



Notified Concession Final Report to Decision Maker

Decision Maker: Judi Brennan, Permissions Manager, Hokitika and Dunedin

The purpose of this report is to provide a thorough analysis of the application within the context of the legislation, the statutory planning framework and actual and potential effects, so the decision maker can consider the application and make a decision whether it should be granted or declined.

Report Writer: Kelvin Brown, Permissions Advisor, Dunedin Service Centre

Application for a Notified Concession (Lease and Licence) and (Easement)

Applicant:

Table 1 below is a summary of the 4 sites. It includes hyperlinks to the Officer's Reports and concession document templates for each Concession (Lease and Licence) and Concession (Easement).

Table 1

Site	Applicant	Officers Report	Concession Numbers	
			Lease & Licence	Easement
1	Elizabeth Anne DAWE	DOC-5569624	38964-ACC DOC-2756334	50789-OTH DOC-2927614
2 ¹	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

Note: throughout this Report there is reference to the Applicant. This encompasses comments received from individual house owners, Richard Allen (Barrister and Solicitor) who is a co-owner of site 2 and represents all owners and, Rob Enright (Barrister and Solicitor) who represents all owners. Both Richard Allen and Rob Enright represented all house owners at the Hearing.

¹ See discussion in section 5.0 in this Report regarding Pilot house No.2 change of trustee to Sherwood Avenue Trustees Limited.

Objection or Submission Summary – Recommendation Report: Recorded as [DOC-7052187](#).

Permission Record Number: 38964 to 38967-ACC and 50789 to 50792-OTH (see Table 1, column 4 for breakdown).

1.0 Summary of proposals

Type of concession sought: Notified Concession (Lease and Licence) and Notified Concession (Easement)

Term sought: 60 Years

Description of locations where activity is proposed:

The locations of the activities are within the Aramoana Conservation Area (occupation) and Aramoana Ecological area (right of way easement). This location has been described in detail within each of the Officer's Reports, section 1.1 background (see Table 1, column 3 in this Report).

Description of the proposed activities:

Site 1: Elizabeth Anne Dawe: (Concession Numbers: 38964-ACC & 50789-OTH):

- (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: Vincent Paul George; Diane Margaret George; Liane Josephine Farry; Richard Vivian Marsh Allen; GSM Trustees Limited: (Concession Numbers: 38965-ACC & 50790-OTH):

- (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: Madeleine Jill Child & Phillip Matthew Jarvis: (Concession Numbers: 38967-ACC & 50791-OTH):

- (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 Joseph Vessels: (Concession Numbers: 38966-ACC & 50792-OTH)

- (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;

Background

A decision in principle was made to grant these concessions on 24 January 2022 and they were publicly notified on Saturday, February 12, 2022.

Public notification occurred for 40 working days and submissions closed on Monday, 11 April 2022. Link to DOC website: [Intention to grant accommodation in Aramoana: 2022 notified applications \(doc.govt.nz\)](https://www.doc.govt.nz/Intention-to-grant-accommodation-in-Aramoana-2022-notified-applications)

In total, 24 submissions were received: 21 submissions in support; 2 support/oppose; 1 in opposition. 4 objectors/submitters requested to be heard at the public hearing however, only 2 were able to appear on the day. All submissions were summarised on a spreadsheet² with hyperlinks to individual submissions³.

The Hearing was held on Tuesday, 31 May 2022. The Hearing Chair, David Newey, made several recommendations and signed off the objection and submission recommendation report (Recommendation Report) on 29 July 2022. Judi Brennan, as delegate of the Minister of Conservation, after considering the contents of the Recommendation Report, agreed that the proposals can proceed pursuant to section 49(2)(e) of the Conservation Act 1987.

The outcome of public notification and the Hearing was consolidated in the Recommendation Report, which has been referred to throughout this Final Report.

2.0 Information available for consideration

Information received:

- Refer to the signed Officer's Reports approving in principle the intention to grant concessions (refer to Table 1, column 3 in this Report).

