



ACCESS AGREEMENT

Between

The Dunedin City Council

and

Nash and Ross Limited

Access Agreement

Dated:

19/6/12

2012

Parties

1. The Dunedin City Council ("the Council")
2. Nash and Ross Limited ("NRL")

Background

- A. The Council is the owner of the Land known as Ocean Grove Reserve and is duly empowered to enter into this Agreement pursuant to Section 48(f) of the Reserves Act 1977.
- B. NRL is the holder of Coastal Permit 2010.256 relating to Sand Extraction within the Coastal Marine Area.
- C. In order to access the Coastal Marine Area and give effect to the Coastal Permit, NRL requires access to the Land.
- D. The parties agree to enter into an access arrangement in respect of the Land on the following terms.

It is agreed

PART 1 – PRELIMINARY PROVISIONS

1. PURPOSE

1.1 The purpose of this Agreement is to:

- a. grant NRL access to the Land to enable NRL to give effect to the Coastal Permit;
- b. set out the mitigation and remediation that NRL must undertake;
- c. set out the compensation that the Council is entitled to in consideration for granting access to the Land.

2. OVERVIEW

2.1 In this Agreement:

- a. Part 1 deals with preliminary matters, including definitions and the interpretation of this Agreement;
- b. Part 2 contains provisions granting NRL access to the Land and sets out each party's obligations under this Agreement;
- c. Part 3 sets out the compensation that the Council is entitled to in consideration for granting access to the Land; and
- d. Part 4 contains miscellaneous provisions.



3. DEFINITIONS

3.1 In this Agreement, unless the context otherwise requires:

"Coastal Marine Area"	means the area shown in the map attached as Schedule 3;
"Coastal Permit"	means Coastal Permit 2010.256 attached as Schedule 2;
"Land"	means the land described in Schedule 1;
"Operations"	means all of NRL's activities (including acts and omissions) on the Land.
"Related Company"	has the meaning set out in section 2(3) of the Companies Act 1993;
"RMA"	means the Resource Management Act 1991;
"Sand Extraction"	means the sand extraction activities authorised by the Coastal Permit.
"Working Day"	means a day on which trading banks in Dunedin are open for business (other than a Saturday or Sunday).

4. INTERPRETATION

- 4.1 Headings are for convenience only and do not form part of, or affect the interpretation of, this Agreement.
- 4.2 Words importing the singular include the plural and vice versa.
- 4.3 References to a party to this Agreement include that party's successors, personal representatives, executors, administrators and permitted assigns.
- 4.4 References to persons include any form of entity, whether or not having separate legal personality (including, without limitation, individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, governmental and other regulatory bodies and authorities).
- 4.5 References to a statute include references to:
- regulations, orders, rules or notices made pursuant to that statute;
 - all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
 - any statute passed in substitution of that statute.



PART 2 - ACCESS

5. TERM

- 5.1 This Agreement commences once it has been signed by both parties and, subject to clause 5.2, continues in force for the term of the Coastal Permit
- 5.2 This Agreement will immediately terminate if the Coastal Permit expires or is terminated for whatever reason.

6. ACCESS

- 6.1 The Council grants NRL the right to access the Land to enable NRL to give effect to the Coastal Permit on the terms and conditions set out in Schedule 4.

7. COUNCIL'S OBLIGATIONS

- 7.1 The Council is the registered proprietor of the Land.
- 7.2 The Council undertakes and warrants that it will not do anything that will interfere with NRL exercising its rights under this Agreement.

8. NRL's OBLIGATIONS

- 8.1 At all times during the term of this Agreement NRL is responsible for the acts and omissions of its employees, contractors and anyone else for whom it is responsible.
- 8.2 NRL shall maintain public liability insurance for damage resulting from NRL Sand Extraction activities and access to the site. The sum insured shall be not less than \$1,000,000 (one million dollars).
- 8.3 NRL will undertake the mitigation and remediation works described in Schedule 4. This clause 8 shall remain in full force and effect following the termination or expiry of all or any part of this Agreement.



