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| <b>Applicant:</b>          | <b>Dunedin City Council (DCC) and<br/>Department of Conservation (DOC)</b> |
| <b>Location:</b>           | <b>30 &amp; 32 TUNNEL BEACH ROAD</b>                                       |
| <b>Application Number:</b> | <b>LUC-2020-631</b>                                                        |
| <b>Subject:</b>            | <b>Further Information Request<br/>Section 41C(3) RMA</b>                  |
| <b>Date:</b>               | <b>10 May 2022</b>                                                         |

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### **Introduction**

This minute is to confirm the oral direction given at the hearing.

The hearing for the application lodged by the Dunedin City Council and the Department of Conservation for the Tunnel Beach Carpark and Walkway commenced on Thursday 5 May 2022 in the Edinburgh Room, Municipal Chambers.

I advised the parties that the hearing was adjourned to allow time for me to:

1. undertake my site visit.
2. request a response to a set of questions from the two witnesses who were unable to attend the hearing to present their evidence and answer the questions I had for them. I note that I have no questions for the Department of Conservation's Operations Manager, Annie Wallace and I have taken her statement of evidence as read.
3. determine whether I have all the necessary information to make an interim decision on the applicability of Section 4(3) of the RMA on those aspects of the proposal relating to the modification and use of the walking track.
4. request further information from any parties to ensure I have all the necessary information to make a determination as per (3) above, in particular relating to Section 4(3)(b).

All parties agreed that the hearing adjournment was the best process to follow. I therefore determined the adjournment would not disadvantage any party.

### **1. Site Visit**

I undertook a site visit on Friday 5 May 2022 between 11.00am and 12.45pm and was accompanied by Phil Marshall in his capacity as Committee Advisor. The site visit included a visit to the submitter Anya Durling's property at 40 Tunnel Beach Road. Anya escorted us around her property and did not offer any views on the merits of the application.

## **2. Commissioner Questions for the Applicant's Landscape Architect - Wade Robertson.**

At the hearing, the submissions of Counsel for the submitter noted that the walking tracks and viewing platforms are visible from the property at 40 Tunnel Beach Road.

During my site visit it was clear that the modified walking tracks and viewing platforms 1 & 2 would be visible from the property at 40 Tunnel Beach.

The written evidence of Wade Robertson states in paragraph 5 that he "*visited the site, including the immediately surrounding rural residential area, proposed carpark site, and both existing and proposed pathway alignments down to Tunnel Beach*". Then at paragraph 35 of his statement of evidence it is stated that "*views of the proposed walking track are limited to track users and from vessels travelling along the south coast*".

I request that Wade Robertson respond to the following questions:

- Did you visit the property located at 40 Tunnel Beach Road for the purpose of informing your assessment of the landscape (including rural-residential amenity and natural character), visual effects and cumulative visual effects of the walkway modifications on this property?
- If yes, please explain how any landscape, visual, and any cumulative effects of the walkway modifications on this property were considered. If not, please advise me of the implications of this on your assessments and conclusions.

Bridget Irving on behalf of the submitter offered a revised set of conditions at the hearing. I request that Wade Robertson review Bridget Irving's legal submission and Anya Durling's statement of evidence with the view to provide advice to me on the suitability of the suggested conditions. The suggested conditions include:

- *Requirement for a Landscape Management Plan (Refer Condition 7)*
- *Requirement for the annual review of the Landscape Management Plan by a suitably qualified professional (Refer Condition 8)*
- *Requirement for the outcome of the annual review to be submitted to the Council (Refer Condition 9)*
- *No stockpiles are permitted within the ONF (Refer Condition 22)*
- *The installation of a deer fence along any currently unfenced areas of the legal boundary with 40 Tunnel Beach Road (Refer Condition 28)*
- *A 1.8m impermeable wooden paling fence must be established around Viewpoints 1 and 2 between them and the boundary of 40 Tunnel Beach Road (Refer Condition 29)*
- *Landscape plantings between the track and the boundary of 40 Tunnel Beach Road (Refer Condition 30).*
- *Additional landscape planting for screening ViewPoint 1 & 2 from 40 Tunnel Beach Road (Refer Condition 32d)*
- *Landscaping implemented in accordance with the Landscape Management Pan shall be maintained (Refer Condition 37)*
- *Existing Macrocarpa Trees located to the south of the carpark shall be retained (Refer Condition 38)*

Following receipt of Wade Robertson's advice and response to my questions I invite the submitter, Chantel Whitby landscape architect, and Kirstyn Lindsay Consultant Planner to provide any comments on Wade Robertson's advice.

