

Notified Concession Officer's Report to Decision Maker

Officer's Report to Decision Maker: Judi Brennan, Permissions Manager, Operations

Notified Application for a (1) Lease and Licence Concession; and (2) Easement Concession¹

Applicant: Madeleine Jill CHILD and Phillip Matthew JARVIS

Permission Record Number: (a) 38967-ACC (Lease & Licence); and (b) 50791-OTH (Easement)

File: PAC-00-02-93

The purpose of this report is to provide a thorough analysis of the application within the context of the legislation, the statutory planning framework and actual and potential effects, so the Decision Maker can consider the application; and (a) make a decision in principle whether it should be granted or declined and (b) if the in principle decision is to grant, to confirm that it should be notified.

1.0 Summary of proposal

1.1 Background:

This application was publicly notified in the Otago Daily Times and on the Department's website on Saturday, 31 March 2018². The Department has determined that this application is to be re-advertised. Detailed below is a brief summary of key changes made to the original officer's report³ that have been incorporated into this Report:

- throughout this Report, and primarily in section 4.4, stewardship land held under s.25 of the Conservation Act 1987 has been amended to "land held for conservation purposes under s.7(2)"
- updated consultation with Otago Conservation Board (sections 1.2 and 4.2.3 in this Report)
- updated section 4 obligations and engagement with iwi, Te Rūnanga o Ōtākou (sections 1.2 and 4.2.3 in this Report)
- Addition of Climate change considerations in section 4.2.5 in this Report
- revision of section 4.5 in this Report in relation to structures and improvements
- extra context in relation to consistency with Otago Conservation Management Strategy 2015 ("Otago CMS") (section 4.5 in this Report)
- reduction of Term to correlate with Otago CMS policy 3.11.4 (b) (see section 6.1.2 in this Report)
- Amendment to fees section (section 6.2 in this Report)
- Applicant comments (section 7.0 in this Report)
- summary and conclusions (section 8.0 in this Report)
- recommendations to decision maker (section 9.0 in this Report).

¹ Note: This application was received before the enactment on 18 October 2017 of section 202 of the Resource Legislation Amendment Act 2017 (2017 No 15).

² Submission closure date of 29 May 2018.

³ Full officer's report (recorded as [DOC-2930344](#)), public notification copy of officer's report (recorded as [DOC-5439272](#))



This application relates to authorising the occupation of cottage/pilot house No.3 (one of three cottage/pilot houses and dwelling⁴) that is located on the land purchased⁵ from the Dunedin City Council by the Minister of Conservation in 1993. The land joined the conservation estate as conservation purposes land and comprised an area of 118 hectares⁶. On 4 June 1998 most of the 118 hectares was gazetted as an Ecological Area⁷ along with an additional 241 hectares. However, the portion which the cottage pilot houses (3) and dwelling occupy (0.8 hectares) was held back from the gazettal⁸. This resulted in approximately 0.8 hectares remaining conservation purposes land while the balance, 358.2 hectares surrounding the pilot houses and dwelling, became an Ecological Area to be managed pursuant to section 21 of the Conservation Act.

Since the land (known as The Spit at Aramoana) was purchased from Dunedin City Council, the Department has given assurances to the owners/occupiers (including the applicant) that a formal lease and/or licence would be entered into to regularise the tenure at this location for the occupation of the land and access to the cottage/pilot houses situated at North Spit, Aramoana.

The applicant has not produced information to indicate that occupation of the land was authorised by contract or legislation prior to 1987. Consequently, section 7(2) of the Conservation Amendment Act 1996⁹ is not applicable. This application is dealt with using the usual processes of Part 3B of the Conservation Act.

For clarification purposes, the applicant is represented by Richard Allen, Richard Allen Law (Barrister and Solicitors), who co-ordinated the completion of the concession application forms for those parties who have a financial interest in the cottage/pilot houses. The structures i.e. cottage/pilot house, ancillary/associated structures e.g. fences and other improvements on public conservation lands and waters that are the subject of this application are owned by the applicant i.e. no structures or improvements are owned by the Crown or managed by the Department of Conservation¹⁰.

⁴ Refer to Appendices C-E for an overview of all 3 cottages/pilot houses and dwelling (1) at this location.

⁵ Agreement for Sale and Purchase dated 3 May 1993 with details of tenancies recorded as "Vacant"

⁶ The Certificate of Title for the 118 hectare area of land is CFR OT16D/747.

⁷ New Zealand Gazette, 4 June 1998, No. 76, page 1701. Only 117.2 hectares of CFR OT16D/747 was gazetted as Ecological Area. The gazetted land was depicted as Area "A" on S.O. 24759 and excluded the 0.8 hectares around the pilot houses.

⁸ Survey plan SO 24759 (refer to Appendix D)

⁹ Conservation Amendment Act 1996: Section 7(2) "Where any person lawfully occupied any conservation area at the commencement of this Act in accordance with any right lawfully granted on or before 1 April 1987 under any Act or any contract made on or before 1 April 1987 then, notwithstanding sections 17U and 17W of the principal Act, as inserted by subsection (1) of this section, the Minister may grant a concession to that occupant for the area lawfully occupied by the occupant, but the extent of the activities authorised by any such concession shall be no greater than was lawfully exercised by the occupant."

Section 7(3): "Where any concession is granted under subsection (2) of this section to the occupant, any prior right given to the occupant to occupy the land shall be void and of no effect."

Section 7(4): The provisions of section 17T(4) and (5) of the Principal Act (as so inserted) shall not apply to any concession granted under subsection (2) of this section."

¹⁰ Refer to section 4.5 in this Report for discussion on part 3.11 in the Otago CMS "Private accommodation and related facilities".

Since becoming conservation land in 1993, the applicant, since taking ownership in circa 1998, and the applicant's predecessors, have paid a nominal rental to the Department and, local authority and regional council rates on the land that they occupy to the Dunedin City Council and Otago Regional Council.

The cottage/pilot house is registered with Heritage New Zealand (HNZ) (previously Historic Places Trust) as pilot house No.3, and categorised by HNZ as the Pilots' Cottages Historic Area, North Spit Aramoana¹¹. It has been used as a private residential dwelling since circa 1923, and the applicant intends to continue it being used for this purpose.

Information about the applicant: The applicants are individuals with a financial interest in the cottage/pilot house and have owned the building since circa 1994.

Type of concession sought: Notified Concession Lease and Licence and Easement.

Term sought: 60 years. The term is discussed in more detail in section 6.1.2 in this Report.

Description of the proposed activity applied for:

The concession activity applied for involves the following elements:

- (a) To occupy land by cottage/pilot house No. 3, associated buildings and improvements situated at North Spit, Aramoana;
- (b) To rent cottage/pilot houses No.3 to paying guests;
- (c) To occupy an area around the curtilage of the cottage/pilot house No.3 and ancillary structures for residential purposes;
- (d) To obtain vehicle and foot access to the cottage/pilot house No.3 and ancillary structures via an easement¹².

Table 1: Summary of Lease and Licence and Easement Areas requested in application

House	Requested Lease Area	Requested Licence Area	Total Lease & Licence Area	Requested Easement Corridor (Area)
Pilot House 3	153 m ²	2,074 m ²	2,227 m ²	2,850 m ² [865m (l) x 3.3m (w)]

Refer to section 4.3.2 in this Report for discussion of lease, licence and easement areas applied for.

Table 2: Location of applicant's cottage/pilot house where activity is proposed:

House	Street Address (known as) ¹³	Approx. GPS NZTM 2000
Pilot House 3	76 Moana Street	E1422450.6809, N4927506.9026

¹¹ Appendix A.

¹² Applicant requested a right of way easement only. For clarification purposes, no easement required for a right to convey electricity as the overhead power lines are an existing work under the Electricity Act 1992; No easement required for a right to convey telecommunications as there is no phone; No easement required for a right to convey water as the cottage/pilot house is on a tank supply.

¹³ This section of Moana Street is over conservation land and is not a formed legal road.

Table 3: Conservation status of the land affected by the application

Consunit No	Consunit Name	Legal Description	NaPALIS ID	Activity
I44363	Aramoana Conservation Area ¹⁴	Part of Lot 3 DP 24352 Blk V North Harbour Blueskin SD as contained in Certificate of Title CFR OT16D/747 being approximately 0.8 hectares.	2952217	(i) Lease in relation to land under cottage/pilot house. (ii) Licence (for curtilage surrounding cottage/pilot house).
I44396	Aramoana Ecological Area ¹⁵	Part Section 1 SO 24186 Block V North Harbour and Blueskin Survey District as contained in document 908110 being 241 hectares more or less.	2809123	Easement for vehicle and foot access.

Note: The area generally affected by this application is approximately 359 hectares¹⁶. It is comprised of two sub-units:

- (a) An Ecological Area approximately 358.20 hectares (117.2 ha plus 241 ha); and
- (b) An area of 0.8 hectares surrounding the cottages/pilot houses and the other dwelling was excluded from classification as Ecological Area in the 1998 Gazette and is therefore classified as “conservation purposes land” according to the Conservation Act.¹⁷

1.2 Consultation with External Parties

The following bodies have been asked to comment on the application:

- (a) Otago Conservation Board (refer to section 4.2.3(a) in this Report)
- (b) Te Rūnanga o Ōtākou (refer to section 4.2.3(b) in this Report)
- (c) Te Rūnanga o Ngāi Tahu (in relation to Ngāi Tahu’s first right of refusal) (refer to section 4.2.3(c) in this Report)

¹⁴ The Otago Conservation Management Strategy 2016 (“Otago CMS”) has recorded the “Land to be set apart” within Area “A” on SO 24759 in error as Aramoana Ecological Area (refer map table 7.16 and map 16 of 19 on pages 20-21 in the Otago CMS, as discussed in section 4.5 in this Report), instead of retaining the name Aramoana Conservation Area (s.7(2) conservation purposes). This is further supported by Table 3.11.1 in the Otago CMS that identifies the location as “Aramoana Conservation Area – Spit Houses”. This error will be fixed in DOCgis and NaPALIS.

¹⁵ New Zealand Gazette 1998, page 1701

¹⁶ This is the Recorded Area (ha) from NaPALIS i.e. the surveyed area. Map table 7.16 on page 68 of the Otago CMS records under the Aramoana Ecological Area 361.33 ha which is the GIS Area (ha).

¹⁷ Survey plan SO 24759 (refer Appendix D)

1.3 Photographs relevant to the application



Figure 1: Cottage/pilot house No.3 (July 2015)



Figure 2: Photo of gate (December 2015) as shown on Appendix E map



Figure 3: Aerial photo of the Aramoana Conservation and Ecological Areas (August 2015)

1.4 Characteristics of the Application Area

As noted above, the application area is located within the Aramoana Conservation and Ecological Area which is divided between an Ecological Area of 358.20 hectares and conservation purposes land which the cottage/pilot houses (3) and dwelling currently occupy (0.8 hectares).

The Otago Conservation Management Strategy, extracts of which are reproduced in section 4.5 in this Report, describes the location in detail. In summary the distinctive features are:

- (a) The Aramoana Saltmarsh is a matrix of open sand flats with and without vegetation.
- (b) It grades up from truly tidal to totally non-tidal.
- (c) Ridges of sand create areas of terrestrial vegetation amongst otherwise complete communities of salt-tolerant plants.
- (d) The gentle altitudinal sequence associated with freshwater inflow determines the pattern of plant distribution. The area of land between the village and back beach is dunes of marram and lupin.
- (e) The Mole and Spit are part of the Otago Harbour entrance; all of which provides a number of dynamic landforms and a variety of marine habitats.
- (f) The Aramoana Saltmarsh and adjacent areas are of national significance. The saltmarsh is largely intact with a complete vegetation sequence from tidal to dryland including a dune slack - a feature which most other saltmarshes in Otago no longer retain as the top part of the sequence has been reclaimed or otherwise destroyed.
- (g) The Aramoana tidal flats provide the most important area of wader habitat in Otago.
- (h) The area is important nationally as a fish breeding and nursery area.
- (i) The saltmarsh has very high entomological values.
- (j) Kai Tahu cultural values of this area include a section of the traditional foot track route along the top of the cliff. Aramoana, along with Otakou, were the two main channels of the harbour. The wider area of Aramoana has many areas traditionally thought of as waahi tapu.
- (k) The Aramoana tidal flats are important sources of kai moana to Kai Tahu and are kohaka (a nursery area where patiki and other fish species grow).

1.5 Appendices to this Report

Appendix A: Cottage/Pilot House Heritage New Zealand (previously Historic Places Trust) Registration/Listing Number 7368 – showing “Pilots’ Cottages Historic Area”

Appendix B: Topographical map showing location of “the Spit”

Appendix C: Map showing Aramoana Conservation Area / Aramoana Ecological Area and land excluded from ecological area on SO 24759 (outlined in green)

Appendix D: Land to be set apart Area “A” on SO 24759

Appendix E: Map showing proposed lease and licence and easement area for cottage/pilot house No.3

Appendix F: Proposed Concession Document (Lease and Licence) (*for discussion purposes only*) recorded as [DOC-2930347](#)

Appendix G: Proposed Concession Document (Easement) (*for discussion purposes only*) recorded as [DOC-2930351](#)

2.0 Information available for consideration

Information obtained or received:

- From applicant – Applications received [DOCDM-1599004](#). Includes concession application Form 1a (Applicant Information), Form 3b (Private/commercial facility/structures), Form 3c (Easements)
- From Conservation Board – Conservation Board consultation carried out (refer to discussion in section 4.2.3(a) in this Report)
- From iwi – iwi consulted (refer to discussion in section 4.2.3(b) & (c) in this Report)
- From DOC staff in Dunedin Coastal District Office – [DOCDM-1430956](#)
- Other:
 - Heritage New Zealand Registration
New Zealand Archaeological Association (NZAA) site record. Refer to Appendix A (also recorded as [DOCDM-1433958](#)).
 - Te Rūnanga o Ngāi Tahu (Ngāi Tahu Property Group Limited)
Pursuant to sections 52 and 53 of the Ngāi Tahu Claims Settlement Act 1998, preliminary notice sent to Ngāi Tahu Property Group Ltd on 15 June 2015 as applicants requested a term of 60 years. Response recorded as [DOC-2530325](#) (refer to discussion in section 4.2.3(c) in this Report).

Requested information not received:

All information requested to consider this application has been provided to the Department.

3.0 Acknowledgement of complete application (s17S)

An application is deemed complete once all information required under section 17S has been received.

The Minister should be satisfied that the application is complete for the purposes of the Act.

4.0 Analysis of proposal (s17T, 17U, 17V, 17W, 17X, 17Y)

4.1 Analysis of the Proposal - Section 17T

Declining an Application within 20 working days – s17T

Section 17T(2) requires the Minister to decline an application within 20 working days of it being deemed complete, if “...the application does not comply or is inconsistent with the provisions of this Act or any other relevant conservation management strategy or plan...”

This application was received before the changes made by the Resource Legislation Amendment Act 2017 i.e. the application was received and not finally considered before 18 October 2017, so continues to be dealt with as if the Conservation Act had not been amended, Schedule 1AA, Part 1, clause 1, Resource Legislation Amendment Act 2017.

This application appears to comply with and be consistent with s.17T(2). It is therefore not considered appropriate for the application to be declined within twenty working days.

Public notification s17T(4) and s17T(5):

Pursuant to s.17T(4) before granting a lease, or a licence with a term (including all renewals) exceeding 10 years, in respect of a conservation area, the Minister must give public notice of the intention to do so in accordance with s.49. Accordingly, if the Decision Maker forms an intention to grant the lease/licence, public notification will be required.

The 3 concession activity types (lease and licence and easement) are for inter-related (co-dependent) activities. If the Decision Maker forms an intention to grant the easement it is recommended that the Decision Maker gives the public notice of that decision.

Section 9, recommendation 6 in this Report.

4.2 Analysis of the Proposal - the Effects of the Activity and the Availability of Methods to Avoid, Remedy or Mitigate Adverse Effects –s17U(1) and s17U(2)

Analysis of Effects s17U(1) and (2):

Section 17U(1) requires the Minister to have regard to the effects of the activity as well as the measures that can be imposed to avoid, remedy or mitigate adverse effects. Section 4.2 of this Report considers the effects of the activity from a number of perspectives which can generally be categorised as follows:

- Effects on conservation values
- Effects on cultural values
- Effects on existing and future users
- Cumulative effects of adding this activity to current activity on site.

In accordance with section 17U(1)(c), this Report also considers what measures can reasonably and practicably be undertaken to avoid, remedy or mitigate the adverse effects.

When analysing the effects of the proposed activities, this Report considers the following material:

- (a) Environmental Impact Assessment (EIA) included in application (Table 4)
- (b) The additional information supplied by the applicant regarding human waste disposal. That additional information is summarised in Table 5 below.
- (c) Feedback received from Departmental staff in the Dunedin District Office (section 4.2.2 in this Report).
- (d) Feedback received from the Otago Conservation Board (section 4.2.3(a) in this Report).
- (e) Feedback received from Te Rūnanga o Ōtākou (section 4.2.3(b) in this Report).
- (f) The response from Te Rūnanga o Ngāi Tahu in relation to their first right of refusal under the Ngāi Tahu Claims Settlement Act 1998 (section 4.2.3(c) of this Report).

In addition to the material noted in the preceding paragraph, this Report also assesses the application by reference to the relevant conservation planning documents, including:

1. Otago Conservation Management Strategy 2016 (Otago CMS) (refer to section 4.5 in this Report).
2. Conservation General Policy (May 2005)(CGP) (refer to section 4.5 in this Report).
3. The New Zealand Coastal Policy Statement 2010 (Extracts) (refer to section 4.2.5 in this Report).

4.2.1 Applicant’s analysis of the effects of the activity plus methods to avoid, remedy or mitigate

Table 4: Environmental Impact Assessment (EIA) included in application

Special feature or value	Potential effects of your activity on the feature or value (positive or adverse)	Methods to remedy, mitigate or avoid any adverse effects identified
<p>Its importance as an uninterrupted sequence (now rare or absent on the coast of New Zealand) from tidal eelgrass mudflats, through salt-marsh, and salt-marsh shrub-land to adjacent dry-land.</p>	<p>Destruction of fragile ecosystems resulting from earth disturbance and removal of vegetation.</p>	<p>Applicant has a lengthy history of occupation at this location and is aware of the ecological significance of the area. Applicant has actively taken part in restoration and re-vegetation programmes.</p>
	<p>Occupation combined with any natural event or process may compound the breaching of the “Spit” by the sea.</p>	<p>Applicant consults with and obtains any required consents from Heritage New Zealand Pouhere Taonga, Otago Regional Council and Department of Conservation - for example, proposed building extensions, alterations and any proposed coastal protection work.</p>
	<p>Vehicle damage and contamination e.g. fuel/oil leaks.</p>	<p>Regular servicing of vehicles to minimise the effect of contaminants. Driving to and from the “Spit” house/cottage along a clearly defined easement access route. Parking well away from fragile areas.</p>
	<p>Disease issues: diseases carried by wildlife, health issues associated with human waste and rubbish.</p>	<p>Adequate facilities for the treatment and/or disposal of human waste/foul water and unsanitary matter in accordance with consenting authority</p>

Its value for fish productivity (including shellfish)		
Its indigenous vertebrates		
Its use by a significant variety of migratory wading birds	Disturbance of wildlife by vehicles, dogs and entanglement hazards.	Safe custody and removal of rubbish that may pose a hazard. Vehicle speeds kept to a minimum of 10km per hour. Vehicle gate/barrier considerations in consultation with DOC. Notify DOC in respect to wildlife issues.
Haul out and occasional breeding in dunes on the "Spit" by critically threatened New Zealand sea lions (increasingly since 2005).		
Public Access	Vehicle hazard	Pedestrians to be given right of way.

