



To: Judi Brennan, Permissions Manager, Hokitika and Dunedin, as Delegate of Minister of Conservation

From: David Newey, Strategic Issues Manager – Planning, Permissions and Land (PPL)

Date: 29 July 2022

OBJECTION AND SUBMISSION SUMMARY - RECOMMENDATION REPORT

These applications were received before the enactment on 18 October 2017 of section 202 of the Resource Legislation Amendment Act 2017 (2017 No 15). The Minister of Conservation has made a decision in principle, of the intention to grant concessions and, confirmed that this intention to grant must be notified. This Report is a summary of all objections and submissions received and includes verbal submissions from objectors’ and submitters’ at a Hearing.

1.0 APPLICATION DETAILS

Brief description of proposed activity: Intention to grant concessions for the historic occupation of 3 Cottage/Pilot Houses and a dwelling for residential purposes within the Aramoana Conservation Area (Lease and Licence) and right of way for access over the Aramoana Ecological Area (Easement).

Concession Applicant:

The 4 sites are summarised in Table 1 below.

Note: Hyperlinks to the full approved version of the decision in principle of the intention to grant concession reports are listed below along with the draft template concession documents for each Lease & Licence and Easement.

Table 1: Applicants’ detail including hyperlink to relevant docCM documents

Site	Applicant	Approved intention to grant report (full version)	Concession Numbers	
			Lease & Licence	Easement
1	Elizabeth Anne DAWE	DOC-5569624	38964-ACC DOC-2756334	50789-OTH DOC-2927614
2	Vincent Paul GEORGE, Diane Margaret GEORGE, Liane Josephine FARRY, Richard Vivian Marsh ALLEN, GSM TRUSTEES LIMITED	DOC-5569632	38965-ACC DOC-2930347	50790-OTH DOC-2930351

3	Madeleine Jill CHILD & Phillip Matthew JARVIS	DOC-5569641	38967-ACC DOC-2930348	50791-OTH DOC-2930353
4	Joseph VESSELS	DOC-5569650	38966-ACC DOC-2844599	50792-OTH DOC-2930356

Permission Number: 38964 to 38967-ACC and 50789 to 50792-OTH (see table 1 above for breakdown)

Permission Type: Concession (Lease and Licence) and Concession (Easement) for all four Applicants (see Table 1)

Summary of Proposal

Site 1

- (a) To occupy land by cottage/pilot house No. 1, associated buildings and improvements situated at North Spit, Aramoana;
- (b) To occupy an area around the curtilage of the cottage/pilot house No.1 and ancillary structures for residential purposes;
- (c) To obtain vehicle and foot access to the cottage/pilot house No.1 and ancillary structures via an easement.

Site 2

- (a) To occupy land by cottage/pilot house No.2, associated buildings and improvements situated at North Spit, Aramoana;
- (b) To occupy an area around the curtilage of the cottage/pilot house No.2 and ancillary structures for residential purposes;
- (c) To obtain vehicle and foot access to the cottage/pilot house No.2 and ancillary structures via an easement.

Site 3

- (a) To occupy land by cottage/pilot house No.3, associated buildings and improvements situated at North Spit, Aramoana;
- (b) To rent cottage/pilot house 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.

Site 4

- (a) To occupy land by dwelling, associated buildings (outdoor toilet), ancillary structures (water tank tower) and improvements situated at North Spit, Aramoana;
- (b) Subletting of the dwelling;
- (c) To occupy an area around the curtilage of the dwelling and ancillary structures for residential purposes;
- (d) To obtain vehicle and foot access to the dwelling and ancillary structures via an easement.

2.0 PURPOSE

As stated above, these applications were received before the enactment on 18 October 2017 of section 202 of the Resource Legislation Amendment Act 2017 (2017 No 15), the Minister of Conservation has made a decision in principle, of the intention to grant concessions and, confirmed that this intention to grant must be notified.

This report is provided pursuant to section 49(2)(d) of the Conservation Act 1987. It provides you with:

- A summary of all objections and submissions/comments received in response to public notification:
- Recommendations to the extent to which:
 - objections should be allowed and
 - submissions/comments accepted.
- A recommendation on the application so you can decide whether or not to proceed.
- Any recommendations of actions as a result of those submissions e.g. special conditions, further information requests etc.
- Any recommendations on further information you may wish to obtain and consider.

The implications and extent of allowed objections and accepted submissions/comments are noted, to assist you in forming a view 'before deciding whether or not to proceed with the proposal', pursuant to section 49(2)(e) of the Conservation Act 1987.

I note that any recommendation, as the Director General's delegate, that I make to you in no way fetters your discretion in considering all the relevant issues of these applications and relevant issues.

This Hearing recommendation report will form part of, and be embodied in, the Final Report.

3.0 BACKGROUND

These applications were previously publicly notified in the Allied Press Otago Daily Times and on the Department's website on Saturday, 31 March 2018¹. The Department determined that these applications were to be re-advertised. The 'Notified Concession Officer's Report to Decision Maker' that approved in principle the granting of concessions for all 4 sites was publicly notified again in the following newspaper:

- (a) Otago Daily Times on Saturday, February 12, 2022².

¹ Submission closure date of 29 May 2018.

² [DOC-6936933](#) (Allied Press – ODT advertisement)

The application was also notified on the DOC website at link: <https://www.doc.govt.nz/get-involved/have-your-say/all-consultations/2022-consultations/2022-notified-applications/aramoana-concession/> and all submissions were posted on the webpage for the public to view.

Public notification occurred for 40 working days and closed on Monday, 11 April 2022. Submitter's were requested to submit on the Department's submissions comment form template by email or post.

In total, 24 submissions were received (21 submissions in support; 2 support/oppose; 1 opposed) was on the intention to grant reports and 4 objectors/submitters requested to be heard at the Public Hearing, see Table 2 below. All submissions were summarised on a spreadsheet³ with hyperlinks to individual submissions⁴.

Note: Submitter Number 16, Janet Ledingham, submitted a retraction to the support of Forest and Bird's objection⁵.

Other information

Full details of the applications (including objections and submissions received) can be viewed at webpage:

<https://www.doc.govt.nz/get-involved/have-your-say/all-consultations/2022-consultations/2022-notified-applications/aramoana-concession/>

The Hearing Rules included in the Hearing Agenda⁶ were distributed to objectors or submitter's wishing to be heard before the Hearing.

4.0 DETAILS OF PUBLIC HEARING

Date: Tuesday, 31 May 2022

Time: 10:30am to 12:34pm

Location: Online Teams Meeting by invitation

Chair: David Newey, Strategic Issues Manager (Planning, Permissions and Land Unit) online from Christchurch Service Centre

Advisory Panel Members: None.

Attending DOC Staff: Kelvin Brown - Permissions Advisor, Dunedin Service Centre (online from Dunedin Service Centre); Máire Hearty – Statutory Support Officer/Project Coordinator (online from Hokitika Service Centre)

³ [DOC-6952140](#) (Submission Summary)

⁴ [DOC-6986318](#) (Complete Submissions); [DOC-6986320](#) (Submissions to be redacted); [DOC-6989157](#) (redacted Submissions)

⁵ [DOC-7048511](#) (Janet Ledingham retraction)

⁶ [DOC-7040213](#) (Draft Hearing Agenda)

Media presence: None.

Applicant attendee's: Rob Enright (Barrister & Solicitor appearing on behalf of all Applicant's), Richard Allen (Co-owner Pilot House Site 2 / Barrister & Solicitor appearing on behalf of all Applicant's); Madeleine Child (Submitter / Co-owner of Pilot House Site 3), Philip Jarvis (Submitter / Co-owner of Pilot House Site 3); Elizabeth Dawe (Owner of Pilot House Site 1); Joseph Vessels (Owner of Dwelling Site 4)

Others present: Warren Wilson (Submitter); Tracey Densem (Submitter)

Table 2: List of Objector's or Submitter's who requested to be heard at a Hearing

Submission Number	Submitter	Submission Date (Received)
1	Aramoana Conservation Trust (BradleyCurnow)	5 March 2022
9	Emeritus Professor Sir Alan Mark	13 April 2022
15	The Royal Forest and Bird Society Incorporated, Dunedin Branch (represented by Kimberley Collins and Paul Swale) Contact: Nigel Paragreen	11 April 2022
16	Janet Ledingham	11 April 2022

Note: Submitter's 1 and 16 were unable to appear at the hearing and sent their apologies.

Table 3: Submitters that were heard (in order):

Submitter Order	Submitter	Submission Number
1	Emeritus Professor Sir Allen Mark	9
2	The Royal Forest and Bird Society Incorporated, Dunedin Branch (represented by Kimberley Collins and Paul Swale)	15

General:

- all submitter's were advised when the online hearing was to occur i.e. date and time and received the invitation to the Teams Meeting⁷.
- objector's, submitters and the Applicant's representatives received an advance copy of the Hearing Rules.
- a draft Agenda⁸ was prepared for the Chair.

Before and after the Hearing the Applicant's representatives provided the documents detailed in Appendices 3 to 8 below, in support of the Applicant's right of reply. The Applicant's representatives also gave a verbal response. These documents and, the oral comments at the Hearing have been referenced,

⁷ [DOC-7049039](#) (Word document drafted for Team Meeting)

⁸ [DOC-7040213](#) (Draft Hearing Agenda)

where relevant below in the discussion points about the objections and submissions. They are also discussed in the final recommendations in this report.

Note: on the day of the Hearing, Madeleine Child and Philip Jarvis (Submitter 17) who stated on their submission that they do not wish to be heard, asked to be heard through their representatives, Rob Enright and Richard Allen⁹.

Table 4: Documentation provided by Applicants’ representatives pre and post Hearing

Date received	DocCM Ref	Document Description	Appendix
27 May 2022	DOC-7049345 ¹⁰	interim evidence of Richard Allen in reply to RFNB	3.0
27 May 2022	DOC-7049346 ¹¹	Submission on Report to Decision Maker[37] (003)	4.0
31 May 2022	DOC-7049344 ¹²	DOC Aramoana Legal Subs Final 31May22 doc18	5.0
31 May 2022	DOC-7049342 ¹³	DOC Aramoana Lease History 31May22 Produced by Richard Allen	6.0
31 May 2022	DOC-7047841	Includes letter confirming lease conditions Otago Harbour Board (OHB 1984) - Lease history and Schedule - copy of lease	7.0
31 May 2022	DOC-7049312 ¹⁴	Flash-drive and hard copy document hand-delivered by Richard Allen on 1 June 2022 titled <i>“In the matter of the Conservation Act 1987 And A hearing regarding an application to issue Lease and License Concessions”</i> .	8.0

Hearing Notes and Recording

[DOC-7037542](#): Hearing Notes by Máire Hearty

[DOC-7047849](#): Hearing recording

Forest and Bird provided Hearing notes after the Hearing labelled *“220529 Aramoana accommodation and easement concession hearing points”*¹⁵ which have been incorporated in the issues raised below.

Purpose of hearing: To give submitters the opportunity of appearing before the Director-General in support of the objection or submission. The Director-General also allows a right of reply by the Applicant.

⁹ [DOC-7047821](#) Forest and Bird post Hearing notes

¹⁰ [DOC-7047806](#): email dated 31 May 2022

¹¹ [DOC-7047806](#): email dated 31 May 2022

¹² [DOC-7047536](#) (email dated 27 May 2022) [DOC-7047538](#) (correction – email dated 27 May 2022)

¹³ [DOC-7047536](#): Included in email received 27 May 2022 (and [DOC-7047806](#) dated 31 May 2022)

¹⁴ [DOC-7047824](#): Email to Richard Allen confirming receipt of hand-delivered flash-drive and hard-copy document dated 31 May 2022

¹⁵ [DOC-7047821](#)

All objector's and submitter's made oral submissions based on their submission and, the Applicant provided detailed supporting written 'evidence' as its right of reply both pre- and post Hearing.

What happens after the Hearing?

All present at the Hearing were advised that after the Hearing, the Hearing Chair, as delegate of the Director-General, shall send to the Minister a recommendation report comprising a summary of all objections and comments received and a recommendation as to the extent to which they should be allowed or accepted ("Hearing Report")

The Minister shall consider the recommendation and the contents of the summary before deciding whether or not to proceed with the proposal.

If proceeding with the proposal, a Final Report is prepared and, a decision is made on the applications.

6.0 ANALYSIS OF OBJECTIONS AND SUBMISSIONS/COMMENTS
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Both the oral and written submissions have been separated into key themes to enable easier assessment. For ease of interpretation, reference will be made to the number allocated to the submission when it was submitted.

Issue 1 (i) Support of Applications (ii) Object to Applications

In support of proposals:

No	Submitter Name	Comment
1	Aramoana Conservation Trust (Bradley Curnow)	Supports all sites.
2	Deirdre Newall	Support sites 1-3.
3	William (Bill) Brown	Support all 4 sites.
4	Karen and John Davis	Support all 4 sites. We have been associated with Aramoana for over 65 years, the last 25 years as permanent residents. The houses and their residents referred to in the concession application, have been an integral part of the community and we support their continuance.
5	The Aramoana (Otago) Conservation Charitable Trust	Support all 4 sites.
6	Paul Munro	Im writing in support of the concessions being granted for the 3 Pilots houses/cottages & dwelling situated at the north spit Aramoana...
7	Brian Wilson	I fully support continuing the concession for these houses.
8	Joan Braithwaite	Supports all 4 sites
9	Emeritus Professor Sir Alan Mark	I have no objection to any of the four house sites
10	Theresa Cocks	Support houses 1-3. They are kept in good condition.
11	Cleo Gilmour	All sites. Continued occupation of the dwellings helps to maintain and prolong them as viable buildings.
12	Jennifer Child	All sites. Continued occupation of the dwellings helps to maintain and prolong them as viable buildings.
13	Warren Wilson	All sites supported. As a long-term resident and property owner in Aramoana, I support the Minister of Conservation's intent to grant concessions...
14	Philippa Coleman	All sites 1-4. I support granting the submission to all sites.
16	Janet Ledingham	Supports Sites 1-4 however, has concerns primarily to the use of vehicles over the proposed easement. [Note: Other comments have been included under relevant issues below.]
17	Madeleine Child and Philip Jarvis	We support DOC's proposal to issue licences to the owners of the properties located on "The Spit" at Aramoana.
18	Aramoana Pilots Wharf Restoration Charitable Trust (Tracey Densem - Trustee)	Support Sites 1-4 North Spit Aramoana within the Aramoana Ecological & Conservation Area.
19	Tracey Ann Densem	Support Sites 1-4 Aramoana The Spit Houses/Cottages

20	<i>Geoffrey Michael McClelland</i>	<i>Support Sites 1-4. All North Spit Aramoana. All houses & structures. Leave well alone.</i>
21	<i>Vicki Maria McClelland</i>	<i>Support Site 1 through to 4. The Spit, Aramoana</i>
22	<i>Jasmine Millar</i>	<i>Support Site @ North Spit Aramoana Sites 1-4. All heritage house/buildings.</i>
23	<i>Rheon McClelland</i>	<i>Support North Spit sites 1-4 Aramoana.</i>
24	<i>Simon Ritchie Gilmour</i>	<i>Support all sites</i>

Object to proposals:

No	Submitter Name	Comment
2	<i>Deirdre Newall</i>	<i>Do not support Site 4 (Joseph Vessels). [Note: Other comments have been included under relevant issues below.]</i>
15	<i>The Royal Forest and Bird Society Incorporated, Dunedin Branch</i>	<i>Forest & Bird adopts and submits in opposition to the full range of activities identified in the Notified Officer's Report to Decision Maker for each of the four sites. [para 8]</i>
16	<i>Janet Ledingham</i>	<i>Sites 1-4. Primarily to do with use of vehicles and the proposed easement. [Note: Other comments have been included under relevant issues below.]</i>

Applicants' verbal and written right of reply: Rob Enright (acting for the occupiers of houses 1 to 4) – stated at the Hearing that “Most submitters are in favour of the occupation.”

Recommendation (Issue 1: (i) Support of Applications (ii) Object to Applications)

I recommend the 23 submissions be **accepted** and the 3 objections be **allowed**. The submissions in support highlight, based on the home addresses on submissions, that the Applicants' have support from a cross-section of the Aramoana community.

On the objection side, one submitter indicated an objection to site 4 only (Joseph Vessels) and another had an objection to the use of vehicles (which is covered in Issue 5 below). Forest and Bird opposed all sites. As such, these points are relevant when considering the Applicant's abilities to carry out the activity when considering section 17S(f) and objections, submissions and comments can be noted pursuant to section 17U(1)(f) of the Conservation Act 1987.

Issue 2: Term

(a)(i) Support

No 5: The Aramoana (Otago) Conservation Charitable Trust

THE Aramoana League, established in 1931, has had a long involvement with the activities of the Otago Harbour Board (now replaced by Port Otago Ltd) relating to Mole construction, beach restoration, Pilotage, etc. The Houses on the "Spit" have been an important part of those activities and form an integral part of our community and history. In 1989, when land at Aramoana was transferred from Otago Harbour Board ownership, village residents were promised and obtained freehold status, and the Spit houses were promised "permanent security of tenure".

We support the formalisation of existing occupation and access to these historical dwellings.

No 6: Paul Munro

I believe the lease periods should be a lot longer (999...or 50yrs minimum) to enable the owners to have greater comfort in spending to maintain these heritage buildings which are integral to the development of the Aramoana village/breakwater and Pilots wharf .

I believe there is a legal obligation to up hold the status of title that was applied to these individual titles during the original free holding of the land from OHB to DCC (Dunedin City Council..and now to DOC and must be honored.

No 13: Warren Wilson

The original agreement with Silverpeaks Council of 22 June 1989, before DOC involvement, should be honoured as there was 70 years of habitation already in this area, the light keeper's house has already disappeared.

All reference to a right of first refusal must be removed from the concession, the houses are privately owned and there would not be any land transferred. Phasing out of these properties cannot be countenanced either, the ownership of the houses must be seen with prime user status. There is no difference between the four houses and from the leased farm on the Ecological Area, long before DOC even existed. If DOC procured these properties, I would foresee the houses ending up demolished due to negligence as happened with other historic structures such as the North Spit Jetty known as the Aramoana Pilot's Wharf, lost heritage forever.

No 17: Madeleine Child and Philip Jarvis

Otago Harbour Board had leased the land on which the privately owned houses are located on perpetually renewable leases. The houses in the nearby village had the same terms.

The current owners purchased their properties during or after the reorganization of the Otago Harbour Board in 1988. This resulted in DOC becoming the owner of the Salt Marsh area which included the 4 pieces of land on which the houses are located.

We are aware that in 1989 the local authority responsible for zoning and planning control told DOC that they must, if they become the owner, as a condition of issuing planning controls, grant permanent security of tenure to the owners of those 4 houses. At the same time the Council issued a condition that the new owner of the land in the nearby village be granted freehold status. Dunedin City Council accordingly freeholded the village land immediately after becoming the legal owner of the village land.

