

**BEFORE THE COMMISSION
APPOINTED BY THE DUNEDIN CITY COUNCIL**

UNDER the Resource Management
Act 1991 (RMA)

IN THE MATTER Of an application by Dunedin
City Council for resource
consent being processed with
reference LUC-2020-631

BY **MICHAEL VARSANYI &
ANYA DURLING**
Submitter

SUBMISSIONS OF COUNSEL FOR THE SUBMITTER

DATED 4 MAY 2022



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SUBMISSIONS OF THE COUNSEL FOR THE SUBMITTER

INTRODUCTION

1. Anya Durling and Michael Varsanyi are opposed to the establishment of the proposed carpark and realignment of the Tunnel Beach track as applied for.
2. They consider that the proposal will lead to further increases in visitors and changes in the way that the Tunnel Beach Track is utilised that will lead to increased adverse effects on them. In particular, the rural residential character of their property and the surrounding Tunnel Beach Road environment.
3. Ms Durling has filed evidence that sets out the submitters experience of the area, their observations of the use of the Tunnel Beach Track and Carpark area and the issues they see arising as a result of the proposal.
4. Ms Durling also sets out some changes that she considers would be necessary to address the concerns that she and Mr Varsanyi have.
5. In these legal submissions I will address the following:
 - a. Ross Dowling Advice and the consequences.
 - b. Extent of section 4(3) exemption.
 - c. Scope of section 4(3) activities.
 - d. Key issues of concern to the Submitter.
 - e. Discussion of the evidence filed for the applicant.
 - f. Conditions.

ROSS DOWLING ADVICE AND THE CONSEQUENCES

6. Counsel agrees with the analysis in the Ross Dowling advice dated 22 April 2022 at paragraphs 27-42. It appears that the track was not legally established.
7. On this basis it is submitted that the works do not qualify under section 4(3). The proposal cannot be considered as an upgrade of the existing track because the existing track is not lawful and therefore cannot be said to 'exist'.
8. It would be inappropriate for the Department to benefit from a statutory indulgence that is reliant on previously unlawful activity.
9. Having said that, Appendix 1 of the Conservation Management Strategy does include 'Construction of new tracks as agreed in consultation with the community'. This does mean that construction of the proposed Tunnel Beach Track could potentially still take place pursuant to section 4(3) of the RMA. However, the Department would need to demonstrate that it had undertaken the necessary consultation with the community. Based on the evidence presented this consultation (under the relevant legislation) has not occurred, presumably because the Department has assumed that the works were able to be completed as an upgrade.

Do you have the evidence required to assess the proposal?

10. The unfortunate consequence of the Applicant's failure to correctly understand the legal basis of the existing track is the fact that all of the effects assessments are prefaced on the existing track and activity forming the 'existing environment'.
11. As everyone will be familiar with, the legal position with respect to the existing environment is that it only includes those activities that are lawful, either through existing resource consents or exercise of permitted activity rights.
12. Because the existing track appears to have never obtained necessary consent under the District Scheme it does not form part of the

existing environment. Nor can the use of it benefit from any existing use rights.

13. Therefore, the application and the evidence filed on behalf of the Applicants does not assess all the effects of the application. The effects assessment needed to assume that the existing track and activity did not exist.
14. It is submitted that this issue is fundamental and may be so fundamental that the application should be declined under section 104(6).

WHAT DOES SECTION 4(3) EXEMPT THE CROWN FROM?

15. The starting point under section 4 is that the Resource Management Act binds the Crown. The provisions that then follow provide some specific exemptions to this starting point.
16. Section 4(3) only exempts the Crown from its obligations under section 9(3).
17. Section 4(3) does not exempt the Crown from its other obligations under the Act, namely those under section 17, being the duty to avoid, remedy or mitigate adverse effects.
18. It is submitted that the Applicant still has an obligation to avoid, remedy and mitigate effects of activities that follow from works completed pursuant to section 4(3). As I set out above, the use of the track still requires consent and therefore it is appropriate to consider what conditions are necessary to manage effects of the use (even if the Commissioner determines that section 4(3) applies to the track).

SCOPE OF SECTION 4(3) ACTIVITIES

1. If the Commissioner determines that Section 4(3) does apply, it is submitted that the scope of the authorisation under section 4(3) is limited. It only relates to the works and activities carried out by the Crown. This can only be the actual construction works and subsequent maintenance etc by Crown staff or agents.