Human sewage (or effluent) and grey water

The Department requested additional information from the applicant to consider the appropriateness, design, construction of each cottage/pilot house's effluent disposal and discharge infrastructure:

1. What is the location of the septic tank for the cottage pilot house;
2. What is the location of the discharge field for the cottage/pilot house;
3. What was the date the septic system for the cottage/pilot house was installed?

Table 5 below records the applicant's feedback on these questions.

Table 5: Management of effluent and grey water¹⁸

Site/House	Description
3	Indoor toilet – 4 chamber septic tank takes black and grey water with regular pumping out of solids, overflow by electric sump pump through underground pipes throughout garden through sand filter.
General	I assume the installations were by Otago Harbour Board although unsure of this.

¹⁸ Emails dated 11 June 2015 and 26 August 2015

	<p>They appear very professionally installed and of the latest design being multi chamber septic tanks.</p> <p>I am not aware of any consents required. I assume existing use consents apply. They are certainly eco friendly installations.</p>
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Dunedin Service Centre Comments relating to the human sewage and grey water information supplied by the Applicant

Refer to proposed special conditions 16 to 18 in Section 6.5.1 in this Report which are intended to address the effects associated with this aspect of the activity.

4.2.2 Analysis of the effects of the activity by Departmental Staff together with proposed methods to avoid, remedy or mitigate adverse effects.

Department staff familiar with the application area were asked to comment on the application. Feedback from the District Office ranger is summarised in Table 6 below. The third column of the table also contains a response to the issues raised by the District Office. Specifically, it refers to conditions that could be imposed to avoid, remedy or mitigate the particular adverse effect identified by the District Office. Where the Table refers to Schedule 1 or Schedule 2 that is a reference to the first parts of the proposed draft concession documents which appear in Appendices F & G in this Report. Where reference is made to a proposed special condition those special conditions can be found in section 6.5 in this Report ((sections 6.5.1 (Lease and Licence) and section 6.5.2 (Easement)).

Table 6: District Office assessment of effects on conservation values (dwelling) plus proposed methods to avoid, remedy or mitigate adverse effects

Note: Reference to Schedules in this table relate to the standard terms and conditions in Schedule 2 of the draft Concession (Lease and Licence) and Concession (Easement) referred to in Appendices F and G.

Item	District Office Comments <i>Effects on conservation, cultural values and on existing and future users</i>	Dunedin Service Centre's Response to Issues Raised by the District Office <i>Methods to manage and special conditions required</i>
1.	<p>Heritage and coastal protection:</p> <p>(a) the dwelling is on a site that was occupied by Māori, however occupation has been buried below the current site. This area is significant culturally and potentially significant archeologically.</p> <p>(b) It is the owner's responsibility to ensure that appropriate resource consents are held for sand/soil disturbance from the Otago Regional Council (ORC) and Heritage New Zealand (HNZ) if ORC determines HNZ is an affected party.</p> <p>(c) Does the Department need to comply with any ORC and HNZ requirements?</p>	<p>1(a): Accidental Discovery Protocol (ADP): proposed special condition 1 in section 6.5.1 of this Report.</p> <p>Regardless of any approvals given by the Department under any concession, the applicant would be required to comply with legislative requirements and any relevant notices and requisitions of any authority e.g. Otago Regional Council (ORC)/Heritage New Zealand (HNZ) in accordance with the conditions of any Concession (Lease and Licence) - clause 15 of Schedule 2; Concession (Easement) - clause 13 of Schedule 2; proposed special conditions 12 to 18 in section 6.5.1 in this Report.</p>

Item	District Office Comments <i>Effects on conservation, cultural values and on existing and future users</i>	Dunedin Service Centre's Response to Issues Raised by the District Office <i>Methods to manage and special conditions required</i>
2.	<p>Right of way (vehicle access) over the edge of the salt marsh is proposed for near the high tide mark. Points to consider:</p> <ul style="list-style-type: none"> (a) The impacts on the salt marsh. (b) Is limited to pilot house users and authorised persons, including trades and emergency services. (c) Vehicle access is restricted to the right of way. (d) Will comply with the proposed locked gate, (if installed) at the entrance to the ecological area and ensure it is kept locked at all times to prevent unauthorised vehicle access over the salt marsh (owner/occupiers to have a key). (e) Speed limited to 10 km/hr on the right of way. (f) The owners are responsible for ensuring that any guests or invitees comply with the access requirements. (g) That the practical use of the right of way easement cannot be guaranteed in the long term, and the owners/occupiers of the dwelling must comply with any restrictions or closure of access across the ecological area e.g. as a result of sea level rise and natural changes at the location. 	<p>2(a) & 2(c): The lease/licence and easement rights and concession activity will be clearly defined in any concession if granted. Refer also to item 3 below.</p> <p>2(b) & 2(f): Concessionaire's responsibilities in relation to employees, contractors, agents, clients and invitees in accordance with the conditions of any Concession (Lease and Licence) - clause 1.3 of Schedule 2; Concession Easement - clause 1.1 of Schedule 2:</p> <p>2(d) Gates: proposed special condition 10 in section 6.5.2 in this Report.</p> <p>2(e): Public safety and education: proposed special condition 9 in section 6.5.1 and 8 and 9 in section 6.5.2 in this Report.</p> <p>2(g): Suspension of easement concession: proposed special conditions 17 to 23 in section 6.5.2 in this Report.</p> <p>Note: The concession for the Lease and Licence can be held independently from the Easement. However, if the Lease and Licence concession no longer exist for any reason, then the Easement concession will be cancelled: refer to proposed special condition 16 in section 6.5.2 in this Report.</p>
3.	<p>Parking of vehicles: is restricted to the licence area for each house, excluding the right of way.</p>	<p>Proposed special condition 25 in section 6.5.1 and 1 and 2 in section 6.5.2 in this Report.</p>
4.	<p>Dialogue with the owners regarding what happens if the Houses become unusable/uninhabitable and recommend a requirement that the owners hold appropriate insurance to ensure the clean up and or removal of the houses in event they become uninhabitable, to ensure the safety of wildlife and people. (or Bond)</p>	<p>Comprehensive insurance cover in accordance with the conditions of any Concession (Lease and Licence) - Item 14 of Schedule 1 & clause 13 of Schedule 2; Concession (Easement) - Item 10 of Schedule 1 & clause 11 of Schedule 2.</p> <p>Insurance (To be obtained by Concessionaire). This will include the requirement to have comprehensive "Home Sum Insured" cover for the dwelling that includes:</p> <ul style="list-style-type: none"> (a) Compliance Costs (b) Professional and Other Fees (c) Demolition and Removal Costs (d) All Automatic Additional Benefits unless stated otherwise. <p>Bond – refer to discussion in section 6.4 in this Report.</p>

Item	District Office Comments <i>Effects on conservation, cultural values and on existing and future users</i>	Dunedin Service Centre's Response to Issues Raised by the District Office <i>Methods to manage and special conditions required</i>
5.	Not to undertake any activity which has not specifically authorised by the concession	The lease/licence and easement rights and authorised concession activity will be clearly defined in any concession if granted.
6.	The owner is responsible for ensuring all required permits, consents, and permissions are held / gained before any maintenance or alteration work is carried out to the pilots' houses. And for ensuring that the houses in their current state have all the appropriate consents, eg building consent, resource consent, discharge consents etc	Refer to item 1 above.
7.	<p>Any management/work plan drawn up to protect the cottages/pilot houses from coastal hazards/risk is required to include technical details of the work to be undertaken and needs to include consideration of impacts on and protection of the ecological area.</p> <p>Hazards include, but not limited to:</p> <ul style="list-style-type: none"> (a) Sea level rise (b) Dune management and sand inundation. (c) Coastal erosion. (d) Tree Management <p>(i) Any action(s) required would still require Departmental agreement and approval. Any consent and permit requirements are the owner's responsibility.</p> <p>(ii) Giving consideration to allowing natural process of the dune system to continue whilst needing to manage and/or protect the houses from sand inundation.</p>	<p>Refer to item 12 and item 14(c) below.</p> <p>7(i) Approvals and consents: refer to item 1 above.</p>
8.	<p>That the Department is informed of any repair or maintenance work that is to be carried out before it is started.</p> <p>(a) That any repair work that alters the footprint, external appearance, or structure of the houses needs to be approved by the Department in advance.</p>	<p>Repair and maintenance: proposed special condition 24 in section 6.5.1 in this Report.</p> <p>8(a) Colour: refer Concession (Lease and Licence) – clause 9.6 of Schedule 2.</p>

Item	District Office Comments <i>Effects on conservation, cultural values and on existing and future users</i>	Dunedin Service Centre's Response to Issues Raised by the District Office <i>Methods to manage and special conditions required</i>
9.	<p>Owner and occupiers of the houses need to be made aware of the rules and regulations regarding the ecological area and the need to comply with them.</p> <p>(a) Pets, dogs should be under control at all times to protect wildlife, including the endanger NZ sea lion which has breed in the ecological reserve. This clause needs to be consistent with our general management of the Ecological Area, e.g. if dogs are banned then the owners will not be allowed dogs.</p> <p>(b) That the owners and occupiers will need to comply with any restriction put in place to protect wildlife; this could include closure of parts of the ecological area to protect wildlife during the breeding season.</p> <p>This may include part of the licence area e.g. if a NZ sea lion breeds there.</p>	<p>9(a) Dunedin City Council (DCC) bylaw, Control of Dogs – Date of Effect: 1 July 2016 - clause 5.8 Public Places in which Dogs are prohibited”. Clause 5.8.1 states “Dogs are prohibited at all times in those places listed in Schedule D” “Conservation/Wildlife Areas Aramoana Ecological Area – salt marsh and wetland (DOC)”.</p> <p><u>No</u> animals allowed at location: refer proposed special condition 22 in section 6.5.1 in this Report.</p> <p>9(b) Suspension of Concession: refer Concession (Lease and Licence) – clause 18 of Schedule 2; proposed special conditions 17 to 23 in section 6.5.2 in this Report.</p> <p>Compliance obligations in draft concession (lease and licence) clause 15 of Schedule 2 in particular clause 15.1(d) “The Concessionaire must comply where relevant with all Department signs and notices placed on or affecting the Land;...”</p>
10.	<p>That the building and licence area are to be kept in a such as way as to ensure the safety of wildlife and general public:</p> <p>(a) Any chemical use and storage must be in accordance with all relevant legislation, eg ORC airplan for use of herbicide sprays (bearing in mind that this is public land) and must be authorised by the Department.</p> <p>(b) Area to be kept clear of anything that could harm, trap or entangle wildlife or people.</p> <p>There are old/disused items, beds and post around the area that need to be tidied up and removed from the licence and ecological areas, and disposed of appropriately. This should happen, to a standard acceptable to the Department, at the commencement of the term.</p>	<p>There are obligations to protect the environment (includes conditions in relation to hazardous chemicals on the land, sanitation and keeping the land, structures and surroundings in a clean and tidy condition): refer Concession (Lease and Licence) - clause 9 of Schedule 2; Concession (Easement) - clause 8 of Schedule 2</p> <p>Compliance obligations: refer Concession (Lease and Licence) - clause 15 of Schedule 2; Concession (Easement) - clause 13 of Schedule 2.</p> <p>Fuels, hazardous materials, chemicals and waste: refer proposed special conditions 2 to 8 in section 6.5.1 in this Report.</p> <p>Wildlife: refer proposed special condition 23 in section 6.5.1 in this Report.</p>
11.	<p>Houses are not to be rented out to third parties unless an appropriate concession permitting this to occur is in place.</p>	<p>The proposed Concession Activity allows for cottage/pilot house No 3 to be rented out (refer to section 6.1.1 in this Report).</p>

Item	District Office Comments <i>Effects on conservation, cultural values and on existing and future users</i>	Dunedin Service Centre's Response to Issues Raised by the District Office <i>Methods to manage and special conditions required</i>
12.	<p>Departmental Monitoring of any work carried out in the licence area, as well as an annual inspection including but not limited to:</p> <p>(a) Sand moving or removal</p> <p>(b) Sand stabilisation work must have been agreed to by the Department and be undertaken to Agreed standards.</p> <p>(c) Replanting or planting carried out for dune stabilization</p> <p>(d) Removal of old disused material from the site that may cause harm to wildlife and visitors</p> <p>Monitoring costs to be charged to applicant, at applicable departmental rates.</p> <p>Annual Photo point observations of the site including all buildings, restoration plantings and dune movements (photo point locations to be determined by the Department and applicant's)</p>	<p>An annual Environmental Monitoring programme will be designed and undertaken by the Department to monitor the effects of the applicant's use of the Land and conduct of the proposed activity in accordance with the items raised by the District Office. Refer also to item 7 above.</p> <p>Environmental Monitoring Contribution Fee discussion – refer to section 6.2 in this Report</p> <p>Environmental Monitoring Contribution and compliance: proposed special conditions 29 and 30 in section 6.5.1 in this Report.</p>
13.	<p>There are several large old pines in the area, some of these have had broken branches in the recent past, which DOC removed. They are a potential public safety risk, it is important that a clear understanding of who is responsible for and pays for maintenance or removal of the pines inside of the licence area is established.</p> <p>(a) A condition that the licence holders are responsible for pines inside the licence areas and the Department is responsible for pines outside of the licence area.</p> <p>Or if arborist undertakes work inside the licence area, to ensure public safety, then the Department can recover costs from the owners.</p>	<p>Trees (maintenance and removal): proposed special conditions 26 to 28 in section 6.5.1 in this Report.</p>

Item	District Office Comments <i>Effects on conservation, cultural values and on existing and future users</i>	Dunedin Service Centre's Response to Issues Raised by the District Office <i>Methods to manage and special conditions required</i>
14.	<p>Within the licence area, the following are allowed without further consultation:</p> <p>(a) Maintaining existing vegetation such as lawns, trees and shrubs, flower gardens, and vegetable gardens to the current extent (including replacing ones that die), and provided that no pest plants (as per the Regional Pest Management Strategies (RPMS) are used.</p> <p>(b) Maintaining existing tracks and paths to a suitable standard for foot traffic.</p> <p>(c) Pruning of trees and shrubs, and removal of trees (except where this will compromise sand-dune stability or the ability of the land to withstand coastal erosion).</p> <p>(d) Parking on currently existing driveways during times that the houses are occupied.</p>	<p>The applicant would be obligated to protect the environment: refer Concession (Lease and Licence) – Clause 9 of Schedule 2.</p> <p>14(a): Weed and pest management: proposed special conditions 19 to 20 in section 6.5.1 in this Report.</p> <p>14(c): Trees (maintenance and removal): proposed special conditions 26 to 28 in section 6.5.1 in this Report.</p> <p>14(d): Driveways will be contained within the Lease and Licence Land: proposed special condition 25 in section 6.5.1 in this Report.</p>

Monitoring Conditions

Dunedin Service Centre comment on monitoring

It is recommended that an Annual Environmental Monitoring Contribution be charged. Refer to discussions in section 4.2.2 (Table 6, item 12) and 6.2 in this Report.

The location and nature of the activity requires continuing monitoring to ensure that any conditions of approval, should concessions be granted, are adhered to and that the effects of the activity continue to be avoided, remedied or mitigated.

4.2.3 Third party comments on the effects of the activity plus methods to avoid, remedy or mitigate

The following parties were contacted in order to obtain their feedback on the application.

(a) Otago Conservation Board

Otago Conservation Board advice received on 22 October 2019¹⁹.

In summary:

“The Board supports authorisation being given for these dwellings to continue to occupy the site for a fixed term (in line with our previous advice as outlined in the OCB letter dated November 2015). This view acknowledges the heritage value of the three dwellings, having Historic Places Trust Category 11 status, the use of the area for Pilot House activity which pre-dates the Conservation Act 1987 and the length of occupancy of the Vessel’s house.

The Otago Conservation Board reminds the Department however to be mindful of its obligations under the Otago Conservation Management Strategy 2016 which states that the dwellings are not authorised for private use and that existing private accommodation on public conservation land be phased out.

The Board also notes that the dwellings sit within the Aramoana Conservation and Ecological Area, a designation that protects the ecology of the area. The Board would like the Department to ensure through the consenting process that the land is being used for the purpose for which the land is held. Accordingly, we would like the Department to ensure the concession is consistent with this designation and that the consenting process considers how the biodiversity of the area can be enhanced and supported in the long term.

Finally, the Board also has concerns that one dwelling is being used for short-term commercial accommodation and that the property owner does not hold a commercial concession to operate this enterprise within the Conservation and Ecological Area. Should a concession be granted to operate commercially the Board asks the Department to consider carefully how such activity could contribute positively to maintaining and improving biodiversity values of the land.”

¹⁹ Recorded as [DOC-6157792](#) (note: previous advice referred to, letter dated 23 November 2015 (recorded as [DOC-2647440](#)))

Dunedin Service Centre comments on Otago Conservation Board's Feedback

Paragraph 1: Term discussion. Refer to section 4.5 in this Report.

Paragraph 2: Refer to section 4.5 in this Report.

Paragraph 3: Refer to section 4.4 in this Report.

Paragraph 4: Comments included in pilot house 3 report²⁰.

Consultation with iwi

Section 4 of the Conservation Act 1987 states 'This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi'.

The key [principles](#) of the Treaty of Waitangi that apply to DOC's work are:

1. Partnership – mutual good faith and reasonableness: The Crown and Māori must act towards each other reasonably and in good faith;
2. Informed decision-making: Both the Crown and Māori need to be well informed of the other's interests and views;
3. Active protection: The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the right to govern;
4. Redress and reconciliation: The Treaty relationship should include processes to address differences of view between the Crown and Māori.

Discussion: The relevant iwi for engagement is Ngāi Tahu and Papatipu Rūnanga Te Rūnanga o Ōtākou.

Partnership

In addition to the section 4 responsibilities under the Conservation Act 1987, specific provisions in the Ngāi Tahu (Pounamu Vesting) Act 1997, Ngāi Tahu Deed of Settlement 1997 and Ngāi Tahu Claims Settlement Act 1998 provide opportunity and direction for the Crown and Ngāi Tahu to work together to give effect to the principles of the Treaty of Waitangi. The Deed was signed in 1997 between representatives of Ngāi Tahu and the Crown. The settlement was later passed into law through the Ngāi Tahu Claims Settlement Act 1998 and provides for a full and final settlement of the Ngāi Tahu historic claims. Settlement provisions include Tōpuni, Statutory Adviser, Deeds of Recognition, nohoanga sites, taonga species, and protocols, as well as for pounamu and regarding customary use.

The Ngāi Tahu Claims Settlement Act 1998 provides a practical framework for assisting the Treaty partnership between Ngāi Tahu and the Crown. The legal mechanisms established through the Ngāi Tahu Claims Settlement Act 1998 provide a starting point for Ngāi Tahu tino rangatiratanga and its expression through kaitiakitanga, and the basis for an enduring partnership between Ngāi Tahu and the Crown.

Using the protocols in the Ngāi Tahu Claims Settlement Act, the Department and Ngāi Tahu (including relevant rūnanga) have worked together in partnership to come up with a trigger's document that reflects when and why consultation with Ngāi Tahu is required. This agreed trigger's document ensures informed decision making and active protection of Māori interests.