The current proposal (with leases ending in just 15 years) does not in our opinion grant these owners permanent security of tenure.

So we endorse the proposal to grant the licences but with a condition that the terms be amended.

No 18: Aramoana Pilots Wharf Restoration Charitable Trust (Tracey Densem – Trustee)

For all sites to have the longest Leases made available to them.

No 19: Tracey Densem

The longer Leases to all the better, for historical and cultural reasoning.

No 20: Geoffrey Michael McClelland

...leave these houses/cottages as protected for as long as possible leases.

No 21: Vicki Maria McClelland

Long lease

No 22: Jasmine Millar

More years for lease the better for all heritage structures on this North Spit Land.

No 23: Rheon McClelland

Leave as is and where is.

No 24: Simon Ritchie Gilmour

The site was historically used for intermittent occupation and food gathering and the continued lease of these buildings will support this use.

(a)(ii) Objector objection

**No 15: The Royal Forest and Bird Society Incorporated, Dunedin Branch
(Hearing notes by Kimberley Collins)**

Issues raised in the submission

Issue: must a phase out of private accommodation occur and are there grounds for an exceptional or special case?

- Private accommodation must be phased out.
- There is a strong expectation that it will be phased out by one of two pathways.

- *There is a strong expectation that the details will be provided via this concession, if granted.*

The grounds for an exceptional or special case are extremely limited. [Para 36-40]

No 16: Janet Ledingham

Re Site 4 Joseph Vessels

I do not support the request for subletting, or his request for a 60-year term. (underline added for emphasis)

Applicants' verbal and written right of reply:

Richard Allen (on behalf of all Applicants):

- At a meeting in 2014, he believed, agreement was given for a term of 60 years.
- In 2018, a report changed that to 30 years.
- The current report shows 15 years.

Recommendation (Issue 2 – Term)

I recommend that submissions 18-24 be **accepted** and the 2 objections be **allowed**.

Note: Terms raised by submitters 5, 6, 13 & 17 in support would be unlawful and a breach of the Conservation Act 1987; in particular with regard to section 17Z.

With regard to the Applicant's comments, in conjunction with the discussions on section 7(2) of the Conservation Amendment Act 1996 under issue 4 below. If you agree to proceed with the proposal, this may or may not have a bearing on any final statutory decision you make on the Term pursuant to sections 17Z(1) and 17Z(3)(a) i.e. a Term with a final expiry date of 31 August 2036 in accordance with the policy in the Otago CMS or, if you consider exceptional circumstances are proven, up to 60 years.

See section 8.0, recommendation 2 in this Report.

Issue 3: Framework and hierarchical consideration of Legislation, CGP & CMS

(a)(i) Objector objection

**No 15: The Royal Forest and Bird Society Incorporated, Dunedin Branch
(Hearing notes by Kimberley Collins)**

Direction in the CGP AND Otago CMS for phasing out private accommodation

Forest & Bird submits that the 'should' direction in the Otago CMS is not consistent with the direction of Conservation General Policy (specifically 10(h), which is that:

"Existing private accommodation and related facilities, including encampments on public conservation land and waters **will** be phased out..."

And

"They **should** be removed at the end of the phase-out period unless retained by the Department for public use." [Para 29 & 36 CGP Policy 10(h) Otago CMS Policies 3.11.1]

The interpretation of the term 'will' in the CGP Policy 1(d)(i) states:

"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."

There is a fundamental contradiction between the relevant policies of the CGP and Otago CMS. The CGP provides no discretion that private accommodation will be phased out, whereas the Otago CMS provided limited discretion on the matter. [Para 30-31]

The CGP provides guidance for contradictions of this type. CGP Policies 1(f) and 1(h) require the CGP to be applied consistently. The Otago CMS is not giving effect to the CGP and we should therefore refer to the CGP in this context.

Taken together, the decision maker must apply the CGP Policies and therefore has no discretion as to whether a phase out should occur. There are no grounds for either an exceptional or special case with respect to phasing out private accommodation. [Para 33]

Direction from policy:

- Private accommodation and related facilities must be phased out, there is no discretion on this point.
- There is a strong expectation that the phase out of private accommodation will take the form of either:
 - o removing the buildings by 2036, 20 years after the Otago CMS was approved; or

- making the buildings available for use by the public.

In both cases, there is a strong expectation that the phase out method be set out via specific concession conditions. [Para 34 & 37]

Issue: must a phase out of private accommodation occur and are there grounds for an exceptional or special case?

- Private accommodation must be phased out.
- There is a strong expectation that it will be phased out by one of two pathways.
- There is a strong expectation that the details will be provided via this concession, if granted.

The grounds for an exceptional or special case are extremely limited. [Para 25-35]

Issue: must a phase out of private accommodation occur and are there grounds for an exceptional or special case?

- Private accommodation must be phased out.
- There is a strong expectation that it will be phased out by one of two pathways.
- There is a strong expectation that the details will be provided via this concession, if granted.

The grounds for an exceptional or special case are extremely limited. [Para 36-40]

Verbal response at Hearing (notes prepared by DOC)

Kimberley Collins - Referred to the CMS and said that it states that private accommodation will be phased out by 2036. She said that under the CMS, the Decision Maker has no discretion with respect to private accommodation.

She questioned if the Environmental Impact Assessment is sufficiently complete. She said that there is a need to take account of the amount of impact that a commercial operator has as opposed to single occupier dwellings.

Whilst sympathising with the current inhabitants, Forest and Bird said that they are in favour of removing the buildings, phasing out the accommodation by 2036 and recommended that there be no commercial accommodation offered at the site.

Preferred option for path forward

Given the very high values of the place, imminent sea level rise and heritage value of the buildings, F&B submit that the path most consistent with policy direction is to remove the buildings. [Para 41-43]

If the alternative were chosen, sea level rise will need to be addressed. F&B seek that if this path is chosen, the method for combating coastal erosion does not adversely impact on the environment. [Para 44]

F&B would support a timeframe that ensures a phase out is completed by 2036. This provides time for the owners/occupiers to enjoy the place while managing risks of serious adverse effects for the long term.

If a phase out timeframe were chosen, F&B seeks that restrictions are placed on the concession so that the disturbance to wildlife and the ecosystem is avoided or minimised. [Para 45-46]

In all cases, commercial accommodation is inconsistent with the values of the place and policy guidance. It should not be allowed as part of any concession granted. [Para 47].

Applicant verbal and written right of reply:

Rob Enright (acting for the occupiers of houses 1 to 4)

- Wished to address tenure to 2036 vs a 60-year period; also directive wording of CMS & CGP – with reference to Policy 10(h). This circumstance is an exception; therefore the mandatory phase out does not apply he said. He then went on to discuss s 17U & S 17W do not apply if you have.... And where ‘should’ implies a residual discretion.
- Reference to CMS 1.5.21 and 1.5.22 with respect to Historic places.
- Conservation areas vs ecological areas.
- DOC already has the ability to ‘lock the gate’.
- The question is ‘can the applicants meet the threshold of exceptional circumstances?’ he asked.
- There is a 99-year history of dispute. Research shows that private ownership / habitation is better in the long term for the preservation of the heritage dwellings. Houses 1-3 have heritage protection, 4 does not. However, in the interest of fair play, site 4 should be included he said.
- Consultation with Ngai Tahu is welcomed.
- None of the four Applicants have the desire to carry out commercial activity.
- The Applicants do not contest the need for monitoring but, have some concerns around bonds and public liability insurance.

Recommendation (Issue 3 – Framework and hierarchical consideration of Legislation, CGP & CMS)

I recommend objection 15 be **allowed** as the framework from the legislation, to the CGP, down to the Otago CMS (the hierarchical order) has been concisely explained and clearly laid out in this objection.

With regard to the Applicant’s comments, these relate primarily to (and have been discussed in more detail) under Term (issue 2) and legal status under Section 7(2) of the Conservation Amendment Act 1996 (issue 4).

Refer also to section 8.0, recommendation 2 in this Report.

Issue 4: Legal status under Section 7¹⁶(2) of the Conservation Amendment Act 1996

Applicant verbal and written right of reply:

Richard Allen (on behalf of all Applicants)

- “Is the site already authorised?” (he asked) and said that a Sale & Purchase agreement referred to ‘vacant’ land, but that DOC already knew about the 4 dwellings when they took over the land.
- Mr Allen said that the Harbour Board was dissolved prior to the handover of the land. He said that the Harbour Board gave freehold occupancy to the tenants (12 months and continuing thereafter) – no rights of renewal but rolling over. The leases / licences were never cancelled.
- ‘Permanent Security of Tenure’ is desired Mr Allen said. Section 7(2) is not valid therefore the house occupation is authorised.
- Mr Allen said what is required is 60 years or permanent security of tenure. S7(2) applies – the tenants are an authorised occupation.

Recommendation (Issue 4 - *Legal status under Section 7(2) of the Conservation Amendment Act 1996*)

The Applicant’s comments should be considered to the extent if there has been any error (or element of doubt) in applying section 7(2) of the Conservation Amendment Act 1996, to confirm the Applicant’s contention that the occupation is lawful i.e. authorised rather than unauthorised. This should be explored further, especially in light of the Applicant’s contention that exceptional circumstances exist to warrant consideration of a Term up to 60 years pursuant to section 17Z(1) and 17Z(3)(a) of the Conservation Act 1987; as discussed under issue 2 (Term) in this Report.

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7 New Part 3B inserted

- (1) This subsection inserted Part 3B (comprising ss 17O to 17ZJ) of the principal Act.
- (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 or 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.
- (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.
- (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.
- (5) The following enactments are hereby consequentially repealed:
 - (a) Sections 14 and 15 of the principal Act.
 - (b) Sections 8 and 9 of the Conservation Law Reform Act 1990.
- (6) The policy approved by the Minister of Conservation on 20 October 1994 under section 17B of the principal Act as the **Policy of the Minister of Conservation on Concessions for Recreation and Tourism Business Operations in Reserves and Conservation Areas** is hereby consequentially revoked.

Even if any revised determination under section 7(2) finds in favour of the Applicant, it needs to be reinforced that the wording in section 7(2) states “...*the minister may grant a concession*” and, even though it includes “*notwithstanding sections 17U or 17W*” you, as the Minister’s delegate determined as part of this process, that it was appropriate to consider those sections of the Act and all other provisions of Part 3B of the Conservation Act 1987; such as the requirement for public notification. This resulted in you making the decision in principle, of the intention to grant concessions.

In summary, if the outcome of any further deliberation on section 7(2) determines that it does apply then, if you agree to proceed with the proposal, this may or may not have a bearing on any final statutory decision you make on the Term

See section 8.0, recommendation 2 in this Report.

Issue 5: (i) Nature and Effects of Activity and (ii) Environmental Impact Assessment (EIA)

(a)(i) Support

No 1: Aramoana Conservation Trust (Bradley Curnow)

The granting of these concessions will better protect the ecological values of the area and enhance those values in the future.

No 2: Deirdre Newall

Sites 1, 2 and 3 can contribute to the improvement of Dune restoration with planting & education regarding wildlife (which can help visitors and locals who visit the spit). They already have established areas for cars to be parked in and around their houses therefore they are not destroying the environment in order to accommodate their vehicles.

No 6: Paul Munro

The ecological area has benefited from the protection that the Spit has offered from open water the sand spit itself basically created by the OHB (Otago harbour board) with the installation of the road/rail reclamation to access the Pilots wharf circa 1800s during harbour works.

No 9: Emeritus Professor Sir Alan Mark

No objection to the easement area but, being defined on the ground with durable, white painted marker poles on the side away from the sand dunes, at appropriate intervals (say 80m intervals), to minimise diversion on to the saltmarsh where it is visually seriously damaging to the saltmarsh ecology.

Submitters' oral response at Hearing

Emeritus Professor Sir Alan Mark stressed that the saltmarsh ecology is intact and that he has been aware of its importance since 1973 as one of the most important saltmarshes in the country.

He has no objection to the houses.

He recommended that the access easement be formalised and defined to keep vehicles to that area. He stated that there is no need to have vehicle access to the marsh other than the inhabitants of the houses and that the easement is not a public thoroughfare. Professor Mark said that vehicles are the most damaging thing to the saltmarsh and need to be prohibited from it. He said that the 970m x 3.0m easement on the eastern side is bounded by the dunes and that the inland, western side needs definition. He suggested that a locked gate is required.

Question from Chair to Emeritus Professor Sir Alan Mark

Question was about testing the intent of the white markers. Is it to install white marker posts to delineate and provide a visual representation where the general public should drive their vehicles within.

Response

Yes. Restated verbal submission.

No 10: Theresa Cocks

Residents help with wildlife monitoring.

No 13: Warren Wilson

DOC, I believe should make a clearer statement as to protection from coastal erosion, especially methodology and what measures are allowable. A defined archaeological site adjacent to Pilot House 1 has been defined, habitation of the houses will guarantee protection, especially now that the local authorities including DOC have shown no interest in maintaining any of the local harbour and beach structures, Long Mac rock groyne, other groynes, sea walls and wharves.

No 14: Philippa Coleman

2. *With the Pilots' houses being occupied means that they are maintained and do not fall into disrepair or become derelict and a target for vandals.*
3. *While occupying the Pilots' houses, the occupants are also keeping watch over the flora and fauna in their immediate surroundings. They notice and can notify DOC of any changes to the natural environment, as well as monitor and participate in keeping an eye on the sea lions and their pups. This is an important role that is successful as there is always a presence in the area. It would be much harder for DOC to undertake these duties*

No 17: Madeleine Child and Philip Jarvis

We notify DOC on wildlife issues and have been involved with the Sea Lion Trust and Yellow Eyed Penguin Trust. We monitor beach fires, vehicles and littering.

We have not rented our house No 3 for several years and will not be doing so again.

No 20: Geoffrey Michael McClelland

No problems from them being there and the owners are all well aware of the protected area,...

No 24: Simon Ritchie Gilmour

Continued occupation of the dwellings helps to maintain and prolong them as viable buildings.

(a)(ii) Objector objection

No 2: Deirdre Newall

Site 4 Joseph Vessels

As a former tenant of this house (2009-2019) I know that the owner and now sole occupier of the house, does not follow proper composting toilet requirements. The human waste is often used far too early around plants in the area, also the grey water system is very “dubious” to the point of unhygienic. believes the owner does not follow proper composting toilet requirements. Also site 4 has lately dug away sand by to create a car park which will not help in restoring dune life and therefore biodiversity.

No 15: The Royal Forest and Bird Society Incorporated, Dunedin Branch

(From hearing notes prepared by Kimberley Collins)

The environment at place

As you will see in Paragraph 5 of our submission, the place contains high environmental values. Some are of national significance, and many are significant within Otago. These values are clearly identified in the Otago CMS and summarised in the Notified Concession Officer’s Report to the Decision Maker. These values should not be in contest. [para 5]

Paragraph 6 notes the pressures and threats specific to the place, as outlined in the Otago CMS. These should also not be in contest. [para 6]

The Environmental Impact Assessment depicted in Table 4 of the Notified Concession Officer’s Report to Decision Maker identifies potential effects and methods to remedy, mitigate or avoid any adverse effects.

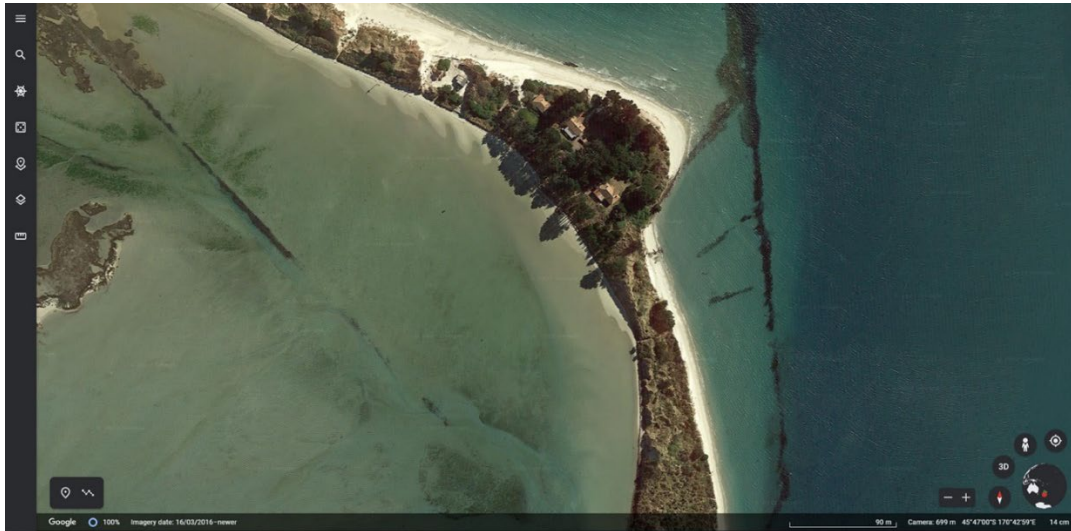
- *The destruction of fragile ecosystems and disturbance of wildlife cells, noting that the mitigation, remedy or avoid strategy respectively is awareness of ecological significance; and removal of rubbish, vehicle restrictions and notifying DoC of wildlife issues.*
- *There is no additional EIA for the commercial accommodation business in the EIA. Presumably it is thought to have the same adverse effects. [para 16-19 & Table 4 of DoC report]*

Sea level rise at place

Paragraph 22 to 24 of our submission outlines our concerns about whether coastal hazards have been considered in the context of the heritage status of these building [paras 22-24]

Google Earth estimates the elevation of the housing sites to be 14 cm above sea level.

Appendix 1. New exhibits, Google Earth model of elevation for dwellings.



Screenshot from Google Earth showing elevation of 14 centimetres above sea level. The lat long of the cursor's position at the centre of dwellings is shown in the bottom right.

Objectors' oral response at Hearing

Kimberley Collins – Forest & Bird opposed the habitation in it's current form. They also objected to the provision of commercial accommodation. This based on perceived Coastal Hazards and Sea Level Rise risks.

Paul Smale - presented an interpretation of recent sea level rise modelling carried out.

Spoke as having been a statistician and mathematical modeler. He referred to atmospheric warming and sea level rise. He stated that the volume of water is increasing and there is vertical land movement (subsidence) of 0.63mm/per year.

He said that the amplitude of the tidal rise will be perturbed over time, increasing the risk to the dwellings, and this coupled with the increase in King Tides (there has been a doubling of these in recent years) will create an ongoing Coastal Hazard. The Sea Level rise is a non-linear trend, and therefore is unpredictable he said.

Issues raised in submission

Issue: is the EIA complete and are the adverse effects appropriate for the place?

- The EIA is not complete
 - o Awareness, pre-existing occupation is not an appropriate action to mitigate, remedy or avoid adverse effects on the disturbance to plants and ecosystems.
 - o There is no mention of how the occupation will mitigate, remedy or avoid adverse effects to wildlife outside of vehicles, removing rubbish and notifying DoC.

