



Permission Decision Support Document

Application Details

Decision Maker Dave Hayes - Operations Manager, the Sounds

Applicant Wakawaahi Limited

Permission Number 61134-OTH, and 63558-OTH

Permission Type Lease / Licence, and Easement

1. Purpose

To make a decision on the application.

2. Context

The department has received an application from Wakawaahi Limited to lease an existing boatshed (owned by applicant) including a bulk fuel tank, total area 660 sqm, within Conservation Area - Accretion Clova Bay. Accretion Clova Bay sits adjacent the Sounds Foreshore Reserve in Clova Bay, Marlborough Sounds. (61134-OTH).

An additional application has been received for an easement (63558-OTH) to incorporate the existing power cable and to add a vehicle right of access.

This report will address the assessment of both applications however there will be two distinct sections at the end of the report for the decision maker to consider. If approved, there would be two permits as a result, one for the lease/licence and another for the easement.

Background

- i. The structure on the land is an old timber sawmill building. The building is owned and insured by the applicant. The jetty is also owned and maintained by the applicant.
- ii. Previous licence concession was held by Sealord Shellfish Limited who had a licence for the structure and land.
- iii. A new licence was issued to Clova Cottages Limited for the same structure and area of land as a result of Sealord's selling its operations in 2004. (PAC-10-07-006)
- iv. The Clova Cottages Limited's licence was for a changed activity "vehicle, boat and general storage and parking for recreational purposes".
- v. A variation was made to the concession 18.3.2009 to allow for an underground power supply to be laid between the cottages and the boat shed.
- vi. Clova Cottages hold a concession (PAC-10-07-006) which expired on 31 December 2013 and is sitting at "Rolling on" in Permissions Data base. The Applicant had enquired on 7 November 2013 about renewing this concession and was advised he would need to apply for a new license.
- vii. The boat ramp itself is not situated on public conservation land.
- viii. An application was received on 26 November 2013.
- ix. Due to a number of issues relating to the application, it was never processed and remains at "Rolling on" in the database.
- x. New applications were received in 2017 under the name Wakawaahi Limited, which is the business set up to manage the boat shed. Clova Cottages still also exists as a business to manage the cottages.
- xi. The lease/licence application was originally received on 16 August 2017. After further discussions with the applicant a revised application was received on 19 December. The changes are detailed below.
- xii. There is a bulk fuel tank onsite. This was brought up to required standards in February 2015, as demonstrated in the emails attached at: [DOCDM-1600459](#).

The previous history of what has occurred is not clear, but it appears that there has been confusion on whether this should be processed as a lease, a licence or declared a Sounds Foreshore Reserve. Applying current policy, these applications should be processed as:

- 1) a lease / licence application, for the footprint of the building and the fuel tank storage.
- 2) an easement application for the right to convey electricity and right of vehicle access.

Between the two applications being submitted in August and December 2017 further discussions took place with the applicant regarding exactly what activities he wanted to carry out and to establish what area he then needed to apply for. To provide an overall chronology of those applications, I will set out below those activities that originally and finally applied for.

August Lease App DOC-3142105	Final Lease App DOC-5382869	Notes
Licence area 3,000 sqm	Lease 550 sqm and licence 110 sqm	Removed the wider area that was being used as a vehicle turning space (i.e. does not need a concession)
Native planting of the reserve	Removed	Planting does not need a concession, it is instead to be done under the agreement of district office
Temporary rope barrier	Removed	Applicant will liaise with district office if they consider that there are any H&S issues we need to be aware of
Moveable table and chairs	Removed	Not a permanent structure so does not need a concession. App to speak with district office if and when want to place items on Reserve.
Parking / manoeuvre boats	Removed	This activity formed the main part of the 3000 sqm licence area. This area is open to the public therefore the applicant does not require a concession to use his vehicle to tow the boat.