Informed Decision Making

Robust consultation and engagement with iwi was carried out to satisfy the Decision Maker that section 4 obligations have been met. Refer to sections 4.2.3(b) and (c) below.

²⁰ 38967-ACC & 50791-OTH (report recorded as [DOC-5569641](#))

Active Protection

The agreed triggers document ensures informed decision making and active protection of Māori interests. Proactive consultation and engagement was carried out with Te Rūnanga o Ngāi Tahu (Ngāi Tahu Property Group Limited) and Papatipu Rūnanga, Te Rūnanga o Ōtākou, as summarised below under 4.2.3(b) & (c). Iwi also received a link to the original publicly notification that appeared in the Otago Daily Times and on the Department's website on Saturday, 31 March 2018.

Redress and Reconciliation

Ngāi Tahu Deed of Settlement 1997 and Ngāi Tahu Claims Settlement Act 1998.

(b) Te Rūnanga o Ōtākou

The applicant recognises the cultural significance of this area to Kāi Tahu as kaitiaki of this area.

No new feedback or issues raised by Te Rūnanga o Ōtākou in a further consultation email sent on 26 August 2019²¹, but still need to address the concerns expressed in the correspondence dated 14 November 2000 recorded as [DOCDM-1433913](#) regarding:

“The Rūnanga’s concern is that there is no clear message or clause in the proposed lease that signals possible archaeological and cultural values needing recognition and protection from unauthorised land disturbance.”

Dunedin Service Centre comments on feedback from Te Rūnanga o Ōtākou

The following proposed special conditions can address these concerns:

- Accidental Discovery Protocol (ADP): proposed special condition 1 in section 6.5.1 in this Report.
- Local / Territorial and Heritage New Zealand authority approvals: refer to section 4.2.2 and Table 3 (items 1, 7 and 10) in this Report.
- New structures or land alterations - refer to concession (Lease and Licence) in Appendix F in this Report (clause 11 in Schedule 2).

(c) Te Rūnanga o Ngāi Tahu (Ngāi Tahu Property Group Limited)

Pursuant to sections 52 and 53 of the Ngāi Tahu Claims Settlement Act 1998, preliminary notice sent to Ngāi Tahu Property Group Limited on 15 June 2015 as applicant requested a term of 60 years. Ngāi Tahu Property Group Limited's response recorded as [DOC-2530325](#). The response included the following:

“Please keep us informed throughout the course of processing the four concession applications you have received requesting a lease/licence/easement for a 60 year term.

As discussed we will forward this onto our Puna Mahara division in TRoNT for their information.”

Dunedin Service Centre comments on feedback from Te Rūnanga o Ngāi Tahu

Further consultation with Ngāi Tahu Property Group Limited is only required if a concession is granted in excess of 50 years. The recommended duration of the concessions is discussed in section 6.1.2 in this Report. This Report does not recommend durations which would trigger Ngāi Tahu's right of first refusal.

²¹ Recorded as [DOC-6165104](#)

4.2.4 Cumulative Effects

The District Office considers that capping the number of people staying at the cottage/pilot house and limiting the frequency of use is not warranted, as there have been no issues reported to date with respect to numbers staying and the frequency of use.

It is envisaged that no future development, expansion or refinement of the activity conducted at the site will be allowed so as to minimise any cumulative impacts.

Overall, the granting of a concession to occupy land will not result in any significant new effects over and above those already known at the location.

4.2.5 Any other information

The New Zealand Coastal Policy Statement 2010 (NZCPS):

The NZCPS is a national policy statement under the Resource Management Act 1991 ('the Act'). The NZCPS is not a document produced under the Conservation Act. However, it is included in this Report because extracts from the policy (shown below) highlight the need to anticipate and respond to physical changes that affect the coastline. This Report acknowledges that the area to which the application relates is vulnerable to coastal hazards, such as inundation and erosion. The Report recommends that those threats be managed through the special conditions which explicitly refer to those problems. The NZCPS also advises that vehicle access to beaches ought to be limited in the interests of preserving natural features such as dunes. That approach is also relevant in this case.

“Objective 1

To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes, and land, by:

- *Maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;...*

Objective 5

To ensure that coastal hazard risks taking account of climate change, are managed by:

- *considering responses, including managed retreat, for existing development in this situation; and*
- *protecting or restoring natural defences to coastal hazards.*

Policy 3 Precautionary Approach

(2) In particular, adopt a precautionary approach to use and management of coastal resources potentially vulnerable to effects from climate change, so that:

- (b) natural adjustments for coastal processes, natural defences, ecosystem, habitat and species are allowed to occur; and...*

Policy 14: Restoration of natural character

(c) Where practical, imposing or reviewing restoration or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require restoration or rehabilitation, possible approaches include:

- (iv) rehabilitating dunes and other natural coastal features or processes, including saline wetlands and intertidal saltmarsh: or*
- (vii) removing redundant structures and materials that have been assessed to have minimal heritage or amenity values and...*
- (ix) redesign of structures that interfere with ecosystem processes; or...*

Policy 20 Vehicle access

- (1) Control use of vehicles, apart from emergency vehicles, on beaches, foreshore, seabed and adjacent public land where:*
 - a) damage to dune or other geological systems and processes; or*
 - b) harm to ecological systems or to indigenous flora and fauna,...*
 - e) damage to historic heritage; or...*

Policy 26 Natural defences against coastal hazards

- (1) Provide where appropriate for the protection, restoration, or enhancement of natural defences that protect coastal land uses, or sites of significant biodiversity, cultural or historic heritage or geological value, from coastal hazards.*
- (2) Recognise that such natural defences include beaches, estuaries, wetlands, intertidal areas, coastal vegetation, dunes and barrier islands."*

Climate Change

The activity will emit greenhouse gas emissions that will contribute to climate change and is an adverse effect on New Zealand's natural and historic resources in terms of s17U(1). The activity's contribution to climate change is relevant to the purpose of the Conservation Act, and the Conservation General Policy, in particular Policy 4.6 Ecosystem Services of the CGP (avoiding or otherwise minimising adverse effects on the quality of ecosystem services). The 2050 target for emissions reductions in the Climate Change Response Act 2002 is also relevant in assessing the application and is consistent with the purpose of the Conservation Act.

Reducing greenhouse gas emissions requires measuring the emissions of the activity, developing, and implementing a plan to reduce those emissions, and if appropriate, offsetting those emissions. The Permissions Advisor recommends, if the application is approved, to include proposed special conditions 38 to 42 (section 6.5.1) and 24 to 28 (section 6.5.2) in this Report, enabling the Department to require greenhouse gas emissions data from the Applicant during the term of the concession, and to amend the conditions to reflect climate change-related legislation and government or Departmental policy and that those conditions may, amongst other things, require the applicant to measure, manage and reduce the greenhouse gas emissions of the proposal.

4.3 Analysis of the Proposal - Other Matters to be Considered by the Minister - s17U(4) and s17U(5)

4.3.1 Alternative Locations – s17U(4)

The Department is satisfied, pursuant to s.17U(4), that it would be impractical to consider if the activity could reasonably be undertaken in another location as the cottage/pilot house has existed at this location for more than a century.

4.3.2 Appropriateness of Granting a Lease or Licence or Easement

The applicant sought three classes of concession in the application. These are a lease, a licence and an easement. The dimensions of each of these areas sought is set out in Table 1 in section 1.1 in this Report and are more particularly described in the application.

In general, this Report agrees with the approach taken by the applicant that three classes of concession be granted:

- (a) A lease to correspond with the footprint and curtilage of the existing structures;
- (b) A licence (being a non-exclusive interest in land) for the land proximate to those structures; and
- (c) An easement to allow access along “Moana Street / Spit Road” so that the leased and licenced areas can be reached by vehicle or foot.

Feedback from the District Office as to the dimensions of the Lease, Licence and Easement Areas

In assessing the extent of each area to be set aside as a lease, license or easement regard has been had to the feedback received from the Department’s District Office. That feedback can be summarised as follows:

Proposed Lease Area

The footprint of cottage/pilot house and associated structures is as set out in the application (refer to Table 7 below).

Proposed Licence Area

Pilot house 3: reduce area compared to surveyed area, high dune between it and dwelling at 74 Moana Street could be excluded from licence area. High dune should be excluded unless there is a compelling reason to include it.

Proposed Easement

Right of way runs from the end of the existing formed road at approximately 3-5 metres from high tide mark to avoid debris deposition area. To ramp approach to pilot houses. The return leg is to provide access to cottage/pilot house No.3 and ends at the parking area for cottage/pilot house No.3.

Will need to be some flexibility to allow for natural shoreline movements, and cannot be guaranteed in the long term.

Dunedin Service Centre Recommendations

This Report recommends that a lease be granted in relation to the land under the existing cottage/ pilot house and related structures because the tests set down in s.17U(5)(a), s.17U(5)(b)(i)(A) and s.17U(5)(b)(ii) are met. The Department is also satisfied, pursuant to s.17U(6), that exclusive possession is necessary over certain land being the footprint of the cottage/pilot house.

In addition to creating a lease in relation to the existing structures, it is proposed to include a clearly defined licence area around the cottage/pilot house because use of the areas immediately proximate to the structures is an integral part of the activity [s.17U(5)(b)(i)(B)].

In considering which area or areas around the structure or facility should be within this licence area, regard has been had to the Application and to the District Officer's assessment of the appropriate dimensions however, any licence area must be contained within the 0.8 hectare conservation purposes area excluded from the Ecological Area (as summarised above).

This report also recommends that an easement for access purposes be granted.

The recommended dimensions and locations for the lease, licence and easement areas are summarised in Table 7 below and depicted in the map at Appendix E.

Table 7: Recommended Lease and Licence and Easement Area

Site	Private Accommodation	Lease Area m ²	Licence Area m ²	Total Area m ²	ROW Easement
Pilot House No.3	Cottage/ Pilot House	153	1,077	1,230	3,000 m ² (1,000 metres long x 3 metres wide)

4.4 Analysis of the Proposal – Purpose for Which the Land is Held - Section 17U(3)

Section 17U(3) provides that the Minister cannot grant a concession if the proposed activity is either contrary to the Act or to the purposes for which the land is held.

The application affects land held under the Conservation Act for the following purposes:

1. conservation purposes under section 7(2) of the Conservation Act (0.8 hectares); and
2. ecological area²² under section 21 of the Conservation Act (358.2 hectares).

Conservation purposes (s.7(2))

The purpose for which land may be acquired and held for conservation purposes is set out in section 7(2):

“The Minister may, by agreement, acquire any interest in land for conservation purposes; and, subject to this Act, it shall thereafter be held for those purposes.”

Ecological areas (s.21)

Section 21 provides that:

“Every ecological area shall be so managed as to protect the value for which it is held.”

According to the Gazette Notice extract from NZ Gazette, 4 June 1998, No. 76, p. 1701 for the Aramoana Ecological Area the particular scientific values for which it is held are:

- (i) Its importance as an uninterrupted sequence (now rare or absent on the coast of New Zealand) from tidal eelgrass mudflats, through salt-marsh, and salt-marsh shrub-land to adjacent dry-land;

²² Note: underlying land is held under s.7(2) for conservation purposes but, has additional protection as an ecological area.

- (ii) Its value for fish productivity (including shellfish);
- (iii) Its indigenous vertebrates;
- (iv) Its use by a significant variety of migratory wading birds.

The terms “conservation” “preservation” and “protection” are defined in section 2(1) of the Conservation Act as:

*“**conservation** means the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations.”*

*“**preservation**, in relation to a resource, means the maintenance, so far as is practicable, of its intrinsic values”*

*“**protection**, in relation to a resource, means its maintenance, so far as is practicable, in its current state but includes-*

(a) its restoration to some former state; and

(b) its augmentation, enhancement, or expansion” (underline added for emphasis).

Accordingly, both sections 7(2) and 21 of the Conservation Act refer to the need to “preserve” and “protect”.

4.4.1 Assessment of the purpose for which the land is held for conservation purposes

The portion of land²³ which is occupied by the pilot house and related facilities is not part of the ecological area therefore, the lease and licence would be granted over land held for conservation purposes.

The legal test, so far as conservation purposes land is concerned, is whether granting a lease and licence would fail to protect (so far as is practicable) the historic and natural resources of the conservation purposes land.

The conservation purposes area contains both natural and historic features (the cottage/pilot house in itself is an historical feature). It is clear that the area immediately surrounding the house is also of some historic value since it too appears in the Historic Places Register listing. Although there are natural resources within the proposed lease and licence footprints (not simply man-made structures) those natural resources have co-existed with the residential occupation for many decades. The continued occupation and use of this privately owned, historical dwelling would not substantially alter the existing state of affairs. In fact, enabling the continued occupation of the cottage/pilot house, together with the licenced zones around them, would likely achieve protection of the existing historic resources present.

Accordingly, it would not be contrary to the purposes for which this conservation purposes land is held if concessions, in the form of a lease and licence, were granted to enable the continuation of the activities at the site subject to the terms and conditions proposed in section 6.5 in this Report. Amongst other things, those conditions seek to prevent the expansion of the residential usage, the creation of new structures and also to limit the interference with the natural resources that do exist within the conservation purposes land.

²³ Appendix D plan SO 24759 (page 2 of 2)

In terms of the obligation to protect the natural and historical values within the conservation purposes area, the definition of “protection” in section 2 of the Conservation Act is qualified by the words “so far as is practicable”. The cottage/pilot house and the accessory structures around it are vulnerable to coastal erosion and inundation. Over the medium to long-term it may not be practicable to protect this historic structure. Private occupation of the house and the land they occupy may be untenable in the future. Proposed special conditions 10 and 11 in Section 6.5.1 in this Report acknowledge this risk and respond to the problem.

4.4.2 Assessment of the purpose for which the ecological land is held

As noted above, the ecological area has a number of scientific values which were identified at the time of its gazettal. In order to comply with the test laid down by section 17U(3) the granting of a concession must not be contrary to the protection of those values.

In this case the activities that would take place within the ecological area is access to and from the pilot house along the non-legal road known as “Moana Street” or “Spit Road”. The intention is to gain access via vehicle and foot pursuant to an easement.

The current state of the ecological area is such that a (non-legal) roadway already exists and has been in place for many decades. It is known locally as “Moana Street” or “Spit Road”. This gravel roadway has been formed within the ecological area for up to 800 metres from the gate towards the cottage/pilot house (see map in Appendix E).

Protecting the values of the ecological area in their “current state” can be understood to mean protecting them as they currently are, namely with a roadway passing through the area and with human disturbance already evident. Allowing continued access along the pre-existing roadway would not amount to a failure to protect the values identified in the Gazette Notice because the “current state” of those values would continue. Accordingly, it would not be contrary to the purposes for which the land is held to grant an easement for continued vehicular and pedestrian access to and from the cottage/pilot house.

“Protection”, as used in the Conservation Act, not only anticipates maintaining existing values in their current state but the augmentation or restoration of those values as well. It is within the purpose of ecological area to improve the quality of the scientific values present in the Aramoana Ecological Area by reducing the effects of human interference over time. In the previous section, this Report discussed the threat the historical buildings face from coastal erosion and inundation. It is possible that over the medium to long-term it will not be practicable to protect the buildings nor allow private occupation of them inside the conservation purposes area. In those circumstances the scientific values of the ecological area may be enhanced as a result of reduced use of Moana Street (also known as Spit Road).

4.4.3 Assessment of whether the activities are otherwise contrary to the Conservation Act

For the purposes of section 17U(3) there are no provisions of the Conservation Act that would be breached by the granting of the lease, licence and easement.

4.5 Analysis of the Proposal – Consistency with relevant Conservation Management Strategies and Plans – 17W

Where a conservation management strategy or conservation management plan exists for a particular location a concession can only be granted if doing so is consistent with the management strategy or plan (s17W).

In this case a conservation management strategy does affect the area to which the application relates. The relevant management strategy is the Otago Conservation Management Strategy 2016 (“Otago CMS”). The Otago CMS is subservient to the Conservation General Policy 2005 in so far as it must implement the general policies set out in the 2005 document and it must not derogate from the general policies. Where a conservation management strategy is silent on an issue, reference can be made to the Conservation General Policy for direction.

There is no relevant conservation management plan for the area.

Conservation General Policy (May 2005) (CGP):

It is recognised in the CGP that there are a variety of activities undertaken by people and organisations on public conservation lands and waters that require authorisation. The following parts are most pertinent for the purposes of this application:

- Part 1 Interpretation of Policies
- Part 5 Historical and Cultural Heritage;
- Part 10 Accommodation and Related Facilities.

Excerpts from the CGP are reproduced in the table below:

POLICIES

1 Interpretation of Policies

1 (d) The words ‘will’, ‘should’ and ‘may’ have the following meanings:

- Policies where legislation provides no discretion for decision-making or a deliberate decision has been made by the Minister to direct decision-makers, state that a particular action or actions ‘will’ be undertaken.*
- Policies that carry with them a strong expectation of outcome without diminishing the constitutional role of the Minister and other decision-makers, state that a particular action or actions ‘should’ be undertaken.*
- Policies intended to allow flexibility in decision-making, state that a particular action or actions ‘may’ be undertaken.*

POLICIES

5. Historical and Cultural Heritage

- 5(b) Historical and cultural heritage on public conservation lands and waters, that is assessed as having high significance in accordance with the Historic Places Act 1993, should be actively managed (including restoration where this is necessary) within the context of integrated conservation management.(underline added for emphasis).*
- 5(e) Historic buildings and structures on public conservation lands and waters should be used in ways that:*
 - enable their preservation;*
 - are in keeping with their assessed significance; and*
 - provide opportunities for the public to appreciate them.*

POLICIES

10 Accommodation and Related Facilities

- 10 (a) Accommodation and related facilities on public conservation lands and waters may be allowed for public recreation, educational and community services, consistent with the outcomes planned for places.*
- 10 (b) Accommodation and related facilities on public conservation lands and waters owned and occupied by people and organisations other than the Department, will require a concession.*
- 10 (c) Any application for a concession will comply with, or be consistent with, the objectives of the relevant Act, the statutory purposes for which the place is held, and any relevant conservation management strategy or plan.*
- 10 (d) Any application for a concession to provide accommodation or related facilities, or to extend or add to an existing structure or facility, should meet the following criteria:*
- i. the accommodation or related facility cannot reasonably be located outside public conservation lands and waters;*
 - ii. it cannot reasonably be built elsewhere on public conservation lands and waters where the potential adverse effects would be significantly less; and*
 - iii. the applicant cannot reasonably use or share an existing structure or facility.*
- 10 (e) All accommodation and related facilities including replacements, additions and extensions on public conservation lands and waters should:*
- i. be consistent with the outcomes planned for places;*
 - ii. avoid or otherwise minimise adverse effects on natural resources and historical and cultural heritage, and on the benefit and enjoyment of the public, including public access;*
 - iii. complement and, wherever possible, be located close to existing accommodation and related facilities;*
 - iv. be located, designed, constructed and maintained to meet all legal requirements and standards;*
 - v. be of such a scale, design and colour that they harmonise with the landscape and seascape;*
 - vi. provide for disabled people in places where this is practicable; and*
 - vii. be available for use by the public.*
- 10 (f) The Department and all concessionaires should monitor the effects of the use of accommodation and related facilities on natural resources and historical and cultural heritage, and on the benefit and enjoyment of the public, including public access, to inform future management decisions.*
- 10 (g) New accommodation and related facilities, including encampments, on public conservation lands and waters, for exclusive private use should not be permitted.*
- 10 (h) Existing private accommodation and related facilities, including encampments, on public conservation lands and waters will be phased out, except where specifically provided for or allowed in legislation, in accordance with the conditions and timeframes set out in any relevant concession or conservation management strategy or plan. They should be removed at the end of the phase-out period, unless retained by the Department for public use.*
- 10 (i) A ground rental should be charged for existing private accommodation and related facilities, including campgrounds, on public conservation lands and waters.*

10 (j) The Department should consult the relevant conservation board on all proposals for departmental accommodation and related facilities, including replacements, additions and extensions, on public conservation lands and waters.