2. It does not extend to the subsequent activities that take place. Namely, the use of the track by the general public. It is not the Crown that will be wandering down the track on a sunny Sunday afternoon.
3. The use of the track by the public falls to be considered as a Sport and Recreation Activity, which requires a discretionary resource consent as set out by Ms Lindsay in the section 42A report.
4. This means that a full assessment of the all the effects of the activity is required pursuant to section 104. Consent may be granted or declined and if granted, conditions may be imposed.
5. it is submitted that regardless of the final position with respect to the track the effects that arise from the subsequent use are still part of the required assessment under section 104.
6. It is submitted that what is proposed is a bundle of activities. The carpark and the track are inextricably linked. This is supported by the fact that the Dunedin City Council and the Department of Conservation have jointly sought consent.
7. Therefore, the effects that are consequential to the establishment of the carpark and track realignment are squarely relevant.
8. The Courts have held that effects which flow from allowing activities for which consent is sought may also include those from other activities which may inevitably flow¹.
9. As discussed by Ms Durling it is the submitters view that the establishment of the carpark will encourage more visitors, visitors to stay for longer and for larger groups to come to the track. The effects that arise from this are relevant considerations regardless of how the track works are authorised.

KEY ISSUES OF CONCERN FOR THE SUBMITTERS

¹ *Auckland City Council v Auckland Regional Council* EnvC Auckland A101/97, 25 August 1997 at [7], cited in *Cayford v Waikato Regional Council*, at 9.

10. As Ms Durling sets out, She and her Partner Michael moved to Tunnel Beach Road to enjoy the quiet rural environment and to support the training of their high-performance horses.

11. Their key concern is that the effects of the proposal will undermine the quality of their rural residential environment. This is consistent with the expectations of the District Plan provisions. At 17.1 the Introduction to the Rural Residential Zone states:

... "non-compatible activities in rural residential zones are discouraged or carefully managed in recognition that these can adversely affect the liveability and amenity of the zones..."

12. The Objectives of the Rural Residential Zone seek to:

- a. Enable lifestyle farming activities, associated residential activities and provide for a limited range of compatible activities.
- b. Minimise the potential for conflict between activities within the Zone.
- c. Maintain the character and amenity of the Rural Residential Zone.

13. The relevant policies:

- a. Enable farming activity
- b. Only allow community and leisure large scale and sport and recreation where effects will be managed in line with the subsequent objectives (and the provisions of the relevant overlay zones).
- c. Only allow community and leisure – large scale and sport and recreation where adverse effects on the amenity of surrounding rural residential properties are avoided, or if avoidance is not possible adequately mitigated.

- d. Only allow community and leisure – large scale and sport and recreation where any adverse effects on rural residential character and amenity will be avoided, or if avoidance is not possible adequately mitigated.

14. It is submitted that these provisions demonstrate that the proposal can only go ahead if it can be demonstrated that effects will be appropriately managed. The policies indicate that 'management' occurs by prioritising avoidance of effects. The other effects management levers are only to be used where avoidance is not possible.
15. It is the submitters view that activities that have arisen under the existing configuration are generally acceptable², but any changes that will alter the scale and character of the activities will give rise to unacceptable effects.
16. Such an outcome would go against the objective and policy direction of the 2GP.

EVIDENCE PRESENTED FOR THE APPLICANT

17. I note that Mr Taylor's identification of relevant strategic provisions in the 2GP appears to be incomplete. In my view the provisions that relate to the natural character of the coastal environment are also relevant. As are the provisions relating to the character of the rural environment. The objective in this instance seeks to maintain or enhance the character and visual amenity of Dunedin's rural environment.³
18. The submitter disagrees with Mr Taylor's conclusions regarding Policy 17. 2.3. The proposed carpark will present as a large urban style development within the Rural Residential Zone. It will dominate the local the environment and result in noise generation more akin to

² By which they mean, for the most part. As Ms Durling sets out there have been some issues that have arisen.

³ Objective 2.4.6

an urban environment – bus noise, car doors closing frequently, large groups of people chatting etc.

19. The current 'informality' of the existing parking area is more consistent with the nature and character of the rural residential environment.
20. Whilst the submitter agrees that gains can be made with establishment of a carpark. What is proposed is simply too big.
21. The rural residential provisions direct consideration of the objectives and policies of any applicable overlay. In light of my submission above regarding the need for the track works to obtain consent and for the activity on it to be authorised it is submitted that the provisions relating the Natural Coastal Character Overlay are applicable. Mr Taylor does not discuss them in his evidence which I submit is an oversight.
22. I note that Ms Lindsay has assessed the Chapter 10 provisions which is helpful. Although, unfortunately it is tainted by the fact that it assumes the existing track and track activity is part of the existing environment. As set out in the Ross Dowling advice, with which I agree, the starting point for assessment is an environment that does not contain the existing track and associated activity.
23. The evidence of Mr Shanks, Mr Roberston and Mr Trumper all preface their effects assessment against an existing environment that includes the existing track activities. As I say above the Ross Dowling advice confirms this is not the correct approach. Therefore, none of this evidence has assessed the full scale of the activity that will arise pursuant to the consents sought. On this basis very little weight can be attributed to this evidence because it effectively assumes that many of the effects on rural character are already 'baked in'.
24. A good example of this is the analysis of Mr Shanks, where he predicts a 2dB increase in noise levels if visitor numbers were to increase by half. The potential adverse effect of this small increase in