- The EIA assumes the same adverse effects from owner/occupiers compared to commercial accommodation visitors.
- The identified actions are not consistent with policy direction
 - CGP Policy 4.6(a) requires the minimisation of adverse effects on the quality of ecosystem services

Otago CMS requires concessionaires manage adverse effects on wildlife [Paras 13-20, 21]

Issue: have coastal hazards been appropriately considered in the context of the buildings' heritage status?

- If the heritage status of the three buildings is to be valued, then it should also be protected.
- The solution to exempt the department of responsibility for restoration, repair or incidental matters is not consistent with policy direction.

The concession should detail actions taken to protect heritage buildings from coastal hazards (coastal defences or removal). [Paras 22-24].

Statement/observation from Chair

With respect to conditions concerning environmental impact: the fewer people affecting the ecosystem the better therefore, conditions may be put in place for commercial users.

No 16: Janet Ledingham

Re Site 4 Joseph Vessels

I do not support his intention to create a drive in parking area. The request for a parking area to be created should not be granted.

Use of vehicles/easement right

On numerous occasions in the past vehicles have strayed further onto the saltmarsh and in some cases have caused serious damage. This has not been such a problem since the gate was installed but on some occasions, especially when multiple vehicles have gone down to one or other of the sites the tyre tracks have extended way beyond the high water mark.

Consideration should be given to limiting the number of vehicles permitted to go down to one or other of the sites on party or other occasions and putting in some sort of markers to remind people of the extent of the concession at all times. This would ensure that workmen or other non-lessee vehicles were also well aware of that.

Proposed condition 17.1 of Schedule 2

*The Concessionaire acknowledges that the Easement Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency **or for the protection of wildlife such as sea lions***

I would like the wording to be amended to take account of any wildlife issues that would warrant closing public access. (bold highlighting).

Re Site 4 Joseph Vessels

Re the parking area requested. I believe that this would result in unacceptable damage to the affected trees and other ground cover.

Re Site 4 Joseph Vessels

I do not support the request for subletting, or his request for a 60-year term. (underline added for emphasis)

Re Site 4 Joseph Vessels

I have no confidence that the likely tenants would be adequately briefed in the values of the Ecological Area and the saltmarsh based on past actions of Mr Vessels of which DOC are well aware.

Subletting should not be approved.

Applicant verbal and written right of reply:

Richard Allen (on behalf of all Applicants):

- The properties are not located on part of an ecologically significant area. He has set up an organisation to help stabilise the sand dunes.
- A survey was carried out to examine road use. This saw 141 cars/day =13,000 people a year.
- The boardwalk is part of human disturbance to the site.
- He queried how much the public use is affecting the saltmarsh, and how much are the applicants/dwellers affecting the saltmarsh?
- Flora and Fauna: there's nothing specifically special about the four sites Mr Allen said and referred to a report written by Dr Jill Hamel (1990s) which reached the conclusion that there was no special flora/fauna at any of the 4 inhabited sites. [Note: At the Hearing, Kelvin Brown was asked about the existence of this report on DOC files. The file from off-site storage which has the original letter on it from Richard Allen (dated 16th August 2000) had no report attached from Dr Jill Hamel].
- Concerning climate change. Mr Allen said that the sea is rising at the rate of 1.48mm or 1.75mm / year. After 60 years, this will amount to 105 mm, but the houses are 1.4 m above sea level so, theoretically, this rise is negligible
- Mr Allen said that the Harbour Boards' mole is causing damage to the spit where the houses are (Deepening the sea channel is causing the erosion of other areas of the harbour). There have been many man-made interferences that can only be offset by further man-made interferences (ref The Long Mac).
- Mr Allen said that there is an inherent conflict between historic context and ecological context.

- He said that the Applicants had a record of notifying DOC of important ecological happenings in the area.
- None of the four Applicants have the desire to carry out commercial activity.

Recommendation (Issue 5 – (i) Nature and effects of activity (ii) EIA)

I recommend that the submissions be **accepted** and objections be **allowed**.

To give context to my further recommendation below, under s.17U and in particular s.17U(1)(a) “*the nature of the activity and the type of structure or facility (if any) proposed to be constructed:*” and s.17U(1)(b) when considering the “*effects of the activity, structure, or facility:*”. The Minister is to have regard to submissions regarding the adequacy of the information provided, any potential adverse effects of the proposed activities on public conservation lands and waters. The Minister may request further information, especially when this information may impact on matters to be considered by the Minister under s.17U(2).

Under Section 17U(1)(e) the Minister must have regard to “*any relevant environmental impact assessment, including any audit or review:*”;

I consider that the comments from submitter’s and objector’s have been covered satisfactorily in the intention to grant reports, especially with regard to matters to be considered by the Minister under section 17U and, to the nature and extent of the effects of the activity.

With regard to Submission 16 not supporting any parking area for Site 4 Joseph Vessels. This outcome was determined as part of the intention to grant process and, my recommendation is for this to stand.

I also recommend that, in the event that concessions are granted, that conditions are imposed to not allow any protection works/hard structures to protect from sea level rise/storm surges for the life of the concessions.

The Applicant commented that all four Applicants will not be carrying out any commercial activity. This will require removal of any commercial rental arrangement such as subletting terms and conditions for pilot house No.3 (Madeleine Child and Philip Jarvis) and dwelling No.4 (Joseph Vessels), if a decision is made to proceed with the proposals and grant concessions.

See section 8.0, recommendation 3 in this Report.

Issue 6: Social history of houses and dwelling

(a)(i) Support

No 2: Deirdre Newall

Support sites 1-3 as they have historic heritage merit and are worth preserving for their architecture and cultural value.

No 3: William (Bill) Brown

The Pilot Station Historic Area consist of three cottages from 1913 to 1923 providing accommodation to the Otago Harbour Boar's pilot and boatmen, responsible for piloting vessels in the harbour. These buildings recall the importance of the pilot service I the days before radio communication, and have architectural significance as examples of workers' dwellings designed by prominent Dunedin architect Basil Hooper, known for his Arts and Crafts style residences.

No 8: Joan Brathwaite

I believe that it is vital to maintain these historic properties because of their place in the history of Otago Harbour. They have been an integral part of Aramoana since they were built in the 1930's and played a vital role in the safety of the Port.

I also believe that they are an important part of the history of the settlement of Aramoana.

No 10: Theresa Cocks

These are historic houses for pilots by famous local architect, Basil Hooper.

No 13: Warren Wilson

These houses are identified by the New Zealand Heritage List/Rarangi Korero, within the Pilot Station Historic Area. The New Zealand Heritage List/Rarangi Korero identifies New Zealand's significant and valued historical and cultural heritage places. The historic area was registered under the Historic Places Act 1993. The Pilot Station Historic Area consists of three cottages that from 1913 to 1923 provided accommodation for the Otago Harbour Board's pilot and boatmen, responsible for piloting vessels in the harbour. These buildings recall the importance of the pilot service in the days before radio communication and have architectural significance as examples of workers' dwellings designed by prominent Dunedin architect Basil Hooper, know for his Arts and Crafts style residences.

In New Zealand Aotearoa, we now live in an environment marked by a growing interest in heritage, recognition of its social, cultural, environmental, and economic benefits to our country, and awareness of its importance to our local and national identity.

No 14: Philippa Coleman

1. *The Pilots' houses are historical and should be preserved*

No 17: Madeleine Child and Philip Jarvis

These Pilot's Houses, designed by Basil Hooper, are iconic and have been located there for over a hundred years. They form part of the fabric of the Aramoana area, and pose no negative environmental effect.

The houses and the surrounding land are recognised in the Dunedin District Plan and are appropriately protected and cannot be removed or demolished or altered in any way under the Historic Places Act.

No 18: Aramoana Pilots Wharf Restoration Charitable Trust (Tracey Densem – Trustee)

The pilots houses are part of the heritage Area along with the pilots wharf at the 'North Spit' since the 1920's. They have high significance in accordance with the Historic Places Act 1993. They should remain, as is, for historical & cultural heritage values.

No 19: Tracey Densem

These are heritage structures that should remain on this very important site all Basil Hooper designed. Extremely rare all on a extremely rare historical site. Please leave as is.

No 20: Geoffrey Michael McClelland

They are just fine as is even in the Conservation and Ecological Area these heritage structures are to stay as is.

No 21: Vicki Maria McClelland

Heritage structures should be left alone where they are!

No 22: Jasmine Millar

Heritage structures on this site should remain on this site forever.

No 23: Rheon McClelland

The pilot houses and pilots wharf are heritage structures on this site and should be left as is & kept in this heritage area.

(a)(ii) Objector objection

No 2: Deirdre Newall

Site 4 Joseph Vessels

The house is not of heritage or cultural importance and therefore is not as important as sites 1, 2 and 3.

**No 15: The Royal Forest and Bird Society Incorporated, Dunedin Branch
(Hearing notes by Kimberley Collins)**

Forest and Bird acknowledge the applicant's connection to this place and does sympathise with the current owner/occupiers.

We recognise this process has been ongoing and provides limited clarity for those involved. We hope this decision will provide an appropriate way forward that ultimately aligns with policy.

Applicants' verbal and written right of reply:

Refer to Appendix 3.1 for Leasing History of Spit Houses and Simplified Timeline.

Recommendation (Issue 6 – *Social history of houses and dwelling*)

I recommend that all the submissions be **accepted** and objections be **allowed**, as all either recognise (and in the Applicant's case can clearly document) the historic value/social history of occupation at this location.

I recommend that appropriate conditions be included in any concession (if granted) to protect historic values for the Term of any concession. I also recommend that further work be done prior to the end of any Term (this may be able to be captured in a special condition) on the most appropriate actions to consider these historic values into the future, for example, engagement with Heritage New Zealand Pouhere Taonga.

From a legislative perspective, it is recognised that section 17ZAA¹⁷ of the Conservation Act 1987 will apply to these applications if you decide to proceed, and grant concessions.

¹⁷ [Conservation Act 1987 No 65 \(as at 12 April 2022\), Public Act 17ZAA Concession may continue after application for new concession – New Zealand Legislation](#)

8.0 RECOMMENDATIONS

I have made recommendations to you in respect of the extent to which submissions/comments should be accepted and objections allowed in section 6.0 in this Report.

Recommendation 1 (General)

In conjunction with the recommendations in section 6.0, I have included the Applicants' comments (written response to submissions and right of reply) in Appendices 3.0-8.0, for your consideration.

Recommendation 2 (Issue 2 Term)

I recommend, if you agree to proceed with the proposals pursuant to section 49(2)(d)(e) that, during your final deliberations on the Term, that you take into account the documentation referred to in Recommendation 1 (General) above, as the Applicant contends that they have proven that exceptional circumstances exist to warrant a Term of 60 years, pursuant to s.17Z(1)¹⁸ and s.17Z(3)(a)^{19,20}.

Your approval in principle of the intention to grant concessions included agreement for the Terms to be in accordance with the following:

- sites 1-3 a Term up to a final expiry date of 31 August 2036 and,
- site 4 (Joseph Vessels) a 10-year Term, with one right of renewal up to a final expiry date of 31 August 2036.

As the Minister's delegate, you will need to make a final statutory decision on the Term after assessing any further relevant information over and above what was made available to you when you made your principle decision to grant.

Recommendation 3 (Issue 5 (i) Nature and Effects of Activity and (ii) Environmental Impact Assessment (EIA))

The Applicant stated that all four Applicants will not be carrying out any commercial activity. This will require removal of any commercial rental arrangement such as subletting terms and conditions for pilot house No.3 (Madeleine Child and Philip Jarvis) and dwelling No.4 (Joseph Vessels), if a decision is made to proceed with the proposals and grant concessions.

Recommendation 4 – final report

The Applicants, at the Hearing, did not contest the need for monitoring but did have concerns around the imposition of bonds or bank sureties and public liability insurance. It is recommended that a copy of

¹⁸ s.17Z(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."

¹⁹ s.17Z(3)(a) "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."

²⁰ s.17Z(3)(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:"

the draft final report (along with draft concession documents) be sent to the Applicants' representative (via Richard Allen) to comment on the final report before a decision is made.

With regard to the recommendations above, the Intention to Grant Reports consolidate all relevant information on the applications that allowed the Minister's delegate to deliberate and make a decision on the intention to grant. The Intention to Grant Reports contain feedback from third parties such as iwi and Conservation Board, DOC district office and technical staff contributions and assessments, analysis of submissions and views heard at the hearing, and statutory analysis.

I recommend that consideration of any perceived incompleteness, insufficiency or inadequacy of the application and resultant Intention to Grant Reports be considered as part of the Minister's consideration as part of the Final Report for each application as the Minister would need to be satisfied that the provisions of Part 3B of the Act have been met, whether or not to proceed with the proposal pursuant to s.49(2)(e), and grant concessions under 17Q.



David Newey, Strategic Issues Manager

Planning, Permissions and Land (PPL)

Delegate of the Director General of Conservation as Chair of the Hearing

Date: 29 July 2022

Recommendations:

1. Note the summary of objections and comments received during the public notification process:

Yes ~~/~~ No

Comments:

2. Note the recommendations as to the extent to which objections should be allowed and submissions should be accepted:

Yes ~~/~~ No

Comments:

3. Note the recommendations on further information to be considered:

Yes ~~/~~ No

Comments:

4. Note, that in developing these recommendations the submitters and Chair had the benefit of assessments and analysis of all applications by DOC staff in the form of Intention to Grant Reports:

Noted (circle)

Comments:

5. Having considered the contents of this report, I agree that these proposals can proceed pursuant to section 49(2)(e) of the Conservation Act 1987:

Yes ~~/~~ No

Comments:



Judi Brennan,
Permissions Manager, Hokitika and Dunedin
Delegate of the Minister of Conservation

Date: 22 August 2022

APPENDIX 1.0 Emeritus Professor Sir Alan Mark (Submission 9) [DOC-6983495](#)

Intention to grant accommodation in Aramoana

**Submission by: Sir Alan Mark, FRSNZ; Hon. D.Sc., Univ. of Otago; Emeritus Prof., Department of Botany, University of Otago, Dunedin.
Dated 13 April, 2022.**

BACKGROUND.

I am a retired academic ecologist with a lifetime of involvement with pure and applied ecological studies of a wide range of indigenous ecosystems, aimed at achieving their sustainable management, with representative conservation areas.

SUBMISSION.

Invitation to formalise existing occupation and access to private accommodation (three ex Pilot Houses and a dwelling) and related facilities situated within, but excluded from the Aramoana Conservation Area and Aramoana Ecological Area.

Site 1 (Pilot House 1). Applicant E.A. Dawe. House registered with Heritage NZ.

Site 2 (Pilot House 2). Applicant V & D George, L. Farry, R. Allen & GSM Trustees.

Site 3 (Pilot House 3). Applicant M.Child & P. Jarvis.

Site 4 Dwelling. Applicant J. Vessels.

Lease and licence area for these four houses is 0.68ha

Easement. 970m long & 2.3m wide, total 2850m sq, permitted for personal access only, via vehicle or foot.

The Aramoans Conservation Area and Aramoana Ecological Area of 358.2ha.

NOTE: An Ecological Area is defined in the Conservation Act as a specially protected area, having to be “managed for protection of the particular values of each area. Conservation Act Part IV, Sect. 18-23.

The 358.2ha area is apparently in two parcels: 117.2ha and 241ha, all to be managed pursuant to S 21 of the Conservation Act.

The Aramoana saltmarsh gained prominence when the Technical Advisory Committee on Reserves and Scenic Amenities of the Dunedin Regional Planning Authority (of which I was a member), completed a report in 1973 on “Otago Harbour as a Regional Recreation Resource.” Despite its industrial zoning, we

recommended that the saltmarsh area be formally reserved “to protect its high ecological values” (see Mark, 2015, pp133-4).

The later controversy over the aluminium smelter proposal saw the saltmarsh proposed as a Wildlife Refuge (secured by a bund wall from the actual smelter and its seepages), largely through the efforts of Hugh Fletcher, senior member of Fletcher Challenge, a partner in the company, South Pacific Aluminium. Fletcher acknowledged “the unique biological values of the saltmarsh” and planned for its protection. When the smelter proposal eventually failed, the local government reorganisation at the time eventually resulted in the saltmarsh being transferred to the Department of Conservation, to which I recommended it be designated an ecological area.

This was a relatively new designation for a conservation area which the NZ Forest Service had devised for the areas of State Forest which the Forest Service’s Reserves Advisory Committee (on which I was a Royal Society NZ rep.) had identified in State Forests around the country. Ecological areas had high conservation values, functional ecosystems with regionally important both floral and faunal values.

It seemed appropriate for the Aramoana saltmarsh, given its fully intact nature (a rare phenomenon, regionally), and obvious floral (representative indigenous species and negligible exotics) and faunal (migratory and local birds, fish nursery, entomological, and a sea lion layby) values; as well as Kai Tahu cultural values. It was so designated and launched in November 1994, by Conservation Minister, Hon Denis Marshall. A boardwalk was constructed through a representative area of this vulnerable saltmarsh by the local Forest & Bird Protection Society, funded with a grant from the Marjorie Barclay Trust, and officially opened by Mayor Sukhi Turner. in August 1999, with support from the local community (see Mark, 2015, pp 230-4).

The Aramoana Conservation Trust (of which I used to be an active member) continues with weed eradication exercises and inplanting of local indigenous plant species in the non-tidal areas adjoining the saltmarsh. The area remains popular with locals and visitors alike.

RECOMMENDATIONS:

I have no objection to any of the four house sites, as described with a total area of 0.68ha being excluded from the Conservation/Ecological Area, or to the

Easement area of 950m X 3.0m, being 2850m sq, as shown on the attached Map, being formally recognised as such, but being defined on the ground with durable, white-painted marker poles on the side away from the sand dunes, at appropriate intervals.

NOTE: The easement currently is not marked on the ground, where it is located adjacent to the edge of the coastal sand dune on its eastern side. Since it is unmarked on the ground it is not always observed; traffic often diverts on to the adjacent saltmarsh where it is visually seriously damaging to the saltmarsh ecosystem.

I therefore recommend that this easement be marked on its outer edge with durable white-painted poles at, say 80m intervals.

I also strongly recommend that the Aramoana Conservation Area/Aramoana Ecological Area of 358.2ha, as demarcated on current maps, continues to be formally recognised as such and managed so as to continue to receive the highest level of protection, with minimal human disturbance, consistent with the relevant legislation.

And I wish to be heard on this issue.

Sincerely, Alan F. Mark.

Reference cited:

Mark, Alan F. 2015. *Standing My Ground: A voice for nature conservation*. Otago University Press. 312pp.