The cottage/pilot house, associated structures and improvements are identified by Heritage New Zealand as “Pilots’ Cottages Historic Area”. They are also in an area of historical significance to Māori. Policy extracts from Part 5 of the CGP Historical and Cultural Heritage are therefore relevant (refer to extract above).

This report acknowledges the historical significance of the cottage/pilot house. Policy 5(e) i-iii advises that such structures should be used in ways enable their preservation and allow for the public to appreciate them. However, this still needs to be within the context of integrated conservation management as stated and reinforced in policy 5(b) in part, and the ongoing threat the historical buildings face from potential coastal erosion and inundation.

The policies in Part 10 of the CGP (in particular policy 10(h)) are addressed further in Part 3.11 of the Otago CMS in relation to private accommodation and related facilities on conservation land within Otago. The relevant policies are considered in more detail in Table 8 below.

Consistency with Relevant Management Strategies and Plans s17W:

Otago Conservation Management Strategy 2016 (Otago CMS)

The conservation land affected by the application is included in Part 2.7 Eastern Otago and Lowlands/Maukaatua Place Otago CMS (pages 93-100) and Map 5.7 and 5.7.1 (pages 20-21) and Map table 7.16 and Map 16 of 19 (pages 68-69).

Extracts from the Otago CMS have been included in the box below in *italics* with comments included. These extracts reinforce the national (and international) importance of this area as a significant ecosystem. The extracts also deal specifically with private accommodation, animals and dogs, and vehicles.

- Extracts taken from **Part One** Part’s 1.3, 1.5.1 and 1.5.4 of the Otago CMS (pages 17-44)
- Reference only to comprehensive objectives included in Part’s 1.5.1.1 to 1.5.1.19 in relation to natural heritage (pages 33-35)
- Extracts taken from **Part Two – Places**; Part 2.7 of the Otago CMS (pages 45-120)
- Extracts taken from **Part Three – Specific policy requirements for Otago**; Part’s 3.1, 3.2, 3.7 to 3.11 of the Otago CMS (pages 121-156)
- Reference to **Appendix 8 Marine Habitats and ecosystems in Otago Peninsula and adjacent shelf Habitat type / Significant values / Pressure/threats – Aramoana Ecological Area** (page 248)
- Reference to **Appendix 9 Significant geological features, landforms and landscapes in Otago Aramoana Ecological Area “Saltmarsh”** (page 255).

Extracts taken from **Part One** Part's 1.3, 1.5.1 and 1.5.4 of the Otago CMS

1.3 Distinctive features, values and issues of Otago

Introduction

Otago has a character distinct from other regions of New Zealand and a vast diversity of landscapes, ecosystems, species and climates, which contribute to New Zealand's international identity and reputation.

The coastal and marine environments in Otago and the species that inhabit them are rich and diverse. Compared with terrestrial environments, relatively little is known about them and the scarcity of marine protected areas remains the most obvious gap in Otago's protected area network.

Ecosystems—rainforests, tussock grasslands, drylands, rich coastal forest and wetland ecosystems

Otago's coastal and marine ecosystems are varied reflecting the diversity of rock types and exposure to waves and currents along the coast. Rocky shores alternate with sandy beaches, kelp beds and coastal cliffs.

Species—Otago, a stronghold for birds, lizards, galaxiids, marine mammals and dryland plant species

Marine and coastal areas support a wide range of seabirds, marine mammals, fish and invertebrates. Penguins, shearwaters, shags, albatrosses and gannets feed and breed in a number of locations along the coast.

Threats—the challenges facing conservation in Otago

Otago's marine environments lack protection and will require community engagement around the benefits and means of marine protection.

Otago's ecosystems and species, along with some recreational opportunities and coastal heritage sites, are being affected by climate change. Future impacts are likely on both terrestrial and marine ecosystems, the distribution and survival of species, and the range of pests. Coastal heritage sites are rapidly being lost by increasing coastal erosion. Minimising the impact of other threats, such as habitat modification and fishing pressure in the marine environment, may allow ecosystems to be more resilient to the effects of climate change.

1.5.1 Natural heritage

Section 1.3 outlines the key matters that have shaped Otago into being an important place for natural heritage, in particular the diversity of Otago's natural landscapes, ecosystems and species, the vulnerability of natural heritage to the impacts of human activities, and the opportunities to protect, maintain and restore these values....and include:...

- *...Coastal and marine areas...*
- *...Wetlands—both upland and lowland, and estuaries...*
- *...Saline ecosystems...*

1.5.4 Community engagement

Examples of places where the community have signalled an interest in initiating or leading conservation programmes include but are not limited to:...

- ...Aramoana...

Extracts taken from **Part Two – Places**; Part 2.7 of the Otago CMS

2.7 Eastern Otago and Lowlands/Maukaatua Place

Description

The Aramoana Ecological Area includes the saltmarsh, which is the largest and most intact saltmarsh in the Dunedin region and one of the best examples on the South Island's east coast. It contains a suite of plants ranging from those that enjoy long daily inundation (e.g. glasswort) through to those submerged for less time (e.g. remuremu and māakoako) and those in the upper saltmarsh (e.g. oioi and saltmarsh ribbonwood). These and other marsh plants provide food for over 80 indigenous moth species.

Community initiatives to protect or restore lowland and coastal indigenous biodiversity are being undertaken...The protection and, in some cases, restoration of remaining natural or semi-natural wetlands, saltmarshes and rivers in the lowlands will require inter-agency and community cooperation if their multiple natural values are not to be lost.

There are few public conservation lands and waters along the Otago coast apart from those on Otago Peninsula, so what is present is important for threatened species, including the rāpoka/whakahao/New Zealand sea lion, hoiho/yellow-eyed penguin and toroa/northern royal albatross, all breeding at locations along the coast.

Pest plants and animals are impacting on the coastal environment, e.g. marram grass has displaced the indigenous pīngao on many beaches.

Archaeological sites along the coast (including urupā sites) are being exposed by wave and wind erosion. Where these are on public conservation lands and waters, the Department liaises with Ngāi Tahu and Heritage New Zealand Pouhere Taonga to ensure appropriate site information and recovery.

The Eastern Otago and Lowlands/Maukaatua Place presents many recreational opportunities. Wildlife tourism is now an integral part of Otago's economy, with Dunedin widely proclaimed as the 'Wildlife Capital of New Zealand'.

...the Aramoana Ecological Area and the Aramoana Recreation Reserve are also sought out by visitors. Recreational use is predominantly walking, picnicking, camping, mountain biking, tramping, hunting, fishing and surfing, with most activity along accessible parts of the coast.

Outcome, policies and milestones for the Eastern Otago and Lowlands/Maukaatua Place

OUTCOME

Lowland and coastal forests, shrublands, coastal turfs, dunes and aquatic ecosystems

(including wetlands, estuaries and saltmarshes) remain prominent features of the Eastern Otago and Lowlands/Maukaatua Place. Ecological functioning and habitat connectivity are considerations in land management and the extent of protected lowland ecosystems has increased.

Priority ecosystems are recovering or are in a healthy functioning state as a result of integrated programmes that include intensive weed, pest and predator management. Threatened species populations are improving where intensive management is occurring either on or off public conservation lands and waters.

Otago's rich and varied coastline retains its predominantly natural, and often wild, character. Otago communities are strong advocates for greater protection and care of the coastal environment and are actively engaged in protecting their local areas. At various locations on land along the coast, marine mammals and seabirds are breeding and surviving well, including where they are observed by people.

People value the natural, cultural and ecosystem service values of wetlands generally and are involved in their protection throughout the lowlands. The complex of wetlands, large and small along the Otago coastline, is protected and sustainably managed and provides an ecological and migratory wildlife corridor and pathway between freshwater and the marine environments. Measures to address sea-level rise effects have been planned on public conservation lands and waters, and for other lands, the community is planning for coastal ecosystem retreat.

Coastal Otago remains an international destination for wildlife tourism and opportunities to quietly enjoy coastal landscapes and wildlife. Concessionaires and permit holders improve public awareness and appreciation of conservation values and operate while managing any adverse effects on wildlife.

On public conservation lands and waters elsewhere in this Place, developments only occur where natural character has already been highly modified or structures are already present. Sites of high natural character or in distinctive landscapes, at significant cultural sites, or in areas that are important for threatened and at-risk species, marine mammals or seabirds, remain free of structures.

POLICIES

- 2.7.1 Work with others to achieve active management to protect eastern lowland and coastal habitats including:*
- a) indigenous or semi-indigenous riparian vegetation;*
 - b) habitats of threatened and at-risk indigenous plants and animals or naturally rare ecosystems;*
 - c) areas of indigenous vegetation that link indigenous ecosystems or adjoining upland areas, providing wildlife corridors;*
 - d) forest and shrub ecosystems;*
 - e) wetlands and their margins; and*
 - f) coastal turfs, herbfields and duneland ecosystems.*

- 2.7.7 Prioritise statutory advocacy for the implementation of the New Zealand Coastal Policy Statement (2010) and the protection of priority ecosystem units and threatened species.*

Comment: Coastal habitat protection and management has been considered extensively throughout this Report (in particular section 4), when considering the historic activity as described in this Report.

2.7.9 *Work with the community to ensure that vehicle access along beaches avoids adverse effects on fragile dunes, nesting birds, marine mammals and threatened species.*

Comment: Historic vehicle access and its impact on this coastal ecosystem has been considered throughout this Report.

2.7.10 *Work with the community (including regional agencies) to raise awareness of the threats posed to wildlife by dogs, and implement dog control provisions to protect vulnerable wildlife in accordance with Policies 3.8.3–3.8.9 in Part Three.*

Comment: See Part 3.7 to 3.8 discussions below.

2.7.13 *Should allow motorised vehicle and mountain bike use only as identified in Table 2.7, and Policies 3.2.1–3.2.12, 3.3.1–3.3.8 and 3.4.1–3.4.5 in Part Three.*

Comment: The conservation land where the applicant’s activity is located for motorised vehicle access is not listed in Table 2.7 (excerpted below). As Policy 2.7.13 is an ‘and’ policy, it requires the consideration of whether to allow motorised vehicle use only as identified in Table 2.7, and the Policies listed in Part Three.

Table 2.7: Access to Eastern Otago and Lowlands/Maukaatua Place

MOTORISED VEHICLE ACCESS ON OR THROUGH PUBLIC CONSERVATION LANDS AND WATERS³⁴
In some cases, vehicle access may use legal road, or additional adjoining legal road access may exist, in which cases see Policy 3.1.8
Trotters Gorge Scenic Reserve – Trotters Gorge access road
Conservation Area—Waipori Falls “Scenic Reserve” (Pt) – Waipori picnic area road
Sandymount Recreation Reserve – Sandymount Road
Conservation Area—Boulder Beach/Highcliff Block – McMeeking Road
Conservation Area—Glencoe “Scenic Reserve” – Glencoe Scenic Reserve access road
Pigeon Bush Scenic Reserve and Trotters Block/Pigeon Bush Conservation Area – Pigeon Bush Scenic Reserve access road
Katiki Point Historic Reserve – Katiki Point Road

³⁴ In some cases, landholder permission may be required for the most practical access, or for parts of roads not on public conservation land and waters. Some roads are inaccessible or closed over winter and/or may require keys for locked gates or other access arrangements.

The proposal has been considered under the relevant Part Three policies listed in Policy 2.7.13 below.

Extracts taken from **Part Three – Specific policy requirements for Otago**; Part's 3.1, 3.2, 3.7 to 3.11 of the Otago CMS

3.1 General

Authorisations (General)

Unless enabled by other legislation, anyone wishing to undertake an activity for specific gain or reward (including carrying out a trade, occupation or business) on public conservation lands and waters..., or the construction of a structure, requires an authorisation. The most common authorisation is a concession under Part 3B of the Conservation Act 1987. The Department aims to allow for a range of authorisations that are consistent with relevant legislation and policy, the protection of natural resources and historic and cultural values, and the recreational settings and planned outcomes and policies for specific Places (Part Two).

3.2 Vehicles

Motorised vehicle use is not generally allowed off formed roads on public conservation lands and waters in Otago, unless specifically provided for in accordance with the outcomes, policies and Tables in this CMS.

There are many opportunities for vehicle touring on public conservation lands and waters, especially on roads running through areas that were formerly pastoral leasehold lands.

The use of motorised vehicles off formed roads or marked routes can adversely affect conservation values through damage to fragile ecosystems, historic and cultural sites and disturbance to wildlife. Their use may also have effects on natural quiet and the experiences of other people. Restricting use to formed roads or marked routes, seasonal closures, and advocacy and compliance work can help prevent damage and minimise conflict and public safety issues.

Policies

3.2.1 Should allow motorised vehicles only on the roads (including designated parking areas) identified in:

- a) Part Two—Places; or*
- b) Mount Aspiring National Park Management Plan 2011.*

Comment: This policy is not relevant as motor vehicle use is not to occur on any roads identified in a) Part Two—Places and, b) the proposed activity is not in Mount Aspiring National Park.

3.2.2 Consider provision for use of motorised vehicles outside of areas provided for by Policy 3.2.1 only where such use is identified at sites listed in Part Two—Places and subject to Policy 3.2.4.

Comment: This policy specifically refers to provision of motorised vehicle use outside of areas provided for by Policy 3.2.1 and, as such, the Decision Maker needs to consider the discussions under Policy 3.2.4 below.

3.2.3 *May allow motorised vehicles on public conservation lands and waters for the construction, operation and/or maintenance of authorised utilities, farming operations, and restoration activities.*

Comment: The current state of the ecological area is such that a (non-legal) roadway already exists and has been in place for many decades (possibly since the early 1920's). It is known locally as "Moana Street" or "Spit Road". This gravel roadway has been formed within the ecological area for up to 800 metres from the gate towards the dwelling (see map in Appendix E).

In policy 3.2.3 the Decision Maker can decide that the use of motor vehicles falls within the description "*for the construction, operation and/or maintenance of authorised utilities*", and that a utility²⁴, as defined in the CGP and Otago CMS, can be "*roads...*".

In the Otago CMS Glossary (page 174), the definition of road is as follows:

Means:

- (a) *A road that is formed and maintained for vehicle use by the public;*
- (b) *A route that is marked by the Department for vehicle use by the public or identified in a conservation management strategy or conservation management plan for use by vehicles generally or for a particular type of vehicle (for example a bicycle) or as a vehicle parking area.*

(Conservation General Policy 2005)

A road may or may not pass over a defined legal road

*See also **Four-wheel drive road.***

Table 2.7 has also been excerpted below from the Otago CMS:

The non-legal roadway has been historically used primarily by the applicant, the other 2 pilot house owners and dwelling owner for access. However, the general public have also been able to use this roadway.

The protection of the fragile ecosystem (saltmarsh) from damage by vehicles and disturbance of wildlife by the presence of vehicles is an ongoing issue. The Department has relied on education and advocacy in the past, and has recently put up a physical barrier in the form of a gate (Figure 2).

As the Otago CMS states in 3.2 above, "*Motorised vehicle use is not generally allowed off formed roads on public conservation lands and waters in Otago, unless specifically provided for in accordance with the outcomes, policies and Tables in this CMS.*" (underline added for emphasis) however, the use of vehicles by the applicant is supported by the Otago Conservation Board in section 4.2.3(a) in this Report "*Sensible access across the Salt marsh be granted, while limiting as much as practicable, environmental damage*", and by District Office in section 4.2.2 in this Report (refer to Table 6, item 2), with conditions.

²⁴ *Includes but not limited to these facilities based over or under the ground: structures and infrastructure for telecommunications; energy generation and transmission and distribution; sewerage; water supply and flood control; oil and gas; roads and airstrips; hydrological and weather stations (based on Conservation General Policy 2005).*

As policy 3.2.3 is a 'may' policy, this allows flexibility in decision making and that particular action or actions 'may' be undertaken (CGP, 2005).

It is considered that the use of vehicles to access the applicant's pilot house/cottage is not inconsistent with Policy 3.2.3.

Note: Even though the access-way to the pilot house/cottage could be considered as a private accommodation related facility in accordance with Part 3.11 (Table 8), consideration of the road for access has been dealt with as a Structure and utility under Part 3.10 below (Table 9).

3.2.4 Should follow the statutory CMS amendment or review process when considering the use of motorised vehicles on public conservation lands and waters other than in accordance with Policies 3.2.1 and 3.2.3 and apply the following criteria to the activity:

a) is consistent with the purposes for which the lands and waters concerned are held;

Comment: Refer to discussions in section 4.4 in this Report

b) is consistent with the outcome and policies for the Place where the road or site is located;

Comment: Refer to the discussions in this box under Part 2.7

c) is consistent with the visitor management zones on Map 3 and as described in Appendix 12;

Comment: Frontcountry. The proposal is allowable within this visitor management zone as any effects will be avoided, remedied or mitigated by conditions

d) adverse effects (including cumulative adverse effects) on the road or site and surrounding natural, historic or cultural values are, or can be, avoided, remedied or mitigated;

Comment: Refer to discussions in section 4.2 in this Report. The 'Spit Road' has existed at this location in one form or another since the early 1920's.

e) adverse effects (including cumulative adverse effects) on the safety and enjoyment of other recreational users are, or can be, avoided, remedied or otherwise mitigated (including conflicts between motorised vehicles/mountain bikes and horses);

Comment: Refer to discussions in section 4.2 in this Report. Further to d) above the location and length of the 'road' creates no safety issues or impact on recreational users. The public can still freely access the proposed licence and easement areas.

f) risks of fire and biosecurity are avoided or otherwise carefully managed; and

Comment: Refer to discussions in section 4.2 in this Report.

g) the ongoing management implications of providing motorised vehicle access (e.g. in terms of ongoing maintenance costs) are taken into account.

Comment: The Applicant will be responsible for all maintenance and repair costs associated with the right of way (easement), if a concession is granted.

It is considered that motorised vehicle use at this site is in accordance with Policy 3.2.3 and, after considering the statements in Parts 2.7 & 3.2 (excerpted above) and, individual comments under Policies 3.2.4 a)-g) above, it is considered that motorised vehicles use is consistent with Policy 3.2.4.

As previously noted under Policy 2.7.13, even though the 'road' to the dwelling could be considered as a private accommodation related facility in accordance with Part 3.11 (see Table 8 below), consideration of the road for access has been dealt with as a Structure and utility under Part 3.10 (see Table 9).

3.2.6 Monitor the effects of motorised vehicles on natural, historic and cultural values, and on other recreational users.

Comment: Yearly environmental monitoring is to be carried out. Refer to proposed special conditions 29-30 in section 6.5.1 in this Report.

3.2.7 Review motorised vehicles use where monitoring shows that adverse effects are occurring, in consultation with relevant motorised vehicle user clubs(s) and the community.

