

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

Legal submissions on behalf of Dunedin City Council and the Department of Conservation

5 May 2022

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May it please the Commissioner:

- 1 These submissions are presented on behalf of Dunedin City Council (**Council**) and the Department of Conservation (**DOC**), as joint applicants (**Applicants**) for resource consent to construct and operate a carpark and associated facilities, and upgrade the existing track, at Tunnel Beach (**Application, Proposal**).

Overview

- 2 Council and DOC are seeking to improve accessibility, and health and safety, of the car parking area at Tunnel Beach Road near the existing track to Tunnel Beach, and of the track itself. This application will result in reduced congestion along Tunnel Beach Road, the ability to accommodate a range of vehicle types such as buses/coaches, motorbikes, and bicycles, accessibility parking, as well as cars, and the track upgrade will achieve a more appropriate track gradient to improve accessibility and ensure DOC is able to meet the requirements of the Conservation Act 1987. Additional upgrades include two public toilets, seating, waste bins, and signage. The Proposal is detailed in the Application and summarised in the evidence of Mr James Taylor. Notwithstanding that, we note the following changes to the Proposal since the revised Application was lodged, in response to submitters and the section 42A report:
 - (a) The removal of the vendor trading area; and
 - (b) Addition of an acoustic fence between the carpark and the property at 31 Tunnel Beach Road (as shown in Figure 1 in Mr Shanks' evidence).
- 3 For the purposes of assessment, the Proposal can be separated into two parts. The carpark component of the Proposal is subject to the standard decision-making framework under s104 Resource Management Act 1991 (**RMA**), while the track upgrade is subject to assessment under s4(3) RMA. By way of overview, I will address the carpark component of the Proposal and the relevant statutory assessment on behalf of DCC. Mr Eccles will then address the upgrade to the track and related statutory considerations on behalf of DOC.
- 4 We consider the key matters for determination are:
 - (a) Which parts of the Proposal need consent;
 - (b) What the activity status of the Proposal is; and
 - (c) What conditions should be applied in the event consent is granted.

- 5 In relation to the consent requirements, it is the Applicants' position that the upgrade to the track is exempt from the requirements of s9(3), by s4(3) RMA. Mr Eccles will address this in relation to the track upgrade aspect of the Proposal later in submissions. Should that be found not to be the case, resource consent for the track upgrade has been sought out of an abundance of caution.

The activity status of the carpark

- 6 The application has been assessed by Mr Taylor in paragraph 32 of his evidence. This seems to align with Ms Lindsay's section 42A report at paragraph 53. The activity of the carpark for which consent is sought is identified by the planners as either Community and Leisure – Large Scale (rule 17.3.3.16) or Sport and Recreation (rule 17.3.3.19). Both classifications are discretionary activities and assessed under rule 17.11.2.1.
- 7 It therefore does not make any material difference to the statutory tests, nor the assessment matters whichever definition the activity is considered to meet. It is submitted that the carpark does not fit neatly into either activity, but in combination with the track, it is submitted the carpark is reasonably considered to be Sport and Recreation, and assessed under rule 17.11.2.1.

The carpark

Statutory assessment

- 8 Under s104 RMA, when assessing the Application you must have regard to:
- (a) Actual or potential effects on the environment, including both positive and adverse effects;
 - (b) Relevant provisions of planning documents; and
 - (c) Any other matter considered relevant.
- 9 You have a discretion under section 104B, whether to grant the application, and if granted impose conditions under section 108 RMA.

Written approvals

- 10 Section 104(3)(a)(ii) RMA provides that a decision maker must not have regard to any effect(s) on a person who has provided their written approval for an application. The following parties have provided written approval for the application:

- (a) Russell Glen Millar and Linda Lee Millar (35 Tunnel Beach Road);
and
- (b) Gary John Pettigrew and Megan Alison Pettigrew (31 Tunnel Beach Road).

- 11 The section 42A report notes that the Pettigrews provided written approval prior to the revision of the Application, and therefore prior to the addition of the walking track upgrade. Therefore, Ms Lindsay considers the written approval should be disregarded. This is accepted as correct but it is noted the written approval has not been withdrawn, and there is no submission from the Pettigrews in relation to the revised application.

Positive effects

- 12 A significant benefit of the proposed carpark is improved health and safety, and improved convenience of users. Currently, because there are insufficient car parking facilities near the Tunnel Beach track, visitors to the track and beach are parking in the road carriageway. The congestion and pedestrians present in the roadway caused by this lack of facilitation for visitors is a potential hazard.
- 13 A purpose-built carpark will provide a far safer environment for visitors to Tunnel Beach, and will also greatly improve accessibility for various vehicles. This is particularly by provision of oversized car parks, accessible car parks, tour bus drop off point, parking bay for motorbikes, bikes, and e-bikes, but also formal manoeuvring areas for vehicles (including oversized vehicles).
- 14 The additional facilities, being the toilets, waste bins, seating, and signage will ensure visitor needs will be effectively, and far better managed than is occurring currently.
- 15 The proposed carpark also presents benefits for surrounding land owners from a visual perspective, by removing the cluttered and visually obtrusive roadside carparking, and creating a carpark that works with the slope of the land thereby providing natural screening, and planting vegetation screening in addition to this.

Adverse effects will be no more than minor

- 16 The following witnesses have provided evidence on the proposed carpark:
- (a) Scott MacLean – Council Parks and Recreation Services;
 - (b) Hayden Trumper – Transport effects;

- (c) Brendon Shanks – Noise effects;
 - (d) Wade Robertson – Landscape and visual effects; and
 - (e) James Taylor – Planning.
- 17 The evidence of Shay van der Hurk and Elizabeth Anne Wallace, while focussed generally on the track upgrade, also supports the carpark development from the perspective of health and safety and meeting DOC obligations.
- 18 The evidence provides a thorough assessment of the potential effects of the proposed carpark, concluding that the adverse effects in all cases will be no more than minor. A summary is provided in the evidence of Mr Taylor.¹ These expert opinions are relied on by Council.
- 19 The effects assessments provided in evidence incorporate various mitigation methods in relation to the carpark, proposed as part of the Application, including:
- (a) The design of the carpark utilises the existing landform, resulting in a terraced profile and achieving partial screening of the carpark visually;²
 - (b) Vegetation screening between the carpark and adjoining properties will reduce visual effects on residential properties and maintains the rural amenity of the area;³
 - (c) The reclamation of a portion of the road corridor for use as a footpath and grass verge will contribute to retention of rural amenity;⁴
 - (d) A landscaped bund is included in the design to assist to screen the carpark; and
 - (e) A 1.5m high acoustic fence along the boundary of 31 Tunnel Beach Road has been added to the Proposal to ensure noise rules are well complied with.⁵

¹ Evidence of James Taylor at [36]-[42].

