

29 January 2019

Lochend Limited
C/- Allan Cubitt
4 Norfolk Street
St Clair
Dunedin 9012

Via email: allan@cubittconsulting.co.nz

Dear Mark and Julie

RESOURCE CONSENT APPLICATION:

LUC-2018-219
261 TOMAHAWK ROAD
DUNEDIN

The above application for a land use consent for a function centre at 261 Tomahawk Road was processed on a limited notified basis in accordance with Section 95 of the Resource Management Act 1991. The Hearings Panel comprised of Councillors Aaron Hawkins (Chairperson) and Christine Garey, and Independent Commissioner Andrew Noone, heard and considered the application at a hearing on 14 December 2018.

At the end of the public part of the hearing, the Panel, in accordance with Section 48(1) of the Local Government Official Information and Meetings Act 1987, resolved to exclude the public.

A site visit was undertaken by the Hearings Panel on the morning of 14 December 2018 prior to the hearing commencing.

The Panel has **granted** consent to the application on 29 January 2018. The full text of this decision commences below with a consent certificate attached to this letter.

The Hearing and Appearances

The applicant was represented by:
Mark and Julie Caldwell (Lochend Limited)
Allan Cubitt (Planning Consultant).

Council staff attending were:

John Sule (Advisor to Panel), Melissa Shipman (Processing Planner), Karen Heathman (Environmental Health Officer), Grant Fisher (Transport Planner), Michael Garbett (Legal Advisor present for procedural matter discussion) and Wendy Collard (Governance Support Officer),

Submitters in attendance included:

Paul and Johanna Clark
Pascal Sirguy (witness for Paul and Johanna Clark)

Procedural Issues

A procedural issue was raised in relation to the notification decision made by Council officers to limit notification to selected parties under “special circumstances”. The panel was advised by the Panel Advisor that integral to the notification decision was the determination made by Council officers that the activity was defined in the operative District Plan as a “Rural Tourist Activity”. As a Rural Tourist Activity, the application was required to be assessed as a Controlled Activity. Applications for a controlled activity are precluded from notification unless there are “Special Circumstances” that warrant notification.

The Panel heard from Pascal Sirguy, a resident of Spencer Street, on the notification issue. He considered that noise effects from the proposed activity could impact on residents in Spencer Street and that there was insufficient information provided with the application to conclude that they were not affected. He referred to a petition signed by residents of Spencer Street that he had provided and he considered that the Council should have notified these parties to allow them to participate in the process. He considered the notification was not wide enough in its application. Mr Sirguy also identified potential ecological concerns associated with the proposal and the lack of an ecological assessment. He considered he was an affected party as were other residents of Spencer Street. He identified that he would have submitted on the application if he had been given the opportunity to do so.

The Panel were also presented with a detailed written submission from Nicholas Cullen, a resident of Spencer Street. Mr Cullen’s written submission argued that the determination by the processing planner that the activity was a “Rural Tourist Activity” and therefore a controlled activity was incorrect. He outlined his reasoning and raised concerns about the exclusion of the public and interested parties from the consent process.

The applicant’s planning expert, Allan Cubitt, considered that the proposal was a controlled activity and did not need to be notified. He pointed out that the property was well separated from its neighbours and that noise emissions can be managed to comply with noise limits. He advised the Panel that the Department of Conservation had raised no ecological concerns with the proposal. He did not believe that there was a procedural issue with the notification process that was undertaken.

The Panel also considered the legal opinion obtained by the Council prior to limited notification of the application and sought specific advice from the Council’s legal advisor, Michael Garbett, when deliberating on the procedural matters raised by Mr Sirguy and Mr Cullen. The Panel were also cognisant of Section 104(3)(d) that stipulates it must not grant consent to a proposal that should have been notified but wasn’t.

After considering the procedural matter in private, the Panel determined that it was satisfied that it could hear the substantive application and that the notification decisions made by Council officers in this case were appropriate. Crucially, the Panel noted that the legal case on which the legal advice to Council officers was based was directly relevant. It involved a function venue in Dunedin in the rural zone and the same operative District Plan provisions applied to that venue. On that basis, it accepted that the proposal was a Controlled Activity under the operative Plan that the Panel must grant consent for, and which was precluded from notification unless there were special circumstances. The Panel also accepted the legal advice it received that the activity status remained controlled under Section 88A of the RMA, despite the changes in the Proposed Plan (2GP) which will make the activity status non-complying. In respect of the decision of officers to notify those parties likely to be directly affected by the increase in traffic on the access road, the Panel considered that this was reasonably based on the Council’s experience with the issues arising from the Currie Road function venue. It noted that conditions would allow the control of the potential noise effects given the separation distances involved. On that basis the Panel was satisfied with the notification decisions made by Council officers.

Principal Issues of Contention

The principal issues of contention are as follows:

- The adequacy of information provided to determine the appropriate scale of activity on the site
- Amenity effects arising from the access road
- Noise propagation and control of noise from the facility
- Ecological impacts on the Tomahawk Lagoon

Summary of Evidence

Introduction from Processing Planner

The Planning Officer (Melissa Shipman) spoke to a summary of her report, giving an overview of the proposal. Ms Shipman tabled an addendum identifying the corrections that needed to be made to the Section 42A report she had prepared.

Ms Shipman advised the Panel that resource consent was sought to convert an existing woolshed building and outdoor areas (courtyard/ceremony area) for use as a venue for weddings, events, conferences and seminars. She provided a background to the application and the surrounding environment identifying that the existing barn would be converted into a function venue with the exterior rural character of the woolshed being maintained. Ms Shipman noted that the applicant was proposing the venue would cater for up to 150 people on no more than 8 days in any calendar month. In respect of the supply of liquor at functions, Ms Shipman indicated the applicant was not applying to establish a licenced premise and the supply of liquor will be dependent on liquor licences held by caterers. She noted that this may restrict the type of function that could be held on the site.

Ms Shipman identified the proposal was a controlled activity under the operative District Plan and a non-complying commercial activity under the proposed plan (2GP). As the application was lodged prior to the 2GP rules coming into effect, the controlled status of the Operative District Plan applied by virtue of Section 88A of the RMA. Ms Shipman noted that the matters to be controlled were as follows:

- The scale of the activity
- Vehicle access and parking
- The size and location of structures
- The performance standards of the environmental issues section (noise, glare etc).

Ms Shipman identified that she had recommended a number of conditions to manage effects, including conditions to restrict the number of guests attending evening events. This would help manage the adverse amenity effects on neighbours arising from traffic movements at night.

