

BEFORE THE ENVIRONMENT COURT

Decision No. [2010] NZEnvC 145

IN THE MATTER of an appeal pursuant to Section 120 of the
Resource Management Act 1991

BETWEEN OUTER LIMITS LIMITED
(ENV-2007-CHC-000327)

Appellant

AND MARLBOROUGH DISTRICT COUNCIL

Respondent

Court: Environment Judge L J Newhook
Environment Commissioner R M Dunlop
Environment Commissioner W R Howie

Hearing: Blenheim 12 - 16, 26 - 27 April 2010

Counsel: M J Hunt and B J Cleary for appellant, and for Foodstuffs (South Island)
Limited (s 274 party)
P J Radich and M Radich for respondent
N A McFadden for Deny Properties Limited (s 274 party)
D J Clark for Option 5 Incorporated and B & S Smith (s 274 parties)

DECISION OF THE ENVIRONMENT COURT GRANTING CONSENT



- A. Consent granted (by agreement of all parties).**
- B. No issue as to costs.**

[1] This appeal was called in open court on 12 April 2010 for a hearing contemporaneously with a plan appeal involving the same parties, ENV-2008-CHC-000163.

[2] The appeal the subject of this brief decision was against a decision of the respondent refusing certain land use and water consents, while the plan related appeal was in relation to Proposed Variation 42 to the Proposed Wairau Awatere Resource Management Plan.

[3] After nearly 5 days of hearing the parties announced through counsel that they considered that there was a good prospect that they could settle the consent appeal amongst themselves by negotiation.

[4] We accordingly adjourned until second of our planned sitting weeks, commencing 26 April 2010, to give the negotiations a chance to bear fruit.

[5] It would be fair to say that the negotiations appeared to us from a distance to follow a slightly rocky road, because when the case was called again on 26 April 2010, the parties sought more time to conclude matters. We accordingly granted a series of short adjournments during the next two days, and were ultimately provided with a signed memorandum of counsel confirming that agreement had been reached.

[6] We conferred with counsel and the parties in open court over the draft conditions of consent then lodged. By and large they appeared acceptable to us, subject to some minor changes.

[7] Upon agreement to those changes being confirmed by counsel, we announced that it was our decision that the consents were granted on that basis.



[8] We have made the required changes on the conditions tendered. Those conditions are annexed, firstly, as to land use consents, and secondly, as to discharges to water (Murphy's Creek).

[9] The land use consents are for:

- [a] a single building and home improvement centre (in the nature of a large format retail Bunnings outlet) or similar;
- [b] two only retail supply stores (in each case where the overall focus of the goods and services were supplied as on the rural sector);
- [c] a single supermarket;
- [d] a stand-alone cafe (unlicensed) to a maximum gross floor area of 300m² with no drive-through take-away facility of a kind typical of a fast-food chain;
- [e] a single unmanned refuelling facility ancillary to and operated by the supermarket (with no more than 4 dispensing stations and a canopy of no more than 400m²).

[10] A feature of the land use consents is a covenant, volunteered by the appellant, limiting future additional development on the site for a period of 5 years from the commencement of the resource consent, with further limitations for a period of 10 years from the commencement.

[11] A copy of the covenant is also attached to this decision.

[12] At an early stage of the hearing counsel tendered a memorandum indicating that a consent position had been reached in relation to the appeal over Variation 42. We have focussed on finalising what we considered to be the more urgent matter, the settlement of the appeal relating to the resource consent, and have not yet turned our minds to the Variation 42 settlement proposal. That will occur shortly.

[13] No issue of costs arises in relation to the resource consent appeal.



[14] The resource consent appeal is allowed and the consents granted on the terms appearing in the conditions of consent annexed, together with the covenant, Attachment 1, and a schedule of signage, Attachment 2.

DATED at Auckland this 4th day of May 2010

For the Court:



L J Newhook
Environment Judge



A. LAND USE CONSENT

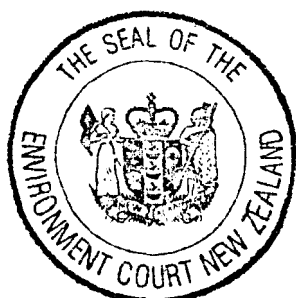
Land use consent is **granted** to undertake a development, known as Westwood, on Lot 2 DP 10461 and that part of Lot 2 DP 315225 (CT 60043) and that part of Lot 2 DP 367475 (CT 274058) shown cross hatched on Ayson & Partners Limited plan 10264 April 2010 Sheet 10 Issue A limited to:

- (i) A single building and home improvement centre (in the nature of a large format retail Bunnings outlet, or similar);
- (ii) Two only rural supply stores (in each case where the overall focus of the goods and services supplied is on the rural sector)
- (iii) A single supermarket;
- (iv) A stand alone cafe (unlicensed) to a maximum gross floor area of 300 square metres with no drive through take-away facility of a kind typical of a fast-food chain.
- (v) A single unmanned refueling facility ancillary to and operated by the supermarket (with no more than four dispensing stations and a canopy of no more than 400 square metres)

In association with the above automatic teller machines may be incorporated into any of the proposed buildings.