² Evidence of Wade Robertson at [19](d).

³ Evidence of Wade Robertson at [50].

⁴ Ibid.

⁵ Evidence of Brendon Shanks at [20].

- 20 Mr Taylor provides an assessment of the proposed carpark against the relevant provisions of the New Zealand Coastal Policy Statement, both the operative and proposed Otago Regional Policy Statements, and the Dunedin Second Generation District Plan (**2GP**). Mr Taylor concludes that the Proposal will be consistent with all relevant objectives and policies. This evidence is consistent with Ms Lindsay's assessment (now that the food vendor initially proposed is removed).

Section 42A Report

- 21 The Applicant has no material issues of disagreement with the content of the section 42A report. It is noted that there are three recommended alterations to Ms Lindsay's proposed conditions that are explained by Mr Taylor in his evidence. These are:
- (a) changing condition 28 to refer to the hours of operation between 9 am and 5 pm for April to August; and the hours between 8 am and 9 pm from September to March. This is to align better to daylight savings;
 - (b) Mr Taylor recommends in paragraph 13(a) that there is a limit of three buses to access the site per hour to align with the traffic assessment; and
 - (c) Mr Taylor also notes that at paragraph 13(k) the Applicant proposes a 1.5 metre high acoustic fence erected on the boundary with the property at 31 Tunnel Beach Road. It would make sense for transparency that this is recorded as a condition of consent.
- 22 Other than these proposed alterations to conditions, the assessment and conclusions of the section 42A report are supported by the Applicant.

Response to the evidence for Mr Varsanyi and Ms Durling

- 23 It is noted that Mr Varsanyi and Ms Durling do not support the proposal. A decision will need to be made about whether consent is granted to the Application, or not. In terms of the further conditions that the submitters seek, the following response can be provided (this relates to the summary in paragraph 79 of Ms Durling's evidence).
- (a) a limit of 25 cars that is proposed by Ms Durling is considered impractical, and will perpetuate the current traffic safety issues that the proposal is seeking to address. This is not supported;
 - (b) removing provision for bus drop off is also not supported. Should buses be used to deliver visitors to the site, this should be encouraged as a mode of transport and a drop off facility is provided

so that buses can manoeuvre appropriately. It is noted that objectives 6.2.2, 6.2.3 and 6.2.4 of the 2GP do emphasise a preference for parking areas to be designed suitably for all travel modes. Retaining a bus drop off facility is most consistent with achieving these objectives;

- (c) the food vendor has been removed from the Application. The section 42A report recommends a condition which is accepted addressing this issue;
 - (d) limiting the hours to 7 pm over the summer period is not supported. This is because during the summer evenings it is considered that this may well be a popular time for visitors to still visit the track and Tunnel Beach for a walk. By closing the car park at 7pm this will again perpetuate the parking problems along Tunnel Beach Road when the track is likely to be in use, and this will not address the issue the car park is seeking to overcome;
 - (e) and (f) it is considered that appropriate signage, viewing platforms and landscape management is proposed as part of the application;
 - (g) it is proposed by Ms Durling that the large macrocarpa trees should be retained. While the Applicant has no intention to remove these trees, requiring that they be retained in perpetuity may result in health and safety issues in the future should the trees become unstable or need to be removed in whole, or limbs of them, at any time. It is not supported that they are required to be retained as a condition of this application. There is no objection to a condition to replace existing macrocarpas with suitable native trees should they be removed;
 - (h) finally, in terms of locking the gate when the carpark is closed, this is already addressed in the application at paragraph 4.15 under 'operating hours', where it is specified that access outside authorised hours is controlled by a locked gate at entrance/exit.
- 24 Overall it is the Applicant's position that the proposal appropriately provides for the needs of visitors to the track, while properly avoiding and mitigating any adverse effects on the neighbours in the environment. It is the Applicant's position that the conditions in the section 42A report with the modifications set out in these submissions and evidence of Mr Taylor are appropriate and should be imposed should the consent be granted.

Conclusion regarding the carpark

- 25 The Dunedin City Council and Department of Conservation have worked together to address existing identified issues for the community and users of the Tunnel Beach track. The car park is intended to provide a much more appropriate parking facility and to address potential health and safety issues that arise from users of the road. It is submitted that this will significantly improve the situation for users and neighbours, while appropriately avoiding and managing adverse effects on the environment.
- 26 It is submitted that consent should be granted subject to the conditions recommended by the section 42A report with the minor amendments described in these submissions.

The track

- 27 DOC adopts the submissions of the DCC in full. These submissions are confined to the question of whether DOC requires land use consent to upgrade the walking track. Counsel for the Director-General submits consent is not required.

The need to upgrade the track at Tunnel beach

- 28 As set out in the evidence of Annie Wallace, the Operations Manager for the DOC Coastal Otago District, Tunnel Beach is a popular local recreation site, and a significant tourism experience. It is amongst the busiest visitor sites DOC manages in the Southern South Island Region.
- 29 In his evidence, Shay van der Hurk, Senior Ranger at DOC, has described the high visitor numbers to the track, which has increased negative impacts on biodiversity at site, and has increased the risk to visitors from hazards at the site.
- 30 DOC is to manage the land Tunnel Beach in accordance with its functions under the Conservation Act 1987. As part of doing so, it is obligated to manage the land it holds for conservation purposes.⁶ The reconfiguration of the site is designed to mitigate damage to the coastal turf ecosystem located on the Tunnel Beach headland, by reducing the number of people currently walking over it.
- 31 DOC is also obligated to foster to the use of this recreation reserve for recreation and to allow its use for tourism, to the extent that doing so is not

⁶ Conservation Act 1987, s 6(a).

inconsistent with its conservation.⁷ The new viewpoints that have been designed are aimed at providing a better visitor experience, in a way that encourages visitors further from the headland. In doing so, the Tunnel Beach track upgrade and reconfiguration is designed to mitigate high cliff hazard exists at the headland.

