

Before the Commissioner
Appointed by the Dunedin City Council

Under the Resource Management Act 1991 (**RMA**)

In the matter of an application by **Dunedin City Council** and the **Department of Conservation** for consent to construct and operate a carpark at Tunnel Beach, Dunedin

Dunedin City Council and Department of Conservation

Applicants

Memorandum of Counsel in reply for Dunedin City Council

28 July 2022

Applicants' solicitors:

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May it please the Commissioner:

- 1 This memorandum is filed on behalf of Dunedin City Council (**Council**) in reply to matters raised as part of the hearing process. It mostly responds to Ms Kirstyn Lindsay's response to Minute 5, and the revised conditions included with Ms Lindsay's response, dated 20 July 2022.

Agreement with Submitters

- 2 As indicated in the reporting memorandum the Applicants have reached an agreement with the submitters in relation to this application. This results in there being no issue taken with the proposition that section 4 RMA authorises the work of the Crown on Crown land. Therefore, no resource consent is considered required for the track proposed on Crown land.
- 3 The DCC have volunteered conditions to be imposed on the consent for the carpark component of the application. This is in accordance with the agreement of the parties.

Proposed conditions

- 4 The Applicant accepts all the changes recommended to conditions by Ms Lindsay with the exception of amendments to:
 - (a) Condition 28 regarding freedom camping signage; and
 - (b) Clause C5001.8 in the "Tunnel Beach Carpark Landscape Specification" dated 6 July 2022, relating to references to topsoil testing and analysis.

Condition 28

- 5 Ms Lindsay has recommended amending Condition 28 to require signage be installed that states that freedom camping is not permitted, or words to that effect.
- 6 The Applicant agrees that no freedom camping is permitted within the car park. This is to be an express obligation on the consent holder already. The gate is also to be closed after hours to ensure the site is not practically available to campers too. However, the Applicant's preference is for no signage to be installed that identifies this. The reason for this is that the Applicant prefers not to install negatively worded signage on this issue, such as no freedom camping is permitted in this carpark. This is because freedom campers can be determined, and this may create the impression (wrongly) that other carparks that do not contain similar negatively worded signs are available for camping, when this is not the case. Such camping is

managed by Bylaws, and DCC is reluctant to put such signage on the carparks it manages.

Clause C5001.8 in "Tunnel Beach Carpark Landscape Specification" dated 6 July 2022

- 7 Ms Lindsay has recommended adopting Ms Whitby's proposed amendment to Clause C5001.8 in the "Tunnel Beach Carpark Landscape Specification" dated 6 July 2022, to remove reference to topsoil testing and analysis, and to replace this with:

Plants must be planted in topsoil suitable for the healthy growth of species specified.

- 8 While there is no problem in principle with this, this specification is for contractors to follow and the more detailed procedures to test and establish topsoil is preferred to ensure this is clear. Council therefore prefers the wording currently included in Clause C5001.8 as it offers more clarity and certainty.

Landscape Specifications

- 9 It is also noted that the landscape specifications referred to in the conditions now have the correct date added. It is also noted in terms of the specifications that:
 - (a) In the "Tunnel Beach Carpark Landscape Specification" dated 6 July 2022, paragraph C5002.5.9 has been corrected to align with clause C5002.3.6 (ii).
 - (b) Paragraph C5002.6 (vii) refers to a 95% plant success rate. Ms Whitby recommends that this should instead refer to a 90% plant success rate. This specification for the 95% requirement is on the installation contractor – whereas the 5 year maintenance specification has the 90% survival requirement. These survival rates are different, but that is deliberate to require a higher initial success rate to ensure the long term survival rate is achieved. This is considered by the Applicant to be appropriate and has been retained.

Final conditions

- 10 The changes have been incorporated in a final version of proposed conditions included as **Annexure A** to this memorandum.
- 11 It is noted that the legal description has been updated, but remains the same. This is because the relevant title to the land concerned is large and

this has been referred to being the property at 30 Tunnel Beach Road. A copy of the LINZ printout showing the property and the legal description referred to in the conditions is attached.

- 12 The Applicant had previously offered conditions that were agreed with the Submitters to resolve the Submitters' concerns. The Applicant has consulted with the Submitters on this memorandum and the offered conditions in light of Ms Lindsay's recommendations. The Submitters have confirmed that they consider these conditions are in line with the agreement reached. Therefore the Applicant offers the attached conditions to be imposed on the consent for the carpark.
- 13 It is submitted that these conditions are appropriate, provide all parties certainty, and enable the car park to operate in a manner that manages effects. Overall it is submitted consent to the carpark should be granted to enable this project to be constructed, subject to these conditions.

Dated this 28th day of July 2022

A handwritten signature in black ink, appearing to read 'm. Garbett', is written above a horizontal line.

Michael Garbett
Counsel for the Applicant, Dunedin City Council