Requested information not received: All information has been received.

Analysis of Submissions: Refer to signed section 49(2)(d) Recommendation Report recorded as [DOC-7052187](#).

Summary of Recommendation Report:

As the delegate of the Minister of Conservation has agreed that the proposals can proceed, this Final Report will concentrate on the key recommendations raised in the Recommendation Report prepared in accordance with section 49(2)(d) of the Conservation Act 1987.

The Hearing Chair, as delegate of the Director-General, made the following recommendations in the Recommendation Report to the Minister's delegate in respect of the extent to which submissions/comments should be accepted and objections allowed. These recommendations have already been considered by you in the Recommendation Report and have been included throughout this Final Report for you to make your final decision on the proposals.

² [DOC-6952140](#) (Submission Summary)

³ [DOC-6986318](#) (Complete Submissions); [DOC-6986320](#) (Submissions to be redacted); [DOC-6989157](#) (redacted Submissions)

Recommendations from Section 8.0 of Recommendation 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)⁴ and s.17Z(3)(a)⁵⁶.

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 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

⁴ 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."

⁵ 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:"

⁶ 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:"

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.

3.0 Acknowledgement of complete application (s17S)

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

Comment

The Minister should be satisfied that these applications are complete for the purposes of the Act.

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

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

Statutory context (consistent/inconsistent):

From Recommendation Report (*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 the Recommendation Report and section 2.0 in this Report.

Discussion: Detailed and comprehensive statutory analysis was carried out in sections 4.4 and 4.5 of each Officers Report (Table 1, column 3 above) on the purpose for which the land is held and consistent with other statutory documents such as the Conservation General Policy (CGP) and Otago Conservation Management Strategy 2016 (Otago CMS).

It is not the intention of this Report to revisit this detailed analysis as it was available when the decision was made in principle of the intention to grant concessions. However, it is appropriate to include excerpts from the Officer's Report.

Excerpts from Officer's 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.

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

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

In this particular case it is not considered appropriate at this stage to require the removal of the dwelling due to the special case discussions above and because, even though the dwelling has been previously identified as a "shed" and is not of historical significance⁷, it is still recorded as being within Heritage New Zealand (previously Historic Places Trust) "Pilots' Cottages Historic Area".

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

The Officer's Report recommended that the existing private accommodation is consented but subject to the proviso that the private occupation of the land must end no later than 31 August 2036.

What happens on termination or expiry (if a concession is granted)

If concessions are granted the following standard condition, clause 20 will be included in Schedule 2. In the case of site 4 (Joseph Vessels) a sunset clause has been imposed.

20. What happens on termination or expiry of the Concession?

- 20.1 *If the Grantor permits the Concessionaire to remain in occupation of the Land after the expiry or earlier termination of the Term, (which permission may be oral or in writing), the occupation is to be on the basis:*
- (a) *of a monthly tenancy only, terminable by 1 month's notice by either party; and*
 - (b) *at the Concession Fee then payable; and*
 - (c) *otherwise on the same terms and conditions, as they would apply to a monthly tenancy, as expressed or implied in this Concession.*
- 20.2 *On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Land.*

⁷ Section 4.5, Part 5 of CGP

- 20.3 *The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition.*
- 20.4 *The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Land then the Grantor can not require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement can not be required until the expiry or termination of the new concession.*

Legal status under Section 7^o(2) of the Conservation Amendment Act 1996

From Recommendation Report (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.

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

Discussion: The Applicant included a copy of a Dunedin Council letter dated 3 March 1994⁹ when the tenancies came under the Department of Conservations control. The final paragraph in this letter stated that "No lease agreements were available when the land came from the Otago Harbour Board and a licence was issued to P J & S G Farry by the Council which is enclosed. I suspect that the tenancies are subject to three months notice as to any rent review or to termination without compensation."

The following italicised text is an excerpt from the Leasing History provided by the Applicant:

8

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.