History of the track

- 32 The New Zealand Walkways Commission, after consultation with the then owner of the land at Tunnel Beach Mr Robert Walker, considered Mr Walker's land should be made available for use by the public as a walkway for the purposes of the New Zealand Walkways Act 1975. Under section 22 of that Act, the Commission requested the Commissioner of Crown Lands to agree an easement over the land.
- 33 On 18 October 1982, the Crown entered an agreement with Mr Walker to allow the creation of the Tunnel Beach Walkway over part of his freehold land, to enable public access. This transaction involved the stopping of unformed legal roads and disposal of these areas to Mr Walker for incorporation into his own certificate of title. A term of the agreement was for the parties to enter into a registerable grant of right of way, upon completion of the survey and compiled plan.
- 34 The track was formally opened to the public by the Minister of Lands on 16 March 1983. DOC has not provided evidence that consent was provided for the track at that time, and it is not clear whether the track was authorised for the purposes of the Town and Country Planning Act 1977. Regardless of compliance with any requirements under that Act, to the extent the Crown is now bound by the existing district plan, the Crown is now bound to the extent provided by section 4 of the RMA, as discussed below.
- 35 A certificate of title was eventually issued to Mr Walker on 9 August 1991, recording that his land was subject to a right in gross for the walkway for the purposes of the New Zealand Walkways Act 1975 over the land, in favour of the Crown (CT 13D/439). The easement was made on the basis that the land was to be made available for use by the public as a walkway for the purposes of the New Zealand Walkways Act 1975, the general purpose of which is to:

[establish] walking tracks over public and private land so that the people of New Zealand shall have safe, unimpeded foot access to the countryside for the benefit of physical recreation as well as for the

⁷ Conservation Act 1987, s 6(e).

enjoyment of the outdoor environment and the natural and pastoral beauty and historical and cultural qualities of the areas they pass through.

- 36 The New Zealand Walkways Act 1975 was re-enacted in the New Zealand Walkways Act 1990, which was in turn repealed and replaced by the Walking Access Act 2008, the purpose of which is “to provide the New Zealand public with free, certain, enduring, and practical walking access to the outdoors (including around the coast and lakes, along rivers, and to public resources) so that the public can enjoy the outdoors”.⁸ Members of the public may, at any time and without charge, pass or repass over any walkway on foot; and perform any activity that is reasonably incidental to that passing or repassing; subject to any other enactment relating to the administration or control of public land and any conditions.⁹
- 37 In 1992 the Department of Conservation arranged for the gazettal of the Tunnel Beach Walkway for the purposes of the New Zealand Walkways Act 1975.¹⁰
- 38 The track was realigned in 1994. Land use consent was not sought, as it is apparent that DOC did not consider it was required.
- 39 Subsequently, under the first operative Dunedin City Council District Plan in 1995, recreation was a permitted activity in the Rural Residential Zone,¹¹ (subject to a permitted activity standard which included a requirement for one off road carpark for every 1000 m² of site).¹²
- 40 The owners of 40 Tunnel Beach Road have submitted that “the existing walking track was not lawfully established at its current usage.” Regardless of whether the track was “lawfully established” at the time it was made, it is submitted there is no need, or ability, to read those words into section 4(3) of the RMA.
- 41 In October 2019 the Crown acquired from Mr Walker the land that is now the Tunnel beach recreation reserve (being Part Section 3 and Sections 5 and 6 Block XIII Dunedin & East Taieri SD, Sections 1- 6 SO 553161), a recreation reserve under section 17 of the Reserves Act 1977.

⁸ Walking Access Act 2008, s 3.

⁹ Walking Access Act 2008, s 33.

¹⁰ *New Zealand Gazette*, 9 April 1992, No. 50, at 1060.

¹¹ Rule 3.6.1(iii).

¹² Rule 3.6.2(iv).

The track is now regulated under the Reserves Act

- 42 DOC is to administer the Reserves Act for the purpose of “providing, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing recreational use or potential, whether active or passive;¹³ and, relevantly, for:¹⁴

Ensuring, as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development.

- 43 As a recreation reserve, the public are to have freedom of access to the reserve.¹⁵

- 44 As provided by section 17 of the Reserves Act, its purpose is as follows:

17 Recreation reserves

(1) It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as recreation reserves, for the purpose of providing areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.

(2) It is hereby further declared that, having regard to the general purposes specified in subsection (1), every recreation reserve shall be so administered under the appropriate provisions of this Act that—

(a) the public shall have freedom of entry and access to the reserve, subject to the specific powers conferred on the administering body by sections 53 and 54, to any bylaws under this Act applying to the reserve, and to such conditions and restrictions as the administering body considers to be necessary for the protection and general well-being of the reserve

¹³ Reserves Act 1977, s 3(1)(a)(i).

¹⁴ Reserves Act 1977, s 3(1)(c).

¹⁵ Reserves Act 1977, s 17(2)(a).

and for the protection and control of the public using it: ...

- 45 Freedom of access and entry can be restricted or prohibited in three circumstances:
- (a) When DOC has decided to apply one of its powers under section 53 of the Reserves Act,
 - (b) with reserve bylaws, or
 - (c) Where DOC considers it necessary to impose conditions and restrictions necessary for the protection and general wellbeing of the reserve and the protection and control of the public using it.
- 46 Under section 53(1)(i) of the Reserves Act, the administering body of a recreation reserve is empowered to:
- make, stop, divert, widen, or alter any bridges, ways, or watercourses in, upon, through, across, or over any part of the reserve, subject to the payment of compensation for damage thereby to adjacent land: provided that any such power in relation to watercourses shall be exercised subject to the Resource Management Act 1991.
- 47 The fact that this power is only subject to the RMA in relation to watercourses indicates the Minister of Conservation is able to make or alter a “way” on a reserve (being a road, track or path),¹⁶ despite the RMA.
- 48 Counsel submit that section 53(1)(i) of the Reserves Act is an exception to section 4 of the RMA. The Reserves Act specifically refers to the RMA in section 53 (and in other sections), and if had it been intended that section 4(3) of the RMA was to apply despite section 53(1)(i) of the Reserves Act, it would be expected that this would also have been provided for when this section of the Reserves Act was amended by the RMA, and when section 4 was later amended. In other words, section 53(1)(i) of the Reserve Act was specifically considered at the time the RMA was enacted yet did not refer to or account for the exemption provided by the then section 4(4) of the RMA (now section 4(3)), indicating there was no intention to displace the plain words of section 53(1)(i) of the Reserve Act.
- 49 Section 53(1)(o) of the Reserves Act also provides a power to: “do such other things as may be considered desirable or necessary for the proper

¹⁶ Concise Oxford Dictionary.

and beneficial management, administration, and control of the reserve”, provided this is consistent with its purpose as a recreation reserve.