Application:

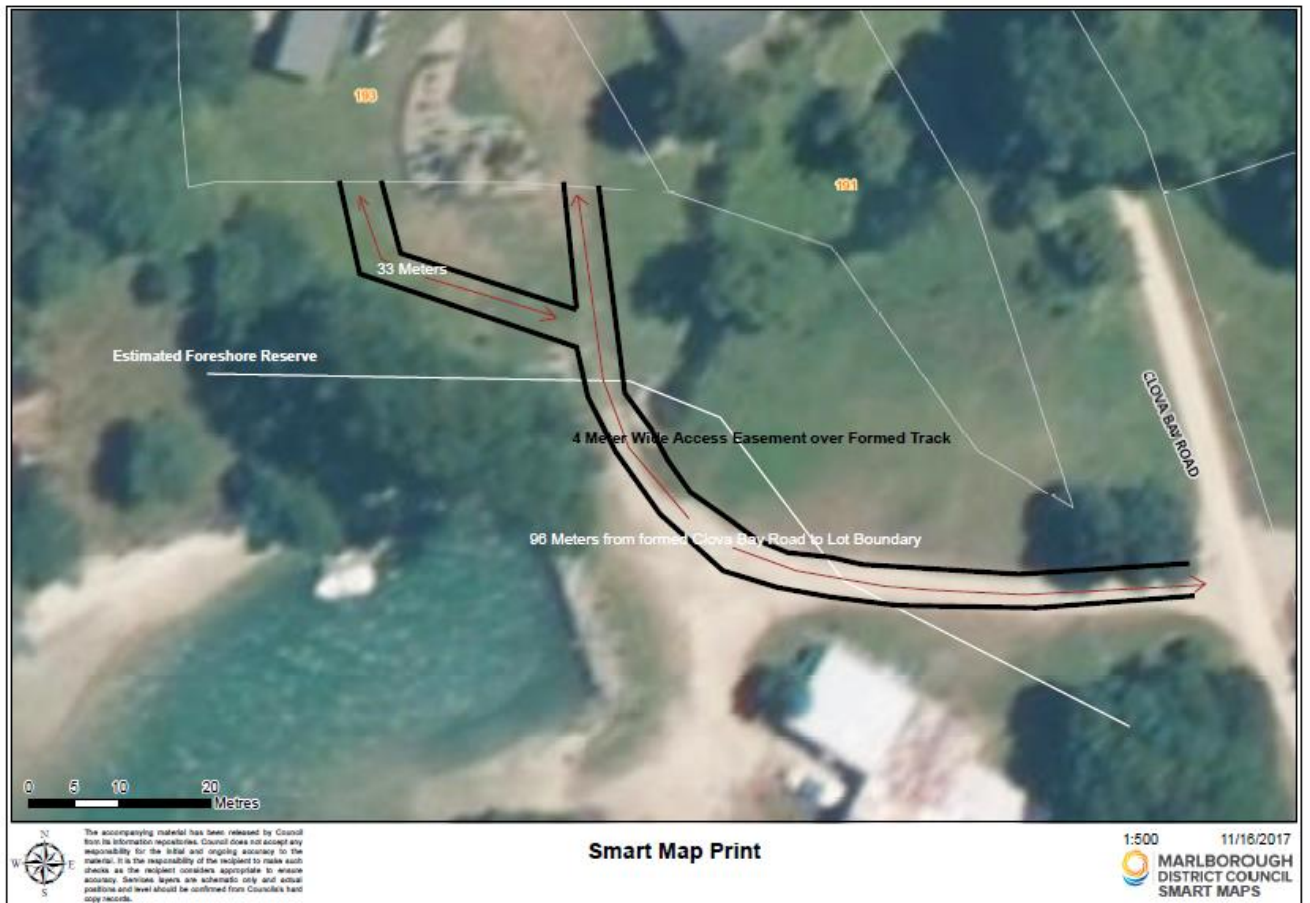
Lease / Licence

Lease of the footprint of the boatshed at 550 sqm, together with licence area of 110 sqm for the bulk fuel storage, as per the images below.



Easement

Easement application for vehicle access to Lot 2 DP 467993 from Clova Bay Road is by way of a forked track of 96 m and also 33m, as per the image below.



The power supply cable to supply power from the cottages to the boatshed has already been laid and is a length of 69 metres, as per image below.