APPENDIX 2.0: Forest and Bird (Notes received after hearing [DOC-7047821](#) and Submission 15 [DOC-6978999](#))

Presentation from Kimberley Collins, Forest and Bird Co-Chair

Tuesday 31 May 2022

Key point	Submission paragraphs
<i>Introduction</i>	
<p>Thank you for the opportunity to present today.</p> <p>My name is Kimberley Collins, I am the Chair of Forest and Bird Dunedin.</p> <p>I would like to start by declaring a conflict in that I was a member of the Otago Conservation Board from July 2018 to December 2020.</p> <p>Also in attendance is Paul Smale. Paul is a retired Research Associate in the Modelling Team at Agresearch where he worked as a mathematical modeller and software engineer. I will let him introduce himself during his part of this presentation.</p>	
<p>Forest & Bird received limited notice of this hearing and were not provided with the terms for proceedings until last week. As such, we have not had time to prepare expertise to a level that we would otherwise be comfortable with.</p>	
<p>In terms of our presentation, my intention is to present the factual information, which includes a presentation from Paul. I will then go through the issues raised in our submission and potential solutions.</p> <p>Would that be suitable to the Chair?</p>	
<p>As outlined in paragraphs 50 to 56 of our submission, Forest and Bird oppose the application in its current form. The occupation of public conservation land is not appropriate in the long term as the effects are not appropriate for the place and there is no plan to protect the heritage values of the buildings. The application is not consistent with the Conservation General Policy, the Otago Conservation Management Strategy, nor the Conservation Act.</p>	50 - 56

<p>However, we are not opposed to an amended concession being granted. This should present a plan to phase out occupation by 2036 and set restrictions on the activities concessionaires can carry out within the saltmarsh to avoid or minimise disturbance to wildlife and the ecosystem. The concession should not authorise commercial visitor accommodation. If heritage structures are to remain, they must be adequately protected in a way that does not create adverse effects on the surrounding environment.</p>	
<p><i>Facts about the environment at the place</i></p>	
<p>As you will see in Paragraph 5 of our submission, the place contains high environmental values. Some are of national significance, and many are significant within Otago. These values are clearly identified in the Otago CMS and summarised in the Notified Concession Officer’s Report to the Decision Maker. These values should not be in contest.</p>	<p>5</p>
<p>Paragraph 6 notes the pressures and threats specific to the place, as outlined in the Otago CMS. These should also not be in contest.</p>	<p>6</p>
<p>Paragraph 7 and Appendix 1 demonstrate Forest & Bird member observations confirming the presence of nationally threatened and at-risk species including hoiho, sea lions and godwits. The New Zealand Bird Atlas has recorded 77 species of birds at the place including New Zealand fernbird (at-risk, declining).</p>	<p>7 Appendix 1</p>
<p>The Environmental Impact Assessment depicted in Table 4 of the Notified Concession Officer’s Report to Decision Maker identifies potential effects and methods to remedy, mitigate or avoid any adverse effects.</p> <ul style="list-style-type: none"> - The destruction of fragile ecosystems and disturbance of wildlife cells, noting that the mitigation, remedy or avoid strategy respectively is awareness of ecological significance; and removal of rubbish, vehicle restrictions and notifying DoC of wildlife issues. - There is no additional EIA for the commercial accommodation business in the EIA. Presumably it is thought to have the same adverse effects. 	<p>16 - 19 Table 4 of DoC report</p>
<p><i>Facts about sea level rise at the place</i></p>	

Paragraph 22 to 24 of our submission outlines our concerns about whether coastal hazards have been considered in the context of the heritage status of these building.	22 - 24
Google Earth estimates the elevation of the housing sites to be 14 cm above sea level.	New exhibit
I will now hand over to Paul Smale who will present an interpretation of recent sea level rise modelling carried out.	New exhibit
<i>Facts about direction in the CGP and Otago CMS for phasing out private accommodation</i>	
<p>Forest & Bird submits that the ‘should’ direction in the Otago CMS is not consistent with the direction of Conservation General Policy (specifically 10(h), which is that:</p> <p>“Existing private accommodation and related facilities, including encampments on public conservation land and waters will be phased out...”</p> <p>And</p> <p>“They should be removed at the end of the phase-out period unless retained by the Department for public use.”</p>	<p>29, 36</p> <p>CGP Policy 10(h)</p> <p>Otago CMS Policies 3.11.1</p>
<p>The interpretation of the term ‘will’ in the CGP Policy 1(d)(i) states:</p> <p>“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.’</p> <p>There is a fundamental contradiction between the relevant policies of the CGP and Otago CMS. The CGP provides no discretion that private accommodation will be phased out, whereas the Otago CMS provided limited discretion on the matter.</p>	30 - 31
<p>The CGP provides guidance for contradictions of this type. CGP Policies 1(f) and 1(h) require the CGP to be applied consistently. The Otago CMS is not giving effect to the CGP and we should therefore refer to the CGP in this context.</p> <p>Taken together, the decision maker must apply the CGP Policies and therefore has no discretion as to whether a phase out should occur. There</p>	33

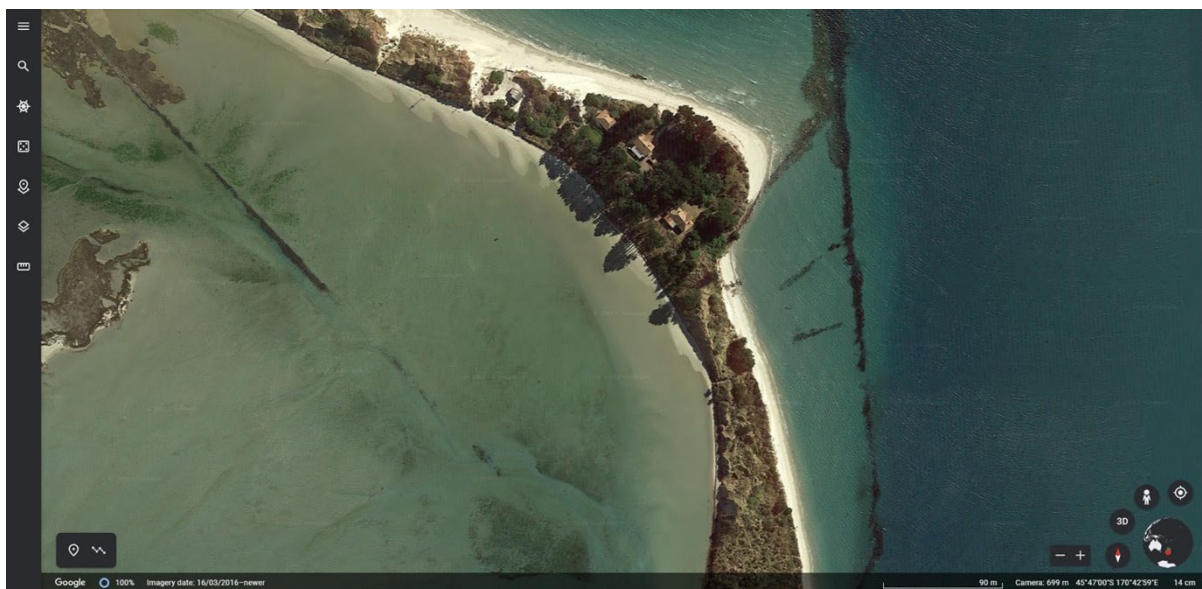
are no grounds for either an exceptional or special case with respect to phasing out private accommodation.	
<p>Direction from policy:</p> <ul style="list-style-type: none"> - Private accommodation and related facilities must be phased out, there is no discretion on this point. - There is a strong expectation that the phase out of private accommodation will take the form of either: <ul style="list-style-type: none"> o removing the buildings by 2036, 20 years after the Otago CMS was approved; or o making the buildings available for use by the public. <p>In both cases, there is a strong expectation that the phase out method be set out via specific concession conditions.</p>	<p>34</p> <p>37</p>
Issues raised in the F&B submission	
<p>Issue: is the EIA complete and are the adverse effects appropriate for the place?</p> <ul style="list-style-type: none"> - The EIA is not complete <ul style="list-style-type: none"> o Awareness, pre-existing occupation is not an appropriate action to mitigate, remedy or avoid adverse effects on the disturbance to plants and ecosystems. o There is no mention of how the occupation will mitigate, remedy or avoid adverse effects to wildlife outside of vehicles, removing rubbish and notifying DoC. o The EIA assumes the same adverse effects from owner/occupiers compared to commercial accommodation visitors. - The identified actions are not consistent with policy direction <ul style="list-style-type: none"> o CGP Policy 4.6(a) requires the minimisation of adverse effects on the quality of ecosystem services o Otago CMS requires concessionaires manage adverse effects on wildlife 	<p>13 - 20</p> <p>21</p>
<p>Issue: have coastal hazards been appropriately considered in the context of the buildings' heritage status?</p> <ul style="list-style-type: none"> - If the heritage status of the three buildings is to be valued, then it should also be protected. - The solution to exempt the department of responsibility for restoration, repair or incidental matters is not consistent with policy direction. 	<p>22 - 24</p>

<ul style="list-style-type: none"> - The concession should detail actions taken to protect heritage buildings from coastal hazards (coastal defences or removal). 	
<p>Issue: must a phase out of private accommodation occur and are there grounds for an exceptional or special case?</p> <ul style="list-style-type: none"> - Private accommodation must be phased out. - There is a strong expectation that it will be phased out by one of two pathways. - There is a strong expectation that the details will be provided via this concession, if granted. - The grounds for an exceptional or special case are extremely limited. 	25 - 35
<p>Issue: can the Department delay the decision to remove or allow public use of the buildings?</p> <ul style="list-style-type: none"> - The 2036 timeframe referenced by the DoC reports is the time in which the phase out should be completed, not started. - There is a strong expectation that the details will be provided via this concession, if granted. - There is a strong expectation that the department is not able to delay the decision. 	36 - 40
<i>Preferred option for a path forward</i>	
<p>Given the very high values of the place, imminent sea level rise and heritage value of the buildings, F&B submit that the path most consistent with policy direction is to remove the buildings.</p>	41 - 43
<p>If the alternative were chosen, sea level rise will need to be addressed. F&B seek that if this path is chosen, the method for combating coastal erosion does not adversely impact on the environment.</p>	44
<p>F&B would support a timeframe that ensures a phase out is completed by 2036. This provides time for the owners/occupiers to enjoy the place while managing risks of serious adverse effects for the long term.</p> <p>If a phase out timeframe were chosen, F&B seeks that restrictions are placed on the concession so that the disturbance to wildlife and the ecosystem is avoided or minimised.</p>	45 - 46
<p>In all cases, commercial accommodation is inconsistent with the values of the place and policy guidance. It should not be allowed as part of any concession granted.</p>	47

<i>Closing</i>	
Again, I would like to thank you all for the opportunity to present.	
<p>Forest and Bird acknowledge the applicant's connection to this place and does sympathise with the current owner/occupiers.</p> <p>We recognise this process has been ongoing and provides limited clarity for those involved. We hope this decision will provide an appropriate way forward that ultimately aligns with policy.</p>	
I will provide a copy of this hearing presentation to the Hearing Panel immediately.	
<p>My role as Chair is a voluntary one and I work full time. Having already taken time out of my working day, I would like to ask the Chair if I may now step out of the hearing as I have a busy day. However, we are happy to take any questions that may arise during the hearing in writing to be answered promptly.</p> <p>Is that suitable to the Chair?</p>	

Appendix 1.

New exhibits, Google Earth model of elevation for dwellings.



Screenshot from Google Earth showing elevation of 14 centimetres above sea level. The lat long of the cursor's position at the centre of dwellings is shown in the bottom right.

APPENDIX 2.1: Forest & Bird Submission 15 [DOC-6978999](#)



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11 April 2022

Submission on an intention to grant accommodation and easement concessions in Aramoana

Introduction

1. This submission is made on behalf of the Dunedin Branch of the Royal Forest and Bird Society Incorporated (**Forest & Bird**).
2. Forest & Bird is New Zealand's longest running independent conservation organisation. Its constitutional purpose is to take all reasonable steps within its power for the preservation and protection of the indigenous flora and fauna and the natural features of New Zealand.
3. Forest & Bird has for many years had a strong interest and involvement in the Dunedin area and has a long-standing interest in improving biodiversity and protecting and enhancing landscapes in the wider Otago region. The Dunedin branch is involved in a wide range of conservation and advocacy activities.
4. The Dunedin Branch has had a substantial history at Aramoana specifically:
 - a. The branch successfully opposed a proposed aluminium smelter in the area; and
 - b. The branch paid for the boardwalk over the saltmarsh, with associated signage.

Site and activities

5. The application relates to the occupation of public conservation land (PCL), specifically the Aramoana Conservation Area and Aramoana Ecological Area. These areas are described in Otago Conservation Management Strategy (Otago CMS) and this is summarised in the *Notified Concession Officer's Reports to Decision Maker* for each of the sites, section 1.4. Forest & Bird adopts this summary of distinctive features and wishes to highlight that:
 - a. The saltmarsh is a matrix of open sand flats with and without vegetation;
 - b. the saltmarsh and adjacent areas are of national significance, with features most other saltmarshes in Otago no longer retain;
 - c. the tidal flats provide the most important area of wader habitat in Otago;
 - d. the area is important nationally as a fish breeding and nursery area, including being characterised as kohaka; and
 - e. the saltmarsh has very high entomological values.
6. Appendices 8 and 9 of the Otago CMS lists pressures and threats to specific places. Entries relevant to the Aramoana Ecological Area and the application include:
 - a. coastal development;
 - b. waste and stormwater effluent discharges
 - c. chronic disturbance, harassment and occasionally more severe interactions between people, dogs and coastal wildlife; and
 - d. vehicles.
7. In addition, Forest & Bird members provide the following observations about the place:
 - a. There is a resident population of godwits (*Limosa lapponica*) at the site year around. The three main areas that the godwits frequent are the sandspit at the end of Warrington Beach, the sandbars between the saltmarsh and the shipping channel and islands at hoopers inlet. They move between these places through the day, likely due to tidal and food influences.
 - b. Other waders are also present, such as red knots (*Calidris canutus*), banded dotterels (*Charadrius bicinctus*) and south island pied oyster catchers (*Haematopus finschi*).
 - c. The wading birds are flighty and take to the air at the slightest disturbance. For the godwits, it seems there are not many other places for them to move to when disturbed. The occupation presents an almost permanent disturbance to the populations.
 - d. Yellow-eyed penguins (*Megadrypetes antipodes*) have used the end of the spit for malting.

- e. Sea lions (*Phocarcots hookeri*) frequent the area and have breed within the saltmarsh in recent years. Last year a pup was born in between two of the houses at the sites. Adult sea lions use the point for coming out of the water to rest.
 - f. Bow waves from the shipping lane are often thought to be disruptive to populations in the saltmarsh. However, observations from Forest & Bird members suggest that this is not so much the case – particularly ships are when fitted with anti-bow wave devices. Disturbance from bow waves is far less problematic than that of human disturbance.
 - g. Related photographs from Forest & Bird members are shown in Appendix 1.
8. Forest & Bird adopts and submits in opposition to the full range of activities identified in the Notified Concession Officer’s Report to Decision Maker for each of the four sites.
 9. Forest & Bird acknowledges that the cottage/pilot houses at sites 1 – 3 are registered with Heritage New Zealand and characterised by the same as the Pilots’ Cottages Historic Area, North Spit Aramoana.¹
 10. Forest & Bird also acknowledges the description of assurances from the Department of Conservation (**the Department**) to the owners/occupiers since the land was purchased in 1993, 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/dwelling...”^{2,3}

In the time since the land was purchased, the Otago CMS came into force.

11. In summary, the area to be occupied sits within a place of extremely high conservation and ecological value and the ongoing management has been subject to low certainty for all parties. A formal agreement has not been entered into by the parties for close to 30 years since the land was purchased. During this uncertain period, it is understood that the sites have been occupied.
12. Forest & Bird seeks that this concession application provide certainty for all parties, as to the future management of the occupation, including the environment and the public.

Adverse effects arising from the application

13. Forest & Bird’s primary concern is for the disturbance or harm of wildlife and the ecosystem at the Aramoana Conservation Area and Aramoana Ecological Area. With permanent structures, the nature of the occupation is likely to facilitate are a frequent human presence. It is well documented that increased human pressure on ecosystems poses a risk to ecosystems through:
 - a. disturbance to wildlife, such as disturbing feeding or breeding;
 - b. harm to wildlife, intentional or not, from humans and domesticated animals such as dogs;

¹ *Notified Concession Officer’s Report to Decision Maker for sites 1 – 3, section 1.1.*

² *Ibid, section 1.1.*

³ *Notified Concession Officer’s Report to Decision Maker for site 4, section 1.1*

- c. increased pressure on vegetation, leading to habitat loss and erosion; and
 - d. vehicle damage.
14. It was noted previously in this submission that the Otago CMS lists issues related to these as current pressures or threats on the Aramoana Conservation Area and Aramoana Ecological Area. These issues identified during development of the Otago CMS while the current occupation was ongoing.
15. In addition, observations by Forest & Bird members, covered above, suggest that the effects of disturbance by humans is near permanent as a result of the occupation, particularly for wading birds.
16. Table 4 of the *Notified Concession Officer's Report to Decision Maker* for each of the four sites details the Environmental Impact Assessment (EIA) from the application. Stated simply, the EIA asserts that the occupation has had a long history and the applicant has taken part in restoration and re-vegetation programmes. Forest and Bird submit that this is an incomplete description, because the Otago CMS and the observations of Forest & Bird members suggests that activities related to the occupation are causing adverse effects.
17. Simply stating that the occupation has occurred for a long time does not demonstrate an absence of adverse effects, as those effects are likely to have been occurring for a long time also. The applicants have not proposed any mitigation of human activity that may result in the above adverse effects.
18. Furthermore, Forest & Bird submits that the nature hosting a commercial accommodation business via Bookabatch at site 3 will elevate the adverse effects. It is likely that this business will lead to an elevated number of short-term visitors who are less familiar with the extremely high conservation values of the area. As such, the human pressure on the ecosystem is intensified, compared to that of long term owner/occupiers, as is the risk of harmful interactions with wildlife. These are not visitors who have had "a lengthy history of occupation at this location and [are] aware of the ecological significance of the area", as claimed in the EIA.
19. The elevated adverse effects resulting from the commercial accommodation business have not been addressed in the EIA.
20. To avoid doubt, Forest & Bird is also concerned with other adverse effects resulting from the occupation, such as stormwater and effluent discharge vehicle use or threats to heritage buildings.

Issue: Is the EIA complete and are the adverse effects appropriate for the place?

21. For the above reasons, Forest & Bird submits that the ongoing elevated human presence resulting from the occupation of the four sites is not consistent with the New Zealand Coastal Policy Statement 2010 (NZCPS) Conservation General Policy (CGP), nor the Otago CMS. A non-exhaustive list of inconsistent provisions from those documents is set out below:
- a. NZCPS:
 - i. Objective 1, which requires the safeguarding of the integrity, form, functioning and resilience of the coastal environment and sustaining its ecosystems;

- b. CGP:
 - i. 4.6(a), which requires activities on public conservation lands and waters should be planned and managed in ways which avoid or otherwise minimise adverse effects on the quality of ecosystem services;
- c. Otago CMS:
 - i. Objective 1.5.1.1(e), which provides priority to conserving features listed in Appendix 9 where they are on PCL, which includes the Aramoana Ecological Area;
 - ii. Objective 1.5.3.12(f), which requires EIAs to identify recreation opportunities on neighbouring PCL that are likely to have minimal environmental and landscape impacts; and
 - iii. the outcome for the Eastern Otago and Lowlands / Maukaatua Place requires that concessionaires manage adverse effects on wildlife, this is not addressed in the EIA.