- 50 DOC can also regulate the reserve through conditions on concessions that may be granted to a person seeking to carry out activities on a reserve, including commercial activities, under section 59A of the Reserves Act.

The track is also regulated under the Walking Access Act 2008

- 51 The New Zealand Walking Access Commission, a Crown entity, is able to monitor compliance with, and enforce, the Walking Access Act.¹⁷ Under that Act, a controlling authority (DOC), can erect and maintain structures that are necessary or desirable to enable members of the public to use the walkway;¹⁸ erect notices warning members of the public who use the walkway not to trespass on any land adjoining the walkway;¹⁹ provide for the proper control and use of the walkway,²⁰ and generally promote and maintain the walkway for the pleasure, safety, and welfare of members of the public.²¹
- 52 DOC is also able to close the walkway for safety reasons, during an emergency, for maintenance and development, or at the request of an adjoining landowner.²²
- 53 It is an offence against the Walking Access Act to, amongst other things, interfere with or disturb livestock on or adjacent to the walkway; or to obstruct, threaten, or attempt to intimidate an adjoining landowner.²³
- 54 Regulations and bylaws are also able to be made to provide for the maintenance of good order on walkways, and to provide for the conditions under which the public may enter, remain on, or use any walkway.²⁴
- 55 While there are means of controlling effects arising from the track under this legislation, DOC is nonetheless obligated to foster recreation in this

¹⁷ Walking Access Act 2008, ss 10(1)(m), 34.

¹⁸ Walking Access Act 2008, s 37(1)(b)(i).

¹⁹ Walking Access Act 2008, s 37(1)(b)(ii).

²⁰ Walking Access Act 2008, s 37(1)(c).

²¹ Walking Access Act 2008, s 37(1)(d).

²² Walking Access Act 2008, s 38, 39.

²³ Walking Access Act 2008, s 56.

²⁴ Walking Access Act 2008, ss 67, 68.

recreation reserve in accordance with the Conservation Act,²⁵ provide for recreational opportunities consistent with the Conservation General Policy, and to provide freedom of access under the Reserves Act and the Walking Access Act. As set out in the evidence of Mr van der Hurk, DOC, there are limits to the extent to which DOC can influence the number of visitors who come to Tunnel beach.

The statutory exemption for land use activities on public conservation land applies

- 56 Prior to the enactment of the RMA, it was recognised that the extent to which the Crown was bound by operative regional and district plans was a matter of continuing interpretation.²⁶ The application of section 5(k) of the Acts Interpretation Act 1924 meant that the Crown (with certain exceptions) was not subject to the Town and Country Planning Act 1977 (and the 1953 Act, its predecessor).
- 57 The RMA now makes it clear that the Crown is bound by that Act, except as provided in section 4:

4 Act to bind the Crown

...

(3) Section 9(3) does not apply to any work or activity of the Crown within the boundaries of any area of land held or managed under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act (other than land held for administrative purposes) that—

(a) is consistent with a conservation management strategy, conservation management plan, or management plan established under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act; and

(b) does not have a significant adverse effect beyond the boundary of the area of land.

- 58 The section 4(3) exception is an exemption to the requirement to comply with section 9(3). It provides an exemption to the requirement to have a resource consent where the activity to be undertaken is on any land held or managed under the Conservation Act 1987 (or any Act in Schedule 1 of the

²⁵ Conservation Act 1987, s 6(e).

²⁶ Resource management law reform. Analysis of existing statutes: legal analysis. Working paper no.7 Part 1: Town and Country Planning legislation and procedures [1988] NZRMLawRef 8, at 11.

Act, which includes the Reserves Act), where the activity would ordinarily require a land use consent (from the relevant district council/territorial authority).

- 59 Section 9 of the RMA deals with restrictions on the use of land, with subsection (3) providing that other than for certain existing uses, no person may use land in a way which contravenes a district rule, unless that use is expressly authorised by a resource consent.
- 60 The effect of section 4(3) is to exempt DOC from complying with district plan rules to undertake activities on public conservation land, provided the activity complies with any relevant statutory management planning document, and does not have a significant adverse effect beyond the boundary of the public conservation land.
- 61 A form of section 4(3) has been in the RMA from its first coming into effect on 1 October 1991, and the subsequent amendments have been made to reflect changes in the RMA and other legislation.
- 62 The legislation enables DOC to manage its own land use activities undertaken on public conservation land without additional regulatory control by councils. It was assumed that if the Crown had planned for an activity under protected area legislation, that would have addressed any adverse effects and so would not be required to be regulated under the RMA. So, there was no need for district plans to address effects within the protected area.
- 63 DOC must prepare management plans for conservation land. The requirement for consistency with conservation planning documents ensures consistency of decision-making. This also allows for public input. As has been noted by the Supreme Court, these planning documents enable public participation in a manner comparable to, although less developed than, the hierarchy set up for resource management under the RMA.²⁷
- 64 The exemption is not unlimited:
 - (a) The work or activity of the Crown must be carried out within the boundaries of land that is held or managed under the Conservation Act 1987 or any other Act specified in Schedule 1 to the 1987 Act (section 4(3));

²⁷ *Hawke's Bay Regional Investment Company Ltd v Royal Forest and Bird Protection Society of New Zealand* [2017] NZSC 106, at [131].

- (b) Land held for administrative purposes is not exempt – this includes land held by DOC for offices and visitor centres in the community (section 4(3));
- (c) The work or activity must be consistent with a conservation management strategy, conservation management plan, or management plan established under the Conservation Act 1987 or any other Act specified in Schedule 1 to the 1987 Act (section 4(3)(a); and
- (d) The work or activity must not have a significant adverse effect beyond the boundary of the area of the land (see section 4(3)(b)).

65 If the work or activity is within the scope of the section 4(3), then DOC does not need to obtain the land use consents that would ordinarily be required by district rules.