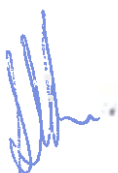
PART 3 – COMPENSATION AND INDEMNITY

9. COMPENSATION

- 9.1 In consideration for the Council entering into this Agreement, NRL shall pay the compensation set out in Schedule 5 to the Council annually in advance.
- 9.2 In addition to the compensation set out in Schedule 5, NRL agrees to reimburse all reasonable costs and expenses incurred by the Council in respect of negotiations with NRL and all reasonable legal and valuation fees in respect of the determination of this Agreement, upon presentation of appropriate invoices.
- 9.3 In addition to the compensation set out in Schedule 5, NRL will pay the Council compensation for any damage caused to the Land resulting from its Operations (other than damage arising as a result of Sand Extraction carried out in accordance with the Coastal Permit and the terms of this Agreement).

10. INDEMNITY

- 10.1 NRL indemnifies the Council and its employees and agents against all claims, damages, penalties and losses (including costs) incurred by the Council as the result of:
- a. any breach of NRL's obligations under this Agreement; or
 - b. any act or omission by NRL or any person under NRL's control.



PART 4 – MISCELLANEOUS

11. ASSIGNMENT

Assignment by NRL

- 11.1 NRL shall not assign or transfer any of its rights, obligations or interests under this Agreement, or novate this Agreement, without the prior written consent of the Council. The Council must grant their consent to such an assignment or transfer if:
- a. the proposed assignee or transferee executes a deed of covenant in which it agrees to be bound by and observe the terms and conditions in this Agreement as if it had been an original party to it; and
 - b. the proposed assignee or transferee is solvent, responsible and respectable.
- 11.2 Despite anything to the contrary in this Agreement any of NRL's rights or obligations under this Agreement may be exercised or performed by any employee, contractor, agent, joint venturer, Related Company or partner of NRL without the prior written consent of the Council.

Assignment by the Council

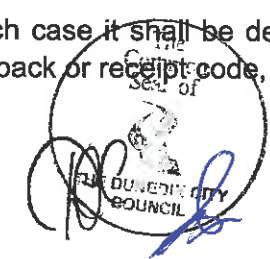
- 11.3 The Council shall not directly or indirectly assign, transfer, sub-license or otherwise dispose of any of their rights, obligation or interests under this Agreement without NRL's prior written consent. NRL must grant their consent if such a third party executes a deed of covenant in which it agrees to be bound by and observe the terms and conditions in this Agreement as if it had been an original party to it.

12. GST

- 12.1 All sums referred to in this Agreement are plus GST (if any).
- 12.2 The Council will confirm to NRL if they are registered for GST purposes.
- 12.3 If the Council is registered for GST then NRL, where required under the Goods and Services Tax Act 1985, will pay GST to the Council on the later of:
- a. the date that the payment is to be made to the Council under this Agreement; or
 - b. five Working Days after NRL receives a tax invoice from the Council.

13. NOTICES

- 13.1 Every notice or other communication given under this Agreement must be in writing and is deemed to be validly given if:
- a. given personally in which case it shall be deemed to have been received upon delivery;
 - b. sent by post (within New Zealand) in which case it shall be deemed to have been received two Working Days after the date of posting; or
 - c. sent by facsimile transmission or email in which case it shall be deemed to have been received on receipt of the correct answer back or receipt code,



to the relevant address as set out in Schedule 6 to this Agreement, provided however that a notice which is not received between 9am and 5pm on a Working Day shall be deemed to have been received at 9am on the next Working Day.