Location/s

The activity has been applied for at the following location/s:

Conservation area	Description of location (if applicable)	Land status	District Office	Activity
<i>Conservation Area - Accretion Clova Bay</i>	<i>Lease / Licence / Easement Areas</i>	<i>Conservation Area</i>	<i>Picton</i>	<i>Lease area of the boat shed area (550m²). Licence area 110m² for fuel storage tank Easement for electricity cable and right of access to lower cottages.</i>

3. Statutory Analysis

**Statutory Analysis: Notified Concession under Part 3B of the Conservation Act 1987,
Amanda Edmonds, Permissions Advisor**

Intention to Grant

S17S: Contents of application

To be complete (s17S(1)), an application for a concession must include:

- A description of the proposed activity;
- A description of the locations for the proposed activity;
- A description of the potential effects of the proposed activity and proposed action to avoid, remedy, or mitigate adverse effects;
- The proposed term and reasons for that term;
- Relevant information about the application (as requested in the application form).

Criteria for decision:

1. Does the application include all the required information as per s17S?

Yes

S17T: Process for complete application

The intention to grant a concession must be publicly notified if it meets any of the following criteria:

- The concession type is a lease – this is for exclusive use of public conservation land;
- The term of the concession exceeds ten years (unless it is an easement – an easement may be granted for a term exceeding ten years without public notification);
- The effects of the activity mean it is appropriate to do so.

Criteria for decision:

2. Is public notification required?

Yes – a lease has been applied for

S17U(1) and (2): Analysis of effects

Criteria for decision:

3. Is the activity consistent with s17U(1) and (2) of the Conservation Act?

Yes

Discussion:

The applicant has identified the following potential effects:

Visual effect of a building on the landscape

The applicant has explained that the building has been part of the landscape since the mid last century. The area does not have any high or special landscape values and further, the building has been repainted using dark, low reflective paint in an environmentally sensitive colour. Planting has been carried out on the seaward side to block that building from view.

The building footprint excludes the public

The applicant makes the point that although the footprint is taking up exclusive use of PCL, the area has no significant values and the public has been excluded for many years now. They say that under the previous concession held by Sealord, the area was more unkempt, with mussel farming equipment left around. The applicant suggests that they are keeping the area tidy and in good condition.

Easement area – Authority has previously been granted by way of variation to remove the overhead power supply and to bury it underground. A 69m long power cable is now buried between the cottages and the boatshed. The applicant has applied to use a formed track as a vehicular right of access to the lower cottages; there are no issues.

Comment:

The applicant has identified less than minor effects that are adequately mitigated. This building has been on the Reserve in a highly modified area for a number of years and the applicant has kept it well maintained in such a way as not to detract from the area. It is noted that the applicant has done some planting of native plants in the past, and whilst this is a positive contribution, going forward any planting or maintenance of the area should be agreed by district office, Picton.

- *The Concessionaire must liaise with the District Office, Picton, to agree the details of any planting of vegetation of the licence area.*

The use of an easement to service power to the shed, together with a right of access to the cottages to the rear of the reserve is appropriate, with less than minor effects.

District office have no outstanding critical issues around effects.

The activity is considered to be consistent with S17(U).

S17U(3): Purpose for which the land is held

A concession shall not be granted if the proposed activity is contrary to the purpose for which the land is held.

Criteria for decision:

4. Is the activity not contrary to s17U(3) of the Conservation Act? (That is, consistent with the purpose for which the land is held – although note that ‘not contrary to’ is not as high as a test as ‘consistent with’).

Yes

Discussion:

Land held under the Conservation Act is held for Conservation purposes. Conservation is defined at Part 1 section 2(1) as 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’.

The boatshed itself does not detract from the reserve area, which has little by way of natural values, as was previously a logging site. The boatshed and wider are maintained to a high standard, as shown on the photos provided by the applicant. The use of the boatshed for recreational related purposes is in keeping with the reserve purpose.

The activity is not contrary to the purpose for which the land is held.

S17U(4): Can a structure or facility be reasonably undertaken elsewhere?

A concession to build or extend a structure or facility shall not be granted if the activity could reasonably be undertaken in another location that is outside conservation land or in another conservation area where the potential adverse effects would be significantly less, or if the activity could reasonably be undertaken in an existing structure.

Criteria for decision:

5. Is the activity consistent with s17U(4) of the Conservation Act? (That is, the activity cannot reasonably be undertaken at another location or in an existing structure?)

