) *There is no change to the water level range or hydrological function of any Regionally Significant Wetland; and*

- (g) *There is no damage to fauna, or New Zealand native flora, in or on any Regionally Significant Wetland; and*
- (h) *The damming or diversion does not cause flooding of any other person's property, erosion, land instability, sedimentation or property damage; and*
- (i) *The damming or diversion is not within the Waitaki catchment*

The Applicant has confirmed that the dimensions of the Cherry Holdings pond comply with the thresholds for the permitted rule, and all other conditions can be met. The damming of water in the Cherry Holdings pond is therefore permitted. In relation to the Bendigo Station pond, given the storage capacity exceeds the permitted threshold of 20,000 m<sup>3</sup>, this permitted rule cannot be met. The damming of water in the Bendigo Station pond is therefore a **discretionary** activity in accordance with Rule 12.3.4.1(i) of the RPW:

*Except as provided for by Rules 12.3.1.1 to 12.3.3.1 and except in the Waitaki catchment, the damming or diversion of water is a discretionary activity.*

### **Take and use of water from the Reservoirs**

The Applicant abstracts water from each of the reservoirs to irrigate land and for stockwater. Although water within the reservoirs has been primarily sourced from other lawful water abstractions, this is considered a take and use of water. Permitted activity rule 12.1.2.3 of the RPW authorises the take and use of water from an 'artificial lake':

#### **Permitted Activity Rule 12.1.2.3:**

*Except as provided for by Rule 12.1.1.2, the taking and use of surface water from any artificial lake is a permitted activity providing:*

- (a) *The artificial lake was created under Rule 12.3.2.1 or under the Transitional Regional Plan rule constituted by General Authorisation 13, prior to 28 February 1998; and*
- (b) *The water is taken by the owner of the dam structure, or the take is authorised by that owner.*

The abstraction from the Cherry Holdings pond can comply with this rule given the damming meets the associated permitted rule; however, the abstraction from the Bendigo Station pond will not comply given the damming is not permitted or authorised by the transitional regional plan. As the take and use is not for primary or supplementary allocation, therefore the activity is a **discretionary** in accordance with Rule 12.1.5.1 of the RPW:

*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.*

Unless discussed above, all relevant permitted activity rules are complied with.

## **7.2 Proposed Plan Change 7 to the Regional Plan Water for Otago**

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.

### 7.3 Bundling and Overall Status

Applications involving a number of different activity status can be bundled together, so that the most restrictive activity classification is applied to the overall proposal. The bundling approach developed from case law to enable appropriate consideration of the effects of an activity, or group of activities. The most restrictive activity status applying to the activities subject to this application is a discretionary activity, for the damming of water and the subsequent take and use from the dam. On this basis this application has a **discretionary** activity status under the RPW. 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)

A request for further information was made under Section 92(1). The Applicant provided a full response to the request within the specified timeframe. A commissioned report was not required.

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)).*

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

#### 12.1.4.8 Restricted discretionary activity considerations



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

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

... the 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.

A residual flow has not been proposed for the take and use for water for primary allocation. Regardless of this, given the applications are bundled, the overall status is discretionary and there is no preclusion on public notification.

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 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:

- Water allocation;
- Minimum and residual flows
- Effects on natural and human use values (ecosystem, natural character, amenity, kai tahu and recreational values) of Bendigo Creek, particularly those identified in Schedule 1 of the RPW;
- Efficiency of water use; and
- Safe containment of water;

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

In terms of the applying a permitted baseline, I do not consider it is appropriate to apply the permitted baseline for the effect of the water abstractions given the applicable permitted rule<sup>2</sup> is a fraction of the rate and volume sought, it would therefore be impartial to apply such a baseline. In relation to the damming of water, I do consider it is appropriate to apply a baseline to aspects of Rule 12.3.2.1 that the applicant can comply with.

