

TO: Independent Commissioner

FROM: Kirstyn Lindsay, Consultant Planner

DATE: 6 April 2022

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2020-631
30 and 32 TUNNEL BEACH ROAD
DUNEDIN CITY COUNCIL

INTRODUCTION

- [1] This report has been prepared on the basis of information available on 6 April 2022. The purpose of the report is to provide a framework for the Commissioner's consideration of the application and the Commissioner is not bound by any comments made within the report. The Commissioner is required to make a thorough assessment of the application using the statutory framework of the Resource Management Act 1991 (the Act) before reaching a decision.

SUMMARY OF RECOMMENDATION

- [2] For the reasons set out in this report, I consider that, subject to recommended conditions of consent the proposal will not have adverse effects on the environment which are more than minor and is consistent with the objectives and policies of the 2GP. As a result, I have concluded that the proposal should be granted, subject to conditions.

BACKGROUND

- [3] Dunedin City Council (DCC) originally sought resource consent to establish a new public car park at 30 Tunnel Beach Road. The proposed car park includes; general car parks, oversized vehicle parking, a bus/coach drop off area, motorbike and cycle parking and ablution facilities, a vendor trading area and associated amenities (bins, seating). The proposal also involves landscaping and earthworks for the development of the site. The application was limited notified to all adjacent neighbours and one submission was received in opposition to the application. The submission raised concerns regarding the omission of the Department of Conservation walking track from the application. The applicant has subsequently submitted a revised application which:

- includes a proposed modification to the Tunnel Beach Walkway beyond the car park; and
- introduced the Department of Conservation (DOC) as a joint applicant with Dunedin City Council for this resource consent application.
- The underlying carpark and facility layout remains generally unchanged in the revised application.

- [4] To assist with the clarity of the proposed changes, the applicant has made obvious the changes from the original application within the revised application by use of a different font colour.

DESCRIPTION OF ACTIVITY

- [5] The application states that Tunnel Beach is a significant tourism destination for Dunedin City as well as a local recreation site. The site is located on the coast, approximately eight minutes' drive from the Dunedin City centre. The walking track provides visitors and residents with access to a sought-after coastal landscape of high scenic value. The current car parking provision is situated on Tunnel Beach Road and was designed for 18 vehicles plus a single parking bay/bus park, excluding manoeuvring, at any one time. However, at peak times the car park is overcrowded and contributing to significant traffic congestion and health and safety issues along Tunnel Beach Road.
- [6] The joint applicant (DCC) seeks to remove the on-street parking from the road reserve and establish a new car park off the road comprising the following:
- Chip sealed finish;
 - 58 standard car parks;
 - 4 oversized car parks;
 - 2 accessible car parks;
 - 1 vendor trading/concession area;
 - A drop off point for tour buses;
 - A parking bay for motorbikes, bicycles and e-Bikes;
 - A two stall toilet/ablution block (which will include art panels developed through engagement with Mana Whenua); and
 - Associated amenities including seating, rubbish bins, information boards and DOC signage.
- [7] The proposed car park has been designed to meet demand for the next 20 years. The applicant advises that the carpark design will result in a terraced car park set into the existing slope. The car park will be set below the private accessway to the north by a landscaped area and an approximately 1m high retaining wall will partially screen the car park from the accessway reducing the effects of bulk on the surrounding development. Up to 3,920m³ of cut material and 2,730m³ fill is proposed.
- [8] The majority of this fill will be used at the southern extent of the car park and to form an earth bund to the west of the site to create an acoustic and visual mitigation barrier. All earthworks will be managed through appropriate erosion and sediment controls to mitigate the discharge of sediment downslope towards the ocean. The applicant advises that Archaeological Authority Protocols will be adhered to throughout construction works.
- [9] Currently, DOC use the site of the proposed car park to store a small stockpile of gravel which is used for track maintenance. DOC has agreed that this stockpile can and will be moved to the west of the proposed car park and will be screened from the western neighbours by a vegetated bund. This bund will be used to visually and acoustically screen the stockpile and wider car park area. A new gate will be installed to access the stockpile and sufficient manoeuvring room provided for a truck to access the stockpile.
- [10] Given the introduction of a large, impervious area into a coastal environment, the applicant proposes that extensive landscaping is proposed within the car park to soften

the form against the surrounding environment. Landscaping includes 2747m² of native planting.

- [11] Screening mixes comprise largely of native grass and small/medium shrub species will be planted around the car park, predominantly to the north on top of the retaining wall bordering the private accessway and to the east bordering a nearby residential dwelling. Throughout the car park itself and the batter slope to the south, amenity planting is proposed. These species are largely comprised of grass species suited to the coastal environment. This type of planting, particularly within the car park, are intended to maintain crucial sightlines for vehicles, pedestrians and passive surveillance. Along the western extent of the car park and the earth bund, a larger revegetation mix is proposed to provide meaningful visual and acoustic screening from the property at 40 Tunnel Beach Road.
- [12] An amenity area is proposed at the bottom of the car park area to the south of the area of works. This amenity area will be flat and will contain two mobility car parks flanked by a concession area to the west and toilet block to the east. Seating and rubbish bins will also be provided in this location, which will double as the new entrance to the Tunnel Beach walkway after future track realignment (proposed to be undertaken by DOC as a separate part of this revised application). The applicant advises that this location has been strategically chosen to contain the amenity facilities as it is the entrance/terminus point for the walkway, is flat and the walkways within the car park will lead to it. In addition, cycle and motorbike parking will be located opposite.
- [13] The primary structures include retaining walls and a new toilet building. Retaining walls have been designed throughout the car park to be less than 1m in height. The new toilet building will comprise of two accessible, self-contained toilets. This toilet block will be approximately 2.3m high, 5.45m wide and 5.15m long. The block will be constructed with materials sympathetic to the surrounding environment comprising of painted timber, corrugated steel and potentially decorative fretwork.
- [14] Four plastic tanks will be located adjacent to the toilet block within the landscaping adjoining the neighbouring site at 31 Tunnel Beach Road. Two of these tanks will be septic tanks servicing the toilet block and will be totally subterranean. The other two tanks will be for potable water and will measure 3m in height and be located within the 6m side yard. However, these tanks will be set approximately 1m into the ground resulting in only 2m of height above ground level. These tanks are required to be located in this location due to the lack of reticulated water meaning water tankers will require access to them to refill approximately once a week.
- [15] The applicant advises that parking on Tunnel Beach Road is currently creating adverse noise effects on the adjoining landowners. The proposed car park location and design was selected to minimise moving noise effects from where they currently occur. A noise assessment has been undertaken by Marshall Day which has found the carpark activity is anticipated to comply with the Dunedin Proposed 2GP noise requirements.
- [16] A new landscaped bund is proposed to the west of the car park which will provide additional acoustic screening for the neighbouring site to the west. In addition to acoustic screening, DCC proposes that the carpark operate in accordance with the attached Tunnel Beach Management Plan which will limit hours that the car park is open.
- [17] In order to discourage parking in the road reserve, no stopping signage along Tunnel Beach Road is proposed. In addition, information boards and DOC track signage is proposed.

- [18] In conjunction with the relocation of the carpark from the road reserve, the joint applicant (DOC) also proposes to modify the Tunnel Beach Walkway to provide a more appropriate grade for track users and establish additional viewing platforms to improve the user experience and reduce risk to users and the environment.
- [19] The applicant advises that due to the steep grade of the track and lack of viewing platform and other basic visitor facilities the current walking track and facilities do not provide an opportunity to adequately mitigate visitor risks, or protect the coastal herb field ecosystem present on the tunnel beach headland. The applicant states that the track is not adequate for the two visitor groups who use the site; being the day visitor and short stop traveller (Tracks and Outdoor visitor Structures SNZ HB 8630:2004).
- [20] In order to perform its functions under the Conservation Act 1987, DOC is seeking to:
- re-align the walking track to obtain a more suitable grade (<10 degrees) for the two identified visitor groups
 - establish new viewpoints;
 - install seating;
 - install interpretation panels; and
 - provide access to the coastal zone and viewshafts to multiple prominent features of cultural significance.
- [21] The modifications will establish multiple viewpoints where people can experience Tunnel Beach and the surrounding coastal zone and are intended to increase safety and protect the coastal herb field by reducing the number of people who venture all the way to the headland; the herb field and the significant fall hazard present there. The applicant advises that the design philosophy for the walking track was developed to focus on public health and safety (visitor risk), the environment, the public benefit of connection to New Zealand's natural, cultural and historic heritage by storytelling, and increased ease and availability of access to this iconic site and the surrounding coastal zone.
- [22] The track has been designed to follow the contour of the land, take advantage of existing farm tracks and flat areas, to sit into the landscape and remain out of sight of the adjacent dwellings. The track will be constructed progressively with earthworks and track formation occurring in parallel. The applicant states that this approach seeks to minimise the amount of area as open earthworks. Due to the small scale of the area subject to earthworks and the predominance of grass land around the open site, the applicant advises that silt fencing will not be required. The applicant seeks some flexibility to install the track within 30m of the location plotted on the plans to allow for minor modifications resulting from unexpected ground conditions.
- [23] The applicant states that the viewing areas are to utilise muted tones, cultural elements and storytelling material, create a flat gravelled area, and seating. The applicant advises that for the first two viewing areas, subtle barriers of narrow-gauge steel, with wide spans brushed to reduce reflectivity and a timber railing will be used to provide a formalised viewing area with a measure of safety and behaviour management. For the singular viewing area where there are significant falls adjacent, a timber or steel barrier with narrower spacings will be used to deliver the safety level required by SNZ HB 8630:2004 Tracks and outdoor visitor structures. The viewing areas are proposed to be located so that they do not have line of sight to or from any adjoining residential dwelling or other sensitive activity. I note that Viewing Point 3 is existing but will be improved.

- [24] The applicant advises that where the existing alignment of the track will no longer be utilised, the alignment will be remediated through a combination of gravel removal, scarification, sown grass and planting as identified in the plan. Planting will be used at areas of likely desire lines and where the new alignment meets the old alignment to discourage continued use. The applicant advises that the planting shown in the walkway drawings is also indicative, the final species and locations will be selected as part of DOC exercising its functions under the Conservation Act 1987 and in consultation with a DOC ecologist and mana whenua species expert and subject to approval of mana whenua.
- [25] The applicant advises that DOC has had an ongoing dialogue with the Ōtākou Runaka about this project since its inception and is working closely with Aukaha to weave mana whenua storytelling throughout the site. At a minimum, mana whenua storytelling will be installed at interpretation panels as part of the project. Storytelling material will also highlight the coastal herb field ecosystem and European heritage of the site.
- [26] In order for DOC to continue exercising its functions under the Conservation Act 1987, the applicants state that interventions are required to the existing track, particularly in the context of demand from up to 110,000 visits per year, and the associated requirements of the Otago Conservation Management Strategy (OCMS) to provide recreational opportunities to cater for this demand. Given the steep topography, the applicants advise that all but the very upper section of the site is hidden from adjoining dwellings or other public places.
- [27] A copy of the application, including plans is contained in Appendix 1 of this report.