The tenancies (i)-(v) above shall be single tenancies and may not be further subdivided to the intent that only a single tenant and commercial activity shall be permissible in each of the buildings referred to above.

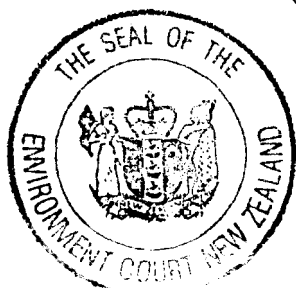
The land use consent is granted subject to the following conditions.



Conditions

General

- 1 The development shall be undertaken generally in accordance with the following suite of plans, specifications and reports:
- (i) Site Plan prepared by Studio Pacific Architecture (Drawing No: SK-002 Revision D);
 - (ii) Floor and Elevation Plans of Building 1 prepared by McCoy and Wixon dated April 2010 (Drawing Nos: SK3 and SK4 Rev 0 14 April 2010 and Drawing No. SK2 Rev 1 17 April 2010);
 - (iii) Plans of the Refueling Facility prepared by Technitrades (Drawing Nos 2341 C1, 2,4,5 AND 84 Version A);
 - (iv) Floor and Elevation Plans of Building 5 prepared by Hume Architects (Drawing No 0644 Plan 02 Revision 2 and Plan 03 R, and "SML/MED Warehouse Cart" Drawing No: BCC-001-14, Revision B, Dated 4 September 2009);
 - (v) Memorandum prepared by Cuttriss Consultants dated April 2006, including Revised Stormwater Calculations dated 21 April 2010 and Drawing Nos: 19631 ENGA, Sheets 1-6 dated April 2010);
 - (vi) Site Planting Concept prepared by Hudson Associates (Drawing Nos: 1003-1 Revision B) and Illustrated Plant List (Drawing 1003-2) but this plan to be extended to reflect the requirements of condition 8 hereof;
 - (vii) Lighting Report prepared by Electrical Consulting Services Ltd dated 23 April 2010.
 - (viii) Proposed Roundabout Layout prepared by Traffic Design Group (Drawing No: 9626-W1A dated 23 April 2010);
 - (ix) Supermarket B-Train Manoeuvres Plan 9b, Bunnings Semi-Trailer Manoeuvres Plan 9c and Semi-Trailer Manoeuvres Plan 9d prepared



by Traffic Design Group (Drawing Nos: ACAD 9626-W1/9, dated 10 June 2008);

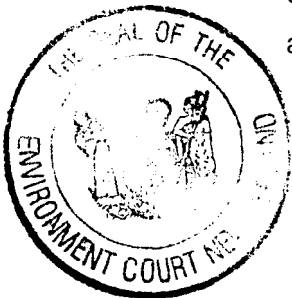
- (x) Entry Sign Plan prepared by Studio Pacific Architecture (Drawing No: SK-003 Revision B), and;
- (xi) Perspectives prepared by Studio Pacific Architecture (View from East, Drawing No: SK-004 Revision A and View from West, Drawing No: SK-005 Revision A).

The layout and structure of the development including, but not limited to, buildings, landscaping (including gabion stacks), roads, and car parking shall be generally in accordance with the above-mentioned suite of plans unless as modified by virtue of any of the following conditions of consent.

- 2 Prior to the commencement of the development the Consent Holder shall at its cost register a covenant in the terms of Attachment 1 hereto against the relevant certificates of title for the site. *This condition has been volunteered by the appellant.*
- 3 Prior to lodgment of any building consent for Buildings 2, 3 or 4 as identified on the plan prepared by Studio Pacific Architecture (Drawing No: SK-002 Option D Revision D) a Design Plan identifying the architectural design and treatment, proposed colour scheme and any corporate signage of the building shall be submitted for approval by the Manager, Resource Consents, Marlborough District Council. The Design Plan is to be prepared in consultation with the Manager, Resource Consents, Marlborough District Council.

Operations

- 4 No commercial activity shall be undertaken on the site until the construction of the roundabout intersection with Middle Renwick Road is completed and an appropriate independent safety audit completed to the satisfaction of the New Zealand Transport Agency to ensure the roundabout performs to its designed function. The design and construction of the roundabout intersection shall be in accordance with Traffic Design Group plan, or such other design as may be approved by the New Zealand Transport Agency and Marlborough Roads.