Issue: have coastal hazards been appropriately considered in the context of the buildings' heritage status?

- 22. Coastal erosion is already an issue in much of coastal Otago and with the impact of climate change this is only expected to be greater. It is clear that the position of the three heritage buildings places them at risk of coastal hazards. So much so, that the recommendations of the Dunedin Service Centre in section 6.5.1 of the *Notified Concession Officer's Report to Decision Maker* for each of the four sites recommends acknowledging that the sites are within a coastal erosion or other natural hazard zone and that the grantor remove themselves of any responsibility for restoration, repair or incidental matters that might arise from the hazards.
- 23. If the heritage status of the three buildings is to be valued, then it should also be protected. Forest & Bird submits that it is very likely impossible to protect the three buildings in-situ, because of their hazardous location.
- 24. Failing to protect the heritage status of the buildings is inconsistent with the NZCPS, the CGP and the Otago CMS. A non-exhaustive list of inconsistent provisions from those documents is set out below:
 - a. NZCPS:
 - i. Objective 5, which requires that coastal hazard risks take into account climate change and are managed;
 - b. CGP:
 - i. Policy 5(e), which requires that historic buildings and structures on PCL be used in ways that enables their preservation; and
 - c. Otago CMS:
 - i. the outcome for the Eastern Otago and Lowlands / Maukaatua Place requires Measures to address sea-level rise effects.

Issue: must a phase out of private accommodation occur and there grounds for an exceptional or special case?

25. The *Notified Concession Officer's Report to Decision Maker* for each of the four sites notes 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."

26. Forest & Bird agrees with this statement and notes that the occupation of the four sites is undoubtedly for the purpose of private accommodation.

27. However, in the Summary and Conclusions sections, the *Notified Concession Officer's Report to Decision Maker* for each of the four sites, the Department suggest that the decision maker could consider an exceptional or special case. Case law is given for the definition for an exceptional case but not for that of a special case.

28. This logic suggested by the Department is only available to a decision maker due to the use of the word 'should' in Otago CMS Policies 3.11.1 – 3.11.4. The interpretation of 'should' is clearly provided for in CGP Policy 1(d) as carrying a strong expectation of outcome.

29. Forest & Bird submits that the 'should' direction in the Otago CMS policies is not consistent with the direction in CGP Policy 10(h), which is that:

"Existing private accommodation and related facilities, including encampments, on public conservation lands and waters will be phased out..."

and

"They⁴ should be removed at the end of the phase-out period, unless retained by the Department for public use."

(my emphasis underlined)

30. The nuance in CGP Policy 10(h) is that existing private accommodation will be phased out and the accommodation and related facilities themselves should be removed, unless they are retained for public use.

31. CGP Policy 1(d)(i) provides an interpretation of 'will':

1(d)(i) 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.

⁴ Referring in the context of the policy to existing private accommodation and related facilities.

32. Putting it all together, there is a fundamental contradiction between relevant policies of the CGP and the Otago CMS. The CGP provides no discretion that private accommodation will be phased out, whereas the Otago CMS provides limited discretion on the matter.
33. Guidance is given in the CGP about contradictions of this type. Policies 1(f) and 1(h) require that the CGP 'will' be applied consistently and approved CMSs have effect except where they clearly derogate from the CGP.
34. Taken together, the decision maker must apply the CGP Policies and therefore has no discretion as to whether a phase out should occur. There are no grounds for either an exceptional or special case with respect to phasing out private accommodation.
35. However, there is consistency between the CGP and Otago CMS Policies in the matter of whether the buildings will be removed or be made available for public use. Both documents provide limited discretion for these pathways with the use of the word 'should'.

Issue: can the Department delay the decision to remove or allow public use of the buildings?

36. With respect to the direction for phasing out private accommodation in the Otago CMS, Policies 3.11.1 – 3.11.4 are relevant. Key provisions for the 4 sites are provided below.

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 1980 or not specifically provided for or allowed in legislation by either:

a) phasing in public use of the building(s) (see Policy 3.11.4(a)); or

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.

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.

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:

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, including the requirement that any costs charged to the public are reasonable; or

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

(c) ...

Footnote 53: Unless retained by the Department for public use/active management of historical and cultural heritage values.

37. The direction from these policies is that there is a strong expectation that the phase out of private accommodation will take the form of either:
- a. removing the buildings by 2036, 20 years after the Otago CMS was approved; or
 - b. making the buildings available for use by the public.

In both cases, the phase out method should be set out via specific concession conditions.

38. However, Table 8 of the *Notified Concession Officer's Report to Decision Maker* for each of the four sites states that:

"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"

39. Forest & Bird submits that the Department is in error in considering that a phase out can begin in 2036, and a decision on which method to use delayed until that date. Rather, the Otago CMS directs a strong expectation that the method of phase out will be specified in concession conditions, meaning the phase out path is to be set as a result of this current process. If the buildings are chosen to be removed, this must be undertaken by 2036. If facilitating public use of the buildings is chosen, the timeframe must logically be set within the timeframe of the proposed concession.
40. Therefore, there is a strong expectation in the Otago CMS that the Department is not able to delay a decision on how to phase out private accommodation. Forest & Bird seeks that a path for the phase out of private accommodation is laid down if these concessions are granted.

The merits of the phase out pathways and concession timeframes

41. The decision maker has discretion on which phase out path to take. Forest & Bird suggests that this decision must therefore be made on merit.
42. This submission has provided detail on the surrounding high conservation values, the adverse effects (and the failure to address them in the EIA), the heritage status some buildings, coastal hazards and the future risk of climate change. Based on these factors, Forest & Bird submit that the occupation of the place for private accommodation is not appropriate for the long term.

43. Given the high conservation values and threat to heritage buildings from coastal erosion, Forest & Bird submits that the path most consistent with direction in the CGP and Otago CMS is to remove the buildings. For the heritage buildings, they might be relocated to a more protected site.
44. The alternative, of retaining the buildings for public use and protecting them for their heritage value, does not resolve the coastal erosion risk and is not bound to occur prior to the maximum timeframe for a concession. Such a long-time frame for a phase out is not appropriate, given the adverse effects identified in this submission. If this pathway is chosen, Forest & Bird seeks that a shorter timeframe for the phase out is imposed and any subsequent coastal erosion defences create no adverse effects the surrounding ecosystem.
45. Forest & Bird would support a timeframe that enabled the phase out in either situation to be completed by 2036. This provides the owners/occupiers with reasonable time to enjoy the place and prepare to leave while ensuring that adverse effects from the occupation will not be imposed on the high value surrounding environment in the long term.
46. In the meantime, Forest & Bird seeks that restrictions are placed on activities the concessionaires can carry out within the saltmarsh, so that the disturbance to wildlife and the ecosystem is avoided or minimised. Concessions should only be granted if they are consistent with the purposes and provisions of the NZCPS, the CGP and the Otago CMS. To ascertain this, the EIA will need to be updated by the applicant.
47. Due to the nature of its adverse effects, Forest & Bird submits that a commercial accommodation business is inconsistent with the purposes and provisions of the NZCPS, the CGP and Otago CMS and as such, should not be allowed as part of the concession for any phase out pathway.

Compensation for loss of the buildings and occupation

48. The fully history of the occupation isn't stated in the documents for this process, nor are the details of whether compensation for the loss of property and occupation would be fair. There appears to be no requirement for compensation, but Forest & Bird does sympathise with the current owner/occupiers for likely loss of connection to this place.
49. In the absence of information, Forest & Bird reserves its position on the issue, if it were raised.

Summary and relief sought

50. Forest & Bird opposes the application and recommendations by the Department in their current form.
51. The occupation of the PCL at Aramoana for private accommodation is not appropriate for the long term. On the information provided, it is clear that the EIA is not complete, the adverse effects of the occupation are not appropriate for the place and there is no plan to protect the heritage values of the buildings.
52. The CGP is clear that the occupation must be phased out, either by:
 - a. removal of the buildings, or

b. making their use public.

53. The 2036 timeframe recommended by the Department for the concession would not allow for the removal of the buildings to be completed by the deadline.
54. Forest & Bird seeks that a timeframe and conditions be placed on the concession such the phase out can be completed on or before 2036.
55. In the meantime, Forest & Bird seeks that restrictions are placed on activities the concessionaires can carry out within the saltmarsh, so that the disturbance to wildlife and the ecosystem is avoided or minimised. This will require the EIA to be updated.
56. Forest & Bird has no opinion on the method used to preserve the heritage structures, except that it should not create adverse effects on the surrounding environment.



Nigel Paragreen

Committee member, Forest & Bird Dunedin



Appendix 1 – Photographs from Forest & Bird observations at the saltmarsh





Appendix 3.0: interim evidence of Richard Allen in reply to RFNB ([DOC-7049345](#))

In the matter of the Conservation Act

And

A hearing regarding an application to issue Lease and Licence Concessions

Between

Elizabeth Dawe Site 1

Richard Allen and Liane Farry Site 2

Madeleine Childs and Philip Jarvis Site 3

Joseph Vessels site 4

(together , the applicants)

And

Department of Conservation (Landowner and issuer of leases/licences/concessions)

Statement of Evidence of Applicant in response to Officers report

My full name is Richard Vivian Marsh Allen. My family and family Trust are the owners of Site 2. I am authorized to provide this statement of evidence on behalf of myself and the other Applicants. I am, by occupation, a lawyer, but this statement is of course given by me in my personal capacity.

I have provided two statements for this hearing. This statement responds to relevant matters raised by the Royal Forest and Bird Protection Society Inc. in their submission. I also refer to submissions to be presented by our Counsel.

Objector 1 Royal Forest and Bird Society Inc.

1. The objector successfully opposed the aluminium smelter.

"victory has a hundred fathers but defeat is an orphan" ("J.F.Kennedy 1961) . Forest and Bird were not alone and all the applicants were also involved in the ultimately successful opposition to the smelter.¹

¹ See Wikipedia page save aramoana campaign

2. Unfortunately, the nub of this objection is that human disturbance is necessarily negative for the flora and fauna. But, in apparent contradiction, Forest & Bird support public access, including public use, of our cribs at the end of the lease period.
3. This application does not increase that human disturbance. It simply regulates existing occupation which has existed for over 108 years of Pakeha occupation.
4. The Objector has contributed to this by funding a public boardwalk at the ecological area which encourages human disturbance and therefore what the objector describes as “chronic disturbance” in and over the actual ecological area, which is some distance from the sites, is not relevant due to the distance from the actual ecological area AND the fact that there is not increased pressure by continuation of existing human habitation that has existed since at least 1850.
5. In addition, that same board walk poisons the soil upon which its foundations are located by the toxins leaching from the Tanalised Posts. This is “human disturbance”.
6. The Applicants are the occupants and owners of 4 modest cottages on what was known as “the Buffer Zone”, and are located approximately 1.1 km from the saltmarsh. The sites DO NOT FORM part of the “ecological area” and are held by DOC “for conservation purposes”.
7. As Part of its “conservation purposes”, DOC is statutorily obliged to conserve the natural heritage area categorised by Heritage NZ Pouhere Taonga Act 2014. Set out below;
“Part 1Preliminary provisions
3Purpose
 The purpose of this Act is to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.
8Act binds the Crown
 8. This Act binds the Crown.”

Para 11

9. Since 1989 the applicants have been involved in significant works in stabilising sand dunes, planting indigenous plants known to assist dune stabilisation, advocating for Regional Council, Port Company and DOC to undertake long overdue maintenance on the man-made structures that interfere with the buffer zone and the salt marsh. This has produced significant results in stabilising dunes and in particular blocking a breach in the dunes which threatened to allow the sea to inundate the ecological area, but the advocacy for overdue maintenance has unfortunately fallen on deaf ears.
10. The applicants, who are all environmentally conscious, monitor the area daily.
11. The sea lion population is increasing according to the applicants. This appears to refute the objector’s claim that human pressure poses a risk to the sea lions. If it did, the Sea Lions

would not return. At the time of these submissions there are multiple Hookers Sea lions hauled out in the dunes near the 4 sites , on its northern edges.

12. The wading birds are located at their closest to the 4 sites, by a 15 minute walk over the sand flats away. That is a distance over which even sound will take some time to travel. The area where the wading birds wade and eat is actually closer to Otakou than it is to the 4 sites, so disturbance could come from Buses on the Portobello Road, Cars, inhabitants at Otakou, fishing and charter boats, pilot boats and ships in the channel, none of which “disturbances” are related to the 4 small families who live in the 4 cottages on the sites.
13. In addition there are abundant cockle beds where the birds (which include , Black Swans, Pied and Black Oystercatchers, Dotterels , Grey Faced Heron, Pied Stilts) spend time, no doubt, feeding. This is also the area that the public come to gather kai moana at low tide, where the largest cockles can be found.
14. The applicants cannot be blamed for this “disturbance”.
15. The applicant Allen set up a charitable trust Beachaven Earth Trust which supervised and funded up to 10 employees working 30 hours per week for over 3 years on dune stabilisation erosion control, installing wind fencing, rock walls, walkways and planting thousands of native plants. Primarily this started as a means of blocking up a breach of the sand dune in the middle of the Spit which had the potential for inundation of the peewee grass of the salt marsh. The spit was known as a “buffer Zone” and acts as a buffer to seas and wind from the north and North East. Beach groynes using sand mounds were also experimented.
16. The applicants submit that this successful intervention has produced many positive effects on the Spit providing more areas for wildlife to locate and generally protecting the historically significant area. Evidence of this effect is the increasing wildlife in the area.
17. As noted, the sites have been occupied by Pakeha since at least 1914, or over 108 years.
18. There is no “increased human pressure” by the granting of these concessions. The issue of concessions is simply regularising an existing occupation which even pre dates 1914.
19. The area was occupied by ancestors of Ngāi Tahu , specifically Hori Kerei Tairaroa (Huriwhenua original name) of that then island Ka Pukepuke Waiparapara, sometime perhaps in 1850 or either side of that date.
20. No evidence has been provided to support the objectors allegations.
21. Jill Hamel considered in her report to DOC in the early 1990’s that the area which is the subject of the applications contains no particularly unique, rare or unusual flora. In fact it is a

mixture of exotic and native species, including Pinus Radiata, Marram Grass, Lupin, Pingao, Hebe, Ake Ake, Pittosporum and Harekeke (Flax) many native species of which have been planted by the Applicants on areas of the buffer zone other than their own sites.

22. Para 6. Waste water is dealt with by 1 composting toilet (site 4) and 3 sewage systems(sites 1, 2 and 3) that disburse septic tank overflow throughout the properties by underground pipes providing nutrients through the sandy soil to native species that have been planted.
23. Storm water – Rain is harvested from the roofs of each site. So natural stormwater is all that can possibly have an effect. That exists whether or not there are houses on the land.
24. Dogs are not allowed in any of the 4 sites.
25. There are potentially 4 vehicles from time to time on site. However in 1991 Beachaven Earth Trust undertook a road counting survey over 1 month. The maximum number of cars was 141 in one day. These were members of the public accessing the road , when it was open , to go bird watching, fishing, walking, swimming, gathering kaimoana, having barbecues, kayaking undertaking watersports, sailing, rowing boats and generally enjoying the beautiful surroundings and wildlife.
26. The applicants submit that effects of this above public use are far more likely to cause the “disturbance” alleged in the objection. Public areas at Aramoana are extensive. There is the salt marsh, the sand flats, wagon bay, pilots wharf, shelley beach, the mole, the spit beach (west of the mole) and the “ecological area”.

27. Para 8-

The objector provides no evidence to support its objection.

28. Para 9- DOC is obliged to comply with its own objectives .i.e. *“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*

29. Para 10.- The Otago CMS 2016 was introduced after the application commenced. In addition, S 7(2) Conservation Amendment Act 1996 applies to protect the occupants pursuant to their legal rights established before 1 April 1987 (4)

S 17 D Conservation Act 1987 states; “Nothing in any conservation management strategy shall—

(a)

derogate from any provision in this Act or any other Act; or

(b)

derogate from any general policy approved under any of the Acts referred to in subsection (1); or
(c)

affect any agreement or arrangement entered into under this Act or any other Act between the Minister and any land owner other than the Crown or between the Director-General and any such land owner.”²

S 7 (2) Conservation Amendment Act 1996 applies which overrides S 17 W which require the minister not to grant concessions if they are in conflict with any. CMS
S7(2) provides a legislative acknowledgment of the prior history of a lease holder by providing that a Minister may override s17U and s17W where the scope of prior activities under lease contradict these provisions. “Notwithstanding” dictionary meaning is defined as “in spite of” or “nevertheless”.

30. Para 11&12

The area , which has been occupied since at least the 1850’s and by the occupants and their successors in title of the houses since 1914 , does not sit within an area of “extremely high conservation values”. This is why it is specifically excluded from the Ecological area.

It is land held near to such an area.

The applicants seek certainty and the restitution of their lawful occupation rights.

31. Para 13- The objectors primary concern mirrors those of the applicant(Mr Allen is a former two-term elected Greenpeace NZ director). However the issuing of leases does not increase human pressure. That pressure already exists. The permanent structures have been there since 1914. Such pressure actually comes more from public use of the surrounding beaches , dune, sand flats and salt marsh. Such pressure includes birdwatchers, nature walkers, fishermen, families , swimmers, recreational water sportspeople, and sightseers. Ironically the objectors funding of a public and popular boardwalk over the actual area of extremely high conservation and ecological value is one of the many causes of increased human pressure.

32. Para 15- The objector provides no evidence that the occupation has effected a human disturbance for wading birds. Sensibly, with the sites being a minimum of 1.11 Kilometre away from where the wading birds feed this assertion has little credence.³

² S17D Conservation Act 1987

³ See nautical chart

33. Para 18 – There is no commercial accommodation business being operated by any of the 4 applicants.

34. Para 20 – “ *adverse effects from stormwater, effluent discharge, vehicle use, or threats to heritage buildings*”

Each site harvests rainwater for drinking through filtered systems. Stormwater is therefore limited to natural stormwater run off that would occur even if there were no structures on the sites.

Each site has modern sewage systems 3 of which reticulate septic tank run off through the gardens on the land which feeds treated run off water to the planting of native fauna which are known to stabilise the sandy soils and fix nitrogen into the soil, thereby filtering the treated run off. Vehicle use exists, but pales in comparison to the vehicle use by the large numbers of vehicles used by the public who visit the area.