Application of section 4(3) to the track upgrade

66 The track upgrade is “work or activity of the Crown”. The track traverses the Tunnel Beach Recreation Reserve, held under the Reserves Act and administered by DOC.

67 The track upgrade is to be within the boundaries of the reserve.

Consistent with the Otago Conservation Management Strategy

68 The proposed activity is “consistent with a conservation management strategy, conservation management plan, or management plan established under the Conservation Act 1987”. Appendix 1 of the Otago Conservation Management Strategy (CMS),²⁸ published in 2016, provides a table titled “Work or activities of the Department of Conservation that may meet the requirements of section 4(3) of the Resource Management Act 1991 for exemption from land use consents in Otago”.

69 DOC intends for the upgrade to be undertaken in accordance with Appendix 1. It lists a range of areas of work/activities, then in relation to each activity it lists activity scope, management actions, environmental impacts, and locations. Under the subheading “Tracks, roads and car-parking areas for visitor purposes”, “Tunnel Beach and the coast South of Dunedin” is specifically listed as a location. As set out in the evidence of Mr Taylor (at

²⁸ [Otago Conservation Management Strategy 2016 \(doc.govt.nz\)](https://doc.govt.nz/publications/strategy/otago-conservation-management-strategy-2016/)

[16]-[18]), the proposal is consistent with the work activities set out in the CMS.

No significant adverse effects beyond the boundary

- 70 The applicant submits the track upgrade will not have a significant adverse effect beyond the boundary of the area of land (section 4(3)(b)). As set out in the evidence of Mr Taylor (at [23]-[27] of his evidence), the effects assessment concludes that the potential effects resulting from the proposal are not significant for the purposes of section 4(3)(b).
- 71 As noted by Mr van der Hurk,²⁹ DOC has been particularly mindful of neighbouring properties when designing the track so as not to affect them, and it has had an ongoing dialogue with the Ōtākou Rūnaka about this project.
- 72 The word “effect” is broadly defined,³⁰ and is not to be taken in isolation or allowed ridiculous scope; rather, it must be understood in context, and read broadly in light of the scheme and purpose of the RMA as a whole.³¹ In the present legislative context, it is only effects arising from “work or activity of the Crown within the boundaries of [the reserve]” that are relevant. It is submitted that here, effects arising from beyond the boundaries of the reserve, cannot be considered effects arising from the Crown’s activities within the reserve. In the present context “effects” are also limited to those that are “significant adverse” effects.
- 73 The nature of the environment is relevant. Whether an activity could have an “adverse effect” requires a contextual assessment.³² For example, it is accepted that generally, excessive noise that is capable of interfering with the enjoyment of people’s homes in a substantial way, can be an adverse effect on the environment. However, in a rural-residential area, noise does not necessarily amount to adverse effects where this is a normal part of the environment.³³ As stated in the evidence of Mr Taylor (at [83]-[84]), people living in a rural-residential area can expect to a reasonable level of noise, and here, potential noise effects are assessed as no more than minor (at [41]).

²⁹ At [59] of his evidence.

³⁰ Resource Management Act 1991, s 3.

³¹ *Canterbury Regional Council v Newman* [2002] 1 NZLR 289 (CA).

³² *Man O’War Farm Ltd v Auckland Council* [2017] NZHC 3217, at [95].

³³ See, for example *Darroch v Whangarei* DC A018/93 (PT), at 23.

- 74 The evidence of Mr Shanks is that based on the distance from the proposed new alignment and viewing platforms, there would be no noticeable noise effects at the nearby properties. He notes that noise from the track would comfortably comply with the daytime and evening noise limits at all assessment positions.
- 75 To the extent the activity could affect noise, section 4(5) of the Conservation Act specifically provides that an abatement notice or excessive noise direction can be served on DOC. Any noise effects are intended to be regulated in this way.
- 76 The adverse natural character effects on the steep hill slopes will be low and the most valuable aspects of the Tunnel Beach coastal landscape will be unaffected by the proposed walking track. As noted in the evidence of Mr Roberson (at [16] of his evidence), adverse effects will be very low, and will generally enhance perceptual and experiential aspects of the landscape. Visual effects of the track will also be low. The evidence is that the change from the current setting would not constitute a significant effect on existing rural-residential amenity.

Whether the track is a “Community Activity”

- 77 The RMA is not a comprehensive code applying to land use activity. Land use is permissive. A person may use land as they see fit unless the use contravenes a regulation.³⁴ This contrasts with the regulation of water and discharge of contaminants into the environment, where the presumption is that uses are restricted unless expressly allowed.³⁵
- 78 This legislative intent is reflected in the 2GP. The 2GP does not provide a “catch all” rule to require resource consent for activities not expressly allowed.³⁶ Rather, it provides that activities are only regulated to the extent they are defined in the 2GP. The nested tables in Section 1.3 (which include community activities) are:

...intended to be a complete list of activities. The activities within the tables are all defined. However, in some cases defined activities identify aspects of those activities that are not managed by this Plan either because they are managed through other statutory instruments or because they were

³⁴ Resource Management Act 1991, s 9.

³⁵ Resource Management Act 1991, ss 14, 15.

³⁶ As permitted by 76(4)(e) of the RMA.

considered to be highly unlikely to create effects that warranted management...

79 That is the case here. The 2GP contemplates activities that it does not regulate. As set out above, the public walking track is managed through other statutory instruments (ie the Reserves Act 1977 and the Walking Access Act 2008, and in accordance with the Conservation General Policy and the Otago Conservation Management Strategy made under the Conservation Act 1987).

80 The site is zoned Rural Residential 1 in the 2GP. The 2GP, at 1.3.2, describes “Community activities” as the category of land that consist of:

- community and leisure
- conservation
- early childhood education; and
- sport and recreation.

81 As noted in the evidence of Mr Taylor, the walking track does not fit squarely within any of the definitions in the Community Activities Category nest, and as illustrated below.

The track is not a “Community and Leisure” activity

82 The track is not a “Community and Leisure” activity, which is defined as: “The use of land and buildings for the purpose of social gathering, worship, community support, non-competitive informal recreation, or leisure activities. These activities are generally not-for-profit and/or may make use of space in an existing building. Examples are:

- churches
- community halls
- after school care and holiday programmes
- Plunket
- playgroups
- Scouts, Girl Guides, Brownies
- community gardens
- game and hobby clubs
- libraries
- Marae-related activities; and
- funeral service providers.