SITE DESCRIPTION

- [28] The subject site is at 30 and 32 Tunnel Beach Road and is legally described as Lot 1 DP 314013, Pt Secs 145 Green Island Bush SD, Sec 163 Pt Lot 146 Green Island SD, Pt Secs 56 57 58 Ocean Beach SD (held in Record of Title 271321) and SEC 3 BLK XIII SO 4104 Dunedin & East Taieri SD, SEC 5 BLK XIII SO 21352 Dunedin & East Taieri SD, SEC 6 BLK XIII SO 21352 Dunedin & East Taieri SD (held in Record of Title 170433). The site comprises a total combined area of approximately 11.8ha and is classified as a Recreation Reserve under the Reserves Act 1977 intended to support the recreational activities occurring in the surrounding area.
- [29] The area of the site where the proposed car park is to be located is at the southern end of Tunnel Beach Road, south of Blackhead Road where the undulating paddocks and residential lifestyle blocks of the Rural Residential 1 zone meet the steep coastline. The proposed carpark site occupies the northern corner of number 30 Tunnel Beach Road, owned by DOC, and of which the existing tunnel beach walking track traverses.
- [30] The proposed car park site sits between existing rural lifestyle blocks on two sides, residential driveway access to the north west and the steep cliffs and ocean to the southeast. Its gradient is fairly flat to the north east but falls steeply away to the coast to the south. The site is covered predominantly by grass which is being overtaken with gorse in places and a slight valley is legible through the centre of the carpark site, directing stormwater downhill and over the cliffs below. There are several stands of mature Macrocarpa trees south east of the proposed carpark site which demarcate a former dwelling site.
- [31] The walking track area includes extensive coastal herb field ecosystems, and sites of significance to mana whenua. The site was the early coastal sea route used by mana whenua for centuries. The site has an uninterrupted view along the coast.

- [32] The walkway traverses 30 Tunnel Beach Road and crosses the northernmost corner of 32 Tunnel Beach Road. The land therefore has the same legal description as the carpark site plus that of the adjoining block to the south west. All the land concerned is a reserve under the Reserves Act 1977. The current walkway alignment is within an easement in favour of the Crown “subject to the purposes of the New Zealand Walkways Act 1975” (NZWA). The purpose of this Act is for the ability of all the community to have unrestricted use of any walkway. The NZWA provides for every member of the public to traverse the land without charge at any time and pass or repass on foot over any walkway.



Image 1: View of Walking track (Source Application)

- [33] Easement documents registered on the record of title of RT 271321 also record that in 1989 the Silverpeaks County Council declared the easement area a Walkway pursuant to s348 of the Local Government Act 1974, thus legally establishing a walkway without limitation on persons or consequentially, numbers of persons, for the unimpeded foot access to the countryside for the people of New Zealand. This easement enabled the use of the track prior to the subsequent purchase of the site by the Crown and its establishment as a Reserve. The existing walkway alignment is located within an easement that remains in favour of the Crown.

REASONS FOR APPLICATION

The Otago Conservation Management Strategy

- [34] The Otago Conservation Management Strategy (OCMS) was published by the Department of Conservation in 2016. Section 1.5 of the OCMS outlines national and regional conservation objectives be delivered by management of conservation resources within Otago over the next 10 years. Appendix 1 of the OCMS 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*". The table lists a range of areas of work/activities including:

- track upgrades and realignments to take better advantage of grades; and
- improvements to tracks to management actions to mitigate any environmental impact, health and safety concern or visitor risk

[35] Under the subheading "*Tracks, roads and car-parking areas for visitor purposes*", "*Tunnel Beach and the coast South of Dunedin*" is listed as a location.

[36] I consider that the OCMS is directly relevant to the site and activity covered by this application.

[37] **Section 4 of the Resource Management Act 1991**

[38] Section 4 of the RMA states that :

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.*

[39] The applicant advises that the components of the project which are the new carpark and the track upgrade are located on land that is subject to the Reserves Act. This Act is specified in Schedule 1 of the Conservation Act and the proposed work is considered to be consistent with the OCMS. Accordingly, the applicant submits that section 4 of the RMA is potentially applicable to the project.

[40] In this respect, DCC are the party intended to establish and operate the car park component independent of the Crown and, therefore, it is assessed that section 4(3) does not apply to the carpark proposal as it is an activity of DCC and not the Crown.

[41] However, the upgrade to the track is to be undertaken by DOC and the works, as discussed below in this report, are not considered to have a significant adverse effect beyond the boundary of the area of the track upgrade works. As such, I agree, on the face of it, with the applicant that section 4(3) is applicable to the track component of the project and section (9)(3) does not apply to the walking track component of the application as undertaken by DOC. However, I recognise that this approach has been challenged by a submitter and to this end the following report covers the eventuality that the Commissioner finds that section 4 of the RMA does not apply.

[42] **Dunedin City District Plans**

[43] Dunedin currently has two district plans, the 2006 Dunedin City District Plan (2006 District Plan) and the 2GP. The decisions on the 2GP were released on 7 November 2018 and the rules of the 2GP have legal effect. The appeal period of the 2GP closed on 19 December 2018 and rules that have not been appealed are deemed operative. An appeals version of the plan was released on 13 February 2019.

[44] Section 86F of Act states that:

- (1) A rule in a proposed plan must be treated as operative (and any previous rule as inoperative) if the time for making submissions or lodging appeals on the rule has expired and, in relation to the rule,—*

- (a) *no submissions in opposition have been made or appeals have been lodged; or*
- (b) *all submissions in opposition and appeals have been determined; or*
- (c) *all submissions in opposition have been withdrawn and all appeals withdrawn or dismissed.*

- [45] 30 Tunnel Beach Road (containing the carpark area and part of the existing walking track route) is located in the Rural Residential 1 zone of the 2GP and 32 Tunnel Beach Road is located in the Coastal Rural zone. There is an archaeological alert layer, High Natural Coastal Character (HNCC) and Outstanding Natural Feature (ONF) classification for Tunnel Beach applying to the southern half of 30 Tunnel Beach Road and all of 32 Tunnel Beach Road. The northern section where the car park is to be constructed is not located within the landscape overlays. Viewing platforms 2, 3 and 4 will be formed within the ONF. Viewing Platform 2 will be located within 32 Tunnel Beach Road.
- [46] There are no relevant 2GP land use activity and development activity rules under appeal for this proposal and these 2GP rules may be treated as operative pursuant to section 86F of the Act and the relevant operative Plan rules deemed inoperative.

2GP Rules

City Wide Activities

Earthworks Activities

- [47] The applicant has assessed that the proposed earthworks associated with the carpark formation meet the definition of earthworks- large scale and are assessed as a **restricted discretionary** activity pursuant to Rule 8A.7. It is noted that if the Section 4 exemption is not applied, the earthworks associated with the track realignment will also be assessed as earthworks- large scale and are assessed as a **restricted discretionary** activity pursuant to Rule 8A.7 due to the works occurring within and ONF and HNCC and the length of the track.

Temporary Activities

- [48] Rule 4.3.2.2 states that construction activity is a permitted activity subject to Rule 4.5.4.1.a.i which set out the construction noise limits as shown in the table below:

Table 1: Construction noise limits

i. Construction noise received in residential zones and dwellings in rural and rural residential zones, and buildings housing any noise sensitive activities in any other zone							
Time of Week	Time Period	Duration of work					
		1. Typical Duration (dBA)		2. Short-term Duration (dBA)		3. Long-term Duration (dBA)	
		LAeq	Lmax	LAeq	Lmax	LAeq	Lmax
Weekdays	1. 6.30am - 7.30am	60	75	65	75	55	75
	2. 7.30am - 6.00pm	75	90	80	95	70	85
	3. 6.00pm - 8.00pm	70	85	75	90	65	80
	4. 8.00pm - 6.30am	45	75	45	75	45	75
Saturdays	5. 7.30am - 6.00pm	75	90	80	95	70	85
	6. 6.00pm - 7.30am	45	75	45	75	45	75
Sundays and Public Holidays	7. 7.30am - 6.00pm	55	85	55	85	55	85
	8. 6.00pm - 7.30am	45	75	45	75	45	75

- [49] The applicant has not applied to breach these construction noise rules and, as such, the proposal is assessed as a **permitted** activity, subject to compliance with the standards above.

Land Use Activities

- [50] The car park proposal was originally assessed as being associated with a Community and Leisure – Large Scale as defined:

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.

- [51] This approach was in line with original Council advice to the applicant at the pre-application meeting. Community and Leisure – Large Scale are **discretionary** activities pursuant to Rule 17.3.3.16 and assessed under Rule 17.11.2.1.
- [52] However, in discussions with the applicant, it has come to light that with the introduction of the walking track to the application, the activity is more appropriately assessed as a Sport and Recreation activity defined as:

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:

- *sports fields*
- *basketball/tennis/netball/squash courts*
- *swimming pools*
- *athletics tracks*
- *bowling greens*
- *gyms*
- *golf courses*
- *shooting ranges, and*
- *outdoor recreational facilities, including walking and cycling facilities.*

[53] Sport and Recreation activities are also discretionary activities, pursuant to Rule 17.3.3.19, and also assessed under Rule 17.11.2.1. Given that the activity status and the assessment matters are the same for both Community and Leisure – Large Scale and Sport and Recreation and the effects of the car park activity does not differ regardless of which activity definition it falls under, and I consider that there is no challenge to the scope of the application and the assessment of the activity under 17.11.2.1 remains appropriate.

[54] I also note that if the Commissioner is of the opinion that Section 4 of the Act does not apply to the walking track upgrade, the track would also be assessed as a Sport and Recreation as a discretionary activity, pursuant to Rule 17.3.3.19, and assessed under Rule 17.11.2.1.

[55] The proposed food vendors/concession activity within the carpark area is assessed as a Commercial Activity and is assessed as a non-complying activity pursuant to Rule 17.3.3.24 and assessed under Rule 17.12.1.

Development Activities

[56] New buildings or structures less than or equal to 60m² footprint are a permitted activity pursuant to Rule 17.3.4.4 providing that these comply with the performance standards relating to fire fighting and are not located within a Significant Natural Landscape (SNL), and Natural Coastal Character (NCC). In this instance, the new buildings and structure associated with the carpark is not residential in nature and do not trigger the firefighting Rule 17.6.1 and 9.3.3. Furthermore, the buildings and structures associated with the carpark are not located within a landscape overlay and do not trigger Rule 17.6.X.

[57] The application states that the proposed potable water supply tanks within the carpark will be a maximum of 2m from the adjoining boundary and will not comply with the boundary setbacks for the underlying zone. I note that the water tanks are not considered to be a building and meet the definition of structure. Rule 17.6.9.1.a.v does not impose a boundary setback for all other “all other structures”. The location of the water tanks 2.0m from the boundary is assessed as a **permitted** activity.

[58] The application indicated that DOC signage will be installed. These are likely to be typical DOC signs in DOC livery and which contain track information. The subject signs are identified as directional signs being “Signs that identify the location of routes, entrances, or direction and/or distance to destinations. Rule 15.6.11.1.a provides for directional signs where these do not exceed 0.25m² as a permitted activity.