⁹ [DOC-7049312](#) Flashdrive link to Folder Letters then PDF letter 1994 DCC schedule of occupants

“PILOT HOUSE 3 (Site 3)”

1 Jan 1964 Otago Harbour Board lease to JP and MH Richardson

26 September 1973 Otago Harbour Board lease to John Law¹⁰

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

August 1997 Transfer Assignment of Lease PJ and SG Farry to Madeleine Childs and Philip Jarvis”

As stated by the Dunedin City Council (DCC), no lease agreements were made available when the land came to the DCC from the Otago Harbour Board. As a result, the agreement issued by the Dunedin City Council to Patrick Joseph Farry and Suzanne Gaye Farry, with an execution date of 12 July 1990¹¹ is the only agreement held by the Department to consider how to apply section 7(2) of the Conservation Amendment Act 1996.

In summary, it is recommended that no further investigation be carried out under section 7(2) of the Conservation Amendment Act 1996. When applying the Amendment Act to the scenario above, based on any agreements held by the Department at the time, it was considered that there was no right lawfully granted on or before 1 April 1987. This determination by the Department led to the houses being included in Table 3.11.1 in the Otago Conservation Management Strategy 2016 as “unauthorised” private accommodation and related facilities; as not being authorised under the concession’s regime.

It needs to be reinforced that the Minister’s delegate has already made a decision in principle to grant concessions and, to proceed with the proposals in accordance with the Recommendation Report. The purpose of this Report is to make a final decision on the proposals.

Analysis of effects:

From Recommendation Report (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.

¹⁰ [DOC-7049312](#) Flashdrive link to Folder Leases then .pdf Law ohb lease in perpetuity (*note: as described by Applicant*)

¹¹ [DOC-7049312](#) Licence to occupy issued by Dunedin City Council (DCC) to PJ Farry & SG Farry dated 12 July 1990 (licence commenced 1st day of October 1989)

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 recommendation 3 from Recommendation Report below.

From Recommendation Report (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 17ZAA¹² of the Conservation Act 1987 will apply to these applications if you decide to proceed, and grant concessions.

Recommendations from Section 8.0 of Recommendation Report

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.

Discussion: It is recommended that no further analysis of effects is required over and above what was carried out in the Officer's Reports.

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

5.0 Relevant information about the applicant

Pilot House No. 2: change of trustee

On 14 July 2022, Richard Allen in his capacity as co-owner and legal representative for Pilot House/Cottage No 2 contacted Kelvin Brown, DOC Permissions Advisor by phone advising that Vincent George no longer had an interest in Pilot House No 2. Richard requested that all further invoices be sent to him. I asked him to send an email to this effect. The email stated *“Further to discussions on the phone this morning, please ask your accounts section to send any rate demand or rental invoices to me addressed to Sherwood Trustees Limited, which will also now be the applicant/licensee/lessee.”*

Kelvin Brown, DOC Permissions Advisor sent an email on 18 July 2022 requesting the following confirmation:

“I will get the National Transaction Centre to send invoices for Pilot House No.2 addressed to you c/-Sherwood Trustees Limited.

Question - The Applicant’s with a financial interest currently listed against Pilot House No.2 are:

Vincent Paul GEORGE, Diane Margaret GEORGE, Liane Josephine FARRY, Richard Vivian Marsh ALLEN, GSM TRUSTEES LIMITED

Please confirm if my assumption is correct, that the only change to make to the list above is that Vincent Paul GEORGE no longer has a financial interest and is to be replaced by Sherwood Trustees Limited.”

Richard Allen responded by return email *“No, the sole owner is Sherwood Trustees Limited.”*

Kelvin Brown sent a request on 9 September 2022 for a *Credit Application Form* to be completed by Sherwood Trustees Limited followed by an email on 15 September 2022 requesting a copy of Sherwood Trustees Limited *Trust Deed* and a copy of the *Sale & Purchase agreement*.