14. DISPUTES


- 14.1 If either party has any dispute with the other in connection with this Agreement
- a. That party will promptly give full written particulars of the dispute to the others.
 - b. The parties will promptly meet together and in good faith try and resolve the dispute.
- 14.2 If the dispute is not resolved within 10 Working Days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 14.3
- a. A party must use the mediation procedure to resolve a dispute before commencing any other dispute resolution proceedings.
 - b. The mediation will be conducted by a LEADR panel mediator chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society or the President's nominee.
- 14.4
- a. If the dispute is not resolved by mediation the parties will refer the dispute to a single arbitrator.
 - b. The single arbitrator will be chosen by the parties or, if they cannot agree, by the President of the New Zealand Law Society, or the President's nominee.
 - c. The arbitration will be conducted in accordance with the Rules in Schedules 1 and 2 of the Arbitration Act 1996.
- 14.5 The parties must always act in good faith and co-operate with each other to promptly resolve any dispute.
- 14.6 The procedures and time frames for any mediation or arbitration will be fixed by the mediator or arbitrator (as appropriate) if the parties cannot agree.
- 14.7 The parties must continue to comply with their obligations under this Agreement during the dispute resolution process but disputed payments may be withheld to the extent of the dispute.
- 14.8 This clause will not apply to:
- a. a dispute arising in connection with any attempted re-negotiation of this Agreement; or
 - b. any application by either party for urgent interlocutory relief.

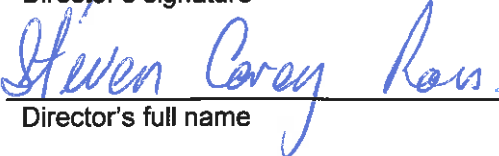
15. GENERAL

- 15.1 This Agreement is effective once both parties have signed and delivered this document or a copy of it to the other party (including by facsimile).
- 15.2 This Agreement sets out the entire agreement between the parties and replaces all earlier negotiations, representations, warranties, agreements and communications (whether oral or written) concerning its subject.
- 15.3 A variation to this Agreement is only effective if in writing and signed by both parties.


- 15.4 Each party shall promptly do all acts and things as may be reasonably required by the other party to carry out the intent and purpose of this Agreement.
- 15.5 If any provision of this Agreement is invalid, void or unenforceable at law, such provision shall be severable, be deemed to be deleted from this Agreement and shall not affect the validity, existence, legality or enforceability of the remaining provisions provided the severance does not frustrate this Agreement.
- 15.6 This Agreement is governed by and construed according to the laws of New Zealand. The parties agree to submit to the exclusive jurisdiction of the Courts of New Zealand.
- 15.7
 - a. If either party delays or does not exercise any right or remedy under this Agreement, it is not a waiver of that right or remedy.
 - b. The single or partial exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy or its further exercise.
 - c. The rights and remedies provided in this Agreement are cumulative. They do not exclude any rights or remedies provided by law.
 - d. Any waiver or consent given by a party must be in writing and will be effective only in the specific instance and for the specific purpose for which it is given.

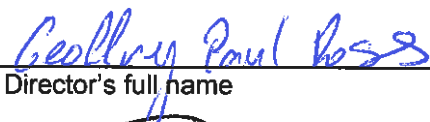
Signed by the Nash and Ross Limited:



 Director's signature


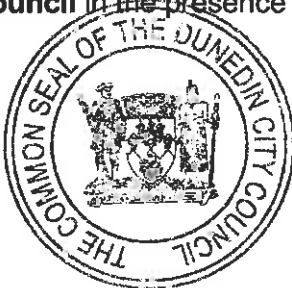
 Director's full name




 Director's signature



 Director's full name

THE COMMON SEAL of The Dunedin City Council in the presence of:



Common Seal



 Authorised Witness


 Authorised Witness

Schedule 1 – The Land

Aerial showing area for access is approximately 473m2 being part Section 52, Block VII Otago Peninsula SD part CFR 456176



COUNTERPART



Otago Regional Council

Our Reference: A339213

Consent No. 2010.256

COASTAL PERMIT

Pursuant to Section 104B of the Resource Management Act 1991, the Otago Regional Council grants consent to:

Name: Nash & Ross Limited

Address: 150 Mornington Road, Dunedin

To extract sand and to disturb the coastal marine area for the purpose of flood protection and extracting sand for commercial use

For a term expiring 1 May 2032

Location of consent activity: Tomahawk Beach, approximately 470 metres south west of the intersection of Tomahawk Road and Domain Avenue, Dunedin

Legal description of consent location: Secs 49 and 52 Blk VII Otago Peninsula SD and Common Marine and Coastal Area, Pacific Ocean