35. Para 21- Otago CMS also states ‘

“Objective 1.5.2.1 Historic and cultural heritage on public conservation lands and waters is valued by New Zealanders . 1.5.2.2 Understand the location, value, significance and condition of historic places on public conservation lands and waters, and ensure that records of the location, value, significance and condition of these places are up to date”.

The application does not cause “elevated human pressure”. The “pressure” of just 4 occupants residing at the sites already exists and is minimal in comparison to significant public use.

The four sites are designated Historic areas of cultural significance.

NZCPS- The Applicant and DOC believe the application complies with Objective 1 for the aforementioned reasons.

CGP- The Applicant and DOC believe the application complies with CGP for the aforementioned reasons.

Otago CMS – The application complies with CMS objectives , refer above objective 1.5.2.1.

36. Para 22- There is no doubt the houses, like every other structure near the coasts of the world will be at risk of coastal erosion or sea level rise. The cause of this is anthropogenic. From the damming of the Clutha river reducing sediment sand and littoral drift up the coast feeding wildlife habitats, to OHB interventions such as the mole and groynes in the harbour mouth, to CO2 pollution causing climate change, these issues of potential sea rise are extant and do not just relate to the sites in question. However limiting occupation rights on these particular

sites does not have any positive or relevant effect on those issues. In any event the applicants pursuant to the proposed leases indemnify DOC against those effects. DOC has no liability because of the risks.

37. Para 23 to 26- The applicants have submitted that DOC be under an obligation to commission a scientific study to address how they observe their statutory duties to maintain and preserve the historic area and places, with input from the applicants, who have undertaken at their own cost their own geomorphic studies and investigations over the last 30 or more years. See Goldsmith report ⁴

The applicants, from the results of their own studies believe the deferred maintenance obligations of the former OHB need to be undertaken at the Long Mac groyne and the Wagon Bay mini groynes. In essence the Long Mac was designed by OHB to trap sand that is carried in an easterly direction from the mole across the north spit beach. However that rock groyne has degraded over the 100 years since its completion and no longer operates to trap the sand migration on a flood tide. Practical steps have been undertaken by the owners already by the use of sand transportation from the western side of the long mac and being returned to establish sand groynes in the fore dune of the North Spit.

Restoring the fore dune that used to exist increases the area for wildlife to haul out and creates a further buffer zone to protect the ecological area.

The applicants submit that increasing tenure under the leases provides an incentive for the owners who have invested in their dwellings, to take the maximum effort to preserve them both to protect their own investment and to comply with their obligations under Heritage NZ Pouhere Taonga Act 2014.

38. Para 27-

Exceptional Circumstances exist. A “special circumstance” equates to an “Exceptional Circumstance”⁵

39. Para 28 to 40-

Both CGP and CMS policies are general policies created and applied by DOC over all its land which comprises nearly 1/3 of all NZ land. Contrary to policy the applicants, who were clearly interested parties to the CMS policy 2016 were not notified and therefore not given the

⁴ Goldsmith Report

⁵ Peninsula Watch Dog Group Inc. v Minister of Energy [1996] 2 NZLR 529 at p 534 Court of Appeal

opportunity to make submissions to such changes. In addition, proposed changes to DOC and its concession processes under notifications recently announced may well change CMS policy to allow for the exceptional circumstances which exist for these registered and classified historic houses and the historic areas upon which they are located and which pursuant to DOC objectives, CMS and CGP DOC I also obliged to conserve and preserve.⁶

There is an exception for “CMS phase” out where S 7 (2) Conservation Amendment Act 1996 applies which the applicant provides evidence of confirming existing lawful occupation prior to 1 April 1987.

The applicant submits that Conservation General Policy 5 also applies:

Policies 5” Historical and cultural heritage 5 (A)

“Conservation 5. Historical and Cultural Heritage Places managed under conservation legislation contain a rich historical and cultural heritage for all New Zealanders – places of exploration, settlement, natural resource use and protection, warfare, communication, and ongoing spiritual and cultural associations. Such places provide a link between the present and the past and with the culture of those who came before. The Department manages historical and cultural heritage on public conservation lands and waters. Advocacy for historical and cultural heritage outside public conservation lands and waters is covered by policies in Chapter 7.

Historical and Cultural Heritage 5 (a) Conservation management strategies and plans should identify historical and cultural heritage on public conservation lands and waters, and required conservation outcomes for that 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.

5 (c) Tangata whenua, as kaitiaki of their historical and cultural heritage, will be invited to participate in the identification, preservation and management of heritage of significance to them on public conservation lands and waters.

5 (d) Significant information should be recorded where historical and cultural heritage on public conservation lands and waters is threatened by unavoidable damage or destruction.

⁶ Recently, conservation minister Kiritapu Allan described existing legislation as not fit for purpose, and she’s right. The government’s announcement to overhaul conservation policy is welcome news.

There are too many outdated, confusing and inconsistent rules. The system they create is out of step with current values and priorities.

The way we use and view the conservation estate has changed. Different forms of recreation are growing in popularity. Tourism operations have expanded. Community partnerships have flourished. But the potential for conflict has increased, too.

Māori have demanded a greater say, yet there are only weak provisions for Treaty-based iwi co-governance within existing rules. Key pieces of legislation, such as the Marine Reserves Act 1971, are completely out of date.

There is a clear inconsistency in the policies. How can DOC reconcile the so called “phase out” with their obligation to conserve and preserve the heritage area and heritage buildings that are owned by external parties?

The answer is, it is submitted, lies by accepting that Exceptional Circumstances exist and that S 7 (2) Conservation Amendment Act 1996 applies under which is an exception from the application of CMS.

5 (e) Historic buildings and structures on public conservation lands and waters should be used in ways that: i. enable their preservation; ii. are in keeping with their assessed significance; and iii. provide opportunities for the public to appreciate them. 28

5 (f) Collections of antiquities and artifacts, including taonga, may be held or managed by the Department where it is important to preserve their association with places, or for information purposes, consistent with the provisions of the Antiquities Act 1975.

5 (g) Monuments, pou whenua, plaques or other memorials may be sited in places associated with people, traditions or events of exceptional importance in New Zealand or conservation history. They should be consistent with the character of the place and should not be attached to or engraved into natural features.

40. Paras 41-47-

This submission has traversed why there are no adverse effects from the granting of this application. The objector has not provided evidence, and it is illogical to suggest an existing activity will increase adverse effects.

The objector acknowledges the historic and culturally significant status of the buildings and area and the obligations of DOC as they relate to that.

Removing heritage buildings conflicts with DOC statutory responsibilities to conserve and preserve the historic area, which would inextricably be affected by the removal of the buildings.

Almost all the submitters in support recognise the connection they, as residents of the area, have with the area and the houses. They are a part of Aramoana and the area and the dwellings are an essential part of that historical and cultural connection.

As previously submitted the existing activities and their effects have a tiny part in the overall aspects of "human disturbance" when compared to the greater public's use and activities on or near the ecological area.

The technical consultants at DOC have already undertaken a detailed internal assessment result in the report now notified.

In addition retaining the buildings in accordance with the agreement reached between the Applicant and DOC in 2014 gives more incentive to both the Applicants and DOC as landowner to preserve and protect the historic area and the buildings.

41. Compensation.

There is no doubt it would be fair, if the leases are terminated in 2036 and the houses taken over by DOC, that compensation be paid.

If not, the Crown through DOC, is compulsorily acquiring property of significant value without compensation. But for clarity, we seek enforcement of the agreement reached with DOC,

which was for a 60 year term. Compensation cannot address the inter-generational effect on our families of losing our homes.

42. Para 50-56-

- There are no new adverse effects from this application
- The occupiers are not in “the saltmarsh” . The objector ought to walk from the site to the saltmarsh and measure the distance. Perhaps the writer has not understood the locations.
- There appears to be a basic philosophical objection to human coexistence with wildlife.
- CMS 2016 is subject to change due to impending changes under a recently announced reorganisation proposed to make concessions easier to navigate and process.
- AN EIA has been undertaken by professional technical consultants within DOC in accordance with present policies in force.
- The applicants sites are not “within” the Saltmarsh. Any restrictions on the applicants can be no more or less than the general public enjoy or are subject to.
- This leads to a suggestion that the objector has decided on spurious grounds that the houses that have been there for 108 years are “not appropriate “ for birdwatching purposes.
- We ask that you disallow the objection, for reasons stated above and identified by our Counsel.

Appendix 4.0: Submission or Report to Decision Maker37 (003) ([DOC-7049346](#))

In the matter of the Conservation Act 1987

And

A hearing regarding an application to issue Lease and Licence Concessions

Between

Elizabeth Dawe Site 1

Richard Allen and Liane Farry Site 2

Madeleine Childs and Philip Jarvis Site 3

Joseph Vessels site 4

(together, the applicants)

And

Department of Conservation (Landowner and issuer of leases/licences/concessions)

Statement of Evidence of Applicant in response to Officers report

My full name is Richard Vivian Marsh Allen. My family and family Trust are the owners of Site 2. I am authorized to provide this statement of evidence on behalf of myself and the other Applicants. I am, by occupation, a lawyer, but this statement is of course given by me in my personal capacity.

The Commissioner will not be surprised to note that there is a lengthy history to the present application, which I address below, and in related documents that I produce. We have come into this process in good faith, because we wish to see the legal issues resolved so that they do not burden our children and grandchildren.

However, our Counsel will explain that this Application is being made on a without prejudice basis, and we reserve our position on jurisdiction. This is because we consider that we have prior interests in the Sites amounting to ownership interests. Because of the legal issues, and failure by DOC officers to respond to our request for recognition of prior binding agreements, we request that the Commissioner issue an interim decision. Our Counsel will address this further.

1

Background

1. The reports and public notifications (31 March 2018 and March 2022) follow a meeting on 12 March 2014 at DOC offices. This meeting in turn followed more than 25 years of unsuccessful attempts to resolve occupancy of the land, since DOC took ownership. The meeting followed a request from Mr. Dave Johnstone, Area Manager of DOC to finally resolve the lease issue. Present were Dave Johnstone (DOC area manager) , Kelvin Brown (DOC), Richard Allen and Nathanael Allen(Representing the 4 owners of the spit properties) .
2. At the meeting it was agreed that a lease be granted for 60 years. This agreement was a compromise by the owners from their claim for perpetually renewable leases which they enjoyed prior to the dissolution of the then landowner Otago Harbour Board. (“OHB”)
3. The agreement reached is reflected in a letter to DOC dated April 2014. ¹

The terms were;

- A term of 60 years
 - Subject to public notification
 - Subject to Ngāi Tahu being consulted
 - That exceptional circumstances existed justifying the maximum (60 year) lease term available under the Conservation Act.
 - The agreement was NOT subject to internal review by DOC or any other party or any other condition except public notification and Ngāi Tahu consultation.
4. In evidence of that agreement, DOC did send notification to Te Rūnanga Ōtakou stating that a lease had been requested for 60 years on 15 June 2015 .²
 5. The first report recommended a 30 year term. This was a repudiation of the agreement reached 4 years earlier referred to above.
 6. The second report recommends a term of 15 years. This was a repudiation of the agreement reached on 12 March 2014.
 7. It is now 8 years since that meeting where agreement was reached (a fact acknowledged by the report writer) , which the applicants say is evidence in itself of a series of bureaucratic mis-steps purporting to repudiate that agreement and that have failed to grasp the true nature of this comparatively minor issue (relative to DOC’s national statutory framework).

¹ Letter 28 April 2014

² Letter to Ngai Tahu 15 June 2015

8. The Applicants have suffered anxiety, stress and financial loss over the many (33 years) years that this matter has percolated. They have been unable to plan their futures despite their significant investment in environmental protection and conservation work on the area , their financial investment in their properties which were purchased on the belief that DOC would honour their obligations under both statute and Local Authority conditions and recognize their conservation works on DOC land. They have also had to spend significant monies with lawyers to establish and confirm their legal rights.
9. DOC has obstinately, and without any legal or moral basis, refused to;
 - accept the existence of their historic and lawful occupation of the land pre dating 1 April 1987 and dating back to 1923.
 - refused to honour a term imposed by the Local Authority on DOC in 1989 that should they (DOC) become the owner, they must grant permanent security of tenure to the applicants,
 - refused to honour an agreement reached at a meeting called for by DOC in March 2014 offering a term of 60 years, and said by DOC to be a final settlement, and then some 4 years later issued a report (2018) only recommending a 30 year term,
 - Resiled from that public notification and re notifying with a further reduced term recommended of 15 years, effectively putting the policy ground of removing residential occupation from conservation land above statutory obligations.
 - They are concerned that DOC is, by their actions and omissions, attempting to take their personal assets without compensation.
 - **Recommendations made by the DOC Report do not address DOC's duty to protect and maintain historic heritage, which is best achieved by continued private use of the 4 Sites.**

Authorized – Was occupation “authorized” within the meaning of S 7(2) Conservation Amendment Act 1996?

1. The applicants do not accept that the occupation of the land is not authorized and submit S 7(2) Conservation Amendment Act 1996 applies as the occupiers lawfully occupied the land pursuant to Agreements entered into before 1 April 1987.

2. The houses have been owned by successive owners who occupied the land on which the privately owned houses are sited pursuant to leases granted by Otago Harbour Board ("OHB") since approximately 1923.³
3. The leases have never been lawfully cancelled or terminated.
4. The leases were for perpetually renewable 12-month terms. The term in each lease was;

*"and the Lessee agrees to take on the lease ALL THAT parcel of land described in the Schedule hereto for the term of One year computing from (.....) and **so on thereafter from year to year .."***

This wording does not require a renewal of the lease. The lease term of One year .."and so on thereafter" is in effect a lease that is extended each year, there is no need for the parties to re-engage or renew as the lease just rolls over without any further instrument. Nor does it mean the landlord has to re-offer the lease each year. **No party has ever lawfully determined these leases .**

Also see a letter from OHB to Mr J Mclean 14 November 1984 stating "the original conditions (sic of the lease) be retained." footnote #3

5. In 1988 the Labour Government, as part of Rogernomics, passed the Port Companies Act 1988("PCA"). This dissolved Harbour Boards throughout the Country, replacing them with Port Companies. The non-core assets were transferred to, in this case, the Dunedin City Council Transition Committee.
6. In essence a legal vacuum was created meaning leases could not be assigned, terminated or issued.⁴ (s 33 PC act).
7. In 1991 this changed with Parliament legislating to "patch this hole".
8. Section 7(1) of The Harbour Boards Dry Land Endowment Reinvesting Act 1991("HBDLERA") came into effect meaning the leases continue to have effect.

³ See for example: advert 1923, letter OHB 1946, lease site 3 1979, lease schedule ex hocken library, sample lease, letter from OHB 1984, advert for lease 1924, advert for leases 1946 with sample lease Photo advert , letter OHB to McLean 1946, sample lease to Law 1979, lease schedule for all sites ex hocken library, advertisement with draft lease 1946, Letter OHB Mclean 14 Nov 1984, advertising 1924, lease terms ex hocken library

⁴ S. 33 (19, 20) Port Companies Act 1988

(1) *“Subject to this section, where an Order in Council is made under section 4 of this Act –*

- a. *Every lease, license, permit, consent, or other authority granted by the Harbour Board or a local authority (whether as a successor or otherwise); and*
- b. *Every Agreement in writing by such a Board or local authority to grant a lease, license, permit, consent, or other authority that is, immediately before the commencement of that order, in effect in respect of any land specified in that order shall, to the extent to which it is lawful, continue to have effect in respect of that land according to its tenor.”*

9. In November 1990 a tragedy occurred at Aramoana, where 14 people died after a deranged gunman killed 13 local Aramoana people. Meanwhile Rogernomics continued to cause a local “revolution” with the amalgamation of SCC with DCC and OHB dissolved. This tragedy took the applicants focus off issues concerning legalising their leases while the land was in this “legal vacuum”.

10. The applicants, somewhat naively relied on DOC, as a Government department, to honour the conditions imposed on them (following DOC’s own application) by the then ruling local authority, the SCC. That is, *to provide permanent security of tenure to the residents and owners of the 4 spit houses.*

11. DCC freeholded the 40 or so lands sections at Aramoana village pursuant to the recommendations of SCC and the Transition Committee.

12. Thus the 4 applicants (due to circumstances beyond their control) were not treated consistently or fairly in DOC failing to fully document transfer or assignment of their leases. The applicants submit this ground constitutes one of the “exceptional circumstances” existing under the Conservation Act to allow 60-year leases.

13. Dunedin City Council advised that OHB never supplied to them the leases, therefore assumed they did not exist. This was incorrect advice both from the now dissolved Harbour Board (who had been in intense disputes with its lessees who led the opposition to the smelter proposed by

OHB)⁵ and Dunedin City Council, likely overwhelmed by work created by the amalgamation of local authorities. In fact, HBDLERA was by this time in force and meant the old leases were to be honoured and remained in legal effect.

14. The land was not at this time surveyed nor held under the Land Transfer Act 1952.
15. Its zoning was an issue as the Local Authority had previously zoned part of the land Industrial in order that a controversial aluminium smelter could be built on OHB land adjacent to the salt marsh.
16. In June 1989 DOC (who had been mooted as becoming the owner of the saltmarsh area) wrote to Silverpeaks County Council ("SCC") seeking comment about zoning.⁶
17. ON 21ST June 1989 SCC issued a decision confirming DOC request on the condition that the owners of the 4 properties at the Spit be granted "*permanent security of tenure*"⁷
18. DOC therefore had **specific knowledge** of the occupiers of the 4 sites at the spit. DOC was also advised by a series of letters to successive Ministers of Conservation of the applicant's ownership and occupancy.⁸
19. The Dunedin City Council knew of the lawful occupation because the Applicants paid the rates and ground rent.⁹
20. DCC had been advised of the occupation by SCC of its resolution and the Transition Committee.
21. DOC knew of the occupation because it had been told of this by SCC and by the applicants, first at a meeting in 1988 and by numerous subsequent letters.¹⁰
22. Clearly, the Agreement for Sale and Purchase between the Dunedin City Council and Department of Conservation, (relied on by the report writer as a reason to say the occupation was not

⁵ See wikipedia "save Aramoana Campaign"

⁶ Doc letter to SCC 2ND June 1989

⁷ Permanent security of tenure resolution 1989

⁸ Letters to Min of Conservation 1989 onwards

⁹ Letter DCC to Doc 1993

¹⁰ Letters to Min of Conservation, environment 1989 onwards

authorized), failed to record the tenancies in error. The sale was clearly subject to existing occupation by the residents and lawful occupiers and by virtue of HBDLERA statute.

23. This is a contractual mistake potentially rendering that part of the agreement void.¹¹

24. S 7 (2) Conservation Amendment Act 1996 applies¹²

The Land

1. The land which is the subject of this application and report is NOT part of the ecological area("EA").
2. EA includes 118 ha of dry land and 241 ha of sandflats which are covered at high tide and exposed at low tide.