Ms Shipman responded to a number of clarification questions from the Panel. She clarified that the scheduled trees on the site were not impacted by the proposal. Ms Shipman also identified that the applicant had offered to seal the first 70m of the access road to mitigate effects. In response to a question regarding management of the premises, Ms Shipman advised that the premises will be leased by the applicant as a venue and the applicant would not be directly managing the functions on the site. The applicant will continue to live on the site and it will continue to be farmed. Ms Shipman noted that the applicant may want to clarify for the Panel how function guests will be managed on the site.

The Applicant's Case

The applicant's agent, Allan Cubitt, presented the applicant's case. Mr Cubitt advised the Panel that he was appearing as the applicant's planning expert. He referred to the map and provided a background to the subject site, identifying the boundaries of the property, the access road, and the areas to the property subject to QE2 covenants. In respect of the noise concerns expressed by Mr Sirguy, he noted it was 500 to 600m to Spencer Street. Mr Cubitt pointed out the access road is legal road in a residential zone where it passes residences also noting that his client's have advised him that the access has never been flooded to their knowledge.

Mr Cubitt referred to the detailed section 92 request received from the Council. He noted that full ecological, acoustic assessments would cost a significant amount of money and as it is a controlled activity it is not warranted. He noted that the RMA provides for the information with an application to be scaled to the significance of the activity, therefore adding another \$20-30 thousand dollars for additional reports is not warranted in this case. Based on his experience as a planner he is comfortable with the information provided. He noted that ecological effects were not assessed in any detail, as the Department of Conservation (DOC) who are responsible for management of the reserve had provided a written approval. He noted that the proposed access road is already used by stock trucks and that bird nesting happens a long way from the access road further up the lagoon.

Mark Caldwell (applicant) tabled and spoke to his submission about the Caldwell's intentions for the function centre responding to a number of questions from the Panel on management. He acknowledged it was a working farm and they are ultimately accountable for the activity on the site. He noted that the caterers they had talked to have advised him that they will be responsible manage the events throughout their duration.

In response to a question on how the design of the building could be used to manage noise impacts, Mr Caldwell acknowledged that they haven't looked into it fully. He noted that they will work within the sound limits they are required to meet.

Mr Cubitt noted that Mark and Julie are liable to ensure that the conditions are met. He noted that it was a working farm and their residence. As a result, they will be in an informal way ensuring that caterers are working within the conditions.

The Panel examined how a complaint would be managed by the applicants in more detail through further questioning. In response to a question on the 70m of road to be sealed Mr Caldwell identified that they would be responsible for on-going maintenance of the sealed section of road.

Mr Cubitt then spoke to his pre-circulated evidence which included the parameters for assessing a controlled activity, case law and an assessment of objectives and policies under both Plans. Given the controlled activity status he noted the Panel has to grant consent, pointing out that the policy framework was primarily for assessing the suitability of conditions. He considered the proposal was supported by the purpose of the RMA enabling people and communities to provide for their social and economic wellbeing. Isolation of the venue in the rural zone in his view will mitigate effects.

Mr Cubitt commented on Ms Shipman's recommended conditions in particular the restriction of numbers to 75 people after 9pm. He noted that most weddings are between 80 and 120 guests and the vehicle access is a road that can be legally used for access. He argued that there was a permitted baseline in regard to the residential zone and the development of residential land along the access road. Mr Cubitt also pointed out that it was a low speed road and the sealing would mitigate noise and dust.

In terms of noise, Mr Cubitt outlined his experience with the Currie Road function venue and he tabled an acoustic report from Nigel Lloyd an acoustic consultant. This report for the Currie Road venue had relevance as it discussed the distances where noise impacts may arise from a function venue. He noted that in this case the closest neighbours are at least 500m away.

Mr Cubitt noted that the applicant does not accept the restriction of 75 guests past 9pm. He pointed out that only one function could be held per day and the conditions proposed by the applicant are based on other venues operating around Dunedin. For viability, he noted that it was critical to have 8 functions per month in the summer.

Mr Cubitt, in responding to an earlier line of questioning regarding the effective management of the facility, indicated that this could be managed through conditions. He noted that conditions could be used to detail the approach the applicants are required to take in overseeing the performance of contracted caterers.

In relation to the proposed passing bays, Mr Cubitt recommended the Panel do not restrict the location of passing bays to where they are identified on the plans as there could be better options and a passing bay is not needed in the DOC managed conservation area.

Mr Cubitt concluded his presentation by noting that the controlled activity status of the activity meant that the Panel's consideration was constrained. He strongly recommended the Panel adopt the modified conditions which he has provided. Mr Cubitt noted that he does not think that there would be the same concerns arising as the Currie Road consent due to the greater separation of the proposed venue.

The Panel questioned Mr Cubitt on his proposed conditions focusing on the appropriate number of guests, effects at the entranceway, the management of events and complaints, and the management of noise.

Evidence of Submitters

Paul Clark spoke to his submission in opposition of the proposal identifying the specific matters that he considered were health and safety concerns. He noted power outages occurred as a result of the swans hitting the lines causing the pole fuse to blow.

Mr Clark identified issues with water supply and electricity supply to 261 Tomahawk Road. He noted that there was a problem with access for electricity contractors as they had to cross Mr Clarks land and he was not always there to approve access. He also pointed out to the Committee that the location of boundaries had not been surveyed (title limited as to parcels) and they may not be accurate. He raised concerns with the vehicle access noting it was very narrow and would not allow for kerb and channelling. He also raised concerns about vehicle speeds past his property.

Johanna Clark spoke and identified her concerns about extra traffic, road maintenance and venue rubbish. She also identified concerns regarding parking and security issues with guests attending functions. Ms Clark raised ecological concerns and commented on the trees that they had planted and the behaviour of the birdlife in the area. She was concerned about the monitoring of the 25km speed limit proposed for the site.

The Clarks responded to questions from the Panel on their main concerns. Traffic speeds and acceleration and deceleration of vehicle outside their house and their mother's house which are located on the same site, 257 Tomahawk Road, were a primary concern.

Pascal Sirguy tabled a submission and spoke as a witness in support of Mr and Mrs Clark's submission. Mr Sirguy drew the Panels attention to Professor Cullen's tabled submission that was provided in support of Mr and Mrs Clark's submission. He commented on the noise that could impact on Spencer Street and expressed a view that the residents of Spencer Street should have been part of the process. He commented on the petition that he had submitted, noting the number of Spencer Street residents that he already had obtained signatures from without any difficulty.

Mr Sirguy discussed his decibel calculations and requested the Panel to give consideration to the potential noise nuisance for the residents in Spencer Street. He noted the potential propagation enhancement that may arise from the noise passing over the lagoon.

Mr Sirguy considered the ecological effects had not been adequately assessed and that the request for further information had not been fulfilled by the applicants. He referred to photographs that he had taken from his window of Spoonbills and a Kotuku (white heron) which is listed as a nationally critical species. He pointed out that these important ecological considerations had not been addressed in the application stating that he could not understand why an ecological assessment had not been included.