Richard Allen responded advising that the sole owner was in fact Sherwood Avenue Trustees Limited not Sherwood Trustees Limited (which happened to be an unrelated registered company). A completed credit application form and trust deed for Sherwood Avenue Trustees Limited have been received by the Department.¹³

Recommendation on change of trustee (site 2)

This change to the original Applicants’ who applied for the concessions i.e. those with a financial interest in Pilot House/Cottage No. 2, could be agreed to in a number of ways:

As Decision Maker you may decide that your preference is to:

- (i) Continue to consider granting concessions to the original Applicant’s as shown in Table 1, column 2 above being *Vincent Paul GEORGE, Diane Margaret GEORGE, Liane Josephine FARRY, Richard Vivian Marsh ALLEN, GSM TRUSTEES LIMITED.*

¹³ [DOC-7158136](#) Background information; [DOC-7158189](#) Credit Application Form; [DOC-7158190](#) Trust Deed

This will necessitate the need for a formal assignment process to be followed if items (ii) & (iii) below are the end result required by the new owner/s of pilot house No 2.

OR

- (ii) Recognise the change of trustee from GSM Trustees Limited to Sherwood Avenue Trustees Limited, with Sherwood Avenue Trustees Limited now being the sole owner of Pilot House/Cottage No 2. There may be reservations from your perspective with this option as a company is often nominated or set up as trustee of a trust to eliminate a trustee's personal legal responsibility to creditors.

OR

- (iii) Recognise the change of trustee from GSM Trustees Limited to Sherwood Avenue Trustees Limited and still include Richard Vivian Marsh Allen as a co-owner (joint concessionaire). Refer to jointly and severally liable proposed special condition 34.

To assist in your deliberations, tiered recommendations have been included in section 9.0, recommendation 2 in this Report, based on the options outlined above.

Other relevant information

No further additional relevant information was brought up in the Recommendation Report to what was covered in the signed Officer's Reports referred to in Table 1, column 3 in this Report. It is appropriate to include the following from the Recommendation Report.

From Recommendation Report (*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.

6.0 Proposed operating conditions

Summary of standard conditions proposed in response to analysis above:

No further relevant information was brought up in submissions. Refer to the Concession contract documents referred to in Table 1, column 4 in this Report.

Proposed amendment to standard conditions:

None required.

Summary of special conditions proposed in response to analysis above:

No further relevant information was brought up in submissions. Refer to section 6.5 and 6.5.1 in the signed Officer's Reports referred to in Table 1, column 3 in this Report.

Proposed amendment to special condition:

None required.

Concession Activity

The concession activity for each of the 4 proposals are in accordance with the Officer's Reports and summarised in section 1.0 in this Report, with the exclusion of subletting at sites 3 & 4 which has been discussed below under fees.

The recommended final lease, licence and easement areas for each site

Site	Accommodation Type	Lease Area m ²	Licence Area m ²	Easement Area (Right of Way) m ²
1	Cottage/Pilot House	260	2,730	2,850 (950m long x 3m wide)
2	Cottage/Pilot House	275	2,065	2,925 (975m long x 3m wide)
3	Cottage/Pilot House	153	1,077	3,000 (1,000m long x 3m wide)
4	Dwelling	50	190	3,075 (1,025m long x 3m wide)

Term: The following recommendations were included in the Recommendation Report and have been discussed below.

From Recommendation Report (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 recommendation 2 from Recommendation Report below.

Recommendations from Section 8.0 of Recommendation Report

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)¹⁴ and s.17Z(3)(a)^{15,16}.

¹⁴ 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."

¹⁵ 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:"

¹⁶ 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:"

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.

Discussion: As Decision Maker, you have had the opportunity to read the information received from the Applicant that was included in the Recommendation Report, on the Applicant's contention that exceptional circumstances exist to warrant a longer Term. It is recommended that the Applicant has provided no further evidence to satisfy you that exceptional circumstances do exist and, the final expiry date of 31 August 2036 (being in accordance with policy in the Otago CMS), is considered appropriate and, that the Terms remain as:

- 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.