[59] For completeness, if the Commissioner is of the opinion that Section 4 of the Act does not apply to the walking track upgrade and associated structures, then the following applies:

[60] The viewing platforms associated seating and culverts meet the definition of structures: as follows:

The development activity that includes a structure, other than as provided for under the definition of "buildings", and is:

- *fixed permanently to the land; or*
- *if movable, greater than 10m² or 2m in height and stored or placed undisturbed on a site for more than 12 months.*

This definition only applies in relation to structures as an activity in the development activities category. It does not cover any other use of the word "structures", such as in relation to "utility structures", which should rely on the broader definition for structure (singular).

Shipping containers or other movable structures that do not meet this definition are included as part of outdoor storage activity.

The following activities are managed as sub-activities of structures:

- *fences*
- *freestanding signs; and*
- *retaining walls (for the purposes of rules that apply in heritage precincts only).*

Structures is an activity in the buildings and structures sub-category, which is in the development activities category.

[61] Rule 16.3.4.5 (Rural) states that new buildings or structures in an ONF or HNCC are non-complying activities. Non-complying activities are assessed under Rule 16.12.2.1 and 16.12.4.2.

[62] Rule 17.3.4.5 (Rural Residential 1) states that new buildings or structures in an ONF or HNCC are non-complying activities. Non-complying activities are assessed under Rule 17.12.2.1 and 17.12.4.2.

National Environmental Standards

[63] The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESC) came into effect on 1 January 2012. The National Environmental Standard applies to any piece of land on which an activity or industry described in the current edition of the Hazardous Activities and Industries List (HAIL) is being undertaken, has been undertaken or is more likely than not to have been undertaken. Activities on HAIL sites may need to comply with permitted activity conditions specified in the National Environmental Standard and/or might require resource consent.

[64] In this instance, the applicant has obtained a search of Council records which confirms that the site is not a HAIL site and the NESC is not triggered by this application.

[65] There are no other National Environmental Standards triggered by this proposal.

Overall Status

[66] Where an activity requires resource consent under more than one rule, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal. In this case, there is more than one rule involved. If the structures within the ONF and HNCC are able to be considered (ie not excluded by Section 4) these are to be assessed as non-complying activities. If unable to be considered, then the car park, earthworks and associated facilities are to be assessed as a discretionary activity overall. I note that the food vendor/concession activity is assessed as non-complying activity and consider the effects of this activity are discrete and this component of the proposal can be separated out.

Affected Parties

[67] The effects on the parties which have provided written approval to the application are disregarded. For completeness, the following parties provided written approval to the original application:

- Department of Conservation
- Russell Glen Millar and Linda Lee Millar of 35 Tunnel Beach Road and
- Gary John Pettigrew and Megan Alison Pettigrew of 31 Tunnel Beach Road.

[68] The Department of Conservation are now the joint applicant and their previous written approval is to be disregarded. In respect of the Millers, they have provided written approval to the revised application and all effects on these parties are to be disregarded. With regard to the Pettigrews, the application which they provided written approval to did not provide an assessment of the walking track modifications and in this regard, it is considered that the written approval for the previous application does not stand.

NOTIFICATION AND SUBMISSIONS

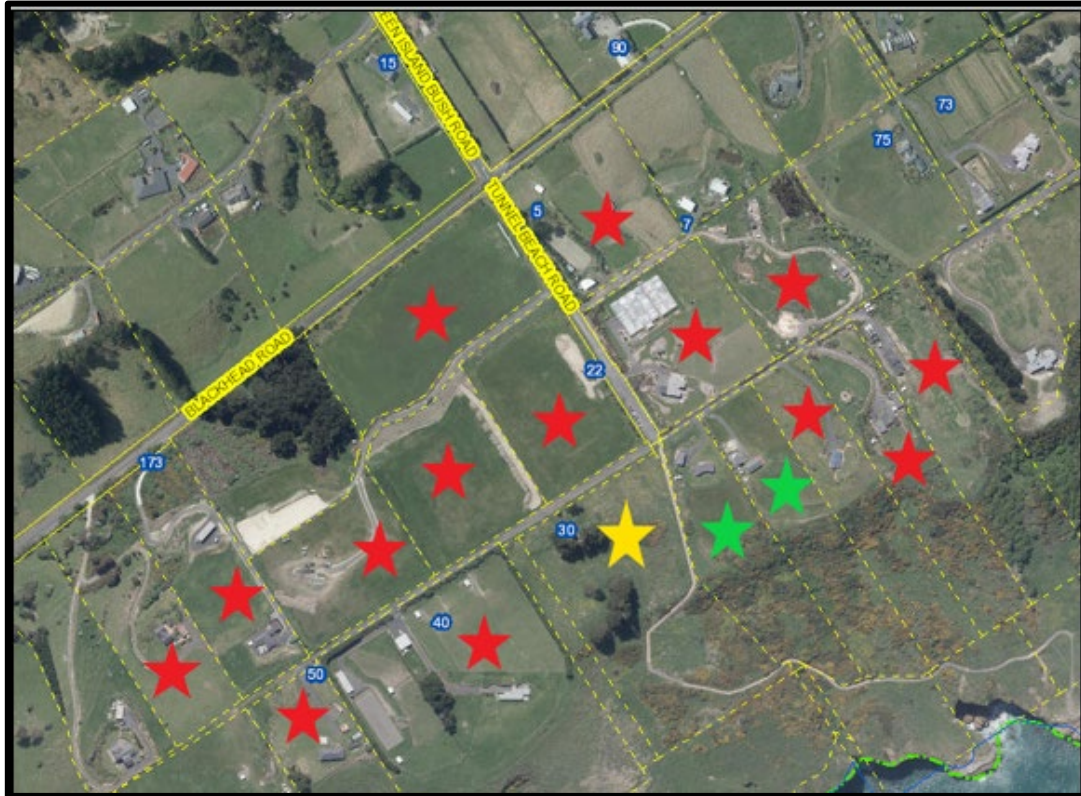
[69] Consideration of application under Sections 95A-F was given to the application and it was determined that the adverse effects of the proposal would be no more than minor, having regard to the surrounding environment and the mitigation measures proposed.

[70] It was therefore determined that the effects of the proposal would be restricted to a limited number of parties being the owners and occupiers of the properties listed in Table 2 below:

Table 2: Parties served notice of the application

Gary and Megan Pettigrew	31 Tunnel Beach Road
Kenneth Ruffman	39 Tunnel Beach Road
Phillip and Nicola Jackson	43 Tunnel Beach Road
Brendon and Andrea Lemm	47 Tunnel Beach Road
Martin Sellbom and Vanessa Beanland	25 Tunnel Beach Road
Keith Ellwood, Joshua Clark and Katie Ellwood	22 Tunnel Beach Road
Andrew Guyton	16 Tunnel Beach Road
Patrick and Sarah Hussey	14 Tunnel Beach Road
Timothy and Melissa Barton	173 Blackhead Road
Mark and Corina Hamilton	181 Blackhead Road

Emma Towers	50 Tunnel Beach Road
Michael Varsanyi and Anya Durling	40 Tunnel Beach Road
The owner and occupiers	15 Tunnel Beach Road
The owner and occupiers	5 Tunnel Beach Road
The owner and occupiers	6 Tunnel Beach Road



- ❖ Yellow star: Subject Site
- ❖ Green Star: APA received with the original application but served a copy of the revised application or provided APA.
- ❖ Red Star: Potentially affected parties to be served a copy of the revised application

[71] Two submissions were received by the close of the submission period. One submission was opposed and one was submission was neutral.

[72] The submissions are summarised in Table 3 below, and a full copy of the submissions is attached in Appendix 2.

Table 3: Summary of Submissions

Name of Submitter	Support/ Oppose	Summary of Submission	Wish to be heard?
Emma Towers	Neutral	States the application is supported subject to the following conditions: • Contractors must not impede access to the property at 50 Tunnel Beach Road and must not park vehicles in carriageway • The entrance must never be made smaller than it is now and large truck and trailers must be able to continue to access 50 Tunnel Beach Road from Tunnel Beach Road • All work within the carriageway must be of a high standard and not to the standard that Council is currently accepting from its roading contractors • Public must be contained and access to the surrounding landscape blocked by fencing so private property security is maintained • Only access to the Tunnel Beach Track is acceptable.	No
A Durling and M Varsanyi	Oppose	Oppose the updated application LUC-2020-631 as amended on 1 December 2021. Considers that the existing walking track was not lawfully established at its current usage Concerned that concern is that by providing on-site facilities, visitor numbers and the effects of them on the local residents will increase, rather than decrease. Consider that scaling up facilities to the extent proposed will enable the use of Tunnel Beach in a way that is out of scale with the reasonable expectation of the residents of area and that the effects of this have not been assessed.	Yes

		Believe that this application will significantly diminish the high rural amenity of the area. Considers that while the proposal addresses some traffic effects (by providing or parking off Tunnel Beach Road), it will create other new adverse traffic effects. The noise generated by all these vehicles and increased numbers of people are likely to cause a threat to livestock Considers that the proposed number of people on site and the noise generated by their activity is not consistent with the high level of rural amenity expected in this rural residential zone. Considers that the proposed bund design and landscape planting do not adequately mitigate potential noise effects. Objects to the realignment of the track to the south-west of its existing alignment crossing into RT 170433. That brings people closer to the submitters residence and provides a reason for people to stop and congregate that currently does not exist. Opposes any use of the carpark at night. Seek that if consent were to be granted that the application be modified to impose the following restrictions:: • Limiting car park to 25 cars on site. • Not making provision for bus parking on site. • Not making provision for food and beverage vendors on site. • All vehicles must be removed and gates locked outside of the following hours: ○ Autumn/Winter 9am – 5pm	
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		○ Spring/Summer 8am – 9pm • Requiring active crowd/public control measures such as signage, barriers and fencing to ensure that members of the public stay on the track. • Require that the realigned walking track not traverse onto RT 170433 (32 Tunnel Beach Road) as shown on design sheets 4 and 5; and that Viewing Point 2 be deleted.	
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ENVIRONMENTAL EFFECTS OF ALLOWING THE ACTIVITY

[73] Section 104(1)(a) of the Act requires that the Council have regard to any actual and potential effects on the environment of allowing the activity. 'Effect' is defined in Section 3 of the Act as including-

- a) *Any positive or adverse effect; and*
- b) *Any temporary or permanent effect; and*
- c) *Any past, present, or future effect; and*
- d) *Any cumulative effect which arises over time or in combination with other effects—*
regardless of the scale, intensity, duration or frequency of the effect, and also includes –
- e) *Any potential effect of high probability; and*
- f) *Any potential effect of low probability which has a high potential impact.*

Permitted Baseline

[74] An important consideration for the assessment of effects is the application of what is commonly referred to as the permitted baseline assessment. The purpose of the permitted baseline assessment is to identify the non-fanciful effects of permitted activities and those effects authorised by resource consent in order to quantify the degree of effect of the proposed activity. Effects within the permitted baseline can be disregarded in the effects assessment of the activity.

[75] In this instance, the permitted activity thresholds for the carpark are identified in the rule assessment above. Overall, it is considered that the permitted baseline is limited and provides little assistance to the car park component of the application.

[76] Should the Commissioner find that the modification of the walking track is exempt from section 9(3) of the RMA then in this regard the effects of the walkway modification are also to be disregarded.

Assessment Matters

[77] Consideration is required of the relevant assessment matters in the 2006 Operative District Plan and the Proposed 2GP. For completeness, it is noted that positive effects are disregarded for the purpose of a notification assessment.