Map Reference: Within 150 metres of NZTM 2000 E1409163 N4913401

Conditions

Specific

- 1. Sand shall only be extracted from the area authorised in the plan attached in Appendix 1 to this consent.
2. For the term of this permit the total volume of sand extracted shall not exceed
(a) 7,100 cubic metres in any 12 month period and;
(b) From 1 October to 31 March the following year, total sand extraction shall be for volumes no greater than;
(i) 500 cubic metres in any 24 hour period; and
(ii) 800 cubic metres per in any 30 day period
(c) From 1 April to 30 September in a year, total sand extraction shall be for volumes no greater than;
(i) 300 cubic metres in any 24 hour period; and
(ii) 550 cubic metres in any 30 day period
3. The permit holder shall advise the Consent Authority of each intended extraction event, as soon as practicable, prior to any extraction event occurring. The advisory shall be in writing and require the following information to be provided:
(a) A description of what works are proposed as part of the extraction event, including;
(i) a description of where sand is intended to be taken from,
(ii) the approximate volume of sand to be extracted,
(iii) how long the extraction event is likely to take,



Mission Statement: "To promote the sustainable development and enhancement of Otago's resources"
70 Stafford Street, Private Bag 1954, Dunedin 9054. Telephone (03) 474-0827. Facsimile (03) 479-0015

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COUNTERPART



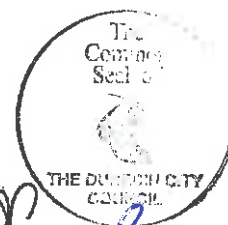
- (iv) if any extraction is intended to be deeper than 1 metre below the present beach level and what depth you intend to extract to,
 - (b) If any alteration of the outlet channel is proposed and a description of what those alterations are intended to be,
 - (c) location details of where it is required to extract sand at a depth exceeding 1 metre below the present beach level,
 - (d) The forecasted oceanic marine conditions for the week following extraction and;
 - (e) Colour photographs showing the condition of the beach. The photographs may be provided electronically but shall be of a sufficient resolution to be scaled up to no smaller than 200 x 150 millimetres.
4. The depth of extraction shall be only up to a depth to allow heavy vehicles access and manoeuvring on the sand.
 5. To allow for foreshore, dune and lagoon management, the consent holder shall follow any directions from the Consent Authority to modify the specific location, proposed timing and or volume of each sand extraction event.
 6. No extraction shall occur below the minimum beach profile level as identified by the plans attached in Appendix 2, or the line of mean high water spring within the authorised extraction areas, unless otherwise approved in writing by the Consent Authority.
 7. Sand shall not be extracted from within 5 metres of the base of any sand dunes.
 8. The consent holder shall ensure that any staff or contractors engaged to undertake work authorised by this consent abide by the conditions of this consent. A copy of this consent shall be present onsite at all times while any extraction is being undertaken.

Performance Monitoring

9. The consent holder shall keep a record of the quantity of sand removed. A return of the quantities removed shall be forwarded to the Consent Authority by 30 April and 31 October each year, and at any other frequency as the Consent Authority requests in writing.
10. Prior to any extraction event, in accordance with Condition 3(e), the consent holder shall take a minimum of 5 representative colour photographs, of a sufficient resolution so that they can be scaled clearly to 200 x 150 millimetres, showing the state of the beach conditions at that time. At least 4 colour photographs shall be taken showing the beach conditions from the approximate locations identified as 1- 4 on the map in Appendix 3 with at least 1 further photograph taken of the intended extraction area. The photographs shall be taken no more than 3 working days prior to the start of the extraction event notified under Condition 3.
11. Following any extraction event the consent holder shall take additional representative colour photographs, of a sufficient resolution so that they can be scaled clearly to 200 x 150 millimetres, of the extraction area after completion. These shall be forwarded to the Consent Authority within 5 workings days of the completion of any sand extraction authorised by Condition 3 of this consent.
2. During March each year for the duration of this permit, the permit holder shall complete a cross section survey through the extraction area showing the relative sand level at this location. The cross section shall be taken through the same location as the plans attached in Appendix 2 detailing the minimum beach profile



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level and shall be completed by a suitably qualified person. The cross section shall show the relative beach level against the minimum profile level to ensure sand is not being extracted below the minimum level. Survey results shall be deposited with the Consent Authority within ten working days of each survey, and all costs shall be met by the permit holder.