Comment: In conjunction with the yearly environmental monitoring referred to in policy 3.2.6 above, there are comprehensive 'suspension of concession' proposed conditions 17-23 in section 6.5.1 in this Report.

*3.2.8 May restrict motorised vehicle access at any time in the following situations:
a) there is a health and safety risk;
b) there is fire risk;
c) adverse effects are evident or likely on conservation resources;
d) priorities change for the provision of the formed roads or designated vehicular route; or
e) where damage to the structure of the road is evident or likely.*

Comment: Any concession (easement), if granted, has conditions to monitor and review vehicle use and possibly restrict (if warranted) vehicle use at this location.

3.7 Animals

Animals are not permitted to be taken onto public conservation lands and waters unless this is consistent with legislation and provided for in this CMS or conservation management plan. This may include giving authorisation by way of signage or other such public notification. Domestic animals and pets can have adverse effects on the natural, historic and cultural values of public conservation lands and waters and can detract from visitor appreciation and enjoyment. Potential effects include killing wildlife, introducing pest plants, introducing disease (such as dogs to seals), browsing indigenous vegetation, increasing erosion and conflicting with other user groups.

The use of animals can also enhance the recreational experience of visitors to public conservation lands and waters.

Policies

3.7.1 Should not permit livestock, other than horses (and pack animals), in accordance with Policies 3.9.1–3.9.4, on public conservation lands unless under a grazing and

farming concession or management agreement.

3.7.2 Should not permit any other types of animals, including pets, other than dogs in accordance with Policies 3.8.1–3.8.9 on public conservation lands and waters.

3.8 Dogs

The Department controls the use of dogs for recreational and other activities, including hunting, on public conservation lands and waters to protect both indigenous wildlife and people's rights of use and enjoyment. It is illegal to take a dog onto public conservation lands and waters without a permit unless the area is identified as an 'open dog area' where no permit is required pursuant to Part 5C of the Conservation Act 1987.

Places in Otago where dogs cause problems include coastal areas (where their exclusion or control is necessary to ensure marine mammals and birds are undisturbed),...

3.9 Horses and pack animals

In some cases, the use of animals such as horses can enhance the recreational experience of visitors. However, they can have adverse effects, as identified above as well as spreading pest plants and pathogens. Authorisation, by signage or other means, is required to take horses and pack animals onto public conservation lands and waters.

Comment: Policy 3.7.2 (Animals) advises that pets and other animals ought not to be allowed on public conservation land because of the adverse impact they can have on wildlife.

Policy 3.8 (Dogs) notes that it is illegal to take a dog onto public conservation lands and waters without a permit unless the area is identified as an 'open dog area' where no permit is required pursuant to Part 5C of the Conservation Act 1987. The areas affected by this application are not "open areas" in terms of dog access.

It is also noted that the affected area is also subject to a Dunedin City Council bylaw which prohibits dog access.²⁵

It is also recommended that horses and pack animals are excluded from the affected area (Policy 3.9).

For reasons of preserving the ecological values of the area (discussed further in section 4.2.2; Table 6, item 9 in this Report) it is recommended that special conditions be imposed to prevent concessionaires bringing dogs and other pets onto the affected area. Refer to proposed special condition 21 in section 6.5.1 in this Report.

3.10 Structures and utilities

Policies

[Refer to Table 9 for a summary of policies 3.10.1 (a) to (k) relating to structures and utilities in Otago, along with Dunedin Service Centre comments.]

3.11 Private accommodation and related facilities

²⁵ Dunedin City Council bylaw, Control of Dogs – Date of Effect: 1 July 2016 - clause 5.8 Public Places in which Dogs are prohibited". Clause 5.8.1 states "Dogs are prohibited at all times in those places listed in Schedule D" Conservation/Wildlife Areas Aramoana Ecological Area – salt marsh and wetland.

Existing structures on public conservation lands and waters include some private accommodation and related facilities that are not available for use by the general public. Some of these structures have been authorised, but several have been erected and used unlawfully (see Table 3.11.1). Under the Conservation General Policy 2005, the use of private accommodation and related facilities, including encampments solely for private purposes, is to be phased out, except where specifically provided for or allowed in legislation.

Table 3.11.1: Authorised and unauthorised private accommodation and related facilities in Otago

Aramoana Conservation Area – Spit Houses

NO: 4

AUTHORISED: No

EXCEPTION APPLIES⁵⁰: No

RIGHT OF RENEWAL: No

⁵⁰ Section 7(2) Conservation Amendment Act 1996, section 11(4) Reserves Amendment Act 1996 or section 5(3) National Parks Amendment Act 1996.

Policies

[Refer to Table 8 for a summary of policies 3.11.1 to 3.11.6 relating to private accommodation and related facilities in Otago, along with Dunedin Service Centre comments.]

Dunedin Service Centre Comments on the Otago CMS

The CMS policies relevant to this application have been discussed in the box above and fall into four broad categories – private accommodation and related facilities, structures and utilities, vehicles and animals/pets.

Private accommodation and related facilities

See Table 8 below for discussion of policies 3.11.1 to 3.11.6.

Table 8: Policies in relation to private accommodation and related facilities (Part 3.11)

<p><i>Policies</i> When considering the policies below, Policy 1(d)(ii) of the CGP clearly states the meaning of the word ‘should’ in any policies: <i>“Policies that carry with them a strong expectation of outcome without diminishing the constitutional role of the Minister and other decision-makers, state that a particular action or actions ‘should’ be undertaken.”</i></p>	<p>Table 3.11.1 in the Otago CMS identifies the Aramoana Conservation Area – Spit Houses as “Authorised = No”.</p>
<p><i>3.11.1 Should not authorise new private accommodation and related facilities, including encampments, on public conservation lands and waters.</i></p>	<p>The cottage/pilot house is not <u>new</u> private accommodation therefore, this policy does not apply.</p>
<p><i>3.11.2 Should phase out all existing private accommodation and related facilities including encampments, on public conservation lands and waters that are not otherwise authorised under section 50 of the National Parks Act 1980⁵¹ or not</i></p>	<p>This heritage building has been inextricably linked to this location since the 1920’s. As this is an either/or statement it is deemed highly impractical for phasing in public use of the building(s) in accordance with part 3.11.2.</p>

<p><i>specifically provided for or allowed in legislation⁵² by either:</i></p> <p><i>a) phasing in public use of the building(s) (see Policy 3.11.4(a)); or</i></p> <p><i>b) removing the building(s) at the end of the phase-out period (see Policy 3.11.4(b)), unless retained by the Department for public use.</i></p>	<p>With regard to that part of policy 3.11.4 b) “...the building(s) are to be removed⁵³ within 18 months of the death of the person named on the authorisation as at 26 June 2013. There was/is no authorisation for this building as at 26 June 2013 therefore, this part of the policy does not apply.</p> <p>The other part of this policy: “...the building(s) are to be removed⁵³...or within 20 years of approval of this CMS, whichever occurs first;...” This requirement to remove the buildings needs to be qualified by note 53 which states “Unless retained by the Department for public use/active management of historical and cultural heritage values.</p> <p>Even though policy 10(h) of the CGP states that “They should be removed at the end of the phase-out period, unless retained by the Department for public use.”, it is considered that until the phase-out period of 31 August 2036 occurs, the Minister will not be in a position to decide if the buildings are to be retained by the Department for active management of historical and cultural heritage values or public use especially as (i) removal may not be considered appropriate considering the heritage nature of the building and its surrounds, or (ii) if, even though it has been deemed impractical, it may be considered at the time to retain the building for public use. These decisions should be made at the end of the phase-out period (i.e. up to 31 August 2036), by the Minister, to ensure that the Minister’s constitutional role is not diminished in this respect.</p>
<p><i>3.11.3 Should consult the Otago Conservation Board and the concession applicant when assessing a concession application for existing private accommodation and related facilities, including encampments, to determine whether a concession may be granted and, if so and where relevant, which of the two phase-out methods (Policy 3.11.2(a) or 3.11.2(b)) should be applied.</i></p>	<p>Further Otago Conservation Board advice received on 22 October 2019²⁶. For details of this advice refer to section 4.2.3(a) in this Report.</p>
<p><i>3.11.4 Should specify the following concession conditions if private accommodation and related facilities, including encampments, are to be authorised in accordance with Policy 3.11.2:</i></p> <p><i>a) in the case of Policy 3.11.2(a), the building(s) are to be made available for use by the public—with specific conditions on how this requirement will be phased in over time stated in each individual concession,</i></p>	<p><u>3.11.4(a) to 3.11.4(b)</u> See comments under policy 3.11.2 above.</p> <p><u>3.11.4(c)</u> The cottage/pilot house is categorised as historic places category 2 and is administered under the Heritage New Zealand Pouhere Taonga Act 2014.</p>

²⁶ Recorded as [DOC-6157792](#)

<p><i>including the requirement that any costs charged to the public are reasonable; or</i></p> <p><i>b) in the case of Policy 3.11.2(b), the building(s) are to be removed⁵³ within 18 months of the death of the person named on the authorisation as at 26 June 2013, or within 20 years of approval of this CMS, whichever occurs first; and</i></p> <p><i>c) the style and character of all buildings are to remain essentially unmodified; and</i></p> <p><i>d) the floor area and footprint of all building(s) are not to increase beyond that existing at the time of CMS approval; and</i></p> <p><i>e) all buildings must comply with the Building Act 2004 and local authority requirements; and</i></p> <p><i>f) transfer/assignment of the concession to another party should not be authorised; and</i></p> <p><i>g) an indemnity to protect the Department is given by the concessionaire and the concessionaire holds adequate insurance (e.g. general public liability insurance, statutory liability insurance, and for the removal of buildings) to cover this indemnity.</i></p>	<p>Refer to draft Concession (Lease and Licence) (Appendix F) - clause 15.1(c) of Schedule 2.</p> <p><u>3.11.4(d)</u> The defined lease, licence and easement areas have been specified in section 4.3.2 in this Report (including Table 7).</p> <p><u>3.11.4(e)</u> Refer to Concession (Lease and Licence) (Appendix F) - clauses 15.1(b) and 15.1(c) of Schedule 2 and proposed special conditions 12 to 18 in Section 6.5.1 in this Report which address this matter.</p> <p><u>3.11.4(f)</u> If, after considering the discussions under policy 3.11.2 above the decision maker forms a view that an intention to grant a concession is considered appropriate for the phase-out period up to 31 August 2036, then the standard condition in Schedule 2 of the lease and licence and easement that precludes any concession being assigned without the Grantor’s consent should satisfy the decision maker, if a concession is granted that the Minister will exercise this discretion reasonably.</p> <p><u>3.11.4(g)</u> The cottage/pilot house owner(s) will be required to have comprehensive “Home Sum Insured” cover²⁷. The background to this cover and the discussion on the imposition of a bond is covered in section 6.4 in this Report.</p>
<p><i>3.11.5 Should, where an existing authorisation contains a right of renewal, grant the renewal⁵⁴ of authorisations for private accommodation and related facilities, including encampments, on public conservation lands and waters only to the existing authorisation holder,⁵⁵ if:</i></p> <p><i>a) the right of renewal is exercised by the authorisation holder before the existing authority expires;⁵⁶ and</i></p> <p><i>b) (subject to the terms of the authorisation) the person holding the authorisation has complied with all of the terms and conditions of the authorisation.</i></p>	<p>There is no existing authorisation, therefore this policy is not relevant.</p>
<p><i>3.11.6 Should not authorise the substantial repair or replacement of private accommodation and related facilities, including encampments, if:</i></p> <p><i>a) a building falls into substantial disrepair, so that it needs work requiring a building consent under the Building Act 2004;⁵⁷ or</i></p> <p><i>b) a building is destroyed or so damaged by an event (e.g. fire, flood) as to render it untenable.</i></p>	<p>The buildings have/will continue to be repaired and maintained.</p> <p><u>Substantial repair or replacement.</u></p> <p>1. Where the buildings are threatened by (or damaged/destroyed by) coastal erosion the Grantor is under no obligation to approve their relocation, repair or rebuilding. Refer</p>

²⁷ Section 4.2.2, Table 7 (Item 4) of this Report

	<p>to proposed special conditions 10 and 11 in section 6.5.1 in this Report; and</p> <p>2. If the building is damaged in a way that makes it unsuitable for residential occupation, then the Grantor can choose not to approve the repair/rebuilding and the lease/licence will come to an end. Refer to clause 19.1(h) of Schedule 2.</p> <p>Under both these scenarios, if a concession is granted then the Minister will be expected to exercise these discretions in reasonably.</p>
<p>51 <i>The exception in section 50 of the National Parks Act 1980 relates to accommodation in a public sense. The only private accommodation it deals with is for staff quarters.</i></p> <p>52 <i>Such as section 7(2) of the Conservation Amendment Act 1996, section 11(4) of the Reserves Amendment Act 1996, or section 5(3) of the National Parks Amendment Act 1996.</i></p> <p>53 <i>Unless retained by the Department for public use/active management of historical and cultural heritage values.</i></p> <p>54 <i>Where the existing/previous authorisation does not contain a right of renewal and is due to expire (or has expired) and the authorisation holder applies for a new concession, the application should be considered against the other policies in this section and the relevant General Policy.</i></p>	

Structures and Utilities

Even though the access-way to the cottage/pilot house could be considered as a private accommodation related facility (see table 8 above), consideration of the road for access has been dealt with in table 9. It should be noted that this road is partially formed.

Table 9 Policies related to Structures and utilities (Part 3.10)

Policies	Dunedin Service Centre Comments
<p>3.10.1 <i>Should apply the following criteria when considering applications to erect or retain structures or utilities or for the adaptive reuse of existing structures on public conservation lands and waters:</i></p> <p>a) <i>the purposes for which the lands and waters concerned are held;</i></p> <p>b) <i>the outcomes and policies for the Places where activity is proposed to occur;</i></p> <p>c) <i>whether the structure could reasonably be located outside public conservation lands and waters;</i></p> <p>d) <i>whether the structure could reasonably be located in another location where fewer adverse effects would result from the activity;</i></p> <p>e) <i>whether the structure adversely affects conservation, including recreational values;</i></p> <p>f) <i>whether the structure is readily available for public use;</i></p> <p>g) <i>whether the structure is consistent with the visitor management zone on Map 3 and as described in Appendix 12;</i></p>	<p>The comments below relate to the existing (non-legal) roadway only:</p> <p>3.10.1(a): Refer to section 4.4 in this Report.</p> <p>3.10.1(b): Refer to extracts from Otago CMS in box above.</p> <p>3.10.1(c): No. Roadway required to access and service cottage/pilot house. Refer also to section 4.3.1 (Alternative Locations) in this Report.</p> <p>3.10.1(d): No. Roadway required to access and service cottage/pilot house. Refer also to section 4.3.1 (Alternative Locations) in this Report.</p> <p>3.10.1(e): Majority of utility (roadway) has been formed – approximately 800 metres from gate towards cottage/pilot house. Refer also to sections 4.4 and 4.2.4 (Cumulative Effects) in this Report.</p> <p>3.10.1(f): Yes. The public can walk over it.</p> <p>3.10.1(g): Map 8.15 (Page 93) Frontcountry. This application for structures is consistent with</p>

<p><i>h) whether the activity promotes or enhances the retention of a historic structure;</i> <i>i) whether the activity is an adaptive reuse of an existing structure;</i> <i>j) whether the policies for private accommodation and related facilities should be applied (see Policies 3.11.1 and 3.11.6); and</i> <i>k) whether any proposed road in a national park is provided for in the relevant national park management plan.</i></p>	<p>the setting criteria for concessions operations and preferred concessions effects management in a Frontcountry zone.</p> <p>3.10.1(h): Yes, the roadway services the historic cottage/pilot house.</p> <p>3.10.1(i): Not applicable, as this is not an adaptive reuse.</p> <p>3.10.1(j): Yes, the roadway is a related facility. Refer to Table 8 (policies 3.11.1 to 3.11.6) in this Report.</p> <p>3.10.1(k): Not applicable.</p>
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Vehicles

Refer to discussions in box above under Policy 3.2.

Animals/Pets

Refer to comments in box above under Policies 3.7 to 3.9.

Policies relating to private accommodation and related facilities in Otago

Policy 10(h) of the Conservation General Policy (CGP) clearly requires phasing out of private accommodation on public conservation land. However, it also anticipates that the CMSs will generate timeframes and conditions for the phasing out of existing private accommodation. In other words, it allows the CMSs to direct when and how phase out will occur.

The CGP is also clear that private accommodation structures “should” be removed at the end of the phase out period. “Should” is interpreted in policy 1(d) of the CGP as “policies that carry with them a strong expectation of outcome without diminishing the constitutional role of the Minister and other decision makers, state that a particular action or actions “should” be undertaken”.

The relevant provisions of the Otago CMS are contained in Policies 3.11.1 to 3.11.4. These policies are analysed more closely in Table 8 above.

The Otago CMS says that private accommodation should be phased out in one of two ways. Either public use is to be phased in or, after a grace period, the structures are to be removed. Removal of the structures, by implication, would end the private accommodation.

In this particular case it is not considered appropriate to require the removal of the pilot buildings because they are of historical significance²⁸. The CMS does not stipulate how long private use ought to be allowed to continue before public use of the buildings occurs or the structures are removed.

However, it can be inferred from Policy 3.11.4(b) that exclusive private occupation will cease no later than 20 years after the CMS became operational. In other words, there is a long-stop date of 2036 such that public use should be phased in or the buildings removed by that date.

This report recommends that the existing private accommodation is consented but subject to the proviso that the private occupation of the land must end no later than 31 August 2036.

5.0 Relevant information about the applicant

Convictions on any charge related to the activity applied for or on any conservation related issue: Form 1a Section C: not completed.

Past compliance with concession conditions: No previous concessions held by the applicant with the Department.

Credit check result: Not required as applicant is the holder of a current debtor account.

6.0 Proposed operating conditions

Appendices F and G contain the draft concession documents. The concession(s) are broken into distinct parts.

- The first portion of the concession document sets out the operative parts of the lease and licence document, and easement document; includes the names of the parties; contains their signatures; and provides the background.
- The second part of the concession contains Schedule 1. Schedule 1 sets out many of the key terms used elsewhere in the concession.
- Schedule 2 contains the standard conditions applied to most concessions.

²⁸ Section 4.5, Part 5 of CGP

- Schedule 3 would contain the special conditions that have been prepared specifically for this application. The draft special conditions recommended by this report are set out in section 6.5 below.
- Subsequent schedules contain maps or plans depicting the concession area(s), bond agreement, and in the case of the easement document; rights and powers implied in easements.

This portion of the Report considers the content of Schedule 1 of the proposed concession(s) and makes recommendations as to the drafting of some of the key terms.

6.1 Concession Activity and Term:

6.1.1 Concession Activity:

The applicant sought a concession on the following terms:

- (a) To occupy land by cottage/pilot house No.3, associated buildings and improvements situated at North Spit, Aramoana;
- (b) To rent cottage/pilot houses No.3 to paying guests;
- (c) To occupy an area around the curtilage of the cottage/pilot house No.3 and ancillary structures for residential purposes;
- (d) To obtain vehicle and foot access to the cottage/pilot house No.3 and ancillary structures via an easement.

In light of the findings of this Report it is considered appropriate to issue two separate (but linked) concessions:

- (1) a lease for the cottage/pilot house and its ancillary buildings and licence to use the land proximate to the cottage/pilot house and ancillary structures; and
- (2) an easement to enable vehicle and foot access to the cottage/pilot house and ancillary structures.