Effects on Landscape Values and Natural Character

- [78] The applicant has submitted a landscape and visual assessment (LVA) and supplementary information to support the revised application. The assessment notes that while there are two landscape overlays near the carpark project site and within the same land parcel (the Outstanding Natural Feature and High Natural Coastal Character overlays for Tunnel Beach). The walking track is located within the Tunnel Beach Outstanding Nature Feature (ONF) as identified in the 2GP.

Car park

- [79] The applicant's assessment and supplementary information was reviewed by the Council's Consultant Landscape Architect. The Consultant Landscape Architect considers the effects on natural character as low/moderate at most due to the distance of the carpark site from the coast (the site is approximately 130m from the coastal zone identified in the 2GP), the low-moderate existing natural character, the low-moderate sensitivity of the site, and the inclusion of extensive native planting as part of the proposal. Furthermore, as noted by the LVA, the proposal will not change ephemeral coastal qualities associated with weather, nor will it alter the dramatic coastal landforms of the area (with the site itself not being unique in the area) or materially diminish existing expansive ocean views.
- [80] With regard to landscape character effects, the LVA sets out the impacts of the carpark proposal on the key characteristics identified in the existing environment description. Effects on rural amenity and associative values are assessed as low. The LVA notes that elements used in the proposal are common in the adjacent land uses, including earthworks, and that strategic use of vegetation, as well as the carpark being recessed below the existing road level, soften the hard surfacing of the proposal. The LVA states that vegetation will reduce open space but that it will integrate well with the wider landscape. The LVA also considers that the carpark will improve people's connection with, and ability to access, the coast. The Consultant Landscape Architect agrees with the above rural amenity and associative values assessment of effects.
- [81] In respect of visual effects, the LVA has considered the visibility of various components of the proposal, including the water tanks, toilet block, and screening vegetation, as well as effects on ocean views. Overall, visual effects have been assessed as either low or very low. The Consultant Landscape Architect concurs with the assessment of effects for this viewpoint. While her assessment of visual effects for some of the viewpoints differs slightly from that of the LVA, there is no consequential difference between those ratings in the LVA and the conclusions that she reached.
- [82] In respect of rural amenity, the LVA notes that the carpark design includes earthworks and several built form elements such as retaining walls, the toilet building and associated tanks and steps. There will be a large asphalt road surface broken up by gravel carparks. The LVA considers that these elements are common in the adjacent land uses with earthworks visible for building platforms and earth bunds. Houses and farm sheds are common, as are shelterbelts, fences and power pylons all contributing to a rural amenity landscape. Strategic use of vegetation surrounding the site and within the carpark and the fact that the carpark is recessed below existing road level will soften hard surfacing. Whilst vegetation will change the balance on the site to reduce the feeling of open space it is perceived amongst a wider context and will integrate well. The effects on rural amenity are considered low when considered in the context of what is already occurring within the area. The application indicates that DOC signage will be installed. These are likely to be typical DOC signs in DOC livery and which contain track information. Neither Landscape Architect raised concerns with the proposed signage.

- [83] Overall, the Consultant Landscape Architect considers that the LVA provides adequate detail about the carpark proposal and is transparent on how the assessment of effects have been reached. The Landscape Architect considers that effects from the car park proposal will be adequately managed and mitigated regarding rural amenity and the coastal character overlay zones. Open space will be maintained on balance, there will be a low density of buildings (only the toilet block), and no existing trees will be removed. The toilet is set back from the boundaries and the height of the building maintains the character of the area. The location of the building also helps in retaining views.
- [84] The two above-ground water tanks are not set back from the boundary but there are tanks on the adjacent property (31 Tunnel Beach Road) close to the boundary and the proposed tanks will not be visible from this property due to the existing fence within 31 Tunnel Beach Road, the orientation of the dwelling, existing bunds on the property, and the downward sloping ground where the tanks are located.
- [85] The Consultant Landscape Architect considers that the natural character of the site will be maintained. While hard surfacing will be introduced, the existing natural character is low-moderate, it is a significant distance from the coast, and only exotic species are present within the proposal area. The proposal will also introduce a large area of native plant species, which will mitigate effects and result in positive biodiversity. Furthermore, the carpark will enhance access to the coast. The outcomes identified in the LVA will ensure that the impacts on natural character, landscape character (including rural amenity) and visual attributes will be no more than minor.

Walking track modification

- [86] The walking track is located within the Tunnel Beach Outstanding Nature Feature (ONF) and HNCC in the 2GP.
- [87] A Landscape Architect Memorandum dated 11 October 2021 has been submitted in support of the track modification which concludes that proposed realignment is proposed in a manner that will not compromise the identified landscape values of the Tunnel Beach area. The application notes that apart from the area immediately connected to the carpark, the track realignment will be completed in areas that are not visible to adjoining sensitive activities (residential dwellings) due to the steep topography of the site. The application notes particularly that the new viewing platforms are screened by topography from line of sight to and from adjoining dwellings. Photographs are included in the application to support this assessment.
- [88] The Landscape Architect Memorandum has been reviewed by the Council's Consultant Landscape Architect who notes the following design measures have been included in the walkway design:
- a more suitable track grade,
 - establishing viewing areas,
 - viewpoint locations situated out of the line of sight of adjoining dwellings and other sensitive activities, installing interpretation panels,
 - providing access to the coastal zone and viewshafts to multiple prominent features of cultural significance,
 - inclusion of cultural elements,

- track alignment which follows the contour of the land,
- taking advantage of existing farm tracks,
- utilising muted tones for materials, and reduced reflectivity of steel safety barriers.

- [89] The memorandum concludes that the walking track proposal will avoid significant effects on existing landscape character and may result in some positive effects.
- [90] Overall, the Consultant Landscape Architect considers that the mitigation measures outlined in the walkway memorandum are appropriate. The Consultant Landscape Architect also notes the memorandum for the walking track provides a high-level desktop analysis of the track proposal against relevant policies and objectives set out in both the operative District Plan and the 2GP where they relate to the management of visual, natural character and landscape aspects of the coast environment and associated overlays. The Consultant Landscape Architect's assessment is adopted for the purposes of this report and it is considered that the effects of the modified walking track will be no more than minor.

Effects on Rural Residential Amenity

- [91] The 2GP identifies that Rural Residential zones seek to provide for people who want to live in a rural setting and undertake rural activities at a small scale, such as the keeping of livestock. Rural residential zones allow for residential activity at a scale consistent with lifestyle or hobby farming, along with those rural and community activities that are consistent with the level of amenity expected by people living in these areas. 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. The 2GP considers that Rural Residential Zones have their own level of rural or semi-rural character and amenity and land use activities and development that detract from this character and amenity should be avoided.
- [92] Policy 17.2.2.5 states that community and leisure - large scale, and sport and recreation activities should only be allowed where any adverse effects on the amenity of surrounding rural residential properties are avoided or, if avoidance is not practicable, adequately mitigated.
- [93] The submission by A Durling and M Varsanyi notes that Tunnel Beach is an important attraction for Dunedin City and acknowledges that the purpose of this application is to better manage people who visit Tunnel Beach. The submitter supports that goal in principle but raises concerns that by providing on-site facilities, visitor numbers and the effects of these on the local residents will increase, rather than decrease. The submitters consider currently that visitor numbers are, to a degree, self-limiting by the limited parking, the gradient of the track, and lack of facilities currently provided.
- [94] The submitters consider the area to be of high rural-residential amenity and is surrounded by lifestyle properties. Landowners in this area enjoy a rural lifestyle, beautiful coastal views, privacy, and the natural rugged landscape. They consider those who live here have made a conscious decision to move away from an urban environment and away from traffic and urban related noise.
- [95] I note that the Tunnel Beach walk (1hr return) is a popular destination and DOC has reported a rapid growth in visitor numbers from around 38,000 visits for the year ending 30 June 2014 up to 110,000 visits for the year ending 30 June 2019. Hourly visitor count data provided to Marshall Day to assist with the acoustic assessment extrapolates the flowing peak hour activities are assumed:

- Up to 250 visitors within a daytime 'peak-hour' comprised of 3 buses (100 visitors) and 60 private vehicles (150 people).
- Up to 100 visitors within an evening 'peak-hour' comprised of 40 private vehicles (100 people)

[96] I note the visitor growth between 2014 to 2019 has occurred without any improvement works and it is this growth which has led to this application. The 110,000 visitors and associated traffic and noise currently associated with this usage also forms part of the receiving environment and will also contribute to the existing Rural Residential Amenity and Natural Character.

[97] Should consent be granted, the submitters, A Durling and M Varsanyi, seek mitigation regarding the restriction of the carpark numbers. I consider that limiting the carpark numbers to 25 is unlikely to resolve the current traffic congestion matter and the overflow parking issue that currently exists will continue to create adverse amenity effects within the wider area. I do not support the limiting of the carpark numbers and consider based on the existing visitor growth, the proposed carpark number to be appropriate.

[98] In terms of the submission point regarding not providing for bus parking on site, I note that evidence submitted with the application shows that buses are currently accessing the site now. From the bullet points at Paragraph 93 above, three buses can accommodate 100 visitors while it takes 60 private vehicles to move 150 people. I consider that the provision of bus parking has the potential to reduce private motor vehicle movements to and from the site overall and, therefore, may have a correlating effect on traffic reduction.

[99] In terms of the provision of mobile food and beverage vendors on site., I agree with the submitters that this type of activity is not in keeping with the amenity and character of the rural residential zone. I consider that the food vendor/concession activity component is not provided for in the zone or in keeping with the values identified for the Rural Resource Area. This activity may attract additional visitors to the site, encourage visitors to extend their stay and detract from the natural environment to the extent that these effects are more than minor. I consider that this is an incompatible activity and, therefore, I consider consent for this aspect of the proposal should be refused

[100] That said, from my understanding of the mobile licencing, vendors are able to trade on any public road which has not been excluded under the Trading in Public Places Bylaw 2020

[101] The submitters seek that all vehicles must be removed and gates locked outside of the following hours:

- Spring/Summer 8am – 9pm
- Autumn/Winter 9am – 5pm

[102] I note that the applicant has included these hours in the Draft Management Plan submitted with the application and in this regard, I consider these can be included as a condition of consent, thereby resolving this submission point.

[103] In terms of the walking track upgrade, both submitters seek active crowd/public control measures such as barriers and fencing to ensure that members of the public stay on the track. A Durling and M Varsanyi also require instructional signage to ensure that public are aware of the public private boundary. Should this be a matter that the Commissioner can consider (ie Section 4 is not deemed to apply), I recommend that the applicant

consider some type of demarcation to restrict members of the public from entering into private land.

- [104] A Durling and M Varsanyi also seek that the realigned walking track does not traverse onto RT 170433 (32 Tunnel Beach Road) as shown on design sheets 4 and 5 of the application; and that Viewing Point 2 be deleted. If this submission point is able to be considered by the Commissioner, I note that Viewing Point 2 is set approximately 180m from the dwelling on 40 Tunnel Beach Road and approximately 50m from the shared boundary. The application confirms that none of the viewing areas have line of sight to any adjoining residential dwellings or other sensitive activities. In this regard, I consider that there is adequate separation between the viewing platform and the submitters' site.
- [105] I note the track does pass close to the boundary of 40 Tunnel Beach. Should this be a matter that the Commissioner can consider, it may be appropriate for the applicant to consider if fencing of barriers at this boundary can be introduced without adversely affecting the values set out for the landscape overlays.