Fees:

Processing Fees¹⁷

Processing costs to be apportioned between the 4 sites amounted to \$26,336.20 (excl GST) i.e. \$6,584.05 each. If the concessions are granted, processing costs are only waived up to the concessions being approved.

Ongoing Concession Fees

The ongoing fees are in accordance with the signed Officer's Reports¹⁸ and Tables 2 & 3 below, noting that sites 3 & 4 will no longer be renting/subletting therefore, there is no requirement for a % of gross revenue derived from all rental arrangements to be include and, there will no longer be a requirement for an Activity Return Schedule 6.

¹⁷ Cost recovery spreadsheet [DOC-7156393](#)

¹⁸ Section 6.2

Table 2: Lease and Licence Activity Concession Fees



Table 3: Easement Activity Concession Fees



It is noted that the pricing manual has recently introduced a minimum activity fee of \$2,000 per annum + GST for private accommodation and related facilities on conservation land. It was agreed, during the intention to grant decision that, for the first 3-yearly period of the commencement of any concession (if granted), the lease and licence activity fees for sites 3 & 4 be applied at the rates in Table 2 above.

Bond

The Applicant raised concerns at the need for a bond or bank surety being imposed. See recommendation 4 from Recommendation Report below.

Recommendations from Section 8.0 of Recommendation Report

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 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.

Discussion: The Decision Maker agreed in each of the Officer's Reports that bonds or bank sureties should be imposed pursuant to section 17X(e) of the Conservation Act 1987²⁰.

¹⁹ Share of [redacted] per annum + GST split 4 ways

²⁰ *Bond*

The Concessionaire must provide the Grantor with a bond as described in Schedule 5 issued by a surety approved by the Grantor:

With respect to the imposition of a bond or bank surety. For context, an extract from section 6.4 of the Officer's Report for site 1 is excerpted below:

Bond discussion excerpted from Site 1 Officer's Report

6.4 Bond

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

17X Power of Minister to impose and enforce conditions

(e) the provision by the concessionaire of bonds—

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

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

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

District office comments on imposition of bond

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

Dunedin Service Centre comments on imposition of bond

Even after taking into account the District Office comments above, and the applicant providing details of comprehensive "Home Sum Insured" cover²¹. As "Home Sum Insured" will only cover an insurable event, any natural event that makes the house uninhabitable and necessitates the removal of any infrastructure, may leave the Department exposed to significant financial risk i.e. removal and rehabilitation costs if the applicant does not meet the conditions of any concession

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

²¹ Section 4.2.2, Table 7 (item 4) and Section 4.5, Table 8 (Item 3.11.4(g)) in this Report

(if granted). Accordingly, the Department needs to protect itself to this exposure to possible financial risk.

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

Refer to section 9.0 in this Report, recommendation 2.

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

If you consider the criteria for the “provision by the concessionaire of bonds” under section 17X(e) it can be concluded that in the last decade the only costs that the Department has incurred has been those costs associated with trying to get the 4 Aramoana houses and dwelling authorised - section 17(X)(e)(i). With regard to section 17(X)(e)(ii), the standard and proposed special conditions should mitigate any effects of the activity if concessions are granted. The impact of perceived coastal hazards and sea level rise risk has been ‘*reasonably foreseen*’ during the processing of the applications.

With regards to coastal hazards and any potential impact on the houses and dwelling at this location. As demonstrated at the Hearing, there was conflicting evidence produced by objector Forest and Bird and the Applicant on the gradual effect of climate change and sea level rise risk at this location, coupled with unpredictable adverse weather events.

Paul Smale, on behalf of Forest and Bird, referred to atmospheric warming and sea level rise and referred to Google earth model of elevation for the dwellings, estimating the elevation of the housing sites to be 14 cm above sea level.

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.