The land was formerly described as a "buffer zone" to the saltmarsh which was eventually acknowledged as an area of natural significance. The land upon which the privately owned historic dwellings are located is approximately 1.1 km from the so-called salt marsh¹³, which is the area that is of ecological significance. It contains less than 0.8 ha(8000m²). It was previously referred to as a "buffer zone" because it is a sandspit to the northeast of the saltmarsh and operates to protect the salt marsh from inundation from wind and wave action from the north quadrant. The total land occupied is approximately 0.8 ha.¹⁴ The ecological area is approximately 359 Ha. That is 0.22% of the total ecological area now owned by DOC.

3. **Neither any objection** nor the report provide evidence of any unique flora or fauna that exist on the so called buffer zone ("land to be set apart Area a on SO 24759") . In general, there is a mix of exotic and indigenous plants, including pine trees, marram grass, lupin and flax. The applicants, using their own funded environmental trust established in 1990 (Beachaven Earth Trust -a registered charitable trust) planted significant numbers of native plants as part of a dune stabilization and prevention plan (and this continues to this day). This was a significant effort involving up to 10 personnel in the Task Force Green project, working up to 30 hours a week for 3 years. This was entirely funded by the Applicants, except for a modest subsidy from NZ Government (not through DOC's budget). This followed a breach of the middle section of dune following a severe North East storm in 1978. The removal of an old crib at this breach area

¹¹ S. 6 and 7 Contractual Mistakes Act 1977

¹² S 7(2) Conservation Amendment Act 1996

¹³ Refer nautical chart Navionics

¹⁴ See appendix D of report

exacerbated loose sand dispersal by northeast and southwest gales. This breach threatened the salt marsh with inundation by the sea.¹⁵

4. **CMS 2016**

The application commenced after agreement was reached between the parties on 12 March 2014. The CMS was introduced by DOC without consultation with the applicants in 2016. The application predates the CMS 2016 and needs to be considered under the previous CMS. DOC have confirmed it is obliged to seek comment or submissions to publicly notified matters, such as the CMS but failed to notify the applicants of this notification.

The CMS policy is in direct odds with DOC fundamental statutory obligations under its own Act, its own policies, (referred to in these submissions) and those of Heritage NZ Pouhere Taonga Act 2014.

There is also an exception to the application of the CMS provided in Conservation Amendment Act 1997 -S7(2).

5. p.22 para 'monitoring Conditions'

This is neither necessary nor appropriate. It is simple revenue gathering by DOC, whose role as landowner, custodian and guardian remains. The lessees have already demonstrated that they are the monitors of all matters in the area, both within and outside of the so-called Buffer Zone.

6. P 22 para 4.-2.3 Otago Conservation Board notes.

- The application predates the CMS 2016. DOC cannot use its own delays in processing the application to introduce new rules under a strategy introduced without notifying interested parties (the applicants) contrary to self-admitted DOC policies of notification to such interested parties.
- This strategy ignores the exceptional circumstances which exist (referred to later in these submissions) .
- The policy is a "should" policy only , is not mandatory and is subject to statutory exceptions.
- There is no short-term commercial accommodation being provided by any applicant.

7. P 24 Te Rūnanga o Ōtakou

The applicants approve and endorse the ADP protocols and are in regular consultation themselves with Kaumatua of Te Rūnanga.

¹⁵ Letter to La Hood Allen to DOC 16 August 2000

The applicants believe Te Rūnanga should be offered the land as historically it was occupied by their ancestors.

8. P 25 para 4-2.5

The applicants believe a term should be added requiring the landowner (DOC) to commission a scientific study on the buffer zone area due to its significant manmade interferences with the natural environment since 1883 when OHB constructed the mole and associated works around the mouth of Otago Harbour and its significant effects on the buffer zone cause accretion to the Spit Beach to the west of mole and to Shelley Beach to the east of the mole where decretion/erosion has occurred promoting erosion and ultimately the potential to affect the ecological area with inundation. Refer photo 1961 and 2022 Nautical chart showing what was one beach turned into two intersected by the Mole with the eastern side now 370 m in decline.¹⁶ This study should allow consultation and submissions by the applicants who have already commissioned at their own cost, their own report.¹⁷

9. Climate Change p 26

The applicants acknowledge climate change risks. As with the rest of the world, and NZ, the potential for rising sea levels affecting the land is accepted by the applicants. The existence of the houses is at their own risk and does not contribute to sea rise. A proposed term in the leases indemnifies DOC from any claim or loss due to erosion or sea level rise. This is not therefore a valid or logical reason to determine these leases early.

10. Conservation, Preservation, Protection

DOC is bound to adhere to the Conservation Act. In this instance that includes protection, conservation and preservation of the Historic protected houses and area as defined in the Heritage NZ Pouhere Taonga Act 2014 whose purpose and objectives are similar;

4 Purpose and principles

- (1) The purpose of this Act is to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.
- (2) In achieving the purpose of this Act, all persons exercising functions and powers under it shall recognise—

¹⁶ Navigation satellite photos on nautical chart showing erosion eastern side of mole

¹⁷ Goldsmith 1995

- (a) the principle that historic places have lasting value in their own right and provide evidence of the origins of New Zealand's distinct society; and
- (b) the principle that the identification, protection, preservation, and conservation of New Zealand's historical and cultural heritage should—
 - (i) take account of all relevant cultural values, knowledge, and disciplines; and
 - (ii) take account of material of cultural heritage value and involve the least possible alteration or loss of it; and
 - (iii) safeguard the options of present and future generations; and
 - (iv) be fully researched, documented, and recorded, where culturally appropriate; and
- (c) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga.

11. This Act binds the Crown (DOC.)

12. P 48 Policies relating to private Accommodation

This is a “should” policy not a “will” policy.

There is a fundamental dichotomy between the so called “phase out” policy and DOC’s basic obligations to Conserve, Preserve and Protect, under both Conservation Act 1987, its own General Policies and the Heritage NZ Pouhere Taonga Act 2014 (“HNZPTA”).¹⁸

If DOC is to phase out private accommodation and is bound by its own act, policies and the HNZPTA, which it must be, it cannot remove or demolish the protected dwellings. Nor can the applicants.

If it grants leases expiring in 2036 and it cannot remove or demolish the buildings, then without a compensation clause then DOC is effectively acquiring valuable properties without consideration.

13. TERM P 50 para 6-1.2

The applicants submit that the term was agreed on 12 March 2014 for a term of 60 years.

The district office and Otago Conservation Board were possibly unaware of the agreement reached between the Area Manager of DOC and the applicants on 12 March 2014.

They were also obviously unaware of the settled legal test for exceptional circumstances, addressed by our Counsel.

¹⁸Interpretation section Conservation Act 1987; **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

Dunedin Services Centre comments.

- “The significance of the ecological area “

The applicants submit there is no evidence that occupation of the tiny area of the buffer zone adversely affects the ecological area. It is a significant distance from the salt marsh. The occupation means daily monitoring occurs should any event occur affecting the ecological area.

As an example, when the sea lion pup was born recently, it was the occupier of site 3 who notified the sea lion welfare group, and who erected signs warning the public and who cared for the pup prior to interest group’s involvement.

There have been no reported historical effects of the occupation on the salt marsh ecological area in over 108 years.

The ecological area is a public area. Thousands of people each year use it for recreation, walking, bird watching, beach barbecues, sunbathing, swimming, surfing, fishing sightseeing, gathering kai moana from the abundant cockle beds, and they walk along the boardwalk located directly within the area and erected by DOC and Forest and Bird.

- “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) “

This is a nearly nonsensical comment. Offering a habitat. For whom? Sea Lions already haul out ashore. Yellow eyed penguins already nest in the dunes. Leopard seals haul out (albeit infrequently) on the shore. Seals have been seen breeding in the area. The applicants’ efforts in restoring and stabilizing fore dune have increased the area in which fauna can come ashore. Erosion risk is accepted by the applicants. The landowner has no liability for this.

- “The instructions in the Otago CMS and the CGP that private Accommodation be phased out”

This “should” policy does not allow for the exceptional circumstances that exist in this case which are referred to later in these submissions, nor the exception provided under S7 (2) Conservation Amendment Act 1996.

There is a **fundamental conflict** between the “should” policy of a CMS and the statutory obligations of DOC both in its own Act, its own general policies and the HNZPTA requiring preservation of Historic resources and areas.

14. Bond para 6.4 p 56

The houses have existed on site for over 108 years. The previous leases had no bond required. Usual demolition costs of a house are about \$20,000.00 per house. However it is suggested that the applicants each pay \$6.50 per week for 60 years into a fund so that there is sufficient money available to pay for demolition should the owners not remove the dwellings at expiry.

15. Applicant’s comments para 7.0 p 66

This is incorrect. The report prepared differed so markedly from what was agreed on 12 March 2014 it did not deserve a detailed response, however the self-imposed deadline was extended to 22 January 2021 and the last letter sent to Natasha Ryburn the Manager at DOC, said to be the manager of this process , and sent on **25 November 2021** and resent on **10 February 2022** and following many prior letters dating to 1989 had the following text;

“Hi Tash,

I act for the 4 crib owners at Aramoana, Otepoti.

I’ve been given your address and contacts by one of the owners who has been asked to hurry up with a notification for concession by Mr Brown at the Dunedin office.

Like you, our clients are somewhat exasperated with progressing a solution in this matter.

We are hoping that you may be able to intercede in this matter which has percolated without success since the very commencement of DOC as an entity.

I’m sure you are aware DOC became the owner of the salt marsh (and adjacent land at Aramoana, upon which the 4 houses are located) in 1994/5 following the restructure of the former Otago Harbour Board in the late 80’s. The land devolved to a

"Transition Committee" under the Harbour Board Dryland Endowment Revesting Act 1991 thence to Dunedin City Council and then in 1995 to DOC.

The houses in question had been built by the Harbour Board using Love Construction Company to a design by Basil Hooper, a recognised "arts and crafts" architect in 1914.

They and the land surrounding are registered Historic buildings and areas. They cannot be altered removed or demolished.

They were leased under perpetually renewable leases by the then Otago Harbour Board, since , we believe about 1921, when the Harbour Pilots no longer used these houses. The Board was dissolved legally in 1988 and could not execute any documentation, (particularly leases)

Prior to DOC's ownership, in 1989, they (DOC) were advised by the then controlling authority, Silverpeaks County Council, on application by DOC for zoning confirmation, that zoning changes could be approved on the condition that the 4 houses at the "Spit" be granted permanent security of tenure. Contemporaneously the Transition Committee imposed conditions that the other land and houses in the township be granted freehold status by its intended owner, Dunedin City Council(DCC) .

Our clients, in the vacuum of ownership, purchased their properties relying on the Silverpeaks County conditions, expecting that the ultimate owner (who knew of these conditions) would abide by them.

DCC completed that freeholding pursuant to those conditions.

Since that advice DOC and upon DOC becoming legal owners, It has continually denied any existing interests (legally) of the owners. Although they all remain there paying lease fees and rates. As you know and as our clients were always promised, (including by two successive Ministers of Conservation) their existing rights would be honoured.

*Some attempts were made to offer concessions over the years but always on a limited tenure with conditions far in excess of what they already enjoyed. It appears staff perhaps ignored the existing rights of our clients and what had been generally accepted as **exceptional circumstances**, entitling DOC to issue longer term leases.*

*By 2014 the writer attended a meeting in the Dunedin office with Dave Johnstone whereby what we thought was an agreement was reached, **by way of a compromise** from "permanent security of tenure", which was a reduced two terms of 30 years , subject only to advertising of these leases. This occurred without objection and indeed several positive submissions.*

It's now 2021 and by a series of bureaucratic bungles the lease /concession term has now been watered down to expire in 2036, just some 15 years in term and with many other conditions not previously endured.

We have now engaged environmental expert Barristers Rob Enright and Ruby Haazen to undertake a legal opinion on the process so far and what our clients' rights moving forward really are.

The result of that opinion says, more or less, that DOC's decision making process would fail a judicial review of their actions, that our clients have and always had a legitimate expectation that DOC would honour our clients rights and follow the conditions imposed to provide permanent security of tenure. Further that the meeting in 2014 was contractually binding should our clients elect to take up a concession rather than rely on their rights to leases in perpetuity.

So, as I am sure you will agree this cannot be resolved (unless we agree a compromise with your assistance) without messy and time-consuming judicial reviews, witnesses, evidence and huge costs.

With this brief background, perhaps you could call me to discuss a way forward?

Kind regards,

Richard Allen

Director

This email also attached;

(i) A letter dated 12 September 2005 from the Minister of Conservation agreeing exceptional circumstances may exist;

(ii) Permanent security of Tenure Resolution Silverpeaks County Council

(iii) Historic Places Act designation

(iv) Copy of Lease

(v) Letters to and from Ministers of Conservation and Environment from 1989 onwards

In addition, Mr Brown was sent emails on;

(i) 22 December 2020 advising he would not be able to comment by 22 January 2021. That the document differs markedly from the agreement reached in March 2014.

(ii) A further email on 2 February 2021

(iii) On 8 February 2021 advising that the applicants do not accept the terms of the concession in the report

(iv) On 10 February 2022 an email was sent advising of the applicants position and demanding that that position be recorded in any public notification.¹⁹

That letter was ignored.

16. Exceptional Circumstances para 8.0

Facts

1. At no stage since original leasing have the leases been lawfully cancelled or terminated by the Harbour Board or any successor to them.
2. HBDLERA applies authorising and honouring the leases. (refer Para 8 of these submissions.)
3. A full timeline from 1910 through to today is set out in **Appendix A**.
4. On 12 March 2014 an agreement was reached between DOC and The Applicants whereby a lease for 60 years was agreed, subject to notification. This was a compromise reached, after 25 years of discussions, whereby the Applicants agreed to waive their claim for perpetually renewable leases and accept a term of 60 years, because exceptional circumstances existed. That agreement did not refer to the need for further input from any other party, except pursuant to the public notification process and Ngai Tahu.
5. The 4 spit properties have applied for concessions (under Part 3B, s17Z of the Act) which would include:
 - a. license to occupy the site; and

¹⁹ See attached emails

b. easement for the accessway to the houses.

If granted, a concession must be limited to 60 years.

In 1996 the houses and the area surrounding them were registered as Category 2 historic places, pursuant to the then Historic Places Act.

The Applicant submits that the term exceptional circumstances means, based on binding case law, statute and the ordinary and natural meaning of the words, circumstances that are ;

- Special,
- Abnormal,
- Unusual,
- Out of the ordinary,
- Beyond the control of the party,
- Less than unique or extraordinary

1. The dissolution of a landlord who also happens to be a government owned entity, as was the Otago Harbour Board, is unusual, abnormal, out of the ordinary, special and certainly beyond the control of the lessee. It is unique in that no replacing legislation legitimising agreements created prior to that dissolution occurred until 1991. The OHB was dissolved in 1988. This created a legal vacuum beyond the control of the lessee.

Although the report writer does not consider exceptional circumstances exist, he does accept the circumstances are special. With respect he has not analysed case law or the facts.

The law is, as the Court of Appeal ruled, "special" is "exceptional."

Historic Area and houses – Further grounds for Exceptional Circumstances

6. What is also exceptional is the nature of the interests engaged: the houses are privately owned and have been identified as a historic area. The historic identification includes the relationship of the houses with the area and not just houses themselves. Therefore, removal of the houses would result in removing of the historic value. CMS policy seeks either that houses be removed or where there is historic value that public access be provided for²⁰ but neither of these outcomes can be achieved without Spit Property owner agreement. This situation is therefore "out of the ordinary" and not expected or provided for by legislation or policy.

7. The Officers Report relevantly records this situation throughout their report:

“This heritage building has been inextricably linked to this location since the 1920s.”

“...it is deemed highly impractical for phasing in public use of the building(s) in accordance with policy 3.11.2.”

¹⁴ Page 40, Officers Report: “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. Policy 3.11.4.

“In this particular case it is not considered appropriate to require the removal of the pilot buildings because they are of historical significance.”

And that private ownership is perhaps the most appropriate response given the circumstances:

“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.**”

8. Having already concluded that s7(2) of the Amendment Act is not relevant the officer does not consider the exceptions to the Phase Out policies in the CGP and the CMS. ²¹, referred to in Policy 3.11.2 of the CMS specifically identifies s7(2) of the Conservation Amendment Act as an **exception**. Applying s7(2) acknowledges the pre-existing lease arrangement and the 99 years of occupation that has occurred. S17U and s17T do not need to be strictly applied and the 20 year limit is not binding on the Minister’s decision.
9. Key findings of the Officers Report in undertaking a Part 3B assessment are:
 - a. “..overall the granting of the concession to occupy land will not result in any significant new effects over those already known at the location”
 - b. “..the proposed leases are in line with the conservation purposes of the Principle Act;
 - c. “it would not be contrary to the purposes for which the land is held to grant an easement for the continued vehicular and pedestrian access to and from the cottage”
 - d. for the purposes of s17U(3) there are no provisions of the Conservation Act that would be breached by the granting of the lease, license and easement
 - e. conditions can provide for limitations around expansion and avoid future adverse effects
10. The Officers Report also considers relevant policies of the New Zealand Coastal Policy Statement 2010 but notes that they are not binding.

21

11. Reference has not been made to Policy 17:

“Historic heritage identification and protection;

Protect historic heritage in the coastal environment from inappropriate subdivision, use, and development by:

(a) identification, assessment and recording of historic heritage, including archaeological sites;

25 Policy 3.11.2 of the CMS:

Policy 10(h):

Policy 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.

Policy 3.11.4 (b) Conservation Management Strategy: *b) in the case of Policy 3.11.2(b), the building(s) are to be removed 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*

Policy 5(b):

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).

“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.”

NZCPS is “not a document produced under the Conservation Act.”

- (b) providing for the integrated management of such sites in collaboration with relevant councils, heritage agencies, iwi authorities and kaitiaki;
- (c) initiating assessment and management of historic heritage in the context of historic landscapes;
- (d) recognising that heritage to be protected may need conservation;
- (e) facilitating and integrating management of historic heritage that spans the line of mean high water springs;
- (f) including policies, rules and other methods relating to (a) to (e) above in regional policy statements, and plans;
- (g) imposing or reviewing conditions on resource consents and designations, including for the continuation of activities;
- (h) requiring, where practicable, conservation conditions; and
- (i) considering provision for methods that would enhance owners' opportunities for conservation of listed heritage structures, such as relief grants or rates relief."

12. This provides an exceptional circumstance and one which the Officer has failed to properly grapple with.

Conclusion on Concession

13. The report writer fails to grapple with how the historic values will be provided for if the owners can no longer access the houses in 2036 but instead refers to issues regarding climate change and erosion of the area around the property that may result in an early outcome and resolution of these issues. Arguably issues with erosion and climate change are better dealt with through review clauses. This is not a reasoned conclusion for protection and preservation of historic values and to CMG policy and the NZCPS. The writer does not address the requirement for consents or approvals under other legislation, given the cottages are scheduled for their heritage values.