### **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.

### **Primary 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*
- (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.”*

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<sup>2</sup> Permitted Activity Rule 12.1.2.1 or 12.1.2.5 authorises the take and use of up to 25,000 litres per day at a rate or 1 L/s

Bendigo Creek is not identified in Schedule 2A of the RPW. Otago Maps indicates that the modelled 7-day mean annual low flow for Bendigo Creek catchment is 16 L/s and therefore 8 L/s is the primary allocation limit. As noted in Section 5.2.1, the MALF at the point of take has been assessed as 63 L/s which would indicate a primary allocation limit of 31.5 L/s. The current consented rate of abstraction within the Beaumont River catchment is 364 L/s. The available primary allocation in Bendigo Creek is therefore -356 L/s or -332.5 L/s depending on which MALF is relied upon. This application seeks to replace current deemed permits that were authorised prior to 28 February 1998 and the rate of abstraction for primary allocation has been reduced by approximately 33.3 L/s. The application will therefore not affect the allocation status of Bendigo Creek and will lead to the reduction of its deficit.

### **Supplementary Allocation**

Supplementary allocation is provided for by Policy 6.4.9 of the RPW. The policy enables access to water at moderate flows (although flows are considerably higher in fully-allocated catchments), whilst maintaining the aquatic ecosystem and natural character values of affected rivers, and providing for natural flow variation:

- 6.4.9 *To provide for supplementary allocation for the taking of water, in blocks of allocation where that is appropriate:*
- (a) *Such that up to 50% of flow at the catchment main stem, minus the assessed actual take, is available for allocation subject to a minimum flow set to ensure that no less than 50% of the natural flow remains instream; or*
  - (b) *On an alternative basis, provided:*
    - (i) *The take has no measurable effect on the flow at any Schedule 2 monitoring site, or any site established in terms of Policy 6.4.4, at flows at or below any minimum flow applying to primary allocation; and*
    - (ii) *Any adverse effect on any aquatic ecosystem value or natural character of the source water body is no more than minor; and*
    - (iii) *There is no adverse effect on any lawful existing take of water.*
  - (c) *Supplementary allocations and associated minimum flows for some catchments are set in Schedule 2B.*

The Applicant seeks the remaining 110 L/s of water as supplementary allocation in accordance with Policy 6.4.9(a). The Applicant has confirmed that a monitoring station will be installed and a minimum flow will be adhered to in accordance with Policy 6.4.9(a) and Method 15.8.1A of the RPW. It is noted that the Applicant holds the only surface water take within the Bendigo Creek catchment. Applying Method 15.8.1A, a minimum flow of 100 L/s would be required, however priority must also be given to all other primary allocation users in the catchment. While there is no further surface water takes in Bendigo Creek, a number of groundwater users are hydrologically connected. Assuming all water users have a full connection with Bendigo Creek, the required minimum flow will be 385 L/s. Subject to this minimum flow, the application is consistent with Policy 6.4.9 and will not affect allocation.

### **Effects on Hydrology**

The Applicant commissioned Landpro to undertake a hydrological assessment of Bendigo Creek and assess the effects on hydrology as a result of the proposed abstraction. The hydrological context is outlined in 5.5.1 of this report. Landpro conclude in their assessment of effect that while abstraction during low flows would shorten the wetted reach of the creek somewhat, the hydrological implications of this shortening would still be considered insignificant. Abstraction does not curb the natural cycles of the creek, meaning it's inherent character is maintained, and the creek is always enabled to flow well past the point of take. Effects are assessed to be no more than minor.



T&T have reviewed Landpro's assessment. T&T agree with the assessment and conclusions of Landpro. I agree with this assessment.

### ***Effects on instream values***

The Applicant commissioned Waterways to undertake a survey of Bendigo Creek and provide an assessment of effects on instream values. The values present in Bendigo Creek are summarised in Section 5.5.2 of this report. Waterways assessed that the abstraction will lead to a reduction in some of the available and useable habitat for brown trout by increasing the size and duration of the natural ephemeral reach. However, as this brown trout population is one of many "stunted" populations within the Otago region and has no sports fishing value, the reduction in available and useable habitat is not considered more than minor. Waterways also identified that the abstraction would reduce available habitat for aquatic invertebrates. However, flow will be maintained through the permanently wet reaches and will continue to provide a varied range of connected habitats for a diverse invertebrate community. Waterways state that the habitat and flow characteristics downstream of the water take (for approximately 750 m) are conducive to high dissolved oxygen and lower temperatures and are not likely to be affected by the proposed water abstraction. No direct measurements of water temperature and dissolved oxygen were collected to confirm this characterisation. Similarly, nuisance periphyton communities are unlikely to reach bloom conditions within this reach due to the low stock grazing, increased riparian shading, and steep gradient providing high scour potential. The lower open and unshaded reaches of Bendigo Creek (> 750 m downstream of the water take), water temperatures are already likely to be naturally higher and will be elevated due to the water abstraction. Additionally, didymo already blooms within this reach and will continue to occur regardless of the water abstraction. Waterways conclude that adverse effects are not likely to be more than minor. No residual flow has been recommended or proposed by the Applicant.