In response to clarification questions Mr Sirguy noted that he accepted that noise from the venue building could be mitigated with suitable design but he pointed out that it is the nuisance of traffic which will create noise and scare native birds that could not be mitigated.

In response to questions, Mr Sirguy indicated that it was the lack of expert assessment that has been provided in regard to the impacts on wildlife that concerned him the most.

Mr Sirguy responded to questions from the Panel on potential conditions to mitigate effects and review conditions.

Expert Evidence

Grant Fisher (Transport Planner) spoke to his report commenting on the scope of his assessment which was primarily directed to safety aspects. He noted that there was only one reported crash near the site in the last five years and that was located 200m west of the access road on Tomahawk Road. He noted that Tomahawk Road carried approximately 1500 movements per day. In terms of speed he noted the last monitoring undertaken showed an average speed of 54km which are east of the site. He considered that the traffic generated by the proposed activity would not make safety issues any worse.

In respect of potential amenity mitigation by fencing within the road, that had been the subject of questions from the Panel, Mr Fisher noted that the Transport Department does not normally allow this to occur on road reserve. His recommendation would be not to allow this. He noted the Council had no obligation to contribute to the cost of a fence on road reserve. Mr Fisher noted that the applicant would be expected to maintain the sealed section of the road as it would only be of a private access standard and a condition identifying this maintenance obligation was appropriate.

Mr Fisher responded to questions regarding bus access and parking, fencing for mitigation of effects at the entrance and demarcation of parking spaces. He recommended a condition regarding the upgrading of the access so that it is able to meet coach requirements.

Karen Heathman (Environmental Health Officer) spoke to her memorandum and commented that she had been to the site on two occasions and had also visited Spencer Street. She noted that the setting was a quiet rural environment but the noise from traffic, the sea and machinery was evident at the time of her visits.

In relation to the potential noise effects of the venue she noted the appropriate noise limits and recommended that an acoustic expert be consulted on the internal fit out to ensure effective acoustic insulation of the building. She identified in response to a question that an entrance lobby and ventilation may be necessary to ensure noise limits are complied with.

In respect of food and alcohol she considered concerns could be managed. She noted that there were other premises supplying food and alcohol that were not on a town supply for water. In response to a question she pointed out that the operators would be required to ensure that drinking water meets NZ drinking standards. She noted that it is workable to not operate from a town supply but there are a number of processes that have to be worked through.

Processing Planner's Review of Recommendation

Ms Shipman reviewed her recommendation in light of the evidence presented at the hearing, maintaining her recommendation to grant consent.

She commented that she was still of the view that a reduction in the number of guests was appropriate in the evening hours. She also acknowledged the potential ecology effects identified by the submitters.

Ms Shipman noted that the primary control over effects was to limit the scale of the activity and she feels that the impacts on the immediate wetlands could be a reason for scaling down the activity during certain times of the year. She considered that more weight was to be applied to the operative District Plan but conditions should still reflect the intent of the 2GP in relation to biodiversity values. In her view there was scope to consult with DOC further and potential for using other methods to protect the wildlife within the wetland.

For the benefit of the Panel, Ms Shipman provided a condition by condition analysis of the applicant's recommended conditions indicating whether she supported recommended changes to her initial draft proposed by Mr Cubitt.

Ms Shipman then responded to questions from the Panel on various conditions. She noted an acoustic report could be required ensuring the building was designed to assist in achieving compliance with noise limits. She also noted that a flyer could be used to advise neighbouring residents of upcoming events and a complaint log maintained.

Applicants Right of Reply

Mr Cubitt addressed the ecology concerns raised in submissions advising the Panel that the applicants could not approach DOC and question their written approval. He noted that if there were ecology issues that DOC had concerns about then they would be in "boots and all" and to second guess their approval is inappropriate. He advised that DOC were fully aware of the proposal and they are not concerned. He also noted that DOC monitor birdlife at the Lagoon on a regular basis. He identified that the limited vegetation on the access way meant that was not good for nesting, pointing out that native birds nest further up the lagoon and into the bull rushes. Mr Cubitt also pointed out that the function venue would only operate for up to 8 days out of 30 per month and that a steady stream of traffic will not be going up and down that road. The traffic will only be at certain times of the day typically mid-afternoon and late evening. He noted that the applicants were not going to damage their relationship with DOC by engaging in activities that would impact on the ecology of the lagoon and that the applicants were not offering or recommending an ecology survey.

In relation to the water supply issues that have been raised. The applicant's noted that they contacted the Council regarding water supply when they discovered that they were not on an approved town supply and that they will take steps to address the issue.

In relation to rubbish generated by functions he advised that the caterers running the event will take the rubbish away.

In respect of the issues raised regarding the access he considered these could be managed by conditions. Mr Cubitt reiterated his view that it was a legal road and available for use. He considered the effects issues would be addressed to a satisfactory extent by sealing the road by use of a traffic management plan and a speed limit on the site.

Mr Cubitt identified that he was confident that the activity will comply with District Plan noise rules. He noted the applicant would accept a condition for a noise management plan to deal with acoustics of the building. He also addressed the recommended conditions where he had a different view to Ms Shipman explaining why his proposal should be preferred. He offered to supply a marked-up version of the conditions for the Panel.

Mr Cubitt responded to further questions from the Panel on conditions, the Panel Chair then agreed that a marked up set of conditions would assist the Panel.

Statutory and Other Provisions

In accordance with Section 104 of the Resource Management Act 1991, the Planner's Report detailed in full the relevant statutory provisions and other provisions the Panel considered. Regard was given to the relevant provisions of the following chapters of the operative Dunedin City District Plan: 4 Sustainability, 6 Rural Zones, 14 Landscape, 16 Indigenous Vegetation and Fauna and 20 Transportation; and the relevant sections of the Proposed 2GP which included Sections 2 Strategic Directions, 6 Transport, 9 Public Health and Amenity, 10 Natural Environment and 16 Rural Zones. Regard was also given to the Regional Policy Statement for Otago.

Main Findings on Principal Issues of Contention

The Hearings Panel has considered the evidence heard, the relevant statutory and plan provisions, the principle issues in contention. The main findings on the principal issues have been incorporated within the reasons discussed below.

Decision

The final consideration of the application, which took into account all information presented at the hearing, was held during the public-excluded portion of the hearing. The Panel reached the following decision after considering the application under the statutory framework of the Resource Management Act 1991. In addition, a site visit was undertaken prior to the hearing, which assisted the Panel when considering the evidence and submissions presented at the hearing.