noise level is quite different from a full assessment of the consequences of introducing a new type of 'non-rural' noise into an environment that is free from it.

25. I would go so far as to say that that there is no evidence before the Commission that assesses the full extent of effects against the correct existing environment.

26. Mr Shanks evidence focusses primarily on predicted noise levels. There does not appear to have been any ambient noise monitoring completed to understand background noise levels. While noise levels are a useful tool, they do not provide a complete picture. Noise that complies with or is less than District Plan noise standards will still be audible and so the analysis does need to be somewhat more nuanced. Particularly when the noise in question is new or of a different character than might be expected within the environment.

27. In this case the issue is not really about noise level. It is about whether it is reasonable to expect residents of a rural residential environment to live with noise akin to a lively outdoor dining area.

28. As discussed by Ms Durling noise currently experienced is relatively minimal and tends to coincide with particularly calm days. I.e. the days when rural residential amenity is at its best. These days are also likely to coincide with busier days on the track. A perfect storm if you will.

29. Mr Shanks evidence is also prefaced on there being no increase in visitors. As Ms Durling sets out that seems unlikely. The proposed carpark increases the carparking available, and is likely to alter the nature of visitor groups that attend the track. It is submitted that as night follows days, improving the accessibility of the parking and the track will facilitate an increase in visitor numbers. There will simply a wider range of people to which the track caters.

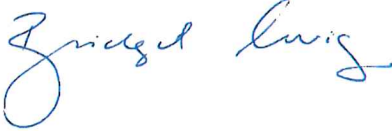
30. With respect to Mr Robertson's evidence, Ms Durling is not aware of him visiting her property. Given that it is submitted that the evidence

of Ms Durling should be preferred when considering potential for the proposed activity to be visible from their property.

31. It is also submitted that the evidence takes an overly narrow approach to the locations on the submitters property where effects may arise. The analysis is primarily focussed on visibility from the house. There is nothing the policy framework or the assessment criteria of the District Plan that suggest it is only visibility from a residential dwelling that is of consequence.
32. As Ms Durling describes in her evidence, she and Michael use their property widely and enjoy the outdoor environment that it provides. It is at the core of what they value about the property and the wider area. Therefore, the effects of increased visibility and intensity of activity on the track is an important consideration and is not well traversed in Mr Robertson's evidence.
33. It also renders some of the conclusions in the evidence incorrect. For example, at paragraph 35 Mr Robertson states that
"views of the proposed walking track are limited to track users and from vessels travelling along the south coast."
34. As the images attached to Ms Durling's evidence show that is incorrect. Further the conclusion means that adverse effects of the viewing areas etc on the submitters are not adequately assessed in the evidence.

COMMENTS ON CONDITIONS

35. Attached with these submissions is a copy of the condition proposed in the section 42A report with some further amendments that would serve to address the concerns raised by the Submitter.

Signed: 

B Irving

Counsel for Anya Durling and Michael Varsanyi

Date: 5 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-032 C |
| • 3336298-CA-011 C | • 3336298-CA-040 C |
| • 3336298-CA-012 C | • 3336298-CA-041 C |
| • 3336298-CA-015 C | • 3336298-CA-050 C |
| • 3336298-CA-016 C | • 3336298-SE-011 A |
| • 3336298-CA-017 C | • 3336298-AL-010 C |
| • 3336298-CA-020 C | • 3336298-AL-011 C |
| • 3336298-CA-021 C | • 3336298-AL-012 C |
| • 3336298-CA-022 C | • 3336298-AL-013 C |
| • 3336298-CA-030 C | • 3336298-AL-041 C |
| • 3336298-CA-031 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 07 B |
| • 501864 L1 03 B | • 501864 L1 08 B |
| • 501864 L1 04 B | • 501864 L1 09 B |
| • 501864 L1 05 B | • 501864 L1 10 B |
| • 501864 L1 06 B | • 501864 L1 11 B |

Commented [BI1]: 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 [B12]: Needs to cover both carpark and track planting.

Commented [B13]: 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 rcmonitoring@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.