13. The permit holder shall carry out profile monitoring at parallel locations approximately 200 metres east and 100 metres west of the authorised extraction area identified in Appendix 1. The profile monitoring shall be undertaken and completed by a suitably qualified person and shall include one profile survey of each location specified, to be completed during March annually. Survey results shall be deposited with the Consent authority within ten working days of each survey, and all costs shall be met by the permit holder.

General

14. On completion of each extraction event, the consent holder shall ensure that the area of beach disturbed shall be contoured to a natural form, consistent with the adjacent beach areas, and all plant, equipment, chemicals, fencing, signage, debris, rubbish and any other material brought on site shall be removed.
15. Stockpiling of any sand or the creation of sand banks within the coastal marine area, other than during an extraction event, is prohibited. Should an extraction event as notified under condition 3, exceed 1 working day in duration any stock piles created shall be removed and the beach level reinstated to a natural form within 24 hours of the stock pile being created.
16. The consent holder shall ensure that:
- all machinery shall be clean, free of contaminants and in good repair, prior to entering the coastal marine area.
 - There is no storage of fuel or oil in Coastal Marine Area
 - That any machinery is not refuelled within the Coastal Marine Area.
 - In the event of contamination the consent holder shall undertake remedial action and contact the Consent Authority immediately via the Pollution Hotline number.
17. No contaminants are authorised to be discharged into the Coastal Marine Area.
18. If the consent holder:
- Discovers koiwi tangata (human skeletal remains), or Maori artefact material, the Permit Holder shall without delay:
 - Notify the Consent Authority, Tangata whenua and New Zealand Historic Places Trust and in the case of skeletal remains, the New Zealand Police.
 - Stop work within the immediate vicinity of the discovery to allow a site inspection by the New Zealand Historic Places Trust and the appropriate runanga and their advisors, who shall determine whether the discovery is likely to be extensive; if a thorough site investigation is required and whether an Archaeological Authority is required.
 - Any koiwi tangata discovered shall be handled and removed by tribal elders responsible for the tikanga (custom) appropriate to its removal or preservation. Site work shall recommence following consultation with the Consent Authority, the New Zealand Historic Places Trust, Tangata whenua, and in the case of skeletal remains, the NZ Police, provided that any relevant statutory permissions have been obtained.
 - Discovers any feature or archaeological material that predates 1900, or heritage material, or disturbs a previously unidentified archaeological or heritage



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site, the Permit Holder shall without delay:

- (i) Stop work within the immediate vicinity of the discovery or disturbance; and
- (ii) Advise the New Zealand Historic Places Trust, and in the case of Maori features or materials, the Tangata whenua, and if required, shall make an application for an Archaeological Authority pursuant to the Historic Places Act 1993; and
- (iii) Arrange for a suitably qualified archaeologist to undertake a survey of the site.

Site work shall recommence following consultation with the Consent Authority.

Review

19. The Consent Authority may, in accordance with Sections 128 and 129 of the Resource Management Act 1991, serve notice on the consent holder of its intention to review the conditions of this consent within 3 months of each anniversary of the commencement of this consent for the purpose of:
- (a) adjusting the consented volume of sand able to be extracted should monitoring under conditions 9 and 10 show that the consented volumes of sand are not available to be extracted or should future changes in beach conditions not permit extraction.
 - (b) determining whether the conditions of this consent are adequate to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
 - (c) ensuring the conditions of this consent are consistent with any National Environmental Standards.