Yes

Discussion:

The close proximity of the boat shed to the boat ramp facilitates ease of launching the boat at the site. Also, the boat shed is an existing structure that the applicant bought from a previous concessionaire, so to ask the applicant to move the structure back onto the private land behind the reserve could be considered unreasonable. Any dismantling of the shed to move could also in itself cause more effects on the environment than permitting it to remain there. It is also reasonable that the underground cable remain, as is an existing structure and services the leasehold property.

S17U(5): Matters to consider when granting a lease or a licence

The Minister may grant a lease or a licence (other than a *profit à prendre*) granting an interest in land only if—

a) the lease or licence relates to 1 or more fixed structures and facilities (which structures and facilities do not include any track or road except where the track or road is an integral part of a larger facility); and

b) in any case where the application includes an area or areas around the structure or facility,—

(i) either—
(A) it is necessary for the purposes of safety or security of the site, structure, or facility to include any area or areas (including any security fence) around the structure or facility; or

(B) it is necessary to include any clearly defined area or areas that are an integral part of the activity on the land; and

(ii) the grant of a lease or licence granting an interest in land is essential to enable the activity to be carried on.

Discussion:

Lease / Licence area - The use of the boat shed for boats and related storage equipment necessitates exclusion of the public due to reasons of securing the items away from the public. The fuel tank is stored directly adjacent to the boatshed, which will form the licence area of this concession. The fuel tank is considered to be essential to the main activity of boat storage and usage and therefore is appropriate that it is stored there.

This activity is consistent with the provisions under S17U(5).

S17W: Relationship between concessions and conservation management strategies and plans

A concession shall not be granted unless the proposed activity is consistent with any established conservation management strategy, conservation management plan, and/or national park management plan.

Criteria for decision:

6. Is the activity consistent with all relevant statutory planning documents?

Yes

Discussion:

Conservation General Policy

The Policy sets out at section 10 the policies around accommodation and related facilities. Whilst the boat shed itself is not accommodation, it is a related facility. These structures may be allowed for public recreation where consistent with the outcomes planned for places, 10 (a). All accommodation and related facilities including replacements, additions and extensions on public conservation lands and waters should, 10 (e):

- i. Be consistent with the outcomes planned for places;
- ii. Avoid or otherwise minimise adverse effects on natural resources and historical and cultural heritage, and on the benefit and enjoyment of the public, including public access;
- iii. Complement and, wherever possible, be located close to existing accommodation and related facilities;
- iv. Be located, designed, constructed and maintained to meet all legal requirements and standards;
- v. Be of such a scale, design and colour that they harmonise with the landscape and seascape;
- vi. Provide for disabled people in places where this is practicable; and
- vii. Be available for use by the public.

New accommodation and related facilities should not be permitted 10 (g). Existing facilities 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 plan, 10 (h). A ground rental should be charged for existing private accommodation and related facilities.

Comment:

The associated Clova Cottages holiday rental accommodation is situated on private land however the boatshed is situated on Conservation Land and is an associated existing facility. The applicant has explained that they use the storage for storing their own boats and related equipment, for recreation purposes. They are also open to neighbours using the shed free of charge in the future should the requirement present itself.

In terms of the policies above:

- i. There are no relevant outcomes planned for places.
- ii. Any potential adverse effects by way of visual impairment upon the landscape has been mitigated by managing and maintaining the building to a good standard.
- iii. This criteria is met as is adjacent to holiday accommodation.

- iv. The building is owned, insured and maintained by the applicant, who has explained that 'it does not require a building warrant of fitness under the Building Act 1991 but is maintained to a standard that is safe and fit for purpose. Any work that is undertaken on it will necessarily need to meet the requirements of the Building Act 1991.'
- v. The building is well presented and harmonious with the surrounding landscape.
- vi. Not directly relevant
- vii. The boatshed itself is used by the applicant however they have confirmed that in the future if there is a need, the space could be made available to other users, i.e. local community.

The appropriate ground rental will be charged as per 10 (h), as discussed in the fee section below.

Following conditions to apply:

- *The Concessionaire must keep the building well maintained and painted in a colour to be agreed by district office (Picton).*
- *The Concessionaire is responsible for the safety of the fuel tank, and must ensure that they maintain it to the standards required under the relevant safety legislation.*

Nelson / Marlborough Conservation Management Strategy 1996-2006 (operative)

Occupation by buildings is discussed at section 14.10 of the CMS. The Objective is to allow only limited exclusive occupation of public land by buildings used for private or commercial purposes, in keeping with the legislation, and where natural, historic or recreational values will not be adversely affected.