83 The proper approach to plan interpretation is to consider the plain meaning of a provision in its immediate plan context.³⁷ Looking to the immediate

³⁷ *Powell v Dunedin City Council* [2004] 3 NZLR 721; [2005] NZRMA 174 (CA) at [35]; Legislation Act 2019, s 10.

context, “walking track” is separately defined in the 2GP, being “A formed track or trail on public or private land, over which the public has right of access for pedestrian or cycling use”. It is not part of the definition of “Community and Leisure”, and it does not fall within any of the listed examples, and is not similar to them, indicating walking tracks were not intended to fall within the definition.

The track is not a comfortable fit with the “sport and recreation” definition

84 “Sport and recreation” (a discretionary activity) is defined to mean:

The use of land and buildings for organised indoor and outdoor sport and recreation activity, ancillary events, sports education, and club meetings, presentations, and functions. For the sake of clarity, this definition includes ancillary office activity and ticket sales activities. Examples are facilities managed by clubs, Dunedin City Council, schools or private entities including ...athletic tracks, and ... outdoor recreational facilities, including walking and cycling facilities.

85 The use of the land is perhaps a better fit within the definition of “Sport and recreation” activity, however, the proposed activity:

- (a) it is not a “use of land ... for **organised** indoor and outdoor sport or recreation activity...”.
- (b) While athletic tracks are included (used for organised outdoor sport or recreation activity), walking tracks are not. This interpretation aligns with the exception that applies to conservation areas, and the way in which public walking tracks are, in practice, regulated generally.
- (c) “Walking track”, separately defined, is not part of the definition of “Sport and recreation”.
- (d) A public walking track is not an easy fit within the term “walking facility” (and is not for an organised recreation activity in any event), as a track does not fall within the common meaning of a facility.

The track is capable of being a “Conservation” community activity

86 Policy 17.2.1.1 states that the rural residential zones enable farming, grazing and conservation.

87 “Conservation”, is defined as an activity in the “community activities” category, being: “The use of land for the establishment, maintenance or

enhancement of indigenous vegetation and/or habitat for indigenous fauna” and includes “restoration planting; pest and weed control; track construction and maintenance; and fencing”.

- 88 Here, as set out in the application, and in the evidence of Mr van der Hurk (at [8], [38]-[45], and [54]-[58]), and Ms Wallace at [19]-[27] and [32], an aim of the track realignment is to protect the headland, described in the 2GP as being “one of few remaining areas of salt tolerant herb vegetation – also important for invertebrates”,³⁸ by reducing the number of people who might go to the headland. The current configuration of the track means that the coastal turf ecosystem is currently being damaged by the large number of people choosing to walk on the headland, and the proposal is designed to address this. To the extent that the track realignment is for this purpose of “enhancement of indigenous vegetation and/or habitat for indigenous fauna”, it is a “Conservation” activity.
- 89 If track construction and maintenance is a “Conservation” activity, it is a permitted activity. As Conservation activities are permitted, resource consent is not required for the “track construction and maintenance” part of the proposal.³⁹ It is inherent in the nature of a permitted activity that it may be exercised as of right without consent. DOC does not need consent for the elements of the project that are permitted. That is consistent with the Otago Conservation Management Strategy, to which regard was had when preparing the 2GP,⁴⁰ which contemplates the track upgrade may meet the requirements of section 4(3), as outlined above.
- 90 The fact that the walking track is not a comfortable fit within any of these community activity definitions indicates there was no intention to regulate the activity under the 2GP.

Conclusion

- 91 Section 4(3) of the RMA applies to the track. The elements of section 4(3) of the RMA will be met. The upgrade is work of the Crown to be carried out within the boundaries of a recreation reserve, consistent with the Otago Conservation Management Strategy. The activity will not have a significant adverse effect beyond the reserve. Rather, it will protect the biodiversity present at Tunnel Beach, manage the risks to visitors, and capitalise on the

³⁸ A1.1C038 of the Plan.

³⁹ It is acknowledged that consent would otherwise be needed for other activities, for example, earthworks; and structures (viewing platform, signs, balustrade) in an Outstanding Natural Feature and High Natural Coastal Character Overlays – a non-complying activity in that case.

⁴⁰ Resource Management Act 1991, s 74((2)(b)(i).

opportunities this high visitation provides to connect visitors to conservation, heritage and recreation.

- 92 Use of the track does not require resource consent as “Community and Leisure- Large Scale”, and the walking track is not a comfortable fit with any of the definitions of community activities, indicating there was no intention to regulate it under the 2GP.
- 93 The activity is instead intended to be regulated by conservation legislation. This is reflected in the various powers provided by the Reserves Act to regulate recreation reserves. Notably, section 53(1)(i) of the Reserves Act enables the Minister to make, widen or alter a track, apparently without being subject to the RMA (other than to the extent watercourses are to be altered).
- 94 Other powers are provided to DOC under Walking Access Act to regulate the track, including powers to protect adjoining landowners.
- 95 If section 4(3) of the RMA does not apply, DOC has sought resource consent out of an abundance of caution, if it is found that resource consent is needed.

Dated this 5th day of May 2022

CONDITIONS FROM SECTION 42A REPORT WITH RECOMMENDED CHANGES BY SUBMITTER

Conditions:

1. The proposed activity must be undertaken in general accordance with the approved plans:

- 3336298-CA-010 C
- 3336298-CA-011 C
- 3336298-CA-012 C
- 3336298-CA-015 C
- 3336298-CA-016 C
- 3336298-CA-017 C
- 3336298-CA-020 C
- 3336298-CA-021 C
- 3336298-CA-022 C
- 3336298-CA-030 C
- 3336298-CA-031 C
- 3336298-CA-032 C
- 3336298-CA-040 C
- 3336298-CA-041 C
- 3336298-CA-050 C
- 3336298-SE-011 A
- 3336298-AL-010 C
- 3336298-AL-011 C
- 3336298-AL-012 C
- 3336298-AL-013 C
- 3336298-AL-041 C
- 3336298-AL-050 C

and the information provided with the resource consent application received by the Council on 1 December 2021, except where modified by the following conditions.