Notes to Consent Holder

1. *For the purposes of complying with this consent an extraction event is defined as the continuous occupation of the coastal marine area for the purpose of extracting sand. This may be over consecutive working days. An extraction event is said to begin once the first piece of machinery / heavy vehicle enters the coastal marine area and ceases once the last piece of machinery has exited the coastal marine area. If the occupation of the coastal marine area ceases for more than one 24 hour period it is deemed to be 2 separate extraction events.*
2. *If you require a replacement coastal permit upon the expiry date of this permit, any new application should be lodged at least 6 months prior to the expiry date of this permit. Applying at least 6 months before the expiry date may enable you to continue to exercise this permit until a decision is made on the replacement application. Failure to apply at least 3 months in advance of the expiry date will require you to cease exercising this permit after the expiry date.*

Issued at Dunedin this 18th day of April 2012

Christopher P. Shaw
Manager Consents

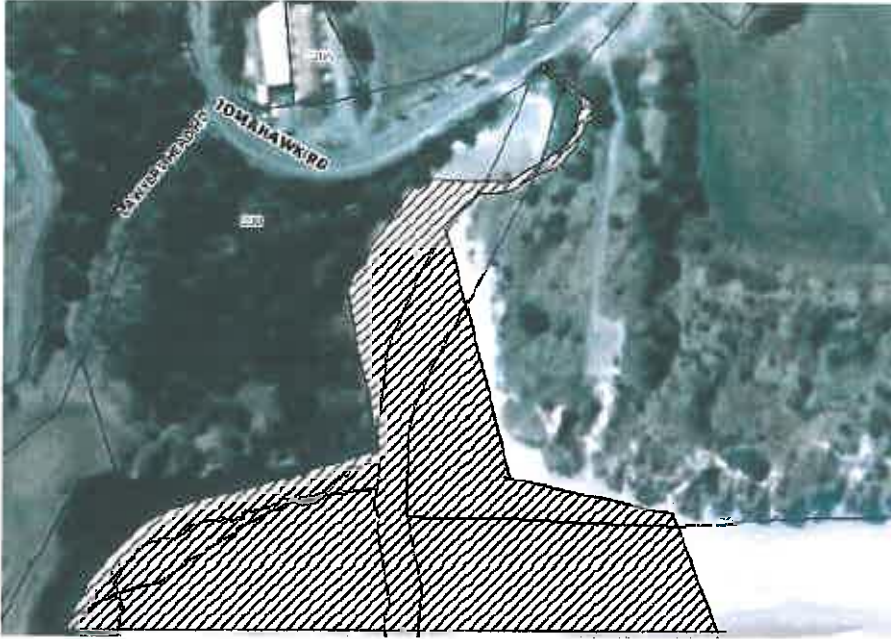


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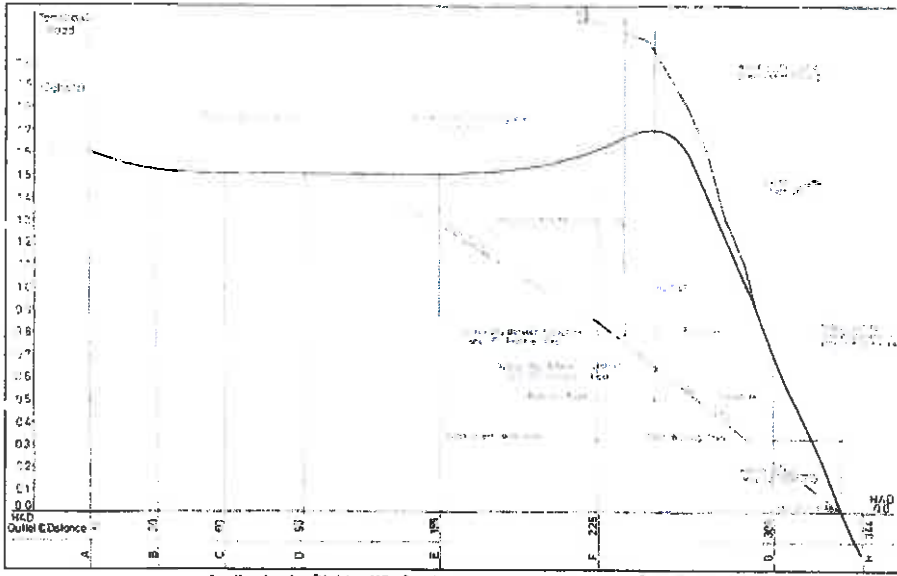
COUNTERPART