The CMS discusses issues such as the use of public land for private gain is not acceptable unless sufficient and appropriate return is obtained by way of public benefit and fair rental as required by legislation.

Sounds Foreshore Reserve is discussed; boat sheds may be permitted in special circumstances such as the building is of low profile and will have minimum impact on the surrounding environment and the public access to the foreshore will not be restricted.

Relevant Implementations are set out and include;

- i. Existing use of land for buildings providing a community benefit may continue, so long as natural, historic, or recreational values are not affected.
- ii. Use of land for existing private baches other than on SFR may continue on short term nature, so long as natural, historic or recreational values are not affected, but approval to assign the licence may be withheld.
- iii. The owners of all buildings erected on areas administered by the Department may be required to paint them in a colour appropriate to the locality.
- iv. Any use of areas administered by the Department for existing commercial buildings must return a fair market rental.
- v. The consideration of any application for commercial buildings involving the exclusive use of land requires consultation with the public through advertising and with the relevant conservation board.

Comment:

The occupation of the boat shed does not adversely affect any natural, historic, or recreational values, as it is an existing structure and therefore the area is already modified; in addition, public access to the recreational area is not affected.

- *The Concessionaire must not obstruct public access to the Reserve.*

The applicant has explained that they use the boat shed for their own personal storage and do not commercially rent it out; therefore, this is not a commercial activity. A condition will be added to ensure that the shed remains as such and is not advertised for rent at any point in the future. If the applicant at some point in the future did want to charge rent, this would need to be assessed under the variation process, and consultation with the conservation board would be required as per implementation (v) above.

The Concessionaire must not charge rental for the use of the boatshed, without first obtaining authorisation from the Department. That authorisation would not be automatic and would be subject to assessment.

It can be argued however that the applicant does receive a private gain by having access to a large exclusive storage area, and as such, in order to comply with the CMS, there should be a fair rental being received. The current activity fee is set at \$900 per annum and has been since their existing licence was approved in 2005. A rental assessment has been carried out, as set out under the fee section.

4. Proposed Operating Conditions

Conditions

Standard conditions applicable to the proposed activity:

As per the draft concession documents:

Lease / Licence: [DOC-5459520](#)

Easement: [DOC-5459583](#)

Special conditions relevant to this application:

- *The Concessionaire must liaise with the District Office, Picton, to agree the details of any planting of vegetation of the licence area.*
- *The Concessionaire must keep the building well maintained and painted in a colour to be agreed by district office (Picton).*
- *The Concessionaire is responsible for the safety of the fuel tank, and must ensure that they maintain it to the standards required under the relevant safety legislation.*
- *The Concessionaire must not charge rental for the use of the boatshed, without first obtaining authorisation from the Department. That authorisation would not be automatic and would be subject to assessment.*
- *The Concessionaire must not obstruct public access to the Reserve.*

Monitoring

Monitoring is not considered a requirement, as the infrastructure is already in place.

Term

30 years

5. Decision Making

Recommendations

The applications are not contrary to legislation and are consistent with statutory plans, and are therefore recommended for approval in principle, subject to public notification and submissions.

Decision: Notified Concession (Lease/Licence) under Part 3B of the Conservation Act 1987

Decision in Principle – 61134-OTH

1. Deem this application to be complete in terms of s17S of the Conservation Act 1987:

Agree / ~~Disagree~~

2. Agree that if this application is approved in principle then the intention to grant the concession will be publicly notified:

Agree / ~~Disagree~~

3. Approve in principle the granting of a lease / licence to Wakawaahi Limited subject to the standard concession contract and the special conditions listed below:

Approve / ~~Decline~~

4. Having regard to s49(1) of the Conservation Act 1987, agree that any intent to grant the permission would be of local or regional interest only, in which case the publication of public notice on this matter be limited notice in the [paper name]:

Agree / ~~Disagree~~

Special conditions to be included:

Decision Maker to list the condition numbers to be included, as per section 6 (Proposed Operating Conditions) of this report.

Include all conditions listed in Section 7.

SIGNED

Signed by Dave Hayes, Operations Manager, Sounds
Pursuant to the delegation dated 9 September 2015

10/4/2018

Date