[Note if the walking track is to be included then the following plans will also need to be included as part of condition 1]

- 501864 L1 02 B
- 501864 L1 03 B
- 501864 L1 04 B
- 501864 L1 05 B
- 501864 L1 06 B
- 501864 L1 07 B
- 501864 L1 08 B
- 501864 L1 09 B
- 501864 L1 10 B
- 501864 L1 11 B

Commented [B11]: Submitters position that walking track must be included.

1A. The Plans for the carpark shall be amended to comply with the following:

- a) There shall be no more than 25 vehicle carparks and 5 campervan carparks.
- b) There shall be no bus parks provided within the carpark.
- c) There shall be no food vendor areas provided within the carpark.

Conditions to be met prior to any site works or construction commencing

2. The consent holder must provide notice to the Resource Consent Monitoring team by email to rcmonitoring@dcc.govt.nz of the start date of the works. This notice must be provided at least five (5) working days before the works are to commence.
3. A Construction Management Plan that documents dust, erosion and sediment control measures to be implemented must be submitted to the resource consent manager for certification to rcmonitoring@dcc.govt.nz. No works may commence until this plan has been approved.
4. The Tunnel Beach Car Park Operational Plan must be finalised and submitted to the resource consent manager for certification to rcmonitoring@dcc.govt.nz.
5. All Temporary Traffic Management Plans and Corridor access Requests must be approved.
6. The consent holder:
 - a) Is responsible for all contracted operations relating to the exercise of this consent; and
 - b) Must ensure that all personnel (contractors) working on the site are made aware of the conditions of this consent, have access to the contents of consent documents and to all associated erosion and sediment control plans and methodology; and
 - c) Must ensure compliance with land use consent conditions.
7. The consent holder must prepare and submit to the resource consent manager for certification to rcmonitoring@dcc.govt.nz Landscape Maintenance Plan prepared by a suitably qualified professional ecologist. The Plan shall include ongoing maintenance requirements of the Landscape Planting required by this consent for at least 10 Years and shall identify the methodology for:
 - a) Planting including plant size, number of plants, ground preparation, fertiliser and mulching requirements to achieve a plant survival rate of at least 80% after 2 years and 90% after that.
 - b) Management of animal pests (such as rabbits and possums) and weed species (such as gorse and exotic grasses) that may affect the ability of the landscape planting to establish effectively and achieve its purpose.
 - c) Irrigation to be installed, frequency of irrigation and any measures (including maintenance) required to ensure water is available when required.
 - d) General landscape maintenance methods to achieve a high level of tidiness and amenity within the planted areas.
 - e) Annual monitoring process to ensure plants are healthy and growing well and that any individual plants that are becoming diseased or are dying are identified for replacement as required by this consent, including any recommended changes to species to improve chances of survival and establishment.
8. The Landscape Maintenance Plan shall be reviewed annually by a suitably qualified professional for the first 4 years and biennially after that to ensure that the methods included in it are achieving the plant survival rates in Condition 7(a) above and that the Landscape planting is healthy and growing well and to make any recommendations to better manage the landscape planting.

Commented [BI2]: Needs to cover both carpark and track planting.

Commented [BI3]: As Ms Durling sets out this is a challenging area for establishing native plants. Therefore, there needs to be a robust plan to provide the best chance of success, including monitoring.

9. The outcome of the Landscape Maintenance Plan Review including any amendments to be made to the Plan must be submitted to the resource consent manager for certification to rcmonitoring@dcc.govt.nz no more than 1 month after each anniversary of this consent.

Conditions to be met at commencement of, or during, site works or construction

Carpark Earthworks

10. All works are to be undertaken in accordance with the certified Construction Management Plan.
11. The earthworks and construction work is to be under the control of a nominated and suitably qualified person (civil/environmental engineer or technician).
12. If fill is to be reused on the site it is to be deposited in accordance with best practice and keyed into any slopes.
13. Any change in ground levels must not cause a ponding or drainage nuisance to neighbouring properties.
14. Any fill material to be introduced to the site must comprise clean fill only.
15. All loading and unloading of trucks with excavation or fill material must be carried out within the subject site.
16. Surplus of unsuitable material must be disposed of away from the site to a Council approved destination.
17. Should the consent holder cease, abandon, or stop work on site for a period longer than 6 weeks, the consent holder must first take adequate preventative and remedial measures to control sediment discharge/run-off and dust emissions, and must thereafter maintain these measures for so long as necessary to prevent sediment discharge or dust emission from the site. All such measures must be of a type and to a standard which are to the satisfaction of the Resource Consent Manager.
18. If at the completion of the earthworks operations, any public road, footpath, landscaped areas or service structures that have been affected/damaged by contractor(s), consent holder, developer, person involved with earthworks or building works, and/or vehicles and machineries used in relation to earthworks and construction works, must be reinstated to the satisfaction of Council at the expense of the consent holder.
19. 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 Heritage New Zealand Pouhere Taonga Act 2014; and
 - iii) arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work may recommence following consultation with the Consent Authority.

Additional Specific Track Conditions (If able to be considered)

- 20. The track width must not exceed two metres in width.
- 21. Where practicable the walking track must follow the existing contour of the land.
- 22. No stockpiles of material are permitted within the ONF area
- 23. No stockpiles within the HNCC are permitted for longer than 30 days and must be no higher than 2m high
- 24. The dis-used track must be rehabilitated and planting established at areas of likely desire lines and where the new alignment meets the old alignment to discourage continued access and use.
- 25. Interpretation panels designed in association with Manu Whenua are permitted adjacent to the walking track and within the viewing platforms.
- 26. Viewing Platforms 1 and 2 must incorporate a gravel and mown areas only with subtle barriers of narrow gauge steel, with wide spans brushed to reduce reflectivity and a timber railing to establish a formalised viewing area.
- 27. Viewing Platform 3 may include a widened track area with Hand Rail.'
- 28. A Deer Fence shall be installed along any currently unfenced areas of the Legal Boundary with 40 Tunnel Beach Road.
- 29. A 1.8m impermeable wooden paling fence must be established around Viewpoints 1 and 2 between them and the boundary of 40 Tunnel Beach Road.
- 30. Landscape Planting to be established between the track and the boundary of 40 Tunnel Beach Road for the purpose of providing improved natural character and discouraging visitors from departing from the track and approaching private property.