Appendix 1 to 2010.256 (extraction area – marked in black and white)



COURTESY

Appendix 2 to 2010.256 (Minimum Beach Profile)



Application for Right to Win Sand - Tomahawk Beach
Applicant: Nash & Ross Ltd

Beach Profile Date: 14th October 2010



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COUNCIL REPORT

Appendix 3 to 2010.256 (Photograph locations)



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COUNTESSANT



Consent No. 2010.257

Our Reference: A339213

COASTAL PERMIT

Pursuant to Section 104B of the Resource Management Act 1991, the Otago Regional Council grants consent to:

Name: Nash & Ross Limited

Address: 150 Mornington Road, Dunedin

To occupy the coastal marine area for the purpose of undertaking flood protection works and sand extraction

For a term expiring 1 May 2032

Location of consent activity: Tomahawk Beach, approximately 470 metres south of the intersection of Tomahawk Road and Domain Avenue, Dunedin

Legal description of consent location: Secs 49 and 52 Blk VII Otago Peninsula SD and Common Marine and Coastal Area, Pacific Ocean

Map Reference: Within 150 metres of NZTM 2000: E1409163 N4913401

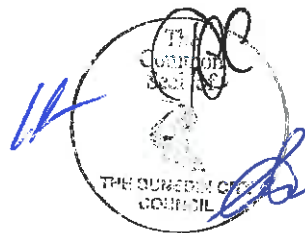
Conditions

Specific

1. This permit shall be exercised in conjunction with Coastal Permit 2010.256.
2. The occupation of the coastal marine area shall only occur within normal working hours between 7:30 am and 5:00 pm on weekdays. No occupation shall occur on weekends or public holidays.
3. The consent holder shall take all necessary precautions, to ensure public safety is maintained at all times. This may include exclusion of the public from beach areas as necessary to maintain public safety. A temporary sign shall be placed on the beach, near to the vehicle and foot access area, during every extraction event, which is clearly visible to vehicles and other beach users advising that machinery is operating on the beach.



Mission Statement: "To promote the sustainable development and enhancement of Otago's resources"
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Notes to Consent Holder

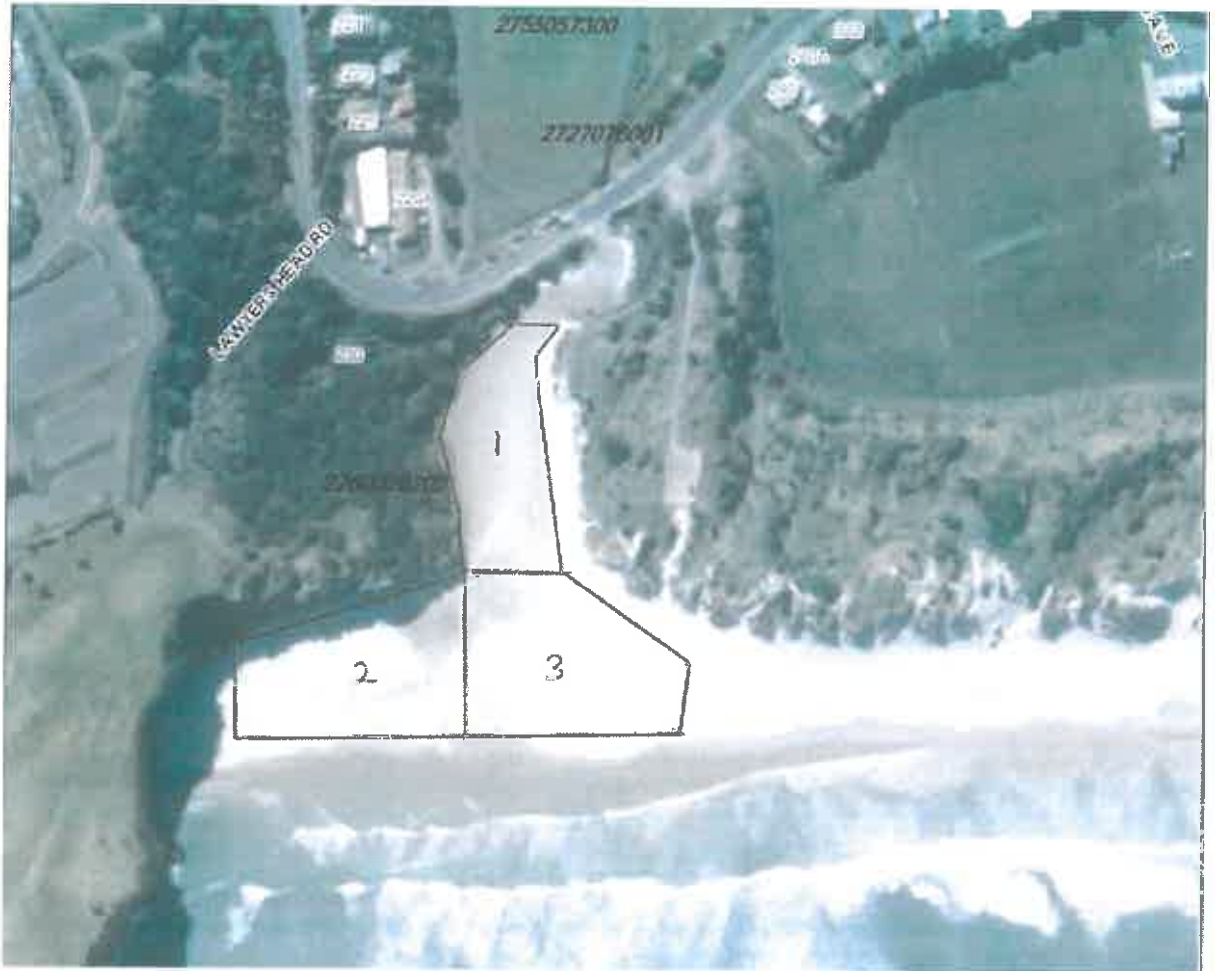
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Issued at Dunedin this 18th day of April 2012