T&T have reviewed the assessment provided by Waterways and agree with their conclusions that the adverse effects will not be more than minor. I agree with this assessment.

In relation to the reservoir, as it was constructed outside the bed of a natural watercourse the 'existing environment' would not support any instream values. The reservoir being already established is enhancing instream values by providing pool habitat.

Overall the effects on instream values is considered no more than minor.

### ***Regionally Significant Wetlands***

The Bendigo Wetland is located at the confluence of Bendigo Creek and the Clutha River/Mata-Au. The values associated with it are discussed in Section 6.3.

The Applicant has assessed that the effects on the Bendigo Wetland will be negligible due to the separation distance between the point of take and the wetland and the insignificant effect that the take would have on hydrology to the wetland.

I agree with this assessment and consider the effects on any regionally significant wetlands to be less than minor.

### ***Dam Safety***

Dam safety refers to the safe operation and management of dams. Currently there is no specific regulations in place for managing dam safety. Central government revoked the Building (Dam Safety) Regulations 2008 on 31 July 2015 and have since proposed another set of dam safety regulations which are likely to be passed as a Bill of Parliament around mid-next year. In the absence of specific dam safety regulations, the Building Act 2004 is the primary legislation regulating the construction and management of dams. In terms of regulating the long-term maintenance and operation of dams, it is necessary that this is considered through the water permit to dam water. The proposed dam safety regulations are based on the New Zealand Society on Large Dams 2015 Guidelines (NZSOLD 2015) which sets out nationally accepted guidelines for the safe construction and operation of dams. As there are proposed regulations, it is reasonable to consider dam safety in relation to those. The dam safety regulation applies to all dams which are defined as a 'classifiable dam'<sup>3</sup> and will apply varying requirements on dam owners to undertake ongoing monitoring and reporting. In this case, the proposed dam, it would meet the definition of a 'classifiable dam'. While there is risk and potential effects for dam safety, the Applicant has confirmed that the dam would be operated in accordance with the NZSOLD 2015 guidelines which reflect the proposed regulations. Subject to this, I consider that effects on dam safety are no more than minor. I note that conditions of consent will ensure that the applicant adheres to the NZSOLD 2015 guidelines and the proposed regulations for this dam. I will discuss this further in the substantive decision.

### ***Effects on Cultural Values***

While Bendigo Creek is not identified in Schedule 1D of the RPW, it is likely that Bendigo Creek contains kai tahu values. Through the Kai Tahu ki Otago Natural Resource Management Plan 2005, it is understood that iwi have a particular interest in water abstractions and their potential effect on the mauri of the river. The Applicant has considered the effects on kai tahu and cultural values to be minor due to the minor effects on hydrology and aquatic ecology.

I agree with this assessment.

### ***Effects on other users***

There are no other water users in Bendigo Creek and the proposed minimum flow for supplementary allocation will avoid any potential adverse effects on groundwater users.

It is unlikely that anglers use Bendigo Creek due to its size, however Trout were identified as being present. As noted above adverse effects on aquatic ecosystems are likely to be no more than minor

Overall adverse effects on other users are considered no more than minor.

### ***Effects on Natural Character and Amenities***

The abstraction will cause a slight reduction in available which is unlikely to cause any change to the natural character of Bendigo Creek. The intake structure does modify the bank of the

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<sup>3</sup> **Classifiable dams** are either of the following:

- at or above 4 metres in height and 20,000 cubic metres in volume; or
- less than 4 metres in height, but at or above 30,000 cubic metres in volume.

river, however this effect is localised and due to the historic nature of the water race, it does form part of the modified environment. The reservoir is located on private land which is unlikely to be seen from neighbouring properties. Being a rural setting, reservoirs are not uncommon.

Overall adverse effects on natural character and amenity will be no more than minor.

### **Conclusion as to effects**

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

The answer to step 4 is no.

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

## **8.2 Recommendation as to public notification**

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

## **8.3 Limited notification (Section 95B)**

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

### **Step 1**

There are no affected groups or affected persons that must be notified under step 1.