Traffic Effects

- [106] The applicant assesses that the parking within Tunnel Beach Road is not actively managed and generates adverse traffic, amenity and public health implications. The application was reviewed by the Council's Consultant Traffic Engineer who notes that overall, he concurs with the applicant's conclusion that the proposed car park will improve the access and safety for people accessing the Tunnel Beach Track and on Tunnel Beach Road. It is noted that other than removal of the existing parking, the proposal does not involve improved turning at the end of Tunnel Beach Road. However, tunnel beach visitor traffic will no longer be required to turn at the end of Tunnel Beach Road as it will now enter and exit through the proposed carpark.
- [107] The Traffic Engineer considers that based on the information in the application that people will park up to 200m away, and taking into account the existing 18 angled spaces, the engineer considers that this would indicate a typical peak demand for at least 45 parking spaces and the provision of 58 spaces would appear reasonable to meet demand and largely eliminate the potential for roadside parking to arise.
- [108] The Tunnel Beach Car Park Management Plan advises that the maintenance of the carpark and facilities within the carpark area will fall to DCC Parks and Recreation Department. The engineer is of the view that the transportation-related effects of the proposal will be less than minor overall. Accordingly, he does not consider that there are any transportation reasons why the application could not be recommended for approval. The Traffic Engineer's assessment is adopted for the purposes of this report.
- [109] For completeness it is noted that freedom camping within Dunedin City's Road Reserve is managed by the Camping Control Bylaw 2020. Furthermore, the proposed carpark is designed to address the existing adverse effects arising from the presence of the lawfully established walking track and the modifications to the walking track are not expected to impact on the proposed carpark.

Effects on Biodiversity

- [110] The proposal has been assessed by the Council's (former) Biodiversity Officer who raises no concerns with the proposal overall, except that he recommends the following change to the species lists:
- Re-vegetation mix – replace *Muehlenbeckia astonii* with *Hebe elliptica*.

- [111] The officer advises that *Muehlenbeckia astonii* is not native to the Dunedin area so is acceptable in amenity planting (e.g. the screening mix) but the revegetation mix should be stocked with plants native to the area and appropriate for the site. The applicant has offered this change. The Biodiversity Officer's assessment is adopted for the purposes of this report and, subject to the offered condition of consent by the applicant, it is assessed that the effects of the proposal on biodiversity are less than minor.
- [112] For completeness it is noted that part of the rationale for the modifications of the walking track is to protect the herb lands located on the headland. It is also noted that the planting (species and locations) associated with the walkway will be selected as part of DOC exercising its functions under the Conservation Act 1987 and in consultation with a DOC ecologist and mana whenua species expert and subject to approval of mana whenua and in this regard, it is considered that the ecology and biodiversity will not be adversely affected by the walking track modification to any degree which could be considered to be minor or more than minor.

Effects on Cultural Values

- [113] The whole of the Otago coastline / Te Tai-o-Ārai-te-uru of Te Waipounamu and the wider landscape in the area of Tunnel Beach has many significant sites/landscapes of past activities and traditions of mana whenua. Aukaha advise that *"the coastal waters and processes were integral to the way of life our tupuna enjoyed. Our belief system binds and identifies kinships across Moananui-a-Kiwa, reinforces the centrality of Takaroa to those beliefs and influences the way we relate to and manage our marine resources now and in the future. The marine environment is a moving force, a reminder of the power of Takaroa. The interconnection of the land and sea environments is consistent with the Ki Uta Ki Tai philosophy. The coastal waters are a receiving environment for freshwater, gravels and sediment from the terrestrial landscape (ki uta) which are important to maintain natural process and the domain of Takaroa."*
- [114] A part of the design process, the applicant has consulted with Aukaha Limited on behalf of Te Rūnanga o Ōtākou. Key cultural issues identified are:
- Management and mitigation measures to be considered for archaeological/cultural heritage values in the surrounding area
 - Management and mitigation measures to be taken on sediment run-off during any earthworks.
 - Management of excess excavated material.
 - Management and mitigation measures to be taken on effects to the vegetation in the proposed area of works
 - Management and mitigation measures to be taken regarding the visual and environmental impact of the cultural landscape
 - Te Rūnanga o Ōtākou request the preparation and adoption of a robust Environmental and Construction and Operation plan to be adhered to, to mitigate adverse construction and operation impacts.
- [115] Aukaha recommend that the Heritage New Zealand Pouhere Taonga Archaeological Discovery Protocol should be adhered to in undertaking earthworks and that any planting of the Tunnel Beach Track should be native plants appropriate for the area and be tended until self-sustaining. This protocol has been offered by the applicant as a condition of consent.

- [116] Information contained with the application states that Te Rūnanga o Ōtākou cautiously supports the proposed car park and Tunnel Beach track upgrade/re-alignment at the design stage but had not provided written approval at the time of notification. Te Rūnanga o Ōtākou were served a copy of the application and invited to submit but no submission was received. Overall, it appears that the matters raised by Te Rūnanga o Ōtākou during the consultation process have been largely addressed within the application, such that wider cultural effects have been mitigated to the extent that these are acceptable.

Earthworks Effects

Car Park area

- [117] The proposed earthworks involving up to 3,920m³ of cut and 2,730m³ fill. Maximum change in ground level is 3m (fill) although only 5% of the earthworks overall will exceed a change of level over 2m and this will be at the concession area. The majority of this fill will be used at the southern extent of the car park and to form an earth bund to the west of the site to create an acoustic and visual mitigation barrier.
- [118] Much of the cut material will be re-used on site resulting in 1190m³ of material to be removed from the site. The earthworked areas include:
- Car park area (including footpaths and concession area etc – also includes the landscaped areas located within) – 3695m²
 - Landscaped areas around the carpark (excluding the western bund) – 1725m²
 - Western bund – 380m²
- [119] The subject site has a predominant slope value of less than 12 degrees. The applicant states that: *“where possible, the design has sought to utilise the existing slope of the land and to achieve an equilibrium between cut and fill while providing for compliant car park grades and manoeuvring areas. As a result, the design has resulted in a form of terraced car park set into the slope.”*
- [120] The applicant advises that all earthworks within the carpark area will be managed through appropriate erosion and sediment controls to mitigate the discharge of sediment and offers a Construction Management Plan to manage effects generated by the earthworks. At completion of the earthworks, the site will be landscaped and made erosion resistant.
- [121] The earthworks are not located near the National Grid, are setback from network utilities, does not involve plantation forestry, does not involve the removal of high class soils and no scheduled trees are located on the site. While the site is not identified as an archaeological site, there is an Archaeological Alert Layer overlay over part of the land. However, this does not include the proposed carpark location.
- [122] The Heritage New Zealand Pouhere Taonga Act 2014 imposes a duty on any party to take certain actions if archaeological discovery is made during excavations. In this regard, the adverse effects associated with any potential disturbance of Archaeology will be managed such that these are no more than minor. The applicant states that in consideration of the nearby Wāhi Tupuna mapped area and feedback from Aukaha, Heritage New Zealand’s Archaeological Authority Protocols will be adhered to throughout construction works.
- [123] The application has been assessed by the Council’s Consultant Engineer who notes the following hazards identified for the site on the Hazard Register:

- Hazard ID 10560 : Land Stability (Land Movement)
- Hazard ID 11965 : Land Stability
- Hazard ID 11504 : Land Stability – Land Movement (Landslip ID=42)

[124] The engineer notes the underlying geology consists of third main eruptive phase volcanics and caversham sandstone towards the sea. He notes that the proposed earthworks consist of levelling for the carpark and advises that there are no significant slopes near the car park. The slope instability hazards are associated with soils further towards the coast and not at the carpark location. The slope to the south is unlikely to be affected by the proposed works provided there is adequate stormwater control. The engineer notes overall that there are no general potential instabilities of concern and the proposal will not create or exacerbate instabilities on this or adjacent properties.

[125] Overall, the engineer recommends that the earthworks for the carpark area not be declined on the ground of known natural hazards. The engineer's assessment is adopted for the purposes of this report and it is assessed that the effects of the earthworks can be managed as identified in the application, such that the effects of these will be no more than minor on the wider environment.

Walking track modification

[126] Should the Commissioner find that the section 4 of the RMA does not apply, then the earthworks required for the track will occur within an HNCC and ONF overlays and constitute large scale earthworks under the 2GP by virtue of the length of the track. The applicant advises that the track will be constructed progressively with earthwork and track formation occurring in parallel and considers that this will result in minimising the amount of area as open earthworks. Disused sections of the existing track will be remediated through a combination of gravel removal, scarification, sown grass and planting as identified in the plan. Planting will be used at areas of likely desire lines and where the new alignment meets the old alignment to discourage continued access and use. The planting lists identified in the plans are not final. The final species list will appropriate endemic species identified by a DOC ecologist and mana whenua species expert and subject to approval of mana whenua.

[127] Due to the confined areas for the earthworks area and predominance of grass land around the open site, the applicant considers that silt fencing will not be required.

[128] Given the discrete nature of the earthworks, and remediation proposed, should the Commissioner be of a mind to consider the effects of these earthworks, it is considered that any adverse effects arising from these will be insignificant overall.

Noise Effects

[129] The applicant has provided an assessment from Marshall Day regarding the levels of noise anticipated from the activity. Noise was a primary concern raised by the submitters, A Durling and M Varsanyi. While the submitter appears to accept that the District Plan zone noise limits will not be breached by the carpark or track activities, the submitter continues to hold concerns regarding the effects noise will have on natural character and rural amenity namely, quietness. The submitters also raise concerns about sudden noise posing a threat to livestock namely high performance sports horses. No technical noise evidence has been presented from the submitter in support of their submission.

Construction Noise Effects

- [130] The noise limits for construction noise are set out at Rule 4.5.4.1.a.i of the 2GP. The applicant has not applied to breach these construction noise rules and, it is assessed that the construction noise effects are anticipated by the 2GP.

Car park

- [131] The assessment from Marshall Day sets out the levels of noise which will occur during the operation of the car park. Marshall Day considers that the Predicted Activity Noise levels will be as shown in Table 3 below:

Table 3: Predicted Car Park Activity Noise levels

Assessment Location	Daytime (0700 – 1900 hours)		Evening (1900 – 2200 hours)	
	Noise level dB LAeq (15 min)	2GP Noise limit dB LAeq (15 min)	Noise level dB LAeq (15 min)	2GP Noise limit dB LAeq (15 min)
1. 25 Tunnel Beach Road, notional boundary of dwelling	41	55	34	50
2. 31 Tunnel Beach Road, notional boundary (in this case, the site boundary) of dwelling;	54	55	49	50
3. 40 Tunnel Beach Road, notional boundary of dwelling;	31	55	< 25	50
4. 40 Tunnel Beach Road, site boundary (paddock contains horses).	33	-	< 25	-

- [132] As such, the predicted carpark noise levels at the nearest dwelling are 54 dB LAeq (15 min) during peak daytime activity, which includes the arrival and departure of a bus. During the evening period, from 1900 to 2200 hours, predicted noise levels are up to 49 dB LAeq (15 min) at the nearest dwelling.
- [133] Marshall Day assess that the District Plan permitted activity noise limits will be achieved at all noise-sensitive assessment locations during peak carpark activity and will also achieve WHO and NZS6802:2008 guideline values for reasonable protection of health and amenity in residential areas. Marshall Day note in particular, concerns raised regarding the horses in the adjacent paddocks to the west of the carpark (at the site boundary of 40 Tunnel Beach Road).
- [134] The acoustic assessment notes that there is very little published guidance on the effects of vehicle noise on animals. However, given the presence of the existing carpark area, which is approximately 180 m from the horse paddock, represented by the site boundary of 40 Tunnel Beach Road Marshall Day expect the horses to be already familiar with traffic noise during the daytime and evening and do not anticipate any adverse effects as a result. The acoustic report notes that noise levels of up to 33 dB LAeq (15 min) and 47 dB L_{Amax} are anticipated at this location. Marshall Day comment that horses are not likely to show any response to vehicle noise levels of this magnitude and does not anticipate any adverse effects as a result.