Commented [B14]: This condition is uncertain. If this work it not already depicted on the plans then it should be so that intensions are clear and extent of obligation under these conditions is certain.

Commented [B15]: There should be a limitation on how many of these are authorised and specifications on materials to be used to manage effects.

Commented [B16]: Further consideration of material choice may be beneficial. E.g powercoated in recessive colours, or use timber.

Commented [B17]: Purpose of this is to address increased potential for track users to trespass. As alternative may be to fence along track alignment, but this may be undesirable from applicants point of view.

Commented [B18]: As above.

Traffic

- 31. Prior to the operation of the carpark:

- a) The existing parking in Tunnel Beach Road must be removed and replaced with a 2m wide landscaped area in front of a 2m wide footpath,
- b) 'no parking' lines must be installed on the carriageway.

Landscaping

32. Prior to the operation of the carpark:

- a) The landscaping set out in the landscaping plans identified in Condition 1 must be completed, except that Re-vegetation mix must replace Muehlenbeckia astonii with Hebe elliptica.
- b) the screening bund to the west of the car park constructed.
- c) All necessary irrigation for the landscaping must be installed.
- d) Additional Landscape Planting shall be proposed for the purpose of providing screening to the extent practicable of Viewpoint 1 and 2 from 40 Tunnel Beach Road.

Commented [BI9]: Landscaping Plans need to include both carpark and track alignment.

Commented [BI10]: This undermines certainty of conditions. Suggested alternative drafting:
"All landscaping shall be irrigated and irrigation shall occur for no less than 10 years following planting" – although this is also addressed in further landscaping conditions suggested by Submitter.

On-going conditions

33. The operation of the carpark must comply with the certified Tunnel Beach Car Park Operational Plan. The purpose of the plan is to:

- a) Include details on operational matters to manage and mitigate adverse effects arising from the operation of the Tunnel Beach Car Park and Track and ensure compliance with the conditions of this resource consent. It must include at least the following:
 - i) Number of rubbish/recycling bins and the frequency of their maintenance.
 - ii) Maintenance frequency for on-site ablution facilities.
 - iii) Monitoring and process for ensuring water tanks contain adequate water to serve the ablution facilities and provide irrigation for Landscape Planting.
 - iv) Monitoring and maintenance process for the onsite wastewater system.
 - v) General maintenance requirements to keep the entire carpark area and track in a clean and tidy condition, such as daily collection of litter etc.
 - vi) Ongoing maintenance requirements for Landscape Planting within the Carpark required by this consent.
 - vii) Contact details of person responsible for managing the opening hours of the carpark.

Commented [BI11]: It is noted that this plan is prepared for different purpose by Parks and Rec team. As noted in the document itself it is a 'living document' that will be reviewed to ensure it is efficient and effective.

As a result it should not be relied upon and key restrictions need to be enshrined in conditions.
Also appropriate for the conditions to set out the purpose of the Operational Plan so that the person certifying it knows what the point is. None of the objectives of the Plan relate to ensuring compliance with conditions of the resource consent. There is clear potential for disconnect – e.g. 3.2.2 which points to review of operational times.
Would be preferable if Management Plan was a creature of this consent. At very least existing plan should include objective to ensure compliance with these conditions.

34. The Tunnel Beach Car Park Operational Plan shall be reviewed at least 2-yearly following commencement of operations at the Carpark to ensure management actions are achieving compliance with these conditions. The outcome of the review shall be reported to rcmontoring@dcc.govt.nz and any proposed amendments certified as being appropriate to ensure compliance with the conditions of this consent.

35. The Hours of Operation are everyday between the following hours:

a) Carpark:

- i) Autumn/Winter 9am – 5pm
- ii) Spring/Summer 8am – 7pm

Commented [BI12]: Would like this reduced to 7pm so some evening respite is available.

b) Track:

- i) Autumn/Winter 9am – 4pm
- ii) Spring/Summer 8am – 6pm

Commented [BI13]: Purpose of this to avoid visitors starting the track at shortly before closure of the carpark which would mean people remain on the track and/or in the carpark after closing.

Outside of the above hours gates to the carpark must be locked and no vehicles may remain in the carpark. The Track shall be closed by locking a gate to the track entrance 1 hour prior to the closure of the carpark.

36. The landscaping implemented in accordance with the Landscape Management Plan must be maintained in Perpetuity. Any Plant that becomes diseased or dies must be replaced within the next growing season.

Commented [BI14]: Updated to refer to both carpark landscaping and track landscaping.

37. Landscaping implemented in accordance with the Landscape Management Plan shall be maintained in accordance with the Landscape Maintenance Plan prepared and certified pursuant to condition above.

Commented [BI15]: To ensure robust ongoing maintenance of the planting to ensure it establishes well and is looked after. Nothing in the current Operational Plan to address this.

38. Existing large Macrocarpa Trees located to the South of the Carpark shall be retained in perpetuity. In the event that any of these trees die or require removal they must be replaced within the next growing season with the same or similar species.

39. The landscaped bund to the west of the car park must be maintained in perpetuity.

40. The toilet block may include art panels developed through engagement with Mana Whenua.

41. No retail or mobile traders are permitted to operate within the carpark area and signage must be installed to this effect.

42. No buses are permitted to enter the carpark area and signage must be installed to this effect.

43. Any damage caused to the Right of Way during construction, operation or maintenance of the carpark and track shall be repaired as soon as practicable.

Advice Notes:

Earthworks

1. Neighbouring property owners should be advised of the proposed works at least seven days prior to the works commencing.
2. All measures (including dampening) should be undertaken to ensure that dust, resulting from the proposed earthworks, does not escape the property boundary.
3. Where there is a risk that sediment may enter a watercourse at any stage during the earthworks, it is advised that the Otago Regional Council be consulted before works commence, to determine if the discharge of sediment will enter any watercourse and what level of treatment and/or discharge permit, if any, may be required.

4. Stormwater is no permitted to create a nuisance to neighbouring properties.

Noise

5. All noise must comply with the relevant provisions of the 2GP.
6. All construction noise must comply with the following noise limits as per New Zealand Standard NZS 6803:1999

General

7. 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.
8. 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.
9. 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.
10. The lapse period specified above may be extended on application to the Council pursuant to section 125 of the Resource Management Act 1991.
11. This is a resource consent. Please contact the Council's Building Services Department, about the building consent requirements for the work.