*That pursuant to Section 34A(1) and 104A and after having regard to Sections 104 of the Resource Management Act 1991, and the provisions of the Dunedin City District Plan and the Proposed Second Generation Dunedin City District Plan, the Dunedin City Council **grants** consent to a **controlled activity** being a rural function centre on the site at 261 Tomahawk Road, Dunedin legally described as Section 5 Block VII Andersons Bay Survey District and Section 3, 5, 7 Block III Tomahawk Survey District (Computer Freehold Register 500037), subject to conditions imposed under Section 108 of the Act, as shown on the attached certificate.*

Reasons for this Decision

1. The Panel has accepted that the proposed activity is a Controlled Activity under the operative District Plan and the reasons for this are outlined in the Procedural Issues Section of this decision letter. It accepts that this controlled status remains in place under Section 88A of the RMA despite the change in the proposed District Plan (2GP) to make the activity a non-complying activity.
2. As the activity is a controlled activity the Panel accepts that it must grant consent but can impose conditions on the following matters:
 - The scale of the activity
 - Vehicle access and parking
 - The size and location of structures
 - The performance standards of the environmental issues section
3. The provisions of the 2GP were considered by the Hearings Panel in setting conditions on the venue. The Panel has imposed a significant number of consent conditions including a review condition which provides for the conditions to be revisited should unanticipated effects arise from the activity.
4. The Panel accepts the applicant's arguments that had the Department Of Conservation had concerns about ecological impact on the lagoon it would not have provided an affected party approval. It also notes that the existing access road used by stock trucks will mean that any nests are likely to be located away from the access. The Panel is satisfied it can determine the application but it acknowledges that it may have benefited from more specific ecological evidence on the appropriate scale for the activity. It has imposed review conditions. In the event evidence of ecological impacts from the venue is brought to the Council's attention by DOC or another party these matters of concern can be addressed through a review of conditions. A condition has also been imposed to minimise the interaction of guests with the reserve areas.
5. In terms of scale, the Panel considered the advice provided by the applicant on the typical size of venues that had been approved in other cases, including cases that had been considered by the Environment Court. It examined the processing planner's proposal to restrict the number of evening functions, but it did not consider there was enough objective evidence to support such an approach. The Panel noted that this proposed reduction would be a significant constraint on the viability of the applicant's proposal as the number of guests recommended for evening events was less than that associated with a typical wedding function.

6. In general terms the Panel agreed with the processing planner that the location is relatively sensitive as the access road is only used as a private access at present. This is not likely to change significantly as the result of permitted development. On that basis it does not feel it is appropriate to provide for larger than typical wedding events that would accommodate up to 150 guests without evidence. In the absence of any direct evidence on effects that would support allowing up to 150 guests the Panel decided that it was appropriate to restrict the activity on the site to events for up to 120 guests which was line with other decisions for function venues on low volume access roads. The Committee noted that this decision would be consistent with the limits on guests placed in the Currie Road function venue.
7. The Panel notes the importance of active management to avoid issues for neighbours and conditions have been imposed to ensure neighbours are informed. If issues arise they can raise these concerns directly at the time of the incident. The Committee notes that if the function centre demonstrates it can operate within its conditions without disturbance to residents or effects on the environment then a variation could be sought to increase numbers at a later date.
8. In terms of noise, the Panel considers it is appropriate to have expert input into the design of the venue to ensure that the required noise limits can be achieved. The applicant's proposed condition is included for that purpose. A range of other noise related conditions are included. A condition has been requiring a noise management plan and conditions to address construction noise. The hard surfacing of the access road will reduce vehicle noise and dust impacts.
9. The Panel accepts that transportation and parking effects can be managed through consent conditions at the scale and intensity it has approved for the site.
10. The Panel noted that the use of an existing physical resource for the venue will minimise landscape impacts agreeing with the landscape advice that the proposal will not introduce any new buildings but rather involves a sympathetic addition to the existing wool shed which is in a visually recessive location due to screening provided by either the landform or mature shelterbelt vegetation.
11. The Panel concluded that the granting of the consent would be consistent with the purpose of the Resource Management Act 1991 to promote the sustainable management of natural and physical resources.

Right of Objection (remove this section if it does not apply)

Pursuant to Sections 357A(1)(f) and 357A(2) of the Resource Management Act 1991, the consent holder may object to this decision or any condition if:

- (i) The application was notified, and
- (ii) Either no submissions were received or any submissions received were withdrawn.

And

- (a) The application was for a controlled activity, or
- (b) The application was for a restricted discretionary, discretionary or non-complying activity that was not declined by the Hearings Panel, or
- (c) The application was declined by an officer under delegated authority.

Any objection must be made within 15 working days of the decision being received, by applying in writing to the Dunedin City Council at the following address:

Senior Planner - Enquiries
Dunedin City Council
PO Box 5045
Moray Place
Dunedin 9058

In accordance with Section 357AB of the Resource Management Act 1991, the consent holder may, when making the objection, request that the objection be considered by a hearings commissioner. The Council will then delegate its functions, powers and duties in relation to consider and decide the objection to an independent hearings commissioner. Please note that the applicant may be required to pay for the full costs of the independent hearings commissioner.

Right of Appeal

Pursuant to Section 120(1A) of the Resource Management Act 1991, no right of appeal to the Environment Court against the whole or any part of this decision exists for the following:

- (a) *A boundary activity, unless the boundary activity is a non-complying activity;*
- (b) *A subdivision, unless the subdivision is a non-complying activity;*
- (c) *A residential activity, unless the residential activity is a non-complying activity.*

(Refer Section 87AAB of the Act for definition of “boundary activity”, and refer to Section 95A(6) for definition of “residential activity”.)

For all other applications, in accordance with Section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received.

The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
Christchurch Mail Centre
Christchurch 8013

Any appeal must be served on the following persons and organisations:

- The Dunedin City Council.
- The applicant(s).
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in Sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

Commencement of Consent

As stated in Section 116 of the Resource Management Act 1991, this consent will only commence once the time for lodging appeals against the grant of the consent expires and no appeals have been lodged, or the Environment Court determines the appeals or all appellants withdraw their appeals, unless a determination of the Environment Court states otherwise.

Monitoring

Section 35(2)(d) of the Resource Management Act 1991 requires every council to monitor resource consents that have effect in its region or district. The scale and nature of the activity, the complexity and number of the conditions needed to address the environmental effects and whether the conditions have been complied with determines the number of monitoring inspections required. Given the nature of your intended works/activity, this consent will require three inspections.

The City Planning Department sets out the fixed fees charged for monitoring in its schedule of fees. The fee for your scheduled inspections will be included in the invoice for your application.

It should be noted that if additional inspections are required, beyond those scheduled at the time the consent is issued, then there is the ability to apply additional charges to cover the costs of these extra inspections. Often you can reduce the need for additional inspections by complying with the conditions of consent in a timely manner and by ensuring on-going compliance with those conditions. Please ensure that you read the conditions of your consent carefully to establish your obligations when exercising your consents.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Aaron Hawkins', with a stylized, cursive script.

