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Dunedin City Council Planning Department

John.Sule@dcc.govt.nz

Level 10
Otago House
477 Moray Place
Dunedin 9016

Private Bag 1959
Dunedin 9054
New Zealand

al.nz

Dear John

Rural tourist activities

- 1 You have requested our advice on whether two current applications being processed may qualify as rural tourist activities. Should they do so, they are treated as a controlled activity in the Rural Zone.

Advice

- 2 We conclude that to qualify as a rural tourist activity, the proposals in these cases need to be seen as complimentary to a natural feature of the rural area. We consider that the venue that is close to, and overlooking the Tomahawk Lagoon could properly qualify as being complementary to the natural feature of the lagoon and the natural features of it. We therefore consider it can reasonably be considered a rural tourist activity.
- 3 The other proposal for a marquee with 12 functions a year on a rural site at 1140 Coast Road is a property that overlooks the ocean. We consider sea views, while impressive, are not a natural feature of the rural area. The ocean is not part of the city's jurisdiction, nor realistically part of the rural area of the Plan. While the "coastal environment" might be significant under the Act, it is different to a land based "natural feature" that is recognised in the plan, in our assessment. We consider this proposal would not meet the test of being complementary to a natural feature and should properly be considered as a commercial activity.

Reasoning

- 4 The definition of rural tourist activity contains three component parts. These are:
 - (a) The use of land and buildings for the purpose of attracting visitors. The Court in *PW and J Lindsay v Dunedin City Council* [2013] NZEnvC 302 decided that the term "visitors" is broad and relates to a congregation of people. We consider any function centre would be used to attract visitors and this part of the definition can be easily met.
 - (b) The activity is complementary to a permitted activity of the Rural Zone. This requires some permitted activity on-site that the facility is "complementary to". In the case of *Grandview Gardens*, the wedding venue was an integral part of the gardens and the function centre and gardens were found to be complementary satisfying this element of the test. We are not aware of any particular permitted activities on these sites that the function centre relates to or is used in a complementary manner. We do not consider this is the appropriate consideration in this case.

- (c) The activity is complementary to a natural feature of the rural area. The Environment Court in the *Currie Road* case¹ indicated that a "natural feature" should properly be interpreted in light of section 6(b) of the Act without reference to "outstanding". We consider this is probably correct.
- 5 In another Environment Court decision² the Court considered the phrase in section 6(b) that relates to landscapes and natural features and expressed that a natural feature means "a distinctive or characteristic part of a landscape". This was considered in light of the modified Pigeon Bay criteria which were:
- (i) The natural science factors.
 - (ii) Its aesthetic values including memorability and naturalness.
 - (iii) Its expressiveness.
 - (iv) Transient values: occasional presence of wildlife; or its values at certain times of the day or of the year.
 - (v) Whether the values are shared and recognised.
 - (vi) Its value to tangata whenua.
 - (vii) Its historical associations.
- 6 The DCC Plan definition also refers to the "natural feature" being of "the rural area", and does not necessarily have to be part of the site in question.
- 7 Therefore in our assessment the definition requires that to be a rural tourist activity the facility designed to attract visitors must be complementary to a distinctive or characteristic part of the landscape of the rural area.

Application to this situation

- 8 The District Plan does not identify any "natural features". We do note that the Tomahawk Lagoon is identified as an area of significant conservation value in Schedule 25.4 of the Plan, particularly C112 identifying the edge of Tomahawk Lagoon as of "regional and local significance". The lagoon itself is a distinctive geographical feature with a range of values from the Pigeon Bay criteria such as geographical distinctiveness, aesthetic values and transient values such as presence of wildlife which are shared by the recognition of the edges in the Plan.
- 9 We therefore consider that the Tomahawk Lagoon would be a distinctive or characteristic part of the environment adjacent to this site. We consider that the wedding venue could be complementary to this feature, being elevated above, with views across it where visitors would appreciate the setting. "Complementary" is probably a low bar in terms of interactions between the venue and the natural feature of the lagoon and we consider that provided the function centre is designed to draw on the natural feature as an amenity to attract visitors to the facility then this is probably enough for the definition. We therefore conclude that the function centre overlooking the lagoon is a rural tourist activity.

¹ Paragraph 24.

² *Wakatipu Environmental Society v Queenstown Lakes District Council* (C129/2001)

- 10 The property at 1140 Coast Road while overlooking the ocean, we do not consider this to be a rural tourist activity for the reasons explained above.

Yours faithfully
Anderson Lloyd



Michael Garbett
Partner
d +64 3 467 7173
m +64 27 668 9752
e michael.garbett@al.nz