### **Step 2**

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

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

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

### **Step 3**



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

I consider that the following parties are affected:

Party	Why the party is considered affected
<b>Department of Conservation (“DoC”)</b>	DoC is the landowner of the parcel of land where water is abstracted. In addition, effects on conservation values including indigenous biodiversity, may incur a minor adverse effect.
<b>Aukaha on behalf of the local runaka</b>	A minor adverse effect on kai tahu values may be incurred.
<b>Otago Fish and Game Council</b>	Trout have been identified in Bedigo Creek and although a stunted population, the abstraction may incur a minor adverse effect.

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

Written approval are to be obtained from all of the affected parties identified above. I will be advising the Applicant to seek and obtain these approvals as per the letter attached as **Appendix 1**. To provide time to obtain the approvals, the statutory timeframes will cease in accordance with Section 88E(3) of the Act.

Subject to the Applicant obtaining the unconditional written approvals, no parties will be considered affected in accordance with Section 95E or require limited notification.

### **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 not be limited notified and should be processed on a non-notified basis.

### **8.4 Recommendation as to Limited Notification**

For the reasons outlined above, I recommend that the application is not **limited notified** in accordance with section 95 and 95B of the Act, subject to the Applicant obtaining all unconditional written approvals of affected persons.

### **9. Notification Recommendation**

Pursuant to sections 95A-95E, I recommend this application be processed on a non-notified<sup>4</sup> basis given adverse effects on the environment are no more than minor and adverse effects on any individual will be less than minor.

<sup>4</sup> Once all identified affected parties have provided their unconditional written approval to the application. If these approvals are not provided then the application will proceed by limited notification.



Charles Horrell

**Consultant Planner**

11 June 2020

**Attachments**

**Attachment 1: Written Approvals**

File: RM20.079

11 June 2020

Bendigo Station Limited  
1460 Tarras-Cromwell  
RD 3  
**Cromwell 9383**

Via email to: [will@landpro.co.nz](mailto:will@landpro.co.nz) and [granporter@xtra.co.nz](mailto:granporter@xtra.co.nz)

Dear Sir/Madam

### Written Approvals Required for Resource Consent Application No RM20.079

As advised in our acknowledgment letter, council staff have now assessed any parties from whom you are required to obtain written approval. Affected parties may be potentially adversely affected by the activity for which resource consent is sought.

They are:

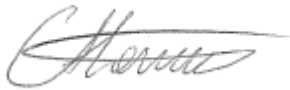
Department of Conservation	Department of Conservation, PO Box 5244, Moray Place, Dunedin 9058	(03) 477 0677
Aukaha	Aukaha, P O Box 446, Dunedin Central, Dunedin 9054	(03) 477 0071
Otago Fish and Game Council	Otago Fish and Game Council, PO Box 76, Dunedin 9054	(03) 479 6552

You need to approach parties directly and obtain their **unconditional written approval** to your proposed activity. The approval must be signed by the authorised person, and returned to this office on or before 13 July 2020. Enclosed is a form(s) you can use for your convenience

If Council has not received the required written approvals on or before this date, your application will proceed immediately to Limited Notification. A brochure outlining Limited Notification was enclosed with your acknowledgment letter.

If you have any queries or concerns about obtaining written approval, or require another copy of the Limited Notification brochure, please contact Charles Horrell at the Otago Regional Council 474 0827 (or 0800 474 082 if calling from outside Dunedin) during office hours.

Yours sincerely,



Charles Horrell  
**Consultant Planner**

cc Will Nicolson, C/- Landpro Limited, PO Box 302, Cromwell 9342



## Decision on notification

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

**Date:** 17 June 2020

**File Reference:** RM20.079

**Application No:** RM20.079.01 and RM20.079.02

**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**<sup>5</sup> 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 Charles Horrell on 11 June 2020 in relation to this application.

We have considered the information provided, reasons and recommendations in the above report. We 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>6</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**  
15 June 2020  
.....

<sup>5</sup> Once all identified affected parties have provided their unconditional written approval to the application. If these approvals are not provided then the application will proceed by limited notification.

<sup>6</sup> Once all identified affected parties have provided their unconditional written approval to the application. If these approvals are not provided then the application will proceed by limited notification.



.....  
Peter Christophers  
**Principal Consents Officer**  
17 June 2020