Aaron Hawkins
Chair
Hearings Panel

Consent Type: Land Use Consent

Consent Number: LUC-2018-219

Purpose: A rural function centre.

Location of Activity: 261 Tomahawk Road, Dunedin.

Legal Description: Section 5 Block VII Andersons Bay Survey District and Section 3, 5, 7 Block III Tomahawk Survey District (Computer Freehold Register 500037).

Lapse Date: 29 January 2024, unless the consent has been given effect to before this date.

Conditions

- The proposal must be established and operated generally in accordance with the plans and relevant details submitted with the resource consent application received by Council on 20 July 2018 and additional information received on 20/7/18 (DOC approval), on 3/8/18 (further information response and amended application) and on 8/9/18 - 9/8/18 (Fulton Hogan Sealing/Passing Lane Detail) and 27/8/18 (additional lighting detail) and on 27/9/18 (final written approval occupier #269 Tomahawk Road) except where modified by the following conditions.*
- The consent holder must advise the Council, in writing, of the start date of the works to establish activity. The written advice must be provided to Council at rcmonitoring@dcc.govt.nz at least five (5) working days before the works are to commence.*

Scale and Intensity of the Activity

- The maximum number of guests permitted on the property must not exceed 120.*
- No more than 8 events per month are allowed on the site.*
- Only one function can be held on the site per day*
- The number of functions that can be held on consecutive days shall not exceed two.*
- No functions shall occur on a public holiday*
- Hours of operation must be limited to the following hours:*

Thursday to Saturday: 9am – 1am. All guests are required to leave the site by 12.30am. Staff must leave the premises by 1am

Sunday to Wednesday: 9am to 11pm

All guests are required to leave the site by 10.30pm. Staff must leave the premises by 11pm

Noise Management

9. *Prior to the application for a building consent, the consent holder shall provide an acoustic design certificate signed by a suitably qualified acoustic engineer stating that the design of the woolshed function building, including any mechanical ventilation necessary to ensure the acoustic insulation is effective, will achieve compliance with the noise performance standards set out in condition 18 when being used for amplified entertainment.*
10. *The applicant shall provide a noise management plan submitted to the Resource Consents manager for approval that shall address the noise control requirements of the function venue activities. This shall include:*
 - i. Acknowledgement of the resource consent and a statement of commitment to comply with conditions of consent relating to noise.*
 - ii. A list of scheduled upcoming functions shall be distributed to the landowners adjoining the access road every three months. Any event that is scheduled during the intervening period shall be communicated to adjoining landowners as soon as is reasonably practical. This can be by either by email, telephone or mail. This schedule shall identify the complaints number specified in v.(e) below.*
 - iii. Identification of persons and their positions who are responsible for managing noise for the overall premises, or parts of the premises.*
 - iv. Setting out minimum conditions to control noise for the hire of any part of the facility.*
 - v. Setting out procedures that will be followed for each part of the premises (including outdoor areas) to:*
 - a) Regulate noise levels in the function venue where amplified music may be played to control noise including heavy bass, and public announcements that will become clearly audible or dominant in the neighbouring area.*
 - b) Instruct all persons leaving the site at night-time to do so quietly, and with consideration of neighbours. This shall be reinforced by signs displaying such instructions inside the premises.*
 - c) Put in place a complaints procedure including the recording of details of complaint (date/time/nature of noise/action taken/by whom) and complainant's details.*
 - d) Provide for review of the Noise Management Plan on an annual basis or earlier if necessary, to address any problems.*
 - e) Provide a dedicated telephone number for members of the public to ring should they have any complaints at the time of the event.*
 - f) Manage solid waste removal e.g. Rubbish, glass recycling.*
 - g) Advise entertainment providers of noise obligations and the need to control low (bass) frequency emissions.*
11. *Any outdoor marquees or other temporary structures erected within the property in association with the events shall not be used after 6pm.*
12. *No outdoor music is permitted outside after 9pm and all music must be turned off by 12am (midnight).*
13. *No stereo and/or other speakers are permitted outside the building venue.*

14. *Speaker systems must be located and positioned so as to direct sound away from neighbouring residences. No sub drivers (bass specific speakers that emphasis low frequencies) are to be used.*
15. *Exterior windows and doors within the venue must be closed after 10pm.*
16. *Any guests collected from the site must be collected from the venue.*
17. *No fireworks are permitted in association with any event subject to this consent.*
18. *The noise level from the consented activities on the site measured at or within the boundary of a receiving property or the notional boundary of noise sensitive activities in a rural zone must comply with the following noise limits:*

Rural:

7.00am to 7.00pm	55 dB LAeq (15 min)
7.00pm to 10.00pm	50 dB LAeq (15 min)
10.00pm to 7.00am	40 dB LAeq (15 min); and 70 dB LAFmax

Residential:

7.00am to 7.00pm	50 dB LAeq (15 min)
7.00pm to 10.00pm	45 dB LAeq (15 min)
10.00pm to 7.00am	40 dB LAeq (15 min); and 70 dB LAFmax

Noise must be measured in accordance with NZS 6801:2008 - Acoustics - Measurement of environmental sound, and assessed in accordance with NZS 6802:2008 Acoustics - Environmental noise.

Note: this does not apply to vehicles on a legal road.

19. *All construction work on the site must be designed and conducted to ensure that construction noise from the site does not exceed the noise limits in the following table. Noise levels will be measured and assessed in accordance with the provisions of NZS 6803:1999 Acoustics Construction noise as defined in table 2-Recommended upper limits for construction noise received in residential zones and dwellings in rural areas.*

Time of Week	Time Period	Leq (dBA)	Lmax(dBA)
Weekdays	0630-0730	60	75
	0730-1800	75	90
	1800-2000	70	85
	2000-0630	45	75
Saturdays	0630-0730	45	75
	0730-1800	75	90
	1800-2000	45	75
	2000-0630	45	75
Sundays and public holidays	0630-0730	45	75
	0730-1800	55	85
	1800-2000	45	75
	2000-0630	45	75

Note: The period of construction applied for by the applicant is expected to be of 'Typical duration'. The New Zealand Standard Acoustics - Construction Noise (NZS 6803:1999) states that "Typical duration" of construction, means construction work at any one location for more than 14 calendar days but less than 20 weeks. If the applicant is proposing that construction times are not of 'typical duration' the applicant is advised to contact this department for clarification on the noise limits that apply.