**Christopher P. Shaw
Manager Consents**



Schedule 3 – Coastal Marine Area



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Schedule 4 – Terms and Conditions of Access

1. Period of Access

- a. NRL will give the Council at least 24 hours notice by telephone to the Council's Parks Officer of its intention to first enter on the Land and commence working on each and every occasion it enters onto the Land.

NRL will not first enter on to the Land without the prior approval of the Council.

- b. Following the first entry onto the Land as referenced above, further access will be permitted without further approval from Council on each occasion on Mondays to Fridays between 8am and 5pm provided that NRL shall notify the Council's Park Officer 24 hours in advance of each occasion that it intends to access the Land. The reason for this requirement is so that Council is fully aware of when NRL will be on the Land.

2. Route of Access

- a. NRL shall only use the access routes shown in Schedule 1.
- b. NRL shall be responsible for maintaining the access routes and NRL be required to reinstate the access routes upon expiry/termination of the Agreement.

3. Permitted Activities

- a. Sand Extraction is the only activity to be carried out by NRL in the Coastal Marine Area.

4. Conditions relating to Sand Extraction

- a. NRL shall exercise its right to extract sand from the Coastal Marine Area strictly in accordance with the Coastal Permit.

5. Rehabilitation

- a. When the Operations have been completed NRL will remove all of NRL's property from the Land and restore the Land to a standard at least as good as it was before commencement of the Operations.

6. Other conditions

The Council may reasonably impose other conditions ^{after consultation} at any time during the term of this Agreement and NRL will be required to comply with such conditions upon notification.





Schedule 5 – Compensation Payable

\$1,150 (one thousand one hundred and fifty dollars) plus GST per annum to be paid to the Council annually in advance. The compensation payable shall be reviewed every five years during the term of the Coastal Permit.



Schedule 6 – Addresses for Notices

The Dunedin City Council:

Mailing Address:

P O Box 5045

Moray Place

Dunedin 9058

Physical Address:

Civic Centre Building

50 The Octagon

Dunedin

E-Mail: cars.admin@dcc.govt.nz

Nash and Ross Limited:

150 Mornington Road

Dunedin 9011