The concession activity is therefore different for each of the three concessions:

“Concession Activity” in respect of the Lease Land: To occupy the Lease Land (Cottage/Pilot House No.3) for residential purposes only;

“Concession Activity” for the licence portion: To use the Licence Land for purposes directly ancillary to the residential use of the Lease Land;

“Concession Activity” in respect of the Lease Land and Licence Land: To allow rental of the Cottage/Pilot House No.3 and Licence Land (curtilage area) to paying guests.

“Concession Activity” for the easement portion: (a) a right of way: for the purpose of vehicle and foot access (Cottage/Pilot House No.3) for residential purposes only.

6.1.2 Term:

There are two statutory constraints which directly impact upon the Term of the proposed concessions. The first is section 17Z of the Conservation Act 1987 and the second is the Ngāi Tahu Claims Settlement Act 1998.

In addition, the Otago CMS is also relevant. It contains policies which require that private accommodation ought to be phased out.

Section 17Z of the Conservation Act 1987 provides as follows:

17Z Term of concession

- “(1) A lease or a licence may be granted for a term (which term shall include all renewals of the lease or licence) not exceeding 30 years or, where the Minister is satisfied that there are exceptional circumstances, for a term not exceeding 60 years.
- (2) A permit may be granted for a term not exceeding 10 years but shall not be renewable.
- (3) An easement may be granted for a term not exceeding 30 years, but—
- (a) in exceptional circumstances, the Minister may grant a term not exceeding 60 years:
 - (b) where the easement provides a right of way access to a property to which there is no other practical access, the term may be for such longer period as the Minister considers appropriate:
 - (c) where the easement is for a public work (as defined in the Public Works Act 1981), the term may be for the reasonably foreseeable duration of that public work.”

Applicant’s comments on Term

The applicant has sought the maximum term of 60 years pursuant to s.17Z(1) and s.17Z(3)(a). The applicant says that the “exceptional circumstances” test has been met as:

- the cottage/pilot house has Historic Places Trust Category II status, and
- the cottage/pilot house has a 70+ year tenure of being held in private ownership with various agencies before the land became land held for conservation purposes, and
- the use of this area for the cottage/pilot house activity pre-dates the very existence of the Department of Conservation and the Conservation Act 1987.

District Office comments on Term

The District Office has responded in the following way:

- 1) Term up to 30 years, unless the decision makers feel the threshold for exceptional circumstance has been met, then up to 60 years.
- 2) Review clause, every 5 years so that:
 - (a) Management issues can be addressed, including protected species
 - (b) May include the licence area, only if circumstances have changed, including erosion or public access needs.

Otago Conservation Board comments on Term

From section 4.2.3(a) in this Report:

“The Board supports authorisation being given for these dwellings to continue to occupy the site for a fixed term (in line with our previous advice as outlined in the OCB letter dated November 2015). This view acknowledges the heritage value of the three dwellings, having Historic Places Trust Category 11 status, the use of the area for Pilot House activity which pre-dates the Conservation Act 1987 and the length of occupancy of the Vessel’s house.”

Ngāi Tahu Claims Settlement Act 1998

The applicant initially sought a lease term of 60 years with a right of renewal of a further 60 years. This will trigger Ngāi Tahu’s right of first refusal in accordance with the Ngāi Tahu Claims Settlement Act 1998 s.49. Section 48(1)(a)(iii) interprets the disposal of relevant land as including “to grant a lease of relevant land if the term of the lease (including rights or renewal or extensions, whether in the lease or granted separately) is, or could be, for 50 years or longer;....”

Pursuant to sections 52 and 53 of the Ngāi Tahu Claims Settlement Act 1998, preliminary notice was sent to Te Rūnanga o Ngāi Tahu (Ngāi Tahu Property Group Limited) on 15 June

2015 as the applicant's requested a term of 60 years and advising Ngāi Tahu that the right of first refusal may be triggered. A letter dated 18 June 2015 was received in response (recorded as [DOC-2530325](#)).

Ngāi Tahu Property Limited responded and advised that:

"Please keep us informed throughout the course of processing the four applications..."

"As discussed we will forward this onto our Puna Mahara division in TRoNT for their information."

Dunedin Service Centre Recommendations on Term

Exceptional circumstances is not defined in the Conservation Act 1987 under which these concession applications are being processed under.

The decision-making power under section 17Z involves the exercise of a discretion based on the decision maker's assessment of the factual situation and use of his/her expertise and judgement. The obvious legislative intent was not to narrow down the implication of "exceptional circumstances" precisely because the words encompass a wide range of different circumstances. It is left to the decision-making power to determine whether or not a particular concession application fits the requirements of "exceptional circumstances."

The applicant still needs to demonstrate and satisfy the Minister that "exceptional circumstances" exist to justify a 60-year term pursuant to s.17Z(1) and s.17Z(3)(a), for the Minister to exercise this statutory power of decision.

In the circumstances, it is not considered that exceptional circumstances exist such as to warrant a term in excess of 30 years. Even if the exceptional circumstances test was met it is not beholden upon the Minister to grant a concession which is greater than 30 years. The wording of section 17Z includes the word "may", thereby leaving the Minister with the option to impose a shorter term even if exceptional circumstances are made out.

The following factors weigh against granting a Term greater than 30 years:

- the significance of the Ecological Area as noted in this Report and expressed in the Otago CMS;
- the uncertainty as to the requirements of future management of the area both in terms of it offering an important habitat and in terms of the effects of coastal erosion [possible inundation?] [and landform change]; and
- The instructions in the Otago CMS and the CGP that private accommodation within the conservation estate be phased out.

With regard to the consideration of granting a Term of 30 years:

The Applicant has had private ownership of the cottage/pilot house since 20 September 1995, and the granting of a Term of 30 years had been previously supported by the District Office and the Otago Conservation Board.

It is recommended that the decision maker consider a Term commensurate with policy 3.11.4(b) in the Otago CMS i.e. "...within 20 years of approval of CMS...". As the Otago CMS was approved/became operative on 1 September 2016, it is recommended that if any concession is granted that it have a final expiry date of 31 August 2036 pursuant to s.17Z(1) and s.17Z(3).

Refer to recommendations 4 and 5 in section 9.0 of this Report.

6.2 Fees:

As at the date of this Report, the only fee payable by the applicant is an activity fee of [REDACTED] per annum, plus GST.²⁹

17Y Rents, fees, and royalties

- (1) It shall be a condition of the Minister's granting a concession under this Part that the person or body to whom the concession is granted—
 - (a) shall pay any specified rents, fees, and royalties to the Minister; and*
 - (b) shall pay any other levy or charge made on an occupier or owner of land, as a result of the grant of a lease, licence, or easement, either to the Minister or as directed by the Minister.**
- (2) The rent, fee, or royalty may be fixed at the market value, having regard to—
 - (a) any circumstances relating to the nature of the activity; and*
 - (b) the effects of the activity on the purposes of the area affected; and*
 - (c) any contractual conditions, covenants, or other encumbrances placed upon intrinsic resources, natural resources, or historic resources by the concession.**
- (3) Rent, fees, and royalties for a concession shall be reviewed at intervals not exceeding 3 years.*

²⁹ Reference LS-191.

Concession Activity Fees

Section 17Y enables the Minister to require the concessionaire to pay any specified rents, fees or royalties and also any levies or charges imposed on an occupier of land. In setting the rent, fee or royalty the Minister may set the amount according to market value. Section 17Y (2) also requires that regard shall be had to:

- (a) Any circumstances relating to the nature of the activity;
- (b) The effects of the activity on the purposes of the area affected; and
- (c) Any contractual conditions, covenants or other encumbrances placed upon intrinsic resources, natural resources, or historic resources by the concession.

In assessing the appropriateness of the concession activity fee, consideration has also been given to the Department’s pricing manual³⁰ and Dunedin City Council’s current rating valuation assessment reference 26590-09300-B.

Lease and Licence Area

It is recommended that a ground market value (ground rental) be applied on this occasion. Where a ground rental is imposed the Department’s pricing book specifies for a lease (exclusive occupation) that it be set at ■ of unimproved land value. That is, at ■ of the value of the Land Exclusive of Improvements “(LEI)”. There is no current guidance for a licence (i.e. non-exclusive occupation) however, it is recommended for this application that this be set at ■ (i.e. 50% of the lease calculation methodology).

Current Land Exclusive of Improvements (LEI)

The Council’s current rating valuation assessment reference 26590-09300-B³¹ does not include an area in hectares ■

■ See calculation in Table 9

below.

Note: If concessions are granted, Quotable Value will generate an individual assessment for each lease and licence area.

Table 9: Recommended Concession Activity Fee (Lease and Licence)

	(A)	(B)	(AxB)	
Site	Proposed Lease Area (m ²)	Proposed Licence Area (m ²)	Rate (per m ²)	Totals
Pilot House No.3	153		■	■
Pilot House No.3		1,077	■	■
			Sub-total	■
			Concession Activity Fee (p.a.) + GST (if applicable)	■

Rental (bookabatch)

Note: It is recognised that cottage/pilot house 3 is rented on a commercial basis on “bookabach”. Under normal circumstances in accordance with the pricing book an additional

³⁰ [DOCDM-1326222](#)

³¹ Rate account ID: 2107919; Property number 5101834; Property address: 74 Moana Street Aramoana; Record of Title: 16D/747

fee would be required in accordance with comparable activities in the pricing book, such as [REDACTED] of gross annual revenue (derived from all activities authorised under the proposed concession during the previous trading year), plus GST.”

Dunedin Service Centre recommendations regarding concession activity fees

Lease and Licence

That the Concession Activity Fee for the Concession (Lease and Licence) be set as two components:

- (a) [REDACTED] per annum plus GST, in accordance with the calculation in Table 9 above, pursuant to s.17Y;

AND

- (b) [REDACTED] of gross revenue derived from all rental (e.g. book-a-batch) activities authorised under the proposed concession during the year 1 July to 30 June, plus GST, pursuant to s.17Y.

Easement (right of way)

The Concession Activity Fee for the Concession (Easement) be set at [REDACTED] per annum, plus GST in accordance with the pricing guide for minor access easements - non-commercial low impact associated with single occupier situations.

Concession Management Fees

The Management Fee represents a fee to recover administrative costs of managing the concession during its term. The management fee covers matters such as responding to general enquiries about the concession, invoicing, reviews and the like.

Based on the following standard Management Fee components:

- (i) Basic Rate [REDACTED] per annum + GST
- (ii) Rent/Fee Review [REDACTED] per annum + GST
- (iii) Activity Return [REDACTED] per annum + GST
- (iv) Recovery of the processing of rates [REDACTED] per annum + GST

Items (i) to (iv) are relevant in this case.

Note: As the application process has proceeded, it has been determined that the easement component of the activity should be contained in a separate document. It is recommended that the Concession Management Fee be charged for the Concession (lease and licence) only as it was the intention when the applicants applied for a concession that the lease, licence and easement would be combined into one concession document that would have required one management fee only.

Dunedin Service Centre recommendations regarding concession management fees

The Concession Management Fee be set at \$500.00 per annum, plus GST for the Concession (lease and licence)³² only, pursuant to s.17Y.

Environmental Monitoring Contribution Fee

An annual Environmental Monitoring Contribution fee is recommended to be charged to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.

³² No management fee to be included in Easement concession.

Description	Quantity (Hrs/km)	Rate	Total
1 staff member to undertake monitoring – site visit, take photo's, write-up report	█	█	█
Mileage – return trip	█	█	█
Total			█

Dunedin Service Centre Recommendations regarding environmental monitoring contribution fee

It is recommended that the Environmental Monitoring Contribution Fee be charged at █ per annum to be apportioned between the pilot houses and dwelling (4 in total) that are current holders of a concession at this location pursuant to s.17Y. Refer to proposed special conditions 29 and 30 in section 6.5.1 in this Report.

6.3 Fee Reviews

All fees to be reviewed 3 yearly pursuant to s.17Y(3). Item 13 of Schedule 1 and clause 6 in Schedule 2 of the lease and licence agreement deals with this matter.

6.4 Bond

The Conservation Act 1987 enables the Minister to impose bonds. The relevant provision is:

17X Power of Minister to impose and enforce conditions

(e) the provision by the concessionaire of bonds—

- (i) to cover any costs incurred by the Minister in carrying out work that the concessionaire has failed to carry out and that was required by the concession document to be carried out; or*
- (ii) to mitigate any adverse effects arising from but not authorised by the concession or not reasonably foreseen at the time the concession was granted:*

Reference is made to “Guidance Document for Concession Application Assessment & Decision Making SOP 2010” recorded as [DOCDM-596529](#); Chapter 5: Assessment, Analysis, and Writing the report – Bonds guidance on page 39 with hyperlink to [DOCDM-293203](#).

Sometimes we want to be assured that the conditions in the Concession will be implemented. The assurances we need may relate to financial issues or to conditions relating to rehabilitation of site.

District office comments on imposition of bond

- adverse effects have been identified and addressed by the Department, and therefore the risk of there being major unforeseen adverse effects is considered to be low; and
- since 1993 when the Department began administering the land the applicants, their predecessors and the Department have historically worked well together, and ensure adverse effects have been reasonably foreseen and addressed, if and when they arise; and
- the Department will be actively monitoring the area; and
- comprehensive conditions will be included in any concession (if granted) e.g. clause 20 in Schedule 2 “What happens on termination or expiry of the concession” (Appendix F).

Dunedin Service Centre comments on imposition of bond

Even after taking into account the District Office comments above, and the applicant providing details of comprehensive “Home Sum Insured” cover³³. As “Home Sum Insured” will only cover an insurable event, any natural event that makes the house uninhabitable and necessitates the removal of any infrastructure, may leave the Department exposed to significant financial risk i.e. removal and rehabilitation costs if the applicant does not meet the conditions of any concession (if granted). Accordingly, the Department needs to protect itself to this exposure to possible financial risk.

Therefore, it is recommended that the decision maker, after considering the contents of this Report, and with regard to s.17X(e), agree that a bond **would** be appropriate and **should** be imposed.

Refer to section 9.0 in this Report, recommendation 2.

Note: If a concession is granted, and a bond required, the Department would require the applicant to enter into a formal process with an independent professional bond/surety assessment firm to assess and calculate an appropriate bond/surety amount. The Department would participate in this exercise and the parties would need to agree to an appropriate bond amount. This bond would be expected to be sufficient to ensure there are appropriate financial safeguards in place to address the risks (refer to proposed special condition clause 37(a) in section 6.5.1 in this Report).

6.5 Summary of special conditions as listed in effects assessment above:

It is recommended that the following special conditions are appropriate in order to avoid, remedy or mitigate the adverse effects of the activities to which the concession applications relate. These proposed special conditions would be included in Schedule 3 of the concession documents.

To the extent that these special conditions are inconsistent with the standard conditions contained in Schedule 2 of the concession documents these special conditions would take precedence.

Note: references within these special conditions to Schedules are references to the Schedules attached to the draft Lease and Licence in Appendix F and in draft Easement in Appendix G.

³³ Section 4.2.2, Table 7 (item 4) and Section 4.5, Table 8 (Item 3.11.4(g)) in this Report

6.5.1 Recommendations of the Dunedin Service Centre as to lease and licence special conditions

Accidental Discovery Protocol (ADP)

1. The Concessionaire must take all reasonable care to avoid any archaeological values on the Land which includes (but is not limited to) historic sites and protected New Zealand objects on the Land. In the event that archaeological sites or other features with heritage values are found during any approved earth disturbance work on the Land:
 - (a) Work must cease immediately until further notice and advice must be sought from the Grantor;
 - (b) If it is an archaeological site as defined by the Heritage New Zealand Pouhere Taonga Act 2014 then Heritage New Zealand must be contacted and their advice also sought;
 - (c) If it is an archaeological site relating to Māori activity then the Papatipu Rūnanga must be contacted and their advice sought;
 - (d) If it is an artefact as defined by the Protected Objects Act then the Ministry for Culture and Heritage must be notified within 28 days;
 - (e) If it is human remains the NZ Police should also be notified;
 - (f) In the event of cessation of approved work because of discovery of potential historical artefact or archaeological site the Concessionaire must not recommence work until permitted to do so by the Grantor.

Fuels, hazardous materials, chemicals and waste

2. Any waste or rubbish must be disposed of in an approved manner off the Land at a Council approved site. Waste held on the Land prior to its removal must be stored in a manner so as to ensure it does not become a contaminant or is not blown by wind or present a potential hazard to wildlife.
3. The Concessionaire must remove all construction related waste and fill from the Land and dispose at a resource recovery centre, Council landfill or other authorised facility.
4. The Concessionaire must familiarise themselves with hazardous material, waste and fuel handling and spill contingency and emergency procedures.
5. The Concessionaire must ensure that all machinery and hazardous materials including paints, fuels and other chemicals are appropriately contained to prevent spills from contaminating the natural environment, including the provision of any spill cleanup kits used to contain and/or absorb all hazardous substances used in the concession activity.
6. Machinery and equipment used in the activity must be maintained at all times to prevent leakage of oil and other contaminants on the Land.
7. No refuelling of vehicles is to be carried out on the Land.
8. In the event of any hazardous substance release, escape or spill the Concessionaire must:
 - (a) Take all practicable measures to stop the flow of the substances and prevent further contamination onto the land or water;

- (b) Immediately contain, collect and remove the hazardous substances and any contaminated material, and dispose of all such material in an appropriate manner / authorised facility;
- (c) Notify the Grantor as soon as practicable;
- (d) Undertake any remedial action to restore any damage to the land; and
- (e) Take all measures to prevent any reoccurrence.

Public safety and education

- 9. The Concessionaire must take reasonable care to manage any approved works on the Land to ensure that users of conservation land are not adversely hindered while maintaining a safe work site.

Coastal erosion and natural hazards

- 10. The Concessionaire acknowledges that the Land is within a coastal erosion or other natural hazard zone and that any erosion or other hazard that occurs at any time will not affect the obligations of the Concessionaire. Nothing in this Concession, express or implied, will oblige the Grantor to undertake works to protect the Land or the cottage/pilot house, associated structures, improvements or services thereon from erosion or to repair damage caused by erosion or natural hazard. The Grantor is not responsible for the costs of any restoration, or repair, or incidental matters, or under any legal liability whatsoever in respect of them.
- 11. The Concessionaire acknowledges that approval for rebuilding or relocation on to public conservation land of the cottage/pilot house, associated structures and improvements on the Land is unlikely to be given if threatened by coastal/sea erosion.

Local / Territorial and Heritage New Zealand authority approvals

- 12. Nothing in this Concession will be deemed to amount to endorsement by the Grantor of the standard of the cottage/pilot house, associated structures, improvements or services for the purposes of compliance with the Building Act 2004, Resource Management Act 1991, or any other statutory requirements administered by local or territorial authorities.
- 13. In addition to complying with clause 15 of Schedule 2 the Concessionaire must also obtain any consents, authorisations or permits required by third party regulators including, but not limited to, Heritage New Zealand and the District or Regional Council. The Concessionaire will comply with any such consents, authorisations or permits and failure to do so is deemed to be a breach of this Concession. The Concessionaire will provide the Grantor with copies of any such consents, authorisations or permits if requested to do so by the Grantor.
- 14. The Concessionaire warrants that any construction or alterations to the cottage/pilot house or associated structures or improvements commenced after 1 July 1992 comply with the Building Act 2004 and any relevant regulations (including the Building Code).
- 15. Without limitation to any other clause in this Concession, the Concessionaire must:
 - (a) Ensure that all structures or alterations are not dangerous or unsanitary in terms of Sections 121-130 of the Building Act 2004, as amended from time to time;

- (b) Comply with any notices issued in accordance with any of the provisions referred to above;
- (c) Indemnify the Grantor for any loss or damage caused or suffered as a result of breach of this condition, including without limitation, the cost of ensuring compliance with any notice issued pursuant to the provisions referred to above.