- [135] The application has also been assessed by the Council's Environmental Health Officer who confirms that the noise levels identified in the Marshall Day report confirm that the predicted noise levels comply with the District Plan permitted activity noise limits and achieve WHO and NZS6802:2008 guideline values for reasonable protection of health and amenity in residential areas. While there is no rule breach per se, the Officer does advise the applicant to consider placing an acoustic barrier between the 31 Tunnel Beach Road and the subject site due to the minor separation distance to the dwelling on that site. The occupiers of 31 Tunnel Beach Road provided written approval to the original application and did not make a submission on the revised application.
- [136] The 2GP noise controls set out the levels considered to be reasonable within the Rural Residential 1 zone and the applicant does not seek to breach these. In particular, I note that the predicated noise levels at the notional boundary of 40 Tunnel Beach Road are 31 during the daytime and 25 during the night time.
- [137] Marshall Day's assessment is adopted for the purposes of the carpark noise assessment and, given that assessment and the permitted baseline for noise set out in the 2GP, I consider that the effects on noise to be more than reasonable at the notional boundary.

Walking track modification

- [138] The applicant submits that noise generated by people using the walking track is part of the existing environment. The realignment of the track will result in an alignment that is no closer to the nearest dwelling at 40 Tunnel Beach Road. Additionally, the residents at 40 Tunnel Beach Road have advised the applicant of the sensitivity of their horses to noise occurring along the western boundary of their property. The applicant advises that the track realignment maintains a separation from this boundary of at least 90m except for its closest point of approximately 80m which is on the existing track alignment.
- [139] Rural Residential Zone noise limits are set at 55 dB LAeq (15 min) between 7am-7pm and 50 dB LAeq (15 min) after 7pm. Under the 2GP, the noise level is to be measured at notional boundary of noise sensitive activities in the Rural Residential Zone. The 2GP identifies residential activities as the only relevant noise sensitive activity for this environment. Therefore, the noise limits apply at the closest residential dwelling (40 Tunnel Beach Road). The applicant submits that 50 dB LAeq is often described as the noise generated in conversation or within an office environment. Given that the noise from the walkway is from conversation and that the track will remain no closer than 120m from the nearest dwelling, I agree with the applicant that it is very unlikely that this noise level will be exceeded.
- [140] Overall, it is assessed that the adverse effects associated with potential noise generated from the realigned track, when taking the existing environment into consideration, fall well below the noise sensitive activities relevant to noise assessment and the limits of the Rural Residential Zone.

Positive Effects

- [141] The current car parking provision serving the Tunnel Beach Walking Track is situated within DCC managed road reserve within Tunnel Beach Road. In practice, the parking area accommodates 18 small vehicles plus an area occasionally used as a bus park. At peak times the car park area is overcrowded and overflows along the road verge. The applicant acknowledges that this is contributing to significant traffic congestion and health and safety issues along Tunnel Beach Road. The application seeks to resolve this congestion issue by removing on street parking from the road reserve and establishing a new car park

off road. In addition to the parking congestion, the lack of toilets and rubbish receptacles has led to potential public health issues.

- [142] The proposed car park will include, general car parks, oversized vehicle parking, a bus/coach drop off, motorbike and cycle parking and ablution facilities, a vendor trading area and associated amenities (bins, seating), which is considered to be a direct response to manage the nuisance issues currently identified at the subject site.
- [143] In conjunction with the relocation of the carpark from the Road Reserve, DOC also proposes to modify the Tunnel Beach Walkway to provide a more appropriate grade for track users and establish additional viewing platforms to improve the user experience and reduce risk to users and the environment.
- [144] Overall, given the uncontrolled use of the area currently leading to traffic congestion, public defecation and rubbish deposition, the application seeks to resolve these matters. The improved track will also enable a wider range of the public to access the track.

Summary: Effects on the Environment

Overall, the proposed carpark activity is assessed as having no more than minor adverse effects on the wider environment and the effects of the walking track modification and associated structures have been assessed as insignificant.

OFFSETTING OR COMPENSATION MEASURES ASSESSMENT

- [145] Section 104(1)(ab) of the Resource Management Act 1991 requires that the Council have regard to any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
- [146] In this case, no offsetting or compensation measures have been proposed or agreed to by the applicant, nor has the need for such measures been identified.

OBJECTIVES AND POLICIES ASSESSMENT

Assessment of Objectives and Policies of the District Plan (Section 104(1)(b)(vi))

- [147] In accordance with Section 104(1)(b) of the Resource Management Act 1991, the objectives and policies of the proposed 2GP were taken into account in assessing the application.

Proposed 2GP

- [148] The objectives and policies of the 2GP must be considered alongside the objectives and policies of the current district plan. The following 2GP objectives and policies are considered to be relevant to this application:

Public Amenities

Objective	Supporting Policies	Commentary
Objective 3.2.1 Public amenities contribute positively to community well-being and streetscape amenity, while: avoiding or, if avoidance is not practicable, adequately mitigating any adverse effects on the amenity of surrounding sites; and meeting the relevant objectives and policies for any overlay zone, scheduled site, or mapped area in which they are located.	Policy 3.2.1.2 Require public amenities to be designed and located to avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the amenity of surrounding sites and streetscape amenity.	The public amenities have been designed and located to adequately mitigate adverse effects on the amenity of surrounding sites and streetscape amenity. Screening between the carpark area and 40 Tunnel Beach Road will be installed and the viewing Platform 2 will not have a direct sightline to the dwelling on that site. The proposal is assessed as consistent with this objective and policies.
	Policy 3.2.1.3 Only allow public toilets and public display boards where adverse effects on surrounding sites will be avoided or, if avoidance is not practicable, adequately mitigated.	

Transport

Objective	Supporting Policies	Commentary
Objective 6.2.2 Land use activities are accessible by a range of travel modes.	Policy 6.2.2.1 Require land use activities whose mobility parking demand either cannot be met by the public parking supply, or would significantly affect the availability of that supply for surrounding activities, to provide mobility parking either on or near the site at an amount that is adequate to: a) avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the availability of publicly available mobility parking in the vicinity of the site (including on-street parking and off-street facilities); and b) ensure accessibility for residents, visitors,	The proposal seeks to resolve significant transportation effects associated with an existing public walking track. The proposal will ensure adequate parking supply, provide for mobility parking, and enhance accessibility for the existing visitors to the site. The current walking track generates a significant number of trips per year and the proposed car park is expected to enhance public safety. The proposal is assessed as consistent with this objective and policies,

	customers, staff and students (as relevant) who have limited mobility, including disabled people, the elderly and people travelling with young children.	
	Policy 6.2.2.4 Only allow activities that are likely to generate a significant number of trips by walking, cycling or public transport where: for activities likely to generate trips by cycling, there will be safe access for cyclists into and through the site and sufficient secure cycle parking; a) for activities likely to generate trips by walking, there will be safe access for pedestrians into and through the site; and b) for activities likely to generate trips by public transportation, the activity will be located a reasonable walking distance from a frequent public transportation route with safe access for pedestrians from a bus stop to the site.	
Objective 6.2.3 Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel modes and its affordability to the public.	Policy 6.2.3.3 Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not practicable, adequately mitigate adverse effects on the safety and efficiency of the transport network.	The walking track and associated parking issues are an existing situation and the proposal seeks to ensure that adequate vehicle loading and manoeuvring space is provided in order to mitigate adverse effects on the safety and efficiency of the transport network. Signage and public amenities are designed to enable the safe movement of vehicles, pedestrians and cyclists. The proposal is assessed as consistent with this objective and policies,
	Policy 6.2.3.4 Require land use activities to ensure that any overspill parking effects that could adversely affect the safety and efficiency of the transport network are avoided or, if avoidance is not practicable, adequately mitigated.	
	Policy 6.2.3.11 Require public amenities and signs located on or	

	above the footpath to provide for the safe movement of vehicles, pedestrians and cyclists.	
Objective 6.2.4 Parking areas, loading areas and vehicle accesses are designed and located to: provide for the safe and efficient operation of both the parking or loading area and the transport network; and facilitate the safe and efficient functioning of the transport network and connectivity for all travel modes.	Policy 6.2.4.1 Require parking and loading areas, including associated manoeuvring and queuing areas, to be designed to ensure: the safety of pedestrians travelling on footpaths and travelling through parking areas; a) that vehicle parking and loading will be carried out safely and efficiently; b) that any adverse effects on the safe and efficient functioning of the transport network are avoided or, if avoidance is not practicable, will be no more than minor; c) the safe and convenient access to and from parking and loading areas for vehicles, emergency vehicles, pedestrians and cyclists; and d) that mud, stone, gravel or other materials are unlikely to be carried onto hard surface public roads or footpaths.	The parking and access area has been designed to provide adequate manoeuvring and queuing areas to ensure the safety of pedestrians travelling on footpaths and travelling through parking areas. The proposal is assessed as consistent with this objective and policy.

Earthworks

<u>Objective</u>	<u>Supporting Policies</u>	<u>Commentary</u>
<u>Objective 8A.2.1</u> <u>Earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on:</u> a) <u>visual amenity and character;</u> b) <u>the stability of land, buildings, and structures;</u>	<u>Policy 8A.2.1.1</u> <u>Require earthworks, and associated retaining structures, to be designed and located to avoid or minimise, as far as practicable, adverse effects on the stability of land, buildings, and structures by:</u> a) <u>being set back an adequate distance from property boundaries, buildings, structures and cliffs; and</u>	<u>The earthworks will be designed and supervised by a suitably qualified and experienced engineer and in this regard no adverse effects on stability of land, buildings, and structures is anticipated.</u> <u>Sediment and dust controls are to be imposed as conditions of consent as volunteered by the application and amended by this report.</u>

<u>and surrounding properties.</u>	b) <u>using a batter gradient that will be stable over time.</u>	The visual effects of the carpark and track upgrade have been assessed by a Landscape Architect and found to be acceptable.' Overall, the proposal is assessed as consistent with this objective and policies.
	Policy 8A.2.1.2 Require earthworks and any associated retaining structures, to be designed, located and undertaken in a way that minimises, as far as practicable, adverse effects on surrounding sites and the wider area, including from: a) sediment run-off onto any property, or into any stormwater pipes, drains, channels or soakage systems; and b) dust nuisance on the amenity of surrounding sites.	
	Policy 8A.2.1.3 Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where the following effects will be avoided or, if avoidance is not practicable, adequately mitigated: a) adverse effects on visual amenity and character; b) adverse effects on the amenity of surrounding properties, including	

Public Health

Objective	Supporting Policies	Commentary
Objective 9.2.2 Land use, development and subdivision activities maintain or enhance people's health and safety.	Policy 9.2.2.1 Require activities to be designed and operated to avoid adverse effects from noise on the health of people or, where avoidance is not practicable, ensure any adverse effects would be insignificant.	The application provides a noise assessment which find that the generated noise will meet both the District Plan and WHO guidelines. The carpark will be closed at nighttime and noise generation and light spill will be minimal during night hours.
	Policy 9.2.2.4 Require activities to be designed and operated to avoid adverse effects from light spill on the health of people or, where avoidance is not practicable, ensure any adverse effects would be insignificant.	The proposal is assessed as consistent with this objective and policies.