Access and Car Parking

20. *That prior to commencement of the activity on the site, an additional 70m of the unnamed legal road that provides access to the property shall be hard surfaced to a standard appropriate for the intended use, which includes use by buses.*
21. *Prior to commencement of the construction of the legal road upgrade, detailed drawings of the proposed work must be provided to the Resource Consents Manager via email to rcmonitoring@dcc.govt.nz to confirm that there is adequate provision for two-way traffic and the construction standard is appropriate. Work on the road shall not commence until such time as Councils approval has been provided.*
22. *The consent holder shall be responsible for the maintenance of the legal road carriageway and shall ensure that it is maintained in good repair at all times.*
23. *That prior to commencement of the activity on the site, appropriate passing bays shall be provided within the private access road. The passing bays shall be constructed so that earthworks are kept to a minimum and the margin of the wetland is not disturbed. (Note: the location of the passing bays does not need to be restricted to locations shown on the plans originally submitted)*
24. *Prior to commencement of the construction of the passing bays, detailed drawings and plans of the location of the passing bays within the private access road must be provided to the Resource Consents Manager via email to rcmonitoring@dcc.govt.nz to ensure the wetland margin is not disturbed and to determine adequate provision for two-way traffic. The matters in wetland proximity conditions shall also be addressed in these plans. Work on the passing bays shall not commence until Council's approval has been provided.*
25. *Detailed drawings of the proposed coach parking must be provided to the Resource Consents manger via email to rcmonitoring@dcc.govt.nz (for Transport's approval) sufficient to determine acceptable gradient and manoeuvrability for coaches.*
26. *A minimum of 40 car parks must be provided within the main car parking area.*
27. *All car parking must be demarcated prior to commencing operation of the venue. A plan of the car park layout and design shall be submitted to and approved by the Resource Consents Manager.*
28. *All car parking must be located within the designated car parking areas within the property. No parking is permitted alongside the lagoon or along the access road to the site. The surface of the main car park must be gravelled.*
29. *Guests and staff are not permitted to exceed a speed of 25km per hour within the venue site to reduce disturbance of wildlife and/or residential neighbours.*
30. *A signage scheme must be submitted to the Recourse Consents Manager via email to rcmontoring.govt.nz (for approval by Council's Urban Design) prior to commencement of any operations on the site. The scheme must identify suitable locations to achieve the following:*
 - (a) *Provide the location and detail of signage designed to alert visitors to the need to be aware of wildlife along the edges of the wetland.*
 - (b) *Alert visitors to the need to drive slowly along the access at all times.*
31. *A Travel Management Plan shall be submitted to and approved by the Resource Consents Manager. This plan shall be implemented prior to the activity commencing. This Travel Management Plan shall include the following:*

- i.* How the applicant intends to promote and encourage the use of coaches for drop off/pick up in their venue hire documents.
- ii.* Management of guests and staff and how the consent holder will contain their activities within the site including a procedure to educate guests about what is considered acceptable in terms of noise when leaving the venue.
- iii.* The use of temporary speed restrictions during events.

Wetland Proximity:

- 32. No guests are permitted along the wetland fringes or within the conservation areas (CO96) within the property.
- 33. No vegetation on the wetland fringes is to be removed or compromised by the activities undertaken on the site.
- 34. Any fill material to be introduced to the site must comprise clean fill only. Any material introduced or reused in the widening of access to the site must be clean and placed carefully in proximity of the lagoon edge.
- 35. Any machinery and equipment utilised within the area of the access to the site must be clean and well maintained before entering the work site.
- 36. All practical measures must be undertaken to minimise the risk of contamination to the Lagoon i.e. fuel from machinery, discharge of materials etc.
- 37. All excavated areas must be cordoned off during works and grassed over immediately following completion of works.
- 38. The earthworks must be undertaken with the principles of industry best practice applied at all stages of site development including site stability, stormwater management, traffic management, along with dust management and noise controls at the sites.
- 39. To ensure effective management of erosion and sedimentation on the site during earthworks and as the site is developed, measures are to be taken and devices are to be installed, where necessary, to:
 - a) divert clean runoff away from disturbed ground;
 - b) control and contain stormwater run-off;
 - c) avoid sediment laden run-off from the site'; and
 - d) protect existing drainage infrastructure sumps and drains from sediment run-off.
- 40. All loading and unloading of trucks with excavation or fill material is to be carried out within the subject site.
- 41. The consent holder must advise the Council, in writing, of the start date of the activity. The written advice must be provided to Council at rcmonitoring@dcc.govt.nz at least five (5) working days before the works are to commence.

Landscape Character

- 42. All lighting must be in accordance with the lighting plan submitted with the application (except no outdoor floodlighting structures are permitted) and must comply with the following:

- (i) *All outdoor lighting must be down lighting only and must be shielded from above in such a manner that the edge of the shield shall be below the whole of the light source and;*
 - (ii) *All outdoor lighting must be of low luminance to reduce the potential for night glow.*
43. *Lighting limits at the windows of any other site used for residential purposes must not exceed 3 lux during night-time hours.*
44. *All existing Macrocarpa trees within 50m of the existing woolshed and approved car parking areas must be retained except if authorised under condition 47 below [i.e. the condition that enables trees to be removed for health and safety reasons]. The Macrocarpa shelterbelt trees between the existing farm dwelling (identified as Item 2 in the legend of the site plan, dated 20/06/2018) and the proposed 40 space car park (identified as Item 6 in the legend of the site plan, dated 20/06/2018), which are not within the unformed local road are to be retained.*
45. *Within 6 months of commencing operation of the new facility, new Macrocarpa trees must be planted in accordance with the Council's Landscape Architect's Recommended Mitigation Planting Plan to ensure adequate screening of the new car park in the event that existing Macrocarpa trees are ever removed (to formalise access along the unformed legal road which traverses the property). New trees must be spaced in a similar manner to the existing macrocarpa trees.*



Council Landscape Architect Mitigation Planting Plan

46. *No macrocarpa trees are to be removed unless it is confirmed by a qualified tree risk assessor that the trees pose a health and safety risk. An accompanying arborist's risk assessment report must be submitted to the DCC planning manager, prior to the proposed removal of any of these trees. Replacement planting with the same species must occur in the next planting season following removal if approval is granted to remove any tree from this shelterbelt.*
47. *New Macrocarpa shelterbelt planting must be undertaken along the western boundary of the proposed carpark to the corner of the paddock, as shown in the marked-up plan attached as Appendix 2.*
48. *The approved main car parking area must not exceed the extent illustrated in the attached site plan, dated 20/06/2018. The aisle widths and manoeuvring widths must be the minimum required by the transport department.*

49. *That the lean-to attached to the woolshed that is to be demolished and replaced, shall be clad in corrugated iron for the roof and either corrugated iron or a natural timber finish for the external wall cladding.*

Cultural Values

50. *If the consent holder:*

a) discovers koiwi tangata (human skeletal remains), waahi taoka (resources of importance), waahi tapu (places or features of special significance) or other Maori artefact material, the consent holder must without delay:

i) notify the Consent Authority, Tangata whenua and Heritage New Zealand and in the case of skeletal remains, the New Zealand Police.

ii) stop work within the immediate vicinity of the discovery to allow a site inspection by Heritage New Zealand and the appropriate runanga and their advisors, who must determine whether the discovery is likely to be extensive, if a thorough site investigation is required, and whether an Archaeological Authority is required.