### **3. Information requirements relating to the applicability of Section (4)(3) of the RMA**

At the hearing, Bridget Irving submitted on behalf of the submitter that if I were to decide that Section (4)(3) does apply to the proposed walkway modifications, that the scope of this authorisation under Section (4)(3) is limited to the works and activities carried out by the Crown and does not extend to the subsequent activities that take place. When applied to the particulars of this case, this would mean in theory that Section (4)(3) only authorises the actual construction works and subsequent maintenance by Crown staff and agents and would not extend to the subsequent use of the track by the general public.

I request that Michael Garbett and Sam Eccles provide me with legal submissions based on relevant case law and/or known practices where Section (4)(3) has been applied in the manner put forward by Bridget Irving or otherwise. I request that the submissions also include the implications of how these considerations apply to the application in front of me.

Following receipt of this advice, I invite the submitter to provide any comments.

### **4. Section (4)(3)(b) Further information required**

At the hearing, Anya Durling stated in line with paragraph 20 of her evidence statement that *"the existing track is approximately sixty metres from our boundary at the closest point. The proposed track re-alignment to VP2 comes to within approximately 10m of our boundary"*. I note that the submitter is referring to the unfenced boundary in the south-eastern portion of their property. During my site visit I could see the cabbage tree as shown in the photographs supplied in the submitter's statement of evidence and it is clear from Council GIS aerial photography this tree is situated within the submitter's property.

The evidence statement of the applicant's Senior Acoustic Consultant Brendon Shanks states in paragraph 26 that *"the new alignment of the walking track would not take people closer to the paddock or notional boundary of 40 Tunnel Beach Road than the existing alignment"*.

I request that Brendon Shanks provide advice to me on the following matters:

- Do you agree with the submitter's assertions that the proposed track re-alignment to VP2 comes to within approximately 10m of the south-eastern boundary of the property at 40 Tunnel Beach Road?
- If you agree that the new alignment of the walking track and associated viewpoints 1 & 2 would take people closer to the property at 40 Tunnel Beach Road, does your noise assessment properly take into account the impact of the modified walkway and associated viewpoints 1 & 2 on the property at 40 Tunnel Beach Road?
- Please advise me of the implications of this on your assessments and conclusions.

Bridget Irving on behalf of the submitter offered a revised set of conditions at the hearing. I request that Brendon Shanks review Bridget Irving's legal submission and Anya Durling's statement of evidence with the view to provide advice to me on the suitability of the

suggested condition designed to mitigate any adverse noise impact on the property at 40 Tunnel Beach Road. The suggested condition includes:

- *A 1.8m impermeable wooden paling fence must be established around View Points 1 & 2 between them and at the boundary of 40 Tunnel Beach Road.*

Following receipt of Brendan Shanks advice, I invite the submitter and Kirstyn Lindsay Consultant Planner to provide any comments on Brendan Shank's advice.

### **Extension to statutory timeframes**

I appreciate the applicant has agreed to a time frame extension under Section 37 of the RMA to allow time for the information to be provided, and I will endeavour to expedite the process once the further information is received.

### **Conclusion**

I request the information from the applicant's witnesses and legal counsel be provided via Jennifer Lapham ([Jenny.Lapham@dcc.govt.nz](mailto:Jenny.Lapham@dcc.govt.nz)) on or before Friday 20 May 2022.

On receipt of the information, it will be sent to the submitter, Chantel Whitby and Kirstyn Lindsay (where applicable) and they will be invited to respond via Jennifer Lapham ([Jenny.Lapham@dcc.govt.nz](mailto:Jenny.Lapham@dcc.govt.nz)) within 2 weeks from that date. I will then determine if I have sufficient information to make an interim decision on the applicability of Section 4(3) of the RMA.

For the avoidance of doubt, the hearing remains adjourned until I receive the above and until I am satisfied that I have all the information I need to make my interim decision.

Please note if I decide that s4(3) does not apply, then a resource consent will be required for the track and its use. If this situation were to eventuate, I note the submitter's legal counsel Bridget Irving's concession during the hearing that a pragmatic approach would be desirable and that a fresh application would not be expected. I will advise hearing parties if I require any further information by way of directions set out in the interim decision, if necessary.

Regards



**Rosalind Day-Cleavin**  
**COMMISSIONER**