Natural environment (Walking Track Only)

Objective	Supporting Policies	Commentary
Objective 10.2.3 (Under Appeal) Areas of outstanding natural coastal character (ONCC), high natural coastal character (HNCC), and natural coastal character (NCC) are protected from inappropriate use and development; and their values, as identified in Appendix A5, are preserved or enhanced.	Policy 10.2.3.2 (Under Appeal) Avoid indigenous vegetation clearance - large scale, buildings and structures, rural activities (except for farming, grazing, rural ancillary retail, rural tourism and rural research – small scale), residential activities (except for working from home), commercial activities (except for restaurants or retail activities ancillary to sport and recreation, and stand-alone car parking), industrial activities, major facility activities, substations, and network utility structures - large scale (excluding amateur radio configurations), in the Outstanding Natural Coastal Character (ONCC) and High Natural Coastal Character (HNCC) overlay zones unless any adverse effects on the natural character	Only the viewing platforms and the walking track upgrade will be located within the HNCC. These are expected to be discrete elements located to maximise and enhance the public enjoyment of the natural coastal area. Earthworks in this location will be limited to track and platform formation. The disused section of track will be rehabilitated. The earthworks will be well setback from the coast and any water body. Overall, the effects on the natural character values are assessed as insignificant. The proposal is assessed as consistent with this objective and policies.

	values, as identified in Appendix A5, are insignificant. Policy 10.2.3.3 Only allow shelterbelts and small woodlots, network utility structures – large scale (amateur radio configurations only), earthworks - large scale, transportation activities, and public amenities in the Outstanding Natural Coastal Character (ONCC) and High Natural Coastal Character (HNCC) overlay zones where any adverse effects on the natural character values identified in Appendix A5 are insignificant.	
Objective 10.2.4 Subdivision and development activities maintain and enhance access to coastlines, water bodies and other parts of the natural environment, including for the purposes of gathering of food and mahika kai.	Policy 10.2.4.1 Require buildings, structures, and earthworks - large scale to be set back from the coast and water bodies an adequate distance to maintain or enhance public access along riparian and coastal margins.	The earthworks and structures will be well setback from the coast and any water body and will enhance public access in this area. The proposal is assessed as consistent with this objective and policy.
Objective 10.2.5 Outstanding Natural Features (ONFs), Outstanding Natural Landscapes (ONLs) and Significant Natural Landscapes (SNLs) are protected from inappropriate development; and their values, as identified in Appendix A3, are maintained or enhanced.	Policy 10.2.5.2 Avoid buildings and structures, rural activities (except for farming, grazing, rural ancillary retail, rural tourism and rural research – small scale), residential activities (except for working from home), commercial activities (except for restaurants or retail activities ancillary to sport and recreation, and stand-alone car parking), industrial activities, major facility activities, substations, and network utility structures - large scale (excluding amateur radio configurations) in the Outstanding Natural Feature Overlay Zone (ONF), unless any adverse effects on the landscape	Only the viewing platforms and walking track upgrade will be located within the ONF. These are expected to be discrete elements located to maximise and enhance the public enjoyment of the natural coastal area. Earthworks in this location will be limited to track and platform formation. The disused section of track will be rehabilitated. The earthworks will be well setback from the coast and any water body. Overall, the effects on the natural character values of the ONF are assessed as insignificant.

	values of the ONF as identified in Appendix A3 are insignificant.	The proposal is assessed as consistent with this objective and policies.
	Policy 10.2.5.8 Only allow large buildings and structures, earthworks – large scale, public amenities, substations, network utility poles and masts – small scale, hydro generators – small scale, solar panels – small scale, wind generators – small scale, network utility structures – large scale, transportation activities and natural hazard mitigation activities in the Outstanding Natural Landscape Overlay Zone (ONL) where any adverse effects on the landscape values of the ONL, as identified in Appendix A3 are: insignificant, or where there are no practicable alternative locations, adequately mitigated.	

Manawhenua

Objective	Supporting Policies	Commentary
Objective 14.2.1 The relationship between Manawhenua and the natural environment is maintained or enhanced, including the cultural values and traditions associated with: wāhi tūpuna; mahika kai; and occupation of original native reserve land through papakāika.	Policy 14.2.1.2 Require buildings, structures, earth works and network utilities to be set back an adequate distance from the coast and water bodies that are wāhi tūpuna and are identified as having mahika kai values in Appendix A4, to maintain or enable access to the coast and riparian margins for the purpose of gathering mahika kai.	The applicant has undertaken early consultation with Manawhenua and have adapted the proposal to ensure that cultural values of the area are maintained and enhanced. The proposal is assessed as consistent with this objective and policy.

Rural

Objective	Supporting Policies	Commentary
Objective 16.2.1 Rural zones are reserved for productive rural activities and the protection and enhancement of the natural environment, along with certain activities that support the well-being of communities where these activities are most appropriately located in a rural rather than an urban environment.	Policy 16.2.2.5 (Under Appeal) Only allow rural tourism - large scale, rural research - large scale (outside the Invermay Farm mapped area), rural contractor and transport depots - large scale, community and leisure - large scale, sport and recreation, veterinary services, visitor accommodation, cemeteries, crematoriums, intensive farming, domestic animal boarding and breeding (including dogs), rural industry, mining, service stations, or landfills where adverse effects on the amenity of residential activities on surrounding properties will be avoided or, if avoidance is not practicable, adequately mitigated.	The walking track is well established in its current form. The proposal seeks to upgrade and extend this track to make it more accessible to a wider range of the public and to address the nuisance and safety issues arising from the lack of parking and facilities. The proposal has been designed in a manner which adequately mitigates any adverse effects on surrounding neighbours through separation distances, noise limits and no night-time use of the carpark. Technical evidence indicates that adverse effects of development on rural character and visual amenity are acceptable. The proposal is assessed as consistent with this objective and policy.
Objective 16.2.3 The rural character values and amenity of the rural zones are maintained or enhanced, elements of which include: a) a predominance of natural features over human made features; a) a high ratio of open space, low levels of artificial light, and a low density of buildings and structures;	Policy 16.2.3.6 Only allow community and leisure - large scale, sport and recreation, early childhood education, service stations, and visitor accommodation where the adverse effects of development on rural character and visual amenity are avoided or, if avoidance is not practicable, no more than minor.	

b) buildings that are rural in nature, scale and design, such as barns and sheds; c) a low density of residential activity, which is associated with rural activities; d) a high proportion of land containing farmed animals, pasture, crops, and forestry; e) extensive areas of indigenous vegetation and habitats for indigenous fauna; and f) other elements as described in the character descriptions of each rural zone located in Appendix A7.	Policy 16.2.3.7 Require ancillary signs to be located and designed to maintain rural character and visual amenity, including by being of an appropriate size and number to convey information about the name, location, and nature of the activity on-site to passing pedestrians and vehicles and not being oversized or too numerous for that purpose.	
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Rural Residential

Objective	Supporting Policies	Commentary
Objective 17.2.1 The rural residential zones enable lifestyle blocks, hobby farms and associated residential activities as the appropriate place in the rural environment for these to occur, and provide for a limited range of other compatible activities.	Policy 17.2.1.5 Only allow rural tourism, rural research, community and leisure - large scale, early childhood education, sport and recreation, and visitor accommodation where the effects will be adequately managed in line with objectives 17.2.2, 17.2.3 and 17.2.4 and their policies, and the objectives and policies of any relevant overlay zones.	As assessed for the Rural zone above, the walking track activity is well established in its current form. The proposal seeks to upgrade and extend this track to make it more accessible to a wider range of the public and to address the nuisance and safety issues arising from the lack of parking and facilities. Viewing platforms will not be in a direct line of sight from any
Objective 17.2.3 The character and amenity of the rural residential zones are maintained, elements of which include:	Policy 17.2.3.3 Only allow rural tourism, rural research, community	

a) a high presence of natural features such as trees, bush, gully systems and water bodies; b) a semi-rural level of development, with a higher proportion of open space and lower density of buildings than in urban areas; and c) land maintained and managed for farming, grazing, conservation and rural residential activities.	and leisure - large scale, early childhood education, sport and recreation, veterinary services and visitor accommodation activities where any adverse effects from development on rural residential character and amenity will be avoided or, if avoidance is not practicable, adequately mitigated.	residential dwelling. The proposal has been designed in a manner which adequately mitigates any adverse effects on surrounding neighbours through separation distances, minimal structures noise limits and no night-time use of the carpark.
	Policy 17.2.3.4 Require ancillary signs to be located and designed to maintain the character of the rural residential zones, including by being of an appropriate size and number to convey information about the name, location and nature of the activity on site to passing pedestrians and vehicles and not being oversized or too numerous for that purpose.	Signage will be instructional or education only and of a style typically associated with a public walk operated by DOC. Technical evidence indicates that adverse effects of development on rural character and visual amenity are acceptable. Generally, the proposal is assessed as consistent with this objective and policy. However, I consider that the non-complying food vendor food vendor/concession activity is contrary with the values of the Rural Residential zone and I agree that such activities may have the effects of

		drawing more people to the area and encouraging them to stay long and in this regard, I consider that this aspect of the proposal is inconsistent with values of the Rural Residential Zone and the objectives and policies.
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[149] The proposal is also assessed as giving effect to the following Strategic Directions:

Objective 2.4.4 Natural Landscapes and Natural Features Dunedin's outstanding and significant natural landscapes and natural features are protected.	Policy 2.4.4.3 Protect the values in identified Outstanding Natural Feature (ONF), Outstanding Natural Landscape (ONL) and Significant Natural Landscape (SNL) overlay zones by listing these values in Appendix A3 and using rules that: a) prohibit certain activities in ONFs; b) require resource consent for activities in ONFs, ONLs and SNLs, where they may be incompatible with the values of the area; and c) restrict the scale of development in ONFs, ONLs and SNLs and ensure the design of development is appropriate.
	Policy 2.4.5.2 Classify and map coastal areas as: a) Outstanding Natural Coastal Character (ONCC) Overlay Zone where the natural character of these areas is exceptional; b) High Natural Coastal Character (HNCC) Overlay Zone where the natural character of these areas is of high significance; and Natural Coastal Character (NCC) Overlay Zone where natural character is of less than high significance but restoration or enhancement of natural character will be promoted.
Objective 2.4.6 Character of Rural Environment The character and visual amenity of Dunedin's rural environment is maintained or enhanced.	Policy 2.4.6.2 Maintain the identified values within different rural environments through mapping rural zones and using: rules that limit the density of residential activities;

	rules that manage the bulk and location of buildings; policies and assessment rules that require or encourage the consideration of effects on rural character and visual amenity associated with land use and development activities; and rules that manage the pattern, scale and design of subdivision.
Objective 2.5.1 Kaitiakitaka Kāi Tahu can exercise kaitiakitaka over resources within their takiwā.	Policy 2.5.1.2 Provide for effective and meaningful engagement with Manawhenua at appropriate stages of the resource management process through: encouraging early consultation by applicants; requiring that the effects on values of significance to Manawhenua are considered for culturally sensitive activities and activities that may adversely affect wāhi tūpuna and mahika kai; recognising and providing for matauraka Māori and tikaka during the consent and hearing process; and advising rūnaka of applications for activities affecting sites and values of significance to them.