Mr Allen, on behalf of the Applicant’s, 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

In conjunction with any decision on the imposition of bonds, it is recommended that there be no derogation from the requirement to have comprehensive insurance cover as discussed in each Officer’s Report that, if concessions are granted, will be included in Item 14 of Schedule 1 of any Concession (Lease and Licence). This item in Schedule 1 also makes reference to the comprehensive standard insurance conditions in clause 13 of Schedule 2. If granted, the insurance requirements to be included in Item 14 of Schedule 1 are:

Types and amounts:

Public Liability Insurance for:

- a) General indemnity for an amount no less than \$1,000,000.00; and*
- b) Third party vehicle liability for an amount no less than \$500,000.00; and*
- c) Comprehensive Home Sum Insured.*

Subject to review on each Concession Fee Review Date.

As an aside, it is noted that there have been recent changes to EQCover for damage caused by natural hazard events with the cap increasing from \$150,000 to \$300,000. The owners of the buildings and related structures in this Report will only get automatic cover if they have a current private insurance policy that includes fire insurance.

It will be up to the Decision Maker to decide, as a condition of granting any concessions, whether to continue to impose a bond (as decided in each Officer's Report) or, decide not to impose before a concession is granted. Accordingly, recommendations have been included in section 9, recommendation 2 in this Report for a decision on the imposition (or non-imposition) of a bond.

7.0 Applicant's comments on draft report

As stated in the Recommendation 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 was recommended that a copy of 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.

If the Decision Maker decides not to impose bonds, and after taking into account any other matters raised in this Report, the Decision Maker may consider that they are in a position to make a final decision on the proposed activities, without the need to seek further comment from the Applicant. This decision to send or, not to send a draft copy of the Report to the Applicant for comment has been included in section 9, recommendation 5.

8.0 Summary and Conclusions

The proposed special conditions are those that were approved in the Officer's Reports as listed in Table 1, column 3 in this Report.

No renting or subletting

The Applicant has confirmed that there will be no renting/subletting at the 4 sites, namely site 3 and 4. Accordingly, Activity Fees in Item 6 of Schedule 1 are to exclude the requirement for a % of gross annual revenue for this activity and, Schedule 6 (Activity Return) is deleted and, the proposed concession activity for sites 3 & 4, as described in section 1.0 in this Report, is amended to read:

Site 3:

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

Site 4:

To occupy land by dwelling, associated buildings (outdoor toilet), ancillary structures (water tank tower) and improvements situated at North Spit, Aramoana.

Pilot house No 2 - change of trustee

This has been explained in section 5.0 in this Report and reflected in the recommendations to the Decision Maker in section 9.0, recommendation 2 below.

Bonds or bank sureties

As discussed in section 6.0 in this Report, the decision in each of the Officer's Reports was to impose a bond or bank surety. The Applicant asked at the Hearing if they can receive a copy of this Final Report before a final decision is made on the bond (or bank surety) and public liability insurance and this request was supported by the Hearing Chair in the Recommendation Report.

Conclusion

It is considered that all the relevant matters raised in the Officer's Reports, objections/submissions and comments have been adequately addressed and, any adverse effects on conservation values such as biodiversity, historic, social and amenity values resulting from the activities are understood and can be adequately avoided, remedied or mitigated by conditions of any concessions (if granted).

It is recommended that the Decision Maker, as the Minister's delegate, grant concessions pursuant to section 17Q(1) of the Conservation Act 1987.