Site work may recommence following consultation with the Consent Authority, Heritage New Zealand, Tangata whenua, and in the case of skeletal remains, the New Zealand Police, provided that any relevant statutory permissions have been obtained.

b) discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage site, the consent holder must without delay:

i) stop work within the immediate vicinity of the discovery or disturbance; and

ii) advise the Consent Authority, Heritage New Zealand, and in the case of Maori features or materials, the Tangata whenua, and if required, must make an application for an Archaeological Authority pursuant to the Heritage New Zealand Pouhere Taonga Act 2014; and

iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work must recommence following consultation with the Consent Authority.

Services / Infrastructure

51. *Prior to operation, the applicant must demonstrate that the property is self-sufficient in terms of provision of adequate water and fire-fighting water supplies to support the activity.*
52. *The effluent disposal system must be designed and installed by a suitably qualified professional sufficient to cater for the proposed use and method of water supply and soil conditions and to ensure that no discharge occurs to the Tomahawk Lagoon.*
53. *The approved effluent disposal system must be serviced regularly recording the time, date and any necessary maintenance undertaken maintenance records are to be submitted to the Resource Consents manager at rcmonitoring@dcc.govt.nz.*

Review Clause:

54. *The Council may once per year, on the last five working days of November, serve notice of its intention to review the conditions of this consent for the purpose of:*
- (a) Dealing with any adverse effect on the environment which may arise from the exercise of the consent (such as noise, traffic, dust nuisance, impacts on wildlife and/or habitat for wildlife within the lagoon and/or its water quality) and which it is appropriate to deal with at a later stage.*

Advice Notes

General

1. In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.
2. Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.
3. It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to and during (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in section 339 of the Resource Management Act 1991.
4. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
5. This is a resource consent. Please contact the Council's Building Services Department, about the building consent requirements for the work.
6. Earthworks involved in the construction of the proposal may require a further resource consent under the District Plan if the works breach scale and setback thresholds specified in the operative or proposed District Plan.
7. If the storage of hazardous substances such as LPG exceeds thresholds specified in either the operative or proposed District Plans a further resource consent may be required.

Services

8. It is recommended that the consent holder review the provisions under the Otago Regional Council Water Plan which to determine whether any of the works to the access road alongside the wetland would necessary addition consenting requirements.
9. It is recommended that the drinking water storage tank be designed with at least 2 days storage for domestic use. Water storage facilities must also comply with the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS 4509).
10. Stormwater collected from roof surfaces may be used for domestic water supply and stored in suitably sized tank(s), with a minimum of 25,000L storage per lot.
11. In the event of reliance on a self-sufficient water supply, drinking water will need to be brought up to meet the necessary standards to meet the NZ Drinking Water Standards. This is likely to require the additional effort of installing a water treatment system and of testing the water supply on a regular basis in accordance with the standard. It is recommended that the consent holder contact Public Health South for further information from a suitably qualified Drinking Water Assessor regarding a Water Risk Management Plan, water treatment and sampling requirements. The water supply will also need to be registered as a community water supply with the Ministry of Health.
12. The consent holder should contact the Dunedin city Council Trade Waste Department for further information on waste water disposal options to ensure that their system is designed to meet the requirements of the combined commercial and domestic use (depending on the final method of water supply).

Duty to avoid unreasonable noise

13. Under Section 16(1) of the Resource Management Act 1991 (1) Every occupier of land (including any premises and any coastal marine area), and every person carrying out an activity in, on, or under a water body or the coastal marine area, shall adopt the best practicable option to ensure that the emission of noise from the land or water does not exceed a reasonable level.

Demolition of Existing Buildings

14. Buildings built before 1900 or sites which were in use before that time are considered archaeological sites under the Heritage New Zealand Pouhere Taonga Act 2014. Before disturbing an archaeological site, or to check whether a site is an archaeological site, the consent holder is advised to discuss their proposal with Heritage New Zealand.
15. Any works within the concession area may require further approval from the Department of Conservation.
16. The consent does not authorise the sale of food and drinks to visitors as part of the business activity. It is noted that if any food is offered for sale, or supplied in conjunction with an entry fee to a function, the site would be deemed to be a food premises. All food would need to meet the requirements of the Food Act 2014 and Food regulations 2015. For exemptions, an application for a detailed Scope of Operations form can be completed (refer to Council's Regulatory Services Team). Refer to the Council's Environmental Health Department for all licencing enquires.

Non-Regulatory Advice

17. The Committee encourages the applicants to continue their involvement with groups associated with the protection of the Tomahawk lagoon and to support initiatives to enhance the ecological values of the lagoon.

Issued at Dunedin on 29 January 2019



Aaron Hawkins
Chair
Hearings Panel

Appendix One: Approved Plans for LUC-2018-219 (scanned images, not to scale)

Original Scale of A3 1:0 1:1 1:2 1:3 1:4 1:5cm

Site Plan Legend



- Site Plan Legend
- 1. Proposed Reception Venue
 - 2. Private Dwelling
 - 3. Coach Parking (existing)
 - 4. Accessible Parking
 - 5. Pick up and Drop Off Zone
 - 6. Guest Parking (approx. 40 spaces)
 - 7. Courtyard Area
 - 8. Proposed Ceremony Site
 - 9. Existing Septic Tank
 - 10. Road side parking for Coach
 - New Pedestrian Pathway
 - Vehicle Access



Site Plan
Scale: 1:1000

McAuliffe Stevens
Registered Architects

Lochend Tomahawk Rd Dunes at 261 Tomahawk Rd Dunes for Mark and Jill Caldwell

Concept Design | 20/06/2018 | Sheet 3 of 22 | Level 4 Public Trust Building, 442 Moray Place, Dunedin | mcauliffestevens.co.nz | P +64 3 474 1404