Wastewater disposal (toilet and grey-water)

16. The Concessionaire must ensure that the toilet system/facilities on the Land:
 - (a) Does not discharge raw sewage from the toilet onto the Land or adjoining public conservation land;
 - (b) Complies with all relevant legislation relating to provision of toilet systems/facilities;
 - (c) Provides adequate facilities on the Land for the treatment and disposal of sewage.
17. The Concessionaire must obtain the prior written approval of the Grantor prior to moving an existing toilet or installing any new toilet facilities on the Land.
18. The Concessionaire must comply with any lawful notice or direction issued by any competent authority regarding sewage and/or storm water disposal from the Land. The Concessionaire must indemnify the Grantor for any loss or damage caused or suffered as a result of non-compliance with this condition, including without limitation, the cost of ensuring compliance with any such direction or notice.

Weed and pest management

19. To minimise the introduction of weed species, the Concessionaire must ensure that all vehicles, machinery, tools and equipment used on the Land are cleaned and weed free prior to being brought onto the Land before commencement of any approved works. Any sand, gravel, other materials and construction material used for approved works must be sourced from an approved weed free source.
20. Further to clause 9.2 of Schedule 2³⁴, the Concessionaire must not plant any introduced species of flora, with the exception of marram grass.

Fires

21. Further to clause 9.1 of Schedule 2³⁵ the Concessionaire may have and use an internal fireplace in the cottage/pilot house subject to the necessary permits being in place.

³⁴ “9. What are the obligations to protect the environment?”

- 9.2 *The Concessionaire must at its cost keep the Land in a clean and tidy condition and free of weeds and all organisms specified as pests in a relevant pest management strategy.”*

³⁵ “9. What are the obligations to protect the environment?”

- 9.1 *The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land; or light any fire on the Land without the prior consent of the Grantor.”*

Animals

22. No domestic or non-domestic (e.g. farm) animals such as cats, dogs, horses, goats are allowed on the Land.

Biodiversity values

23. The Concessionaire acknowledges that the Land is an ecosystem (being a habitat of important threatened species) of national significance and any approved work is to be conducted with care.

Repair and maintenance

24. The Concessionaire may perform the following ordinary maintenance or repair work on the Land:
- (a) the interior repair and maintenance of the cottage/pilot house or associated structure;
 - (b) the exterior maintenance of the cottage/pilot house, associated structure or improvement of the Concessionaire where the work does not materially alter the outside appearance of the building, structure or improvement.

Parking of vehicles

25. The Concessionaire must park vehicles within the Lease Land and Licence Land only.

Trees (maintenance and removal)

26. The Concessionaire, at its cost, must ensure that all pine trees within the Licence Land are kept in a condition as to not pose a hazard to the public.
27. The Concessionaire, at its cost, when considering the removal of trees within the Licence Land must obtain the prior written approval of the Grantor to ensure it does not compromise sand-dune stability or the ability of the land to withstand coastal erosion.
28. In the event that the Grantor and Concessionaire agree that the Grantor can arrange the maintenance and/or removal of trees (if approved in clause 27 of this Schedule 3) within the Licence Land then the Concessionaire will pay any apportionment of costs associated with such maintenance or removal.

Environmental Monitoring Contribution and compliance

29. The annual Environmental Monitoring Contribution payable under Item 7 of Schedule 1 is to be apportioned among the dwelling and pilot houses (4 in total) who have current/active concessions at this location.
30. In addition to the annual Environmental Monitoring Contribution payable under Item 7 of Schedule 1 the Grantor may recover from the Concessionaire on a cost-recovery basis for the reasonable costs of and associated with any site visits to confirm the Concessionaire's compliance with the concession conditions. The rates will be charged at the Department's standard charge-out rates for staff time and the mileage rates for vehicle use.

General

31. The Concessionaire must take reasonable and proper care not to damage any property of the Grantor, or any property of authorised Concessionaires, and must promptly repair any such damage at its cost.
32. The Concessionaire must reinstate the Land to the same or better condition it was before any approved works commence and maintain it in a tidy condition to the satisfaction of the Grantor.
33. The Grantor may inspect the Land during any approved works.

Jointly and severally liable

34. In the event that the Concession is held by multiple Concessionaires, they will be jointly and severally liable.

Amendment to clause 20.2 of Schedule 2

35. Clause 20.2 of Schedule 2 is amended to read:

20.2 On expiry or termination of this Concession, either as to all of part of the Land, the Concessionaire is not entitled to compensation for any structures or other improvements, including but not limited to the cottage/pilot house, which currently exist on the Land or which the Concessionaire has placed or carried out on the Land during the Term.

Surrender

36. If the Concessionaire wishes to surrender this Concession during the currency of the Term, the Grantor may accept that surrender on such conditions as the Grantor considers appropriate which, without limiting the scope of the Grantor's discretion, those conditions may include transferring of the Concessionaire's interests in the cottage/pilot house and other affixed structures belonging to the Concessionaire without any compensation.

Bond (*if the decision maker agrees that a bond should not be imposed, then this special condition will be deleted.*)

37. The Concessionaire must provide the Grantor with a bond as described in Schedule 5 issued by a surety approved by the Grantor:
 - (a) The Concessionaire, at its costs, will commission an independent professional bond/surety assessment firm ("Assessor") approved by the Grantor to assess and calculate an appropriate bond/surety amount. The decision of this Assessor shall be binding on both parties. Should the choice of Assessor not be acceptable to the Grantor then an Assessor will be appointed by the President of the Otago branch of the New Zealand Law Society and such choice and decision by that Assessor will be binding on both parties;
 - (b) The Concessionaire must ensure that the Schedule 5 bond document is provided to the Grantor no later than 6 months following the Concession Commencement Date in Item 3 of Schedule 1.

Climate change considerations

38. The Concessionaire acknowledges that the Grantor and the Department of Conservation are reviewing their obligations under the Climate Change Response Act 2002 and developing responses to address greenhouse gas emissions from activities conducted on public conservation land and waters. The reviews are likely to result in policies which seek to measure, manage and reduce greenhouse gas emissions from Concession Activities. The Grantor wishes to signal to the Concessionaire that new concession conditions related to both climate change mitigation and adaptation may be imposed during the life of this Concession to address greenhouse gas emissions associated with the Concession Activity.
39. If the Grantor requests data relating to greenhouse gas emissions associated with the Concession Activity, the Concessionaire must provide any relevant data that is reasonably available to it within 6 months of the Grantor's request.
40. The Grantor may review and amend the conditions of this Concession to reflect climate change-related legislation and government or Departmental policy and those conditions ("Revised Conditions") may, amongst other things, require the Concessionaire to measure, manage and reduce the greenhouse gas emissions of the Concession Activity.
41. Before amending the conditions of this Concession in accordance with clause 40 in this Schedule 3, the Grantor will provide the Concessionaire the draft Revised Conditions. The Concessionaire may provide written comments on those draft Revised Conditions within 60 days. The Grantor must take into account any comments received from the Concessionaire on the Revised Conditions before finalising the Revised Conditions.
42. The Revised Conditions will apply to the Concession Activity 4 months after the Grantor has notified the Concessionaire of the Revised Conditions in accordance with clause 41 in this Schedule 3 or any later date specified in the Revised Conditions.

6.5.2 Easement proposed special conditions³⁶

Rights of way

1. The Concessionaire and the Grantor have (in common with one another and other persons to whom the Grantor may grant similar rights) the right to go over and along the Easement Land.
2. The right to go over and along the Easement Land includes the right to go over and along the Easement Land with or without any kind of vehicle, machinery, or implement.

General rights (including repair and maintenance)

3. The Concessionaire must not alter or modify the Easement Land.
4. For the purpose of performing any duty or in the exercise of any rights conferred the Concessionaire may—
 - (a) enter upon that part of the Land over which this right is granted;
 - (b) with all necessary tools, vehicles, and equipment; and
 - (c) remain on that part of the Land over which this right is granted for a reasonable time for the sole purpose of completing the necessary work; and
 - (d) leave any vehicles or equipment on that part of the Land over which this right is granted for a reasonable time if work is proceeding.
5. Further to clauses 3 and 4 of this Schedule 3, the Concessionaire must obtain the prior written approval of the Grantor for any repair and maintenance of the Easement Land however, this shall not apply to routine maintenance where such maintenance does not alter the shape, nature or surface material of the right of way on the Easement Land. All approved works and routine maintenance must be performed to the satisfaction of the Grantor.
6. The Concessionaire must contact the Grantor within 20 days of carrying out any work (over and above general maintenance) on the Easement Land and work must not commence any until written approval is given by the Grantor.
7. The Concessionaire must ensure that vehicles pass over the Easement Land via the route defined in the Schedule 4 map.

Public safety

8. The maximum speed for all motorised vehicles over the Easement Land is 10 kilometres per hour at all times.
9. Pedestrians have right of way over motorised vehicles over the Easement Land at all times.

³⁶ Note: The rights and powers implied in the relevant easements by the 5th Schedule to the Property Law Act 2007 and the Fourth Schedule to the Land Transfer Regulations 2002 **DO NOT APPLY** to this Easement. The rights and powers relating to this Easement are set out in the Special Conditions contained within Section 6.5.2 of this Report and as listed below.

Gate

10. The Concessionaire after entering or exiting the Easement Land must shut the gate shown on the map in Schedule 4. In the event that the Grantor attaches a lock to the gate, the Concessionaire can request security key/s (at the Concessionaire's cost) or the lock combination from the Grantor, and must lock the gate after entering or exiting the Easement Land.

Other

11. The Concessionaire must reinstate the Easement Land to the same or better condition it was before any approved works commence and maintain it in a tidy condition to the satisfaction of the Grantor.
12. The Concessionaire must take reasonable and proper care not to damage any property of the Grantor, or any property of other authorised Concessionaires, and must promptly repair any such damage at its cost.
13. The Grantor may inspect the Land during any approved works.
14. The Grantor may recover from the Concessionaire on a cost-recovery basis for the reasonable costs of and associated with any site visits to confirm the Concessionaire's compliance with the concession conditions. The rates will be charged at the Department's standard charge-out rates for staff time and the mileage rates for vehicle use.
15. In the event that the Concession is held by multiple Concessionaires, they will be jointly and severally liable.
16. This Easement concession can only be held in conjunction with Concession Number (Lease and Licence) 38967-ACC for cottage/pilot house No.3. **In circumstances where Concession Number 38967-ACC terminates or expires this easement will also be deemed to terminate.**

Suspension of concession

17. If, in the Grantor's opinion, there is a temporary risk to any natural or historic resource on or in the vicinity of the Land or to public safety whether arising from natural events such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Concession on the part of the Concessionaire, then the Grantor may suspend this Concession.
18. If, in the Grantor's opinion, the activities of the Concessionaire are having or may have an adverse effect on the natural, historic or cultural values or resources of the Land and the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, then the Grantor may suspend this Concession until the Concessionaire avoids, remedies or mitigates the adverse effect to the Grantor's satisfaction.
19. The Grantor may suspend the Concession for such period as the Grantor determines where the Concessionaire has breached any terms of this Concession.
20. The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 17 and 18 in this Schedule 3 and also while the

Grantor investigates any potential breach or possible offence by the Concessionaire, whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act.

21. The word “investigates” in clause 20 in this Schedule 3 includes the laying of charges and awaiting the decision of the Court.
22. During any period of temporary suspension arising under clauses 19 or 20 in this Schedule 3 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
23. The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under clauses 17 to 22 in this Schedule 3 including loss of profits.

Climate change considerations

24. The Concessionaire acknowledges that the Grantor and the Department of Conservation are reviewing their obligations under the Climate Change Response Act 2002 and developing responses to address greenhouse gas emissions from activities conducted on public conservation land and waters. The reviews are likely to result in policies which seek to measure, manage and reduce greenhouse gas emissions from Concession Activities. The Grantor wishes to signal to the Concessionaire that new concession conditions related to both climate change mitigation and adaptation may be imposed during the life of this Concession to address greenhouse gas emissions associated with the Concession Activity.
25. If the Grantor requests data relating to greenhouse gas emissions associated with the Concession Activity, the Concessionaire must provide any relevant data that is reasonably available to it within 6 months of the Grantor’s request.
26. The Grantor may review and amend the conditions of this Concession to reflect climate change-related legislation and government or Departmental policy and those conditions (“Revised Conditions”) may, amongst other things, require the Concessionaire to measure, manage and reduce the greenhouse gas emissions of the Concession Activity.
27. Before amending the conditions of this Concession in accordance with clause 26 in this Schedule 3, the Grantor will provide the Concessionaire the draft Revised Conditions. The Concessionaire may provide written comments on those draft Revised Conditions within 60 days. The Grantor must take into account any comments received from the Concessionaire on the Revised Conditions before finalising the Revised Conditions.
28. The Revised Conditions will apply to the Concession Activity 4 months after the Grantor has notified the Concessionaire of the Revised Conditions in accordance with clause 27 in this Schedule 3 or any later date specified in the Revised Conditions.

7.0 Applicant's comments on draft Officer's Report³⁷

On 19 November 2020³⁸ a draft copy of this report and contracts was sent to the applicant's lawyer, Richard Allen, for comment. A reminder was sent requesting final comments by the deadline of 31 August 2021. After this date, public notification of the applications was to be progressed. No further comments were received for this application.

8.0 Summary and Conclusions

The Decision Maker could consider that exceptional circumstances exist for consideration of appropriate tenure for the pilot house. Exceptional circumstances is not defined in the Conservation Act 1987 however, the Supreme Court has defined exceptional circumstances as "well outside the normal range of circumstances" – that is, truly an exception rather than the rule, although they do not have to be unique.

Using this definition, and after reviewing Table 3.11.1 in the Otago CMS it clearly identifies not only Aramoana Conservation Area Spit Houses as being unauthorised but, includes numerous other unauthorised private accommodation. Accordingly, the unauthorised nature of the pilot house is definitely not outside the normal range of circumstances, and is not an exception, which means that considering tenure based on the existence of exceptional circumstances may not be considered appropriate.

It is, however, more appropriate to consider that a special case exists for consideration of appropriate tenure for the pilot house. The Department, ever since the land was purchased in 1993 from the Dunedin City Council, has been in a stand-off with the current and previous owners of the cottage/pilot house on whether they had any existing lawful authority to occupy the land. Eventually, in 2014/15, agreement was reached with the Applicant's legal representative for a Part 3B concession application to be submitted, and this was received on 18 April 2015. The application was to be processed in accordance with relevant parts of the Otago CMS (August 1998)³⁹ which implied that appropriate (and necessary) tenure would be considered for the pilot house, taking into account conservation values at the location. When the new Otago CMS became operative on 31 August 2016, the applications needed to be considered in accordance with Otago CMS 2016, which included the insertion of Table 3.11.1 which identified the Aramoana Conservation Area Spit Houses as being unauthorised; as the applications were being processed.

³⁷ Before the first notification on Saturday, 31 March 2018. A draft copy of this report was forwarded to the applicant for comment on 16 December 2016. An initial response was received on 14 March 2017 with several general statements and questions that the Department responded to on 13 April 2017. If the contents of this email (dated 13 April 2017 and record as [DOC-3173261](#)) were considered relevant they have been incorporated into this Report. The applicant was asked to provide any final comments on the draft report on two separate occasions i.e. by 31 May and 31 August 2017 ([DOC-3173267](#)), to no avail. The email requesting a final response by 31 August 2017 included a statement that if no response was received that the Department would proceed with the notified concession process.

³⁸ [DOC-6500525](#)

³⁹ **Part 10.5.8 Management Issues**

- The four houses on the spit are privately owned and the land that they stand on is conservation land. Consideration of what sort of tenure is appropriate is necessary.

Implementation

- (q) Tenure will be given to the residents of the Spit houses which recognises their interest in them but priority will be given to protecting the natural resources of the area while not making the department liable for the results of any natural event or process.

In addition, to support the consideration of a special case, an area of 0.8 hectares surrounding the cottages/pilot houses and the other dwelling was excluded from classification as Ecological Area in the 1998 Gazette and is therefore classified as “conservation purposes land” according to the Conservation Act.⁴⁰ This adds weight to a special case consideration especially as the 0.8 hectares (which was not included in the ecological area overlay), correlated to the “unauthorised occupation”.

A special case is further supported by the Otago Conservation Board⁴¹ that *“The Board supports authorisation being given for these dwellings to continue to occupy the site for a fixed term (in line with our previous advice as outlined in the OCB letter dated November 2015). This view acknowledges the heritage value of the three dwellings, having Historic Places Trust Category 11 status, the use of the area for Pilot House activity which pre-dates the Conservation Act 1987 and the length of occupancy of the Vessel’s house.* However, this advice was qualified by the Decision Maker needing to consider the relevant parts and policies in the CGP and Otago CMS in relation to private accommodation and related structures.

Further consultation has been carried out with iwi to ensure Section 4 of the Conservation Act obligations have been met. Te Rūnanga o Ōtākou⁴² did not respond to this further request for feedback and had previously recorded no concerns with tenure for the cottage/pilot house at this location. Te Rūnanga o Ngāi Tahu (Ngāi Tahu Property Group Limited)⁴³ were given preferential notification of the application and raised no concerns.

Even if the Decision Maker considers that a special case exists to approve in principle the intention to grant, the Decision Maker needs to ensure that the application is not contrary to the Conservation Act and the purpose for which the land is held [s.17U(3)] and is consistent with the strategy of plan [s.17W(1)].

For the purposes of section 17U(3) there are no provisions of the Conservation Act that would be breached by the granting of a lease and licence or easement.

With regard to the CGP and Otago CMS. It is accepted that Policy 10(h) of the Conservation General Policy (CGP) clearly requires phasing out of private accommodation on public conservation land. However, it also anticipates that the CMSs will generate timeframes and conditions for the phasing out of existing private accommodation. In other words, it allows the CMSs to direct when and how phase out will occur.

The CGP is also clear that private accommodation structures “should” be removed at the end of the phase out period. “Should” is interpreted in policy 1(d) of the CGP as *“policies that carry with them a strong expectation of outcome without diminishing the constitutional role of the Minister and other decision makers, state that a particular action or actions “should” be undertaken”*.

The relevant provisions of the Otago CMS are contained in Policies 3.11.1 to 3.11.6 and these have been analysed in depth in Table 8 above.

The Otago CMS says that private accommodation “should” be phased out in one of two ways. Either public use is to be phased in or, after a grace period, the structures are to be removed. Removal of the structures, by implication, would end the private accommodation.

⁴⁰ Survey plan SO 24759 (refer Appendix D)

⁴¹ See 4.2.3(a)

⁴² See 4.2.3(b)

⁴³ See 4.2.3(c)

In this particular case it is not considered appropriate at this stage to require the removal of the pilot buildings due to the special case discussions above and because it is of historical significance⁴⁴.