9.0 Recommendations to decision maker

Pursuant to the delegation dated 9 September 2015 / 7 July 2019 it is recommended that the Permissions Manager, Hokitika and Dunedin, Planning Permissions and Land Unit:

Recommendation 1 (Pilot House/Site 1):

1(a) Agree that if concessions are granted a bond is to be imposed pursuant to 17X(e):

~~Agree~~/ Disagree

1(b) Approve the granting of a Notified Concession (Lease and Licence) and Notified Concession (Easement) to **Elizabeth Anne Dawe** subject to the standard concession contract; and the special conditions identified in this Report:

Approved / ~~Declined~~

Comment (if any): In the case of these particular houses, I consider that the general insurance requirements that include public liability insurance will suffice noting that it would be preferable to impose a bond to ensure the Dept does not incur liability if the concessionaire abandons the building however noting these facilities have been in place for a long time, consider there is minimal risk of abandonment. It is also noted that the Department has initiated some work on understanding how and when to impose bonds however this work is just in the initial stages and it would be unfair at this point to delay decisions further on these applications or to make a decision on bond imposition that may be inconsistent with upcoming policy and/or guidance.

Recommendation 2 (Pilot House/Site 2):

2(a) Agree that if concessions are granted a bond is to be imposed pursuant to 17X(e):

~~Agree~~/ Disagree

2(b)(i) Agree to grant a Notified Concession (Lease and Licence) and Notified Concession (Easement) to **Vincent Paul George; Diane Margaret George; Liane Josephine Farry; Richard Vivian Marsh Allen; GSM Trustees Limited** subject to the standard concession contract; and the special conditions identified in this Report:

~~Agree~~ / Disagree

OR

2(b)(ii) Agree to grant a Notified Concession (Lease and Licence) and Notified Concession (Easement) to **Sherwood Avenue Trustees Limited** subject to the standard concession contract; and the special conditions identified in this Report:

~~Agree~~ / Disagree

OR

2(b)(iii) Agree to grant a Notified Concession (Lease and Licence) and Notified Concession (Easement) to **Richard Vivian Marsh Allen and Sherwood Avenue Trustees Limited** subject to the standard concession contract; and the special conditions identified in this Report:

Agree / ~~Disagree~~

Recommendation 3 (Pilot House/Site 3):

3(a) Agree that if concessions are granted a bond is to be imposed pursuant to 17X(e):

~~Agree~~/ Disagree

3(b) Approve the granting of a Notified Concession (Lease and Licence) and Notified Concession (Easement) to **Madeleine Jill Child and Phillip Matthew Jarvis** subject to the standard concession contract; and the special conditions identified in this report:

Approved / ~~Declined~~

Recommendation 4 (Dwelling/Site 4):

4(a) Agree that if concessions are granted a bond is to be imposed pursuant to 17X(e):

~~Agree~~/ Disagree

4(b) Approve the granting of a Notified Concession (Lease and Licence) and Notified Concession (Easement) to **Joseph Vessels** subject to the standard concession contract; and the special conditions identified in this report:

Approved / ~~Declined~~

Recommendation 5 (as discussed in section 7 in this Report):

5. Agree that a draft copy of this Report be sent to the Applicant before a decision is made:

~~Agree~~ / Disagree

Comment (if any): The “applicant” has reviewed all documentation, including reports and draft contracts that have highlighted the insurance conditions that are a requirement for all concessions and has had the opportunity to comment and provide feedback at each opportunity. The issue pertaining to the term has been well canvassed during the period of consideration.

Decision Maker comments (if any):

As decision maker, I needed to consider a significant amount of information in the initial Officer’s report, along with the objections and submissions received during the public notification stage that formed the hearing report, and finally, the decision report that has outlined the recommendations. I have provided comment above with regard to where the decision made has been required to aide the understanding, particularly with regard to not imposing a bond at this point. In making my decision on the term, I am cognisant of the consistent approach to be taken by DOC with regard to decisions about private accommodation on public conservation land. It is unlawful to grant concessions in perpetuity. I appreciate this has been a lengthy and stressful time for the applicants and wish to thank them for their engagement and patience in this process. It will be important to share this decision with the District, the public and any other stakeholders who have been party to getting to this point.



Signed by Judi Brennan, Permissions Manager
Hokitika and Dunedin, Planning Permissions and Land
Pursuant to the delegation dated 9 September 2015 / 7 July 2019

Date: 21 October 2022