14. S7(2) of the Amendment Act applies to the Minister's decision. Weight should therefore be given to the previous tenure, binding commitments of DOC to providing a lease similar to what has been historically enjoyed by the owners.

15. Applying s7(2) means policy directive that provide strict terms can be reconciled or overridden.

16. It also follows logically that in considering her discretion to grant 60 years leases, the Minister is not in conflict with CMS or the Act as S 7 (2) Conservation Amendment Act enables the Minister to grant a concession. The report writer himself acknowledges "there are no provisions of the Act which would be breached by the granting of a lease licence and easement"²²
17. It has been acknowledged that the owners are in the best position to preserve and protect te historical values identified as opposed to these degrading or being destroyed.
18. Review periods will provide opportunities to consider effects to ecological, conservation and erosion or inundation effects.
19. Where a term of longer than 50 years is granted Ngāi Tahu need to be notified and provided an opportunity to submit of such a grant.

Conclusion

- 1.The applicant's occupancy was authorized by agreement entered into prior to 1 April 1987 and S 7(2) Conservation Amendment Act 1996 applies.**
- 2.Exceptional circumstances as defined by case law and statute apply justifying lease terms of 60 years in accordance with agreement reached on 12 March 2014**
- 3.CMS 2016 does not apply as S 7 (2) Conservation Amendment act sets out an exception to application of this policy.**
- 4.The historic status of the area and the houses requires DOC to preserve the area and the houses.**

²² At 4.4.3 p 66

Appendix 5.0: DOC Aramoana Legal Subs Final 31May22 doc 18 ([DOC-7049344](#))

Under the Conservation Act 1987
And
In the Matter of a notified application for (1) Lease and Licence
Concession; and (2) Easement Concession for Sites 1, 2, 3,
and 4
Between Elizabeth Dawe Site 1
Richard Allen and Liane Farry (and related Family Trusts)
Site 2
Madeleine Childs and Philip Jarvis Site 3
Joseph Vessels site 4
Applicants

Submissions of Counsel for Applicants

Solicitor
Richard Allen
Counsel
Rob Enright
Wānaka

Introduction

- 1 It appears to be common ground that the concessions should be granted (with the possible exception of Site 4). The only issue is duration.
- 2 There is some limited opposition to Site 4, based on what appear to be historic interactions between the owner and several submitters. Grounds raised by at least one of those submitters appear to be of a personal (and therefore irrelevant) nature. The proposed conditions recommended by the Department Report (**Report**) address wastewater and site access issues for all of the Sites, including Site 4.
- 3 Accordingly, given the lack of opposition, the key issue for determination is whether to grant an extended period for the Lease, Licence and Easement concessions, beyond 2036, and up to 60 years from date of grant. Subsidiary issues relate to the form of relief being granted; and proposed conditions.
- 4 The 2036 date should not be treated as determinative. It is not. Policy 3.11.2 and 3.11.4 of the CMS are subject to exceptions (which apply here). Wording such as “..or not specifically provided for or allowed in legislation..” relevantly includes s7(2) Conservation Amendment Act 1996.¹ Axiomatically, the CMS does not override legislation: refer s17D Conservation Act.² Departmental and submitter reliance on 2036 as a bright-line test is therefore misplaced. The Minister retains a discretion (in exceptional circumstances) to grant a 60 year term.
- 5 While there is a theoretical ability to decline the concession applications, this would be disproportionate and cause substantial disadvantage to the Applicants, as longstanding tenants (and owners of the dwellings).³ This reflects the site history, historic heritage values present, absence of adverse impacts (as a status quo proposal), and natural justice issues.

¹ Section 7(2) applies, based on prior enforceable agreements reached with the landowners, per Richard Allen’s evidence.

² Equally, it does not override an existing agreement for perpetual lease but this is outside the purview of this hearing.

³ It would also be unlawful, in terms of prior agreements reached.

CONTEXT

- 6 This process is meant to be the culmination of an agreed position reached between the Applicants and DOC officials, following 25 years of on-and-off correspondence (1989 to 2014), and a conciliatory meeting in March 2014, subsequently documented by letter from Richard Allen to the Department (dated 28 April 2014).
- 7 The agreed position was that exceptional circumstances justified a favourable recommendation for 60-year tenure, conditional on due process being followed (including public notification), meaning that any final decision would need to have regard to submitter, and other mandatory, considerations. For that reason, it is probably best described as an agreement in principle, alternatively a conditional agreement.
- 8 Several of the attendees at that meeting are present today, including Messrs Allen and Brown. The agreed position appears to be disputed by DOC officers. You may not need to resolve this dispute, if you are willing to treat the circumstances relating to the meeting, and wider attempts to resolve matters over at least a 25 period, as part of a wider matrix of exceptional circumstances.
- 9 The agreement was intended to resolve a lengthy dispute over tenure. Depending on one's perspective, the genesis of today's dispute commenced in 1923 (when the predecessor Otago Harbour Board resolved to grant perpetual leases to the Sites), or, more recently, from 1989 (in terms of an arguable failure by central government agencies to make good County Council resolutions to confirm perpetual leasehold interests to the 4 Sites). On either view, the dispute is long-lived.
- 10 From the Applicants' perspective, this process might deliver a liveable outcome, rather than prolonging legal disputes. As stated in 2014, the Applicants are willing to live with a 60-year tenure, even if that does not necessarily reflect their strict legal entitlement to a perpetually renewable lease. 60 years is seen as a trade-off, that allows at least 3 further generations of whanau to continue to enjoy occupation of the Sites. It provides finality of outcome.

- 11 The unpalatable alternative is for the Applicants to seek to enforce their asserted interest in a perpetually renewable lease. That would likely require High Court declaratory proceedings.
- 12 For that reason, these submissions are necessarily without prejudice to the Applicant's legal argument that a perpetual leasehold interest has been granted (as a matter of fact and law). They proceed on the basis that such a legal argument cannot be resolved by the delegated decision-maker, who has limited jurisdiction.
- 13 Issues discussed are as follows:
 - Exceptional circumstances
 - Chronology
 - Statutory instruments
 - Response to DOC report
 - Response to Submitters
 - Conclusion and relief

Exceptional circumstances

- 14 This inquiry is fact and context-specific. What is exceptional can be a combination of different factors: *Cortez Investments Ltd v Olphert & Collins* [1984] 2 NZLR 434 (CA). These include:
 - (a) Richard Allen has identified the relevant context, including dealings with the Department (and earlier Council and Govt Agencies) that gives rise to a legitimate expectation of exceptional circumstances (60 year tenure);
 - (b) The historic heritage values, including HPT Category 2 status, that will be better preserved through continued private ownership and management, than public management or use;
 - (c) The 99+ year term of private ownership and management, which predates DOC ownership and statutory management.
 - (d) the houses are privately owned and have been identified as a historic area. The historic identification includes the relationship of the houses with the area and not just houses themselves. Therefore removal of the houses would result in removing of the historic value.

- 15 Although S17 Conservation Act refers to exceptional circumstances enabling the Minister to grant terms of up to 60 years, that term is not defined in the Act.^[1]
- 16 "Exceptional" circumstances are according to the Court of Appeal, special, abnormal or unusual but something less than extraordinary or unique (Page 534 *Peninsula Watchdog Group Inc v Minister of Energy* [1996] 2 NZLR 529.) The Court of Appeal adopted the High Court summary.^[2]

"Special circumstances, he said, meant something out of the ordinary, or as Viscount Dilhorne described it in *Crabtree v Hinchcliff (Inspector of Taxes)* [1971] 3 ALL ER 967, 983, circumstances which were "exceptional, abnormal or unusual" but, something less than extraordinary or unique (citing *Cortez Investments Ltd v OIphert & Collins* [1984] 2 NZLR 432 per McMillan J).

- 17 "Exceptional circumstances" includes circumstances that are:
- Special,
 - Abnormal,
 - Unusual,
 - Out of the ordinary,
 - Beyond the control of the party,
 - Less than unique or extraordinary
- 18 The Department's Report suggests that houses be removed at the end of the concession period; or where there is historic value, that public access be provided for. Neither of these outcomes can be achieved without Applicant agreement (as owners of the dwellings). The Report relevantly states:

"this heritage building has been inextricably linked to this location since the 1920s."
"...it is deemed highly impractical for phasing in public use of the building(s) in accordance with policy 3.11.2."

Page 40, Officers Report: "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 CMS's 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."

"In this particular case it is not considered appropriate to require the removal of the pilot buildings because they are of historical significance."⁷⁶

And that private ownership is perhaps the most appropriate response given the circumstances:

"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.”⁷⁷

- 19 The Report fails to grapple with how the historic values will be provided for if the owners can no longer access the houses in 2036 but instead refers to issues regarding climate change and erosion of the area around the property that may result in an early outcome and resolution of these issues⁷⁸. Arguably issues with erosion and climate change are better dealt with through review clauses. This is not a reasoned conclusion to providing for protection and preservation of historic values and to CMG policy and the NZCPS.
- 20 S7(2) of the Amendment Act applies to the Minister’s decision. Weight should therefore be given to the previous tenure, in principle commitments of DOC in 2014 to 60 year tenure, and DOC’s recommendation in 2018 for a 30 year tenure.
- 21 The owners are in the best position to preserve and protect the historical values identified as opposed to these degrading or being destroyed.
- 22 Monitoring provides opportunities to consider effects to ecological, conservation, and erosion or inundation effects.
- 23 Where a term of longer than 50 years is granted mana whenua (Kai Tahu) need to be notified and provided an opportunity to submit of such a grant⁷⁹. The Applicant support all forms of Kai Tahu (and Te Rūnanga) involvement.

⁷⁶ At Page 40, Officers Report.

⁷⁷ At page 25, Officers Report.

⁷⁸ Page 43, Officers Report.

Chronology

- 24 Relevant events are addressed by Richard Allen in his evidence. These confirm in their totality the unusual and exceptional nature of tenure issues over the last 99 years.

Statutory instruments

- 25 The relevant instruments are identified in the Departmental Report: the CGP, Otago CMS, and the NZCPS. These are to be read in light of the statutory framework and purpose in the Conservation Act.
- 26 The 2036 date is identified in the CMS as an intended "phase-out" date for private dwellings on conservation estate (being 20 years from date of approval of the CMS). The CMS policy is not determinative. Policies are "guiding principles" that describe courses of action: CMS p12 (Interpretation). They are to be read in light of the higher CMS Objectives, CGP provisions, and the statutory framework in the Conservation Act.
- 27 Equally, there are other relevant objectives and policies within the CMS and the CGP that must be reconciled. Policy 3.11.2 and 3.11.4 are not binding on the decision-maker, at best these are relevant considerations. The CGP (p.14) confirms that there is a hierarchy of language ("will, should, may"); where "should" is used, a residual discretion is retained.
- 28 Other factors, particularly maintenance and preservation of historic heritage, retain their importance, such as CMS Objective 1.5.2.1; and CGP Policy 5(e). Historic buildings and structures on public conservation lands should be used in ways that (*inter alia*) enable their preservation, and enable public appreciation. Heritage buildings are best lived in, and functionally used.
- 29 An interpretation of the CMS should be preferred that reconciles with, and enables comity, with heritage recognition under other legislation, in particular the Heritage NZ Pouhere Taonga Act 2014.
- 30 The NZCPS is equally a relevant consideration. But the NZCPS is to be read as a whole, and the Report does not address all of the relevant

objectives and policies. This includes enabling policies (such as Policy 6) which address historic heritage in the coastal environment, as well as wellbeing of people and communities.

Response to DOC report and submitters

- 31 The vast majority of submissions are in support of the Applicant position, reflecting their connection with the local community at Aramoana, and the value of having people in situ, to maintain the existing heritage buildings.
- 32 Mr Allen has responded to the RFB submission in his evidence dated 27 May 2022. It is submitted that:
- The issue of exceptional circumstances responds to the total factual and statutory context. There are a number of matters outside RFB's knowledge, especially relating to the history of tenure at the site from 1923 onwards. These factors merit significant weight.
 - The dwellings form part of the existing environment, which is a nationally and regionally significant biodiversity area. The values have not been adversely impacted by the presence of the dwellings and Mr Allen's evidence speaks to restoration processes followed by the Applicants to maintain and enhance biodiversity.
 - RFB does not give sufficient weight to the footprint of the Cribs / Pilot House being outside the footprint of the SEA.
 - RFB's suggestion that ownership of the Cribs/Pilot House revert to public ownership contradicts their stated view that human presence is adverse to biodiversity values and habitat. Conferring public ownership of the buildings is outside the scope of this process; cannot happen without Applicant consent; and is likely to increase visitor / people numbers, without the commensurate Stewardship ethic displayed by the Applicants.
 - The statutory instruments do not introduce strict bottom lines around phase-out by 2036; the Minister retains the discretion to extend beyond the 20 year term.

Conclusion and relief

- 33 Turning to the issue of conditions and relief, putting to one side the issue of duration, it is now accepted by Mr Allen that annual monitoring

conditions are reasonable subject to quantum. The requirement for a bond is unnecessary and unduly onerous.

- 34 The Applicants understand that the output of this hearings process is a recommendatory Report to the delegated decision-maker. The Applicants have been advised that the Report will be provided to them for comment prior to a final decision being made. This aligns with their request for an Interim (and not binding) determination, so that they can re-evaluate their position on the Application, in particular the issue of their parallel property law claim for perpetual lease. Accordingly, the Applicants request that the recommendatory report arising from this hearing be provided to them for review and comment, prior to any final determination being made.

Dated this 31st May 2022

Rob Enright
Counsel for Applicants

Appendix 6.0: DOC Aramoana Lease History 31May22 Produced by Richard Allen ([DOC-7049342](#))

LEASING HISTORY

SPIT HOUSES

PILOT HOUSE 1 (Site 1)

1910 Land is vested in Otago Harbour Board
Various times , several surveyors cottages built by OHB to west of Pilot Station historic area
(one of which is Site 4)

1913 Otago Harbour Board built 1 pilot house and two boatman's cottages to plans of Basil Hooper

1923 Otago Harbour Board sell the houses and lease the land with a perpetually renewable lease

Lease 1946 Otago Harbour Board to J K Mclean

15 Sep 1995 Transfer /Assignment of Lease interest to Geoffrey Knuckey.
Transmission by will and survivorship to Elizabeth Dawe.

PILOT HOUSE 2 (Site 2)

1 October 1968 Otago Harbour Board lease to P and CA Wright

1970 Transfer and Assignment of lease from P and CA Wright to H Speight

1978 Transfer and Assignment of lease H Speight to KR Gibbs

1989 and following: correspondence from Richard Allen on behalf of the 4 sites to Minister for Conservation and Minister for Environment

1989 Transfer and Assignment of Lease KR Gibbs to A Farry , L Farry and R Allen

6 June 1990 Minister of Conservation (following various correspondence) confirms that transfer of ownership to DOC will not affect existing rights under leases

12 March 2014 Meeting with DOC representatives where agreement reached on 60 year term, following process of public notification

28 April 2014 Letter from Richard Allen to Regional Manager DOC confirming agreed terms of meeting on 12 March 2014

PILOT HOUSE 3 (Site 3)

1 Jan 1964 Otago Harbour Board to JP and MH Richardson

26 September 1973 Otago Harbour Board to John Law

1 August 1990 Transfer Assignment of Lease J Law to Dr PJ Farry and Ms SG Farry

August 1996 Transfer Assignment of Lease PJ and SG Farry to Madeleine Childs and Phillip Jarvis

SURVEYORS COTTAGE (Site 4)

1 June 1978 Otago Harbour Board lease to Dr A H F Thornton

Approx 1992 Dr AH Thornton transfer assign interest in lease to Dr P Strang

Approx. 1995 Dr P Strang transfers assigns to J Vessels

SIMPLIFIED TIME LINE

Simplified timeline

1910 Land is vested in Otago Harbour Board

1913 Otago Harbour Board built 1 pilot house and two boatman's cottages to plans of Basil Hooper

1923 Otago Harbour Board sell the houses and lease the land with a perpetually renewable lease

1989 and following: correspondence from Richard Allen on behalf of the 4 sites to Minister for Conservation and Minister for Environment

6 June 1990 Minister of Conservation (following various correspondence) confirms that transfer of ownership to DOC will not affect existing rights under leases

12 March 2014 Meeting with DOC representatives where agreement reached on 60 year term, following process of public notification

28 April 2014 Letter from Richard Allen to Regional Manager DOC confirming agreed terms of meeting on 12 March 2014

Appendix 7.0: Includes letter confirming lease conditions Otago Harbour Board (OHB 1984) – Lease history and Schedule – copy of lease ([DOC-7047841](#))

Appendix 8.0: Flash drive and hard-copy document hand-delivered by Richard Allen on 1 June 2022 titled “In the matter of the Conservation Act 1987 And A hearing regarding an application to issue Lease and License Concessions.” ([DOC-7049312](#))

Contents of hyperlink [DOC-7049312](#)

Name	Type	Compressed size
Articles	File folder	
Emails to Kelvin Brown	File folder	
Heritage Conservation	File folder	
Interim Evidence	File folder	
Leases	File folder	
Letters	File folder	
Photo Aramoana 2022	File folder	
Pilot Houses	File folder	
15-short-history-of-harbour-dredging-davis-2009-va275988	Microsoft Edge PDF Docu...	403 KB
28 april 2014 let to doc	Microsoft Edge PDF Docu...	322 KB
2005 letter from chris carter min of conversation	Microsoft Edge PDF Docu...	1,853 KB
20220528130632561	Microsoft Edge PDF Docu...	1,963 KB
Appendix A submissions	Microsoft Word Document	47 KB
application 2015	Microsoft Edge PDF Docu...	4,867 KB
Cortez Investments Ltd v Olphert Collins	Microsoft Edge PDF Docu...	599 KB
exceptional circumstances nz tax law -	Microsoft Word Document	39 KB
forest and bird submission w notes	Microsoft Edge PDF Docu...	6,003 KB
Harbour Boards Dry Land Endowment Revesting Act 1991	Microsoft Word Document	63 KB
min of conversation letter	Microsoft Edge PDF Docu...	539 KB
permanent security of tenure	Microsoft Edge PDF Docu...	515 KB
PERMANENT SECURITY OF TENURE RESOLUTION SILVERPEAKS CC 1989	Microsoft Edge PDF Docu...	176 KB
planning report disputed land report , submission plan change, letter acknowledging work load amalgamation	Microsoft Edge PDF Docu...	1,848 KB
Powell v Tinline Properties Ltd	Microsoft Edge PDF Docu...	475 KB
ra ltr to doc 2000 ken stewart	Microsoft Edge PDF Docu...	171 KB
Save Aramoana Campaign - Wikipedia	Microsoft Edge HTML Do...	49 KB
seagrass study 2017	JPG File	470 KB
Shoreline Change report 1995 M Goldsmith	Microsoft Edge PDF Docu...	2,302 KB
survey plan of DOC area 1995	Microsoft Edge PDF Docu...	319 KB