The Otago CMS does not stipulate how long private use ought to be allowed to continue before public use of the buildings occurs or the structures are removed. However, it can be inferred from Policy 3.11.4(b) that exclusive private occupation will cease no later than 20 years after the CMS became operational. In other words, there is a long-stop date of 2036 such that public use should be phased in or the buildings removed by that date⁴⁵.

Accordingly, this Report, as primarily discussed in section 6.1.2 (Term), recommends that the existing private accommodation is consented but, subject to the proviso that the private occupation of the land must end no later than 31 August 2036.

The discussions in this Report, in particular section 4.5 in this Report in relation to the Otago CGP and policies in the Otago CMS (primarily “should” policies relating to private accommodation and related facilities) should allay any concerns the Decision Maker may have in approving in principle the intention to grant concessions.

In addition, the contents of this report should satisfy the Minister that the impact and effects of the proposed activity, whilst deemed to be more than minor, are well known at this location due to the historic occupation and are understood and manageable. Any potential adverse effects and impacts on biodiversity, historic, social and amenity values can be avoided, remedied or mitigated by conditions.

⁴⁴ Section 4.5, Part 5 of CGP

⁴⁵ If a concession is granted – refer document [DOC-2756334](#), clause 20 in Schedule 2. What happens on termination or expiry of the Concession?

9.0 Recommendations to decision maker

Pursuant to the Ministerial delegation dated 8 September 2015 / 9 September 2015 it is recommended that the Permissions Manager, Operations:

- 1. Agree this application is complete in terms of s17S of the Conservation Act 1987; and**
- 2. Agree that a bond, pursuant to s17X(e) is required; and**
- 3. Approve in principle the granting of a Notified Concession (Lease and Licence and Easement) subject to the standard and special concession conditions identified in this report to Madeleine Jill CHILD and Phillip Matthew JARVIS; and**
- 4. Agree that if approved in principle the Term of the Notified Concession (Lease and Licence) to expire no later than 31 August 2036; and**
- 5. Agree that if approved in principle the Term of the Notified Concession (Easement) to expire no later than 31 August 2036; and**
- 6. Having regard to s49(1) of the Conservation Act 1987, be satisfied that any intent to grant the three concessions would be of local or regional interest only, in which case the publication of the public notice on this matter be limited notice in the Otago Daily Times and The Star.**

Date: 14/01/2022

Kelvin Brown
Permissions Advisor
Dunedin Service Centre

Recommendations:

1. Agree / ~~Disagree~~
2. Agree / ~~Disagree~~
3. Approved / ~~Declined~~
4. Agree / ~~Disagree~~
5. Agree / ~~Disagree~~
6. Approved / ~~Declined~~

If the recommendation is declined please discuss here why this is so:

Signed: _____
Judi Brennan
Permissions Manager, Operations

Date: 24/01/2022

Appendix A: Cottage/Pilot House Heritage New Zealand (previously Historic Places Trust) Registration/Listing Number 7368 – showing “Pilots’ Cottages Historic Area”

Register search results: New Zealand Historic Places Trust Pouhere Taonga

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Pilots' Cottages Historic Area

North Spit, ARAMOANA



Pilots' Cottages Historic Area: Plan of Historic Area from registration report

Registration Type

Historic Area

Register Number

7368

Date Registered

13-Dec-1996

Extent of Registration

The area consists of three Pilots Cottages positioned on the North Spit of Aramoana on the Otago Harbour.

City/District Council

Dunedin City

Region

Otago Region

Historical Significance

This historic area was registered under the Historic Places Act 1993. The following text is from the original Historic Area Assessment Under Section 23 Criteria report considered by the NZHPT Board at the time of registration.

Historical.

The three former pilots' houses at Aramoana were built by the Otago Harbour Board in 1913 to serve its new pilot station which was being transferred from Taiaroa Heads to the Spit. The Board again relocated the pilots in 1923, this time to Port Chalmers. Since then the houses have been in private ownership.

The houses were built for the Otago Harbour Board, which employed the following during the years 1913-23:

George Thompson - 1895-1922

Duncan McDougall - 1902-18

Frederick John Duncan - 1907-36

Francis A Maxwell - 1907-15

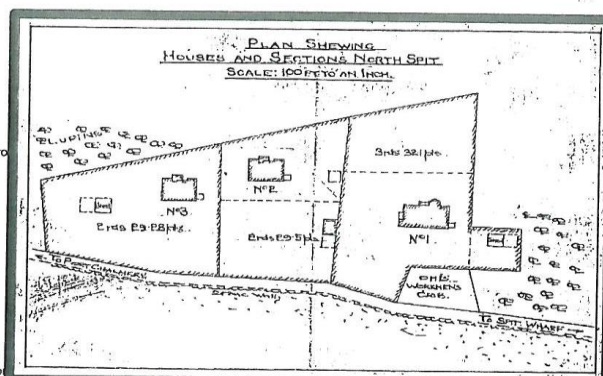
James Smith McKenzie - 1918-19

John McLean - 1922-40

These houses date from the end of an era in which poor surface communications compelled port authorities to station Harbour Department staff at the harbour entrance in order to service shipping which often arrived unannounced. By 1923 the provision of (1) reliable powered pilot launches and (2) a road between Port Chalmers and the entrance enabled the Board to relocate its pilots in the township and to reduce its requirement for the provision of staff accommodation.

Physical Significance

This historic area was registered under the Historic Places Act 1993. The following text is from the original Historic Area Assessment Under Section 23 Criteria report considered by the NZHPT Board at the time of registration.



Pilots' Cottages Historic Area: Plan of Historic Area from registration report. Copyright NZ Historic Places Trust

<http://www.historic.org.nz/TheRegister/RegisterSearch/RegisterResults.aspx?RID=736...> 9/17/2013

Appendix A (continued): Cottage/Pilot House Heritage New Zealand (previously Historic Places Trust) Registration/Listing Number 7368 – showing “Pilots’ Cottages Historic Area”

Register search results: New Zealand Historic Places Trust Pouhere Taonga

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Architectural

Pilot's House No 1

The Pilot's House No. 1 at Aramoana is an Arts and Crafts workingman's type cottage designed in Edwardian Free Style by Dunedin architect Basil Hooper. It represents part of the outstanding Domestic Revival style that Hooper built his reputation on with large set-piece houses in Dunedin during the years 1904-1923. The fact that the Pilot's House was one of a group of small houses designed for employees of the Otago Harbour Board makes it an example of a particular class of building for which Hooper is less well known, but which is nonetheless very important in understanding the scope and oeuvre of Hooper's work.

The Pilot's House is one of a group of three houses located at North Spit Beach. The houses were designed in December 1912 and completed in October 1913 for the purpose of accommodating the Otago Harbour Board Pilots, who had been transferred across to North Spit from their previous location at Tairāoa Head in 1912.

Pilot's House No 2

As the architectural style and quality of House No 2 is the same as the Pilot's House (house No 1 of the group) the assessment is the same as that given for the Pilot's House No 1. The only difference to note is that whereas the Pilot's House is designed with a hipped roof and with a gabled Bay window, House No 2 is a simple long rectangular building having flush gable ends and a gabled entrance at right angles to the rear facade, the front facade catching the sun and not, as Hooper would argue, needing the entrance on that side.

The Pilot's House No 2 at Aramoana is an Arts and Crafts workingman's type cottage designed in Edwardian Free Style by Dunedin architect Basil Hooper. The Boalman's cottage, House no 2, is the second building of a group of three houses located at North Spit Beach designed by New Zealand Arts and Crafts architect, Basil Hooper of Dunedin (1876-1960).

Pilot's House No 3

As the architectural style and quality of House No.3 is the same as the Pilot's House (house No 1 of the group) the assessment is the same as that given for the Pilot's House No 1. The only difference to note is that whereas the Pilot's House No 1 is designed with a hipped roof and with a gabled Bay window, House No 3 appears to be an "I" plan cottage with two gabled wings at right angles to the central portion.

The Pilot's House No.3 at Aramoana is an Arts and Crafts workingman's type cottage designed in Edwardian Free Style by Dunedin architect Basil Hooper. The house is the third of a group of three houses located at North Spit Beach. The houses were designed in December 1912 and completed in October 1913 for the purpose of accommodating the Otago Harbour Board Pilots, who had been transferred across to North Spit from their previous location at Tairāoa Head in 1912.

Physical Description

This historic area was registered under the Historic Places Act 1993. The following text is from the original Historic Area Assessment Under Section 23 Criteria report considered by the NZHPT Board at the time of registration.

Description:

The area proposed here for registration is located on the North Spit of Aramoana at

the entrance to Port Chalmers, Dunedin.

The area consists of three Pilots Cottages which are positioned on North Spit more or

less midway between the 'Mole' and North Spit Jetty. The cottages are located opposite Harrington Point which is on the other (southern) side of Otago Harbour.

Historic Area Places

Pilot's Cottage

Pilot's Cottage

Pilot's Cottage

Other Information

A copy of the original report is available from the NZHPT Southern region office.

Information on this page is correct to the best of the Trust's knowledge. If you have any additional information you would like to share with the Trust, please contact the Registrar. You may wish to contact the Trust to view our paper records.

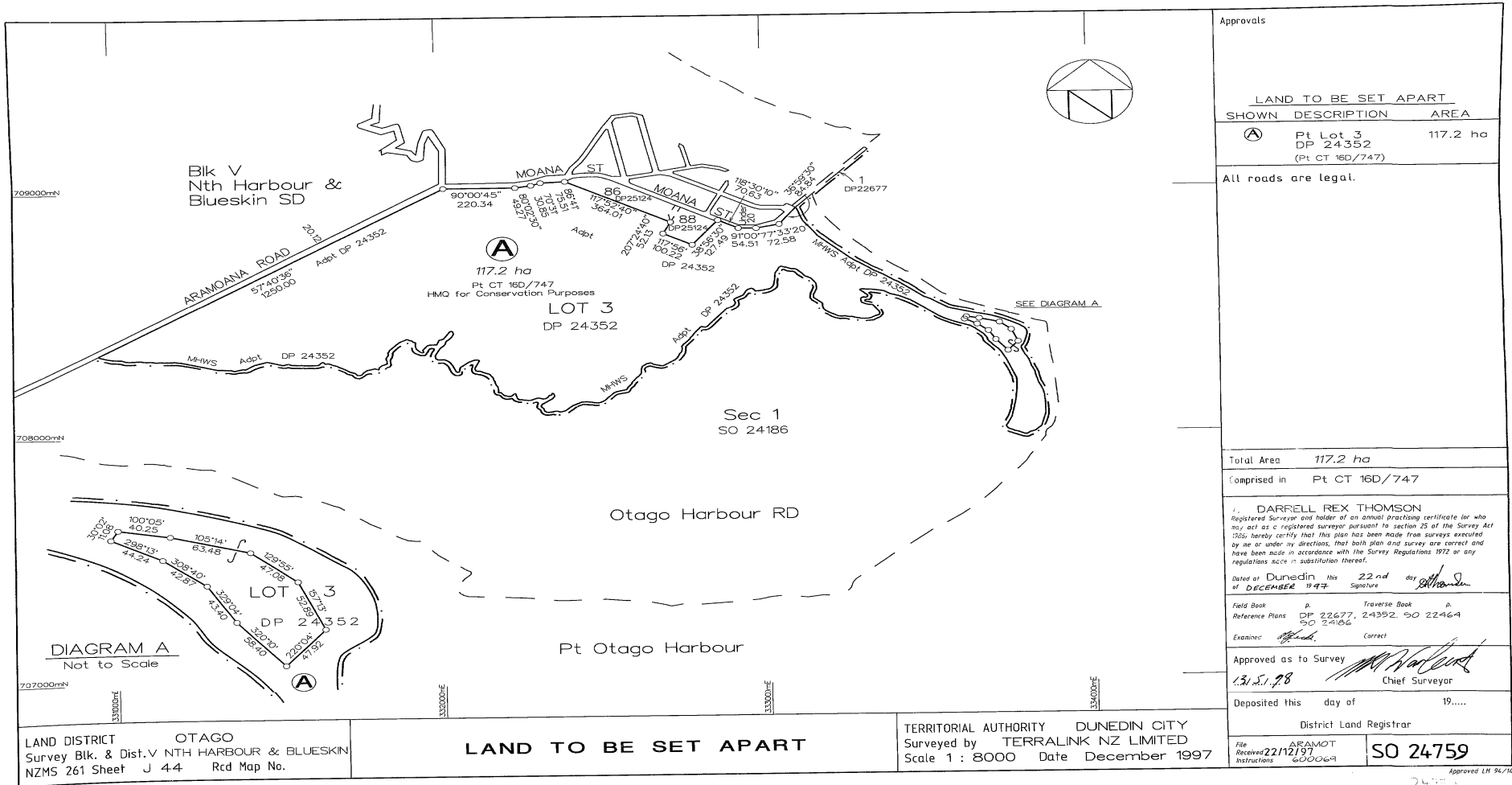
Appendix B: Topographical map showing location of “the Spit”.



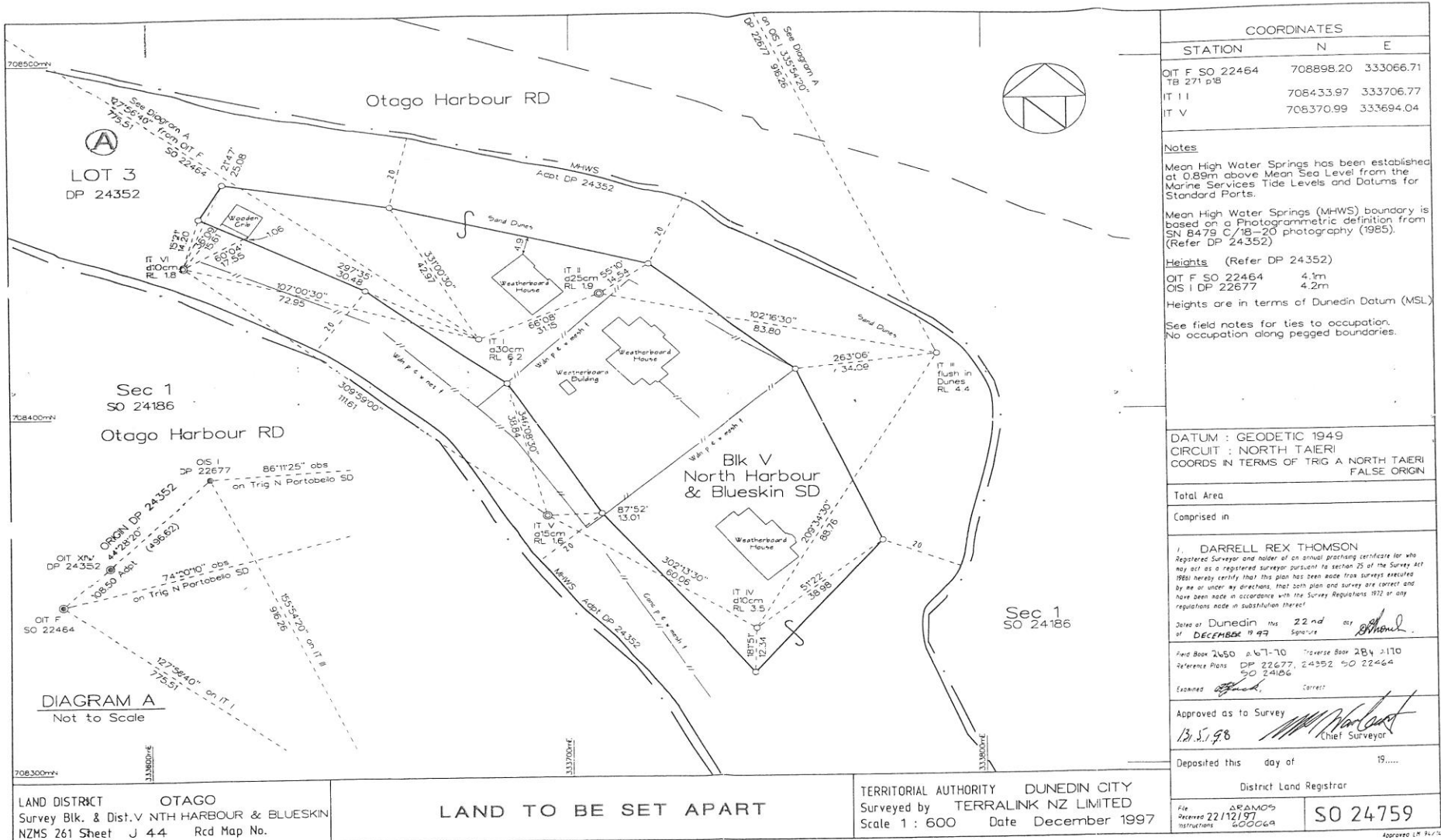
Appendix C: Map showing Aramoana Ecological Area / Aramoana Conservation Area and land excluded from ecological area on SO 24759 (outlined in green)



Appendix D: Land to be set apart Area "A" SO 24759 (page 1 of 2)



Appendix D (continued): Land to be set apart Area "A" on SO 24759 (page 2 of 2)



COORDINATES		
STATION	N	E
OIT F SO 22464 TB 271 p18	708898.20	333066.71
IT II	708433.97	333706.77
IT V	708370.99	333694.04

Notes
 Mean High Water Springs has been established at 0.89m above Mean Sea Level from the Marine Services Tide Levels and Datums for Standard Ports.
 Mean High Water Springs (MHS) boundary is based on a Photogrammetric definition from SN 8479 C/18-20 photography (1985). (Refer DP 24352)

Heights (Refer DP 24352)
 OIT F SO 22464 4.1m
 OIS I DP 22677 4.2m
 Heights are in terms of Dunedin Datum (MSL)
 See field notes for ties to occupation.
 No occupation along pegged boundaries.

DATUM : GEODETIC 1949
 CIRCUIT : NORTH TAIERI
 COORDS IN TERMS OF TRIG A NORTH TAIERI FALSE ORIGIN

Total Area
 Comprised in

I, DARRELL REX THOMSON
 Registered Surveyor and holder of an annual practicing certificate for who may act as a registered surveyor pursuant to section 25 of the Survey Act 1988 hereby certify that this plan has been made from surveys executed by me or under my directions, that both plan and survey are correct and have been made in accordance with the Survey Regulations 1972 or any regulations made in substitution thereof

Date of Dunedin this 22nd day of DECEMBER 1997
 Signature: *[Signature]*

Field Book 2650 p. 67-70 Inverse Book 284 p. 170
 Reference Plans DP 22677, 24352 SO 22464 SO 24106
 Examined *[Signature]* Correct

Approved as to Survey
 13.1.98 *[Signature]* Chief Surveyor

Deposited this day of 19....
 District Land Registrar

File ARAMOS
 Reference 22/12/97
 Instructions 6006A

SO 24759

LAND DISTRICT OTAGO
 Survey Blk. & Dist. V NTH HARBOUR & BLUESKIN
 NZMS 261 Sheet J 44 Rcd Map No.

LAND TO BE SET APART

TERRITORIAL AUTHORITY DUNEDIN CITY
 Surveyed by TERRALINK NZ LIMITED
 Scale 1 : 600 Date December 1997

Appendix E: Map showing proposed lease and licence and easement area for cottage/pilot house No.3



Appendix F: Draft Concession Document (Lease and Licence) *for discussion purposes only.*

Recorded as [DOC-2756334](#)

Appendix G: Draft Concession Document (Easement) *for discussion purposes only.*

[DOC-2927614](#)