Overall Objectives and Policies Assessment

- [150] Having regard at the relevant objectives and policies individually, the above assessment indicates that the application is consistent with the relevant provisions, except of the food vendor/concession component of the application which is considered to be contrary to these.

Assessment of Regional Policy Statements (Section 104(1)(b)(v))

- [151] Section 104(1)(b)(v) of the Act requires that the Council take into account any relevant regional policy statements. The Regional Policy Statement for Otago (RPS) 1998 is now revoked. The Partially Operative Regional Policy Statement for Otago (PORPS) was made partially operative on 14 January 2019. Specific to this proposal are the following objectives and policies:
- [152] *Objective 3.2 Otago's significant and highly-valued natural resources are identified and protected, or enhanced where degraded.*
- [153] *Policy 3.2.4 seeks to manage outstanding natural features, landscapes and seascapes*
Protect, enhance or restore outstanding natural features, landscapes and seascapes, by all of the following:
- a) *In the coastal environment, avoiding adverse effects on the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding;*

- b) *Beyond the coastal environment, maintaining the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding;*
- c) *Avoiding, remedying or mitigating other adverse effects;*
- d) *Encouraging enhancement of those areas and values that contribute to the significance of the natural feature, landscape or seascape.*

[154] *Policy 3.2.10 seek to manage the high natural character of the coastal environment*
Preserve or enhance the high natural character of the coastal environment, by all of the following:

- a) *Avoiding significant adverse effects on those values that contribute to the high natural character of an area;*
- b) *Avoiding, remedying or mitigating other adverse effects;*
- c) *Recognising and providing for the contribution of existing introduced species to the natural character of the coastal environment;*
- d) *Encouraging enhancement of those values that contribute to the high natural character of an area;*
- e) *Controlling the adverse effects of pest species, preventing their introduction and reducing their spread.*

[155] *Objective 5.1 - Public access to areas of value to the community is maintained or enhanced*

[156] *Policy 5.1.1 Public access seeks to maintain or enhance public access to the natural environment, including to the coast, lakes, rivers and their margins and where possible areas of cultural or historic significance, unless restricting access is necessary for one or more of the following:*

- a) *Protecting public health and safety;*
- b) *Protecting the natural heritage and ecosystem values of sensitive natural areas or habitats;*
- c) *Protecting identified sites and values associated with historic heritage or cultural significance to Kāi Tahu;*
- d) *Ensuring a level of security consistent with the operational requirements of a lawfully established activity.*

[157] I have assessed that the proposal will not give rise to adverse effects on the values associated with the ONF or HNCC and will enhance public access to the natural environment. As such, I consider that the proposal is consistent with the relevant PORPS policies.

[158] The Proposed Regional Policy Statement (PRPS21) was notified on 26 June 2021 but decisions have not been released.

DECISION MAKING FRAMEWORK

Part 2 Matters

[159] It is considered that there is no invalidity, incomplete coverage or uncertainty within either the operative Dunedin City District Plan or the Proposed 2GP. As a result, there is no need for an assessment in terms of Part 2 of the Resource Management Act 1991.

Section 104

- [160] Section 104(1)(a) states that the Council must have regard to any actual and potential effects on the environment of allowing the activity. This report assessed the environmental effects of the proposal and concluded that the likely adverse effects of the proposed development overall will be minor overall and can be adequately avoided remedied or mitigated provided recommended conditions of consent were adhered to.
- [161] Section 104(1)(b)(vi) requires the Council to have regard to any relevant objectives and policies of a plan or proposed plan. This report concluded that the application would be consistent with the key objectives and policies relating to both the Dunedin City District Plan and the Proposed 2GP.
- [162] Section 104(1)(b)(v) requires the Council to have regard to any relevant regional policy statement. In this report it was concluded that the application is consistent with the relevant objectives and policies of the Partially Operative Regional Policy Statement for Otago.

Section 104D

- [163] The food vendors are assessed as a non-complying activity and assessment is required under S104 D for this component of the application. Furthermore, if the Commissioner is of a mind that Section 4 of the RMA does not apply to the walking track upgrade, then S104D of the RMA must also in respect of the non-complying status of the culverts and viewing platforms within the ONF and HNCC.
- [164] Section 104D specifies that resource consent for a non-complying activity must not be granted for a non-complying activity unless the proposal can meet at least one of two limbs. The limbs of section 104D require that the adverse effects on the environment will be no more than minor, or that the proposal will not be contrary to the objectives and policies of both the district plan and the proposed district plan.
- [165] It is considered that the proposal (except for the food vendor element) meets both limbs as any adverse effects arising from this wider proposed activity will be no more than minor, and the activity will not be contrary to the objectives and policies of both the Operative District Plan and the Proposed 2GP. Therefore, the Commissioner can exercise discretion under section 104D to grant consent, except for the food vendor aspect of the proposal, which I recommend be refused. I consider this minor aspect of the proposal to be contrary to the relevant objectives and policies of the 2GP and the effects of this element to be more than minor.

Other Matters

- [166] Section 104(1)(c) requires the Council to have regard to any other matters considered relevant and reasonably necessary to determine the application. I note that if the Commissioner is of a mind to disregard section 4 of the Act, an assessment under 104D must be undertaken for the non-complying aspects of the proposal, namely the culverts and viewing platforms within the ONF and HNCC.
- [167] Case law indicates that for the Council to grant consent to a non-complying activity, the application needs to be a 'true exception', otherwise an undesirable precedent may be set and the integrity of the District Plan may be undermined.

[168] In this regard, I do not consider that the proposed activity represents a challenge to the integrity of the Dunedin City District Plan. The proposal seeks to enhance a DOC track within a DOC reserve and in this regard is a unique and confined proposal. I consider that its potential approval would be unlikely to undermine public confidence in the plan's provisions.

[169] For the above reasons, I consider that approval of the proposal will not undermine the integrity of the Plan as the activity will produce only localised and minor effects, if any. I do not consider that the Commissioner needs to be concerned about the potential for an undesirable precedent to be set in this regard.

RECOMMENDATION

[170] Having regard to the above assessment, I recommend that the application, except for the food vendor component and including the walking track and structures in the ONF and HNCC (if not exempt), be granted subject to appropriate conditions as set out in Appendix 1.

REASONS FOR RECOMMENDATION

[171] Provided that the recommended conditions of consent are implemented, I consider that the likely adverse effects of the proposed activity, except for the food vendor component, can be adequately mitigated to the extent that these are less than minor. In particular, it is considered that for the carpark there is adequate setbacks to the residential boundaries, screening within the carpark site will be established, the noise limits of the 2GP will be complied with and earthworks will be managed through conditions of consent. For the track upgrade and viewing platforms, the earthworks will be confined to the track area and platforms, the disused track area will be rehabilitated and there will be no viewing platform in direct sight of a residential dwelling.

[172] I consider that the food vendor component is not provided for in the zone or in keeping with the values identified for the Rural Resource Area, may attract additional visitors to the site, encourage visitors to extend their stay and detract from the natural environment. And therefore, I consider consent for this aspect should be refused

[173] The proposal is considered to be consistent with the key relevant objectives and policies of the Proposed 2GP.

[174] The proposal is considered to be consistent with the objectives and policies of the Partially Operative Regional Policy Statement for Otago.

[175] Overall, the proposed development has been assessed as not being likely to give rise to adverse effects on those elements of the rural, Rural Residential 1 zones or the ONF or HNCC values that the 2GP District Plan seeks to protect.

Report prepared by:

Report checked by:



Kirstyn Lindsay
Consultant Planner

Date 6 April 2022



Phil Marshall
Senior Planner

Date 6 April 2022

APPENDIX 1: DRAFT CONDITIONS

Consent Type: Land Use Consent

Consent Number: LUC-2020-631

Purpose: The establishment of a car park and associated public facilities (and walking track and viewing platforms).

Location of Activity: 30 and 32 Tunnel Beach Road, Dunedin.

Legal Description: Lot 1 DP 314013, Pt Secs 145 Green Island Bush SD, Sec 163 Pt Lot 146 Green Island SD, Pt Secs 56 57 58 Ocean Beach SD (held in Record of Title 271321) and SEC 3 BLK XIII SO 4104 Dunedin & East Taieri SD, SEC 5 BLK XIII SO 21352 Dunedin & East Taieri SD, SEC 6 BLK XIII SO 21352 Dunedin & East Taieri SD (held in Record of Title 170433).

Lapse Date: 6 April 2027, unless the consent has been given effect to before this date.

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

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.

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

Carpark Earthworks

7. All works are to be undertaken in accordance with the certified Construction Management Plan.
8. The earthworks and construction work is to be under the control of a nominated and suitably qualified person (civil/environmental engineer or technician).
9. If fill is to be reused on the site it is to be deposited in accordance with best practice and keyed into any slopes.
10. Any change in ground levels must not cause a ponding or drainage nuisance to neighbouring properties.
11. Any fill material to be introduced to the site must comprise clean fill only.
12. All loading and unloading of trucks with excavation or fill material must be carried out within the subject site.
13. Surplus of unsuitable material must be disposed of away from the site to a Council approved destination.
14. 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.

15. 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.

16. 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)

17. The track width must not exceed two metres in width.
18. Where practicable the walking track must follow the existing contour of the land.
19. No stockpiles of material are permitted within the ONF area
20. No stockpiles within the HNCC are permitted for longer than 30 days and must be no higher than 2m high

21. 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.
22. Interpretation panels designed in association with Manu Whenua are permitted adjacent to the walking track and within the viewing platforms.
23. 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.
24. Viewing Platform 3 may include a widened track area with Hand Rail.

Traffic

25. 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

26. 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.

On-going conditions

27. The operation of the carpark must comply with the certified Tunnel Beach Car Park Operational Plan
28. The Hours of Operation are everyday between the following hours:
 - a) Autumn/Winter 9am – 5pm
 - b) Spring/Summer 8am – 9pm
29. The landscaping implemented in accordance with the Landscape Management Plan must be maintained in Perpetuity.
30. The landscaped bund to the west of the car park must be maintained in perpetuity.
31. The toilet block may include art panels developed through engagement with Mana Whenua.
32. No retail or mobile traders are permitted to operate within the carpark area.

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 not 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.

APPENDIX 2:

THE APPLICATION

APPENDIX 3:
SUBMISSIONS RECEIVED

APPENDIX 4:

COUNCIL TECHNICAL EVIDENCE