CD 03
Revision 3





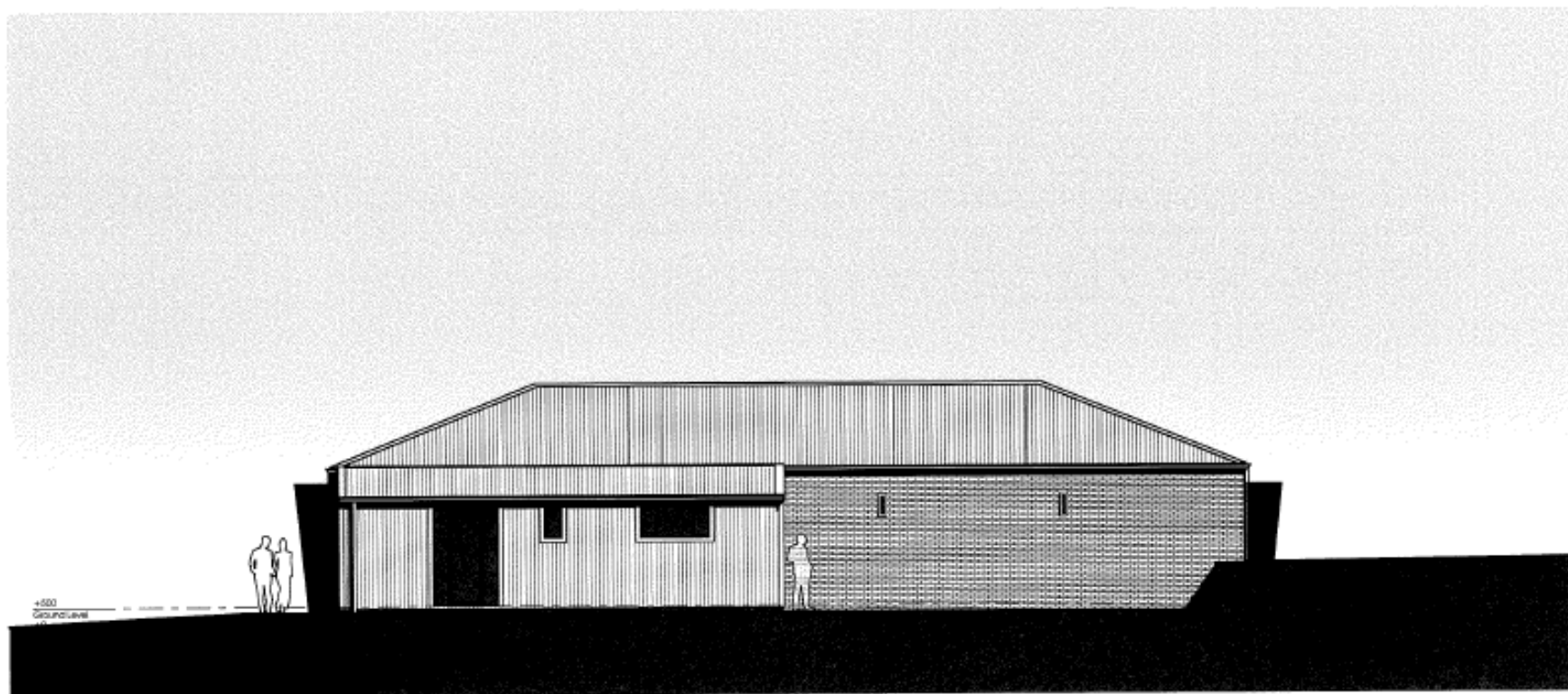
North Elevation - Proposed
Scale: 1:100

McAuliffe Stevens
Registered Architects

Lockend Tomahawk Rd Dunedin at 261 Tomahawk Rd Dunedin for Mark and Jill Caldwell

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CD 10
Revision 1



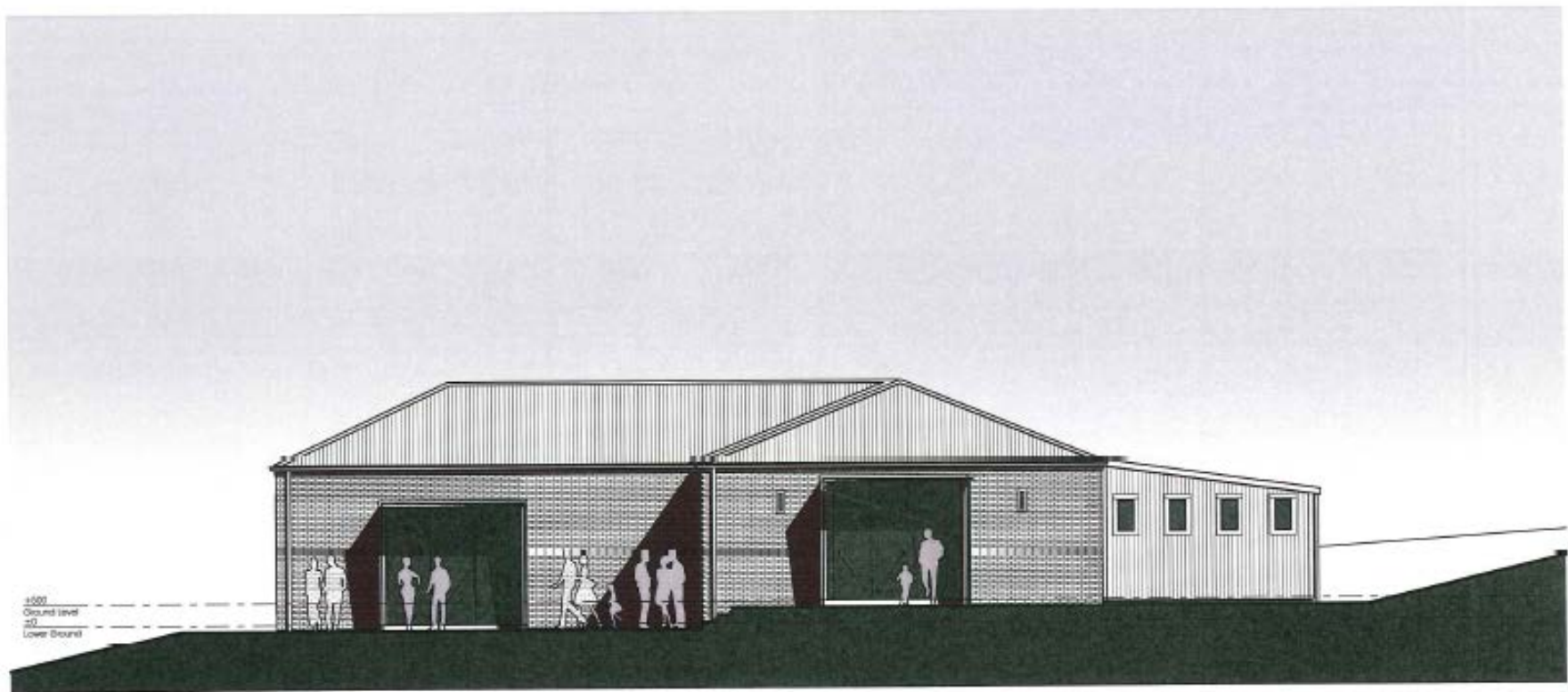
East Elevation - Proposed
Scale: 1:100

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CB 11
Revision 1



South Elevation - Proposed
Scale: 1:100

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CD 12
Revision 1



West Elevation - Proposed
Scale: 1:100