- 5 The hours of operation the respective tenancies within the development are open to the public shall be between 7.00am and 10.00pm 7 days per week except that the hours of operation that the supermarket and refueling facility and cafe/restaurant are open to the public shall be between 6am to 12 midnight 7 days per week.
- 6 Delivery and waste collection vehicle movements and unloading in the service areas on the eastern side of Building 5 will be restricted to 0700-2200hrs from Monday to Saturday and 0900-1900hrs on Sundays.
- 7 A speed limit of 10kph shall be imposed on all service areas at the rear of buildings and shall be appropriately sign-posted.
- 8 Unless otherwise agreed with the adjacent property owners, acoustic fencing shall be constructed within the site not less than 2 metres in from the eastern boundary adjacent to Building 5 in the form of a continuous structure with no gaps between panels or the ground, with a surface mass of no less than 10kg/sqm and a minimum height of 1.8m and a maximum height of 2.5 metres and the 2 metre strip shall be landscaped in accordance with the landscape plan referred to in condition 1(vi) above. The acoustic fencing shall extend along the extent of the eastern boundary as shown in the Floor Plan referred to in Condition 1 (iv) above.
- 9 Noise from activities within the site shall not exceed the following noise levels at or within the boundary of any existing Residential Zone or within the notional boundary of any existing dwelling on another site:
- L_{10} 55 dB (A) between 07:00-22:00 Monday to Saturday and 0900-19:00 Sunday;
 - L_{10} 45 dB (A) at all other times; and
 - L_{max} 75 dB (A) between 22:00- 07:00.
- 10 For compliance purposes, the noise from all on-site activities shall be measured and assessed in accordance with the provisions of New Zealand Standards NZS 6801:2008 - Measurement of Sound and NZS 6802:2008 Assessment of Environmental Sound.



^ provided that same shall be further limited to

Lighting

- 11 No activity shall result in greater than a 10 Lux spill (horizontal and vertical) of light onto any adjoining property ~~or~~ (2.5 LUX onto any adjoining property on the eastern boundary), measured 2 metres inside the boundary of any adjoining property.

Signage

- 12 The area of signage is limited to that identified in the Signage Schedule included as Attachment 2 hereto.

Traffic

- 13 The consent holder shall:
- a. Meet all costs of the design and construction of the new roundabout intersection with Middle Renwick Road, and
 - b. Contribute the agreed proportionate cost to the New Zealand Transport Agency of bringing forward the improvement works necessary to each of the intersections with Battys Road, Coleman Road and Boyce Street respectively into a specific trust fund nominated by NZTA for that purpose

Parking and Internal Roads

- 14 Parking and access shall be provided generally in accordance with the Site Plan prepared by Studio Pacific Architecture (Drawing No: SK-002 Revision D) and the Plans referred to in Condition 1 (viii) and 1 (ix) above. Such parking spaces to be provided for and designed in accordance with the relevant parking standards of the Wairau-Awatere Resource Management Plan.
- 15 All parking and road areas shall be formed, sealed and permanently marked.



- 16 All internal roads shall be permanently marked, and internal intersections shall be controlled by appropriate intersection controls generally in accordance with the Site Plan prepared by Studio Pacific Architecture (Drawing No: SK-002 Revision D).
- 17 There shall be no vehicular access or egress from the site to Rose Street or Rene Street

Vesting of Road Land

- 18 All land required for the roundabout intersection with Middle Renwick Road is to be vested after formation with the New Zealand Transportation Agency.

Infrastructure Servicing

- 19 Servicing connections shall be provided to the site for potable water, stormwater, and sewerage and shall be in general conformity with the plans and specifications referred to in Condition 1 (v) above.
- 20 The final design for water, sewer and stormwater service connections shall be to the satisfaction of Council's Operations and Maintenance Engineer prior to installation.
- 21 An appropriately qualified and experienced engineer shall provide calculations for the size of the required stormwater connection to serve the development. This shall be provided to the Council's Operations and Maintenance Engineer.
- 22 Water shall be piped in a single connection so that each user can be supplied with water individually through a water meter.
- 23 A major control water system shall be installed, comprising of: water meter; adaptor; M Bus converter; M Bus central (read) unit (or any alternative equipment such as a pulse water meter and telemetry as agreed with the Council's Operations and Maintenance Engineer).
- 24 There shall be an external central (read) unit positioned at a location easily accessible without a key by Council staff.
- 25 Individual water connections will require medium hazard reduced pressure zone backflow preventions (installed at ground level).



- 26 The water metering system shall be installed as approved by the Council's Operations and Maintenance Engineer.
- 27 The applicant shall provide Council's Operations and Maintenance Engineer with written confirmation from Marlborough Lines that underground electrical reticulation has been provided to and within the site.
- 28 The applicant shall provide Council's Operations and Maintenance Engineer with written confirmation from an authorised supplier that total underground telecommunications have been provided to and within the site.

Landscaping

- 29 A Landscape Plan detailing plant specimens, quantities and spacing shall be submitted for approval by the Manager, Resource Consents, Marlborough District Council prior to its implementation. The Landscape Plan shall include the boundary plantings in the strip referred to in Condition 8.
- 30 The Landscape Plan shall also include the obligations for the on-going management and maintenance of the plants/trees to ensure the growth and survival of the plant material and for their replacement in the case of disease or demise.
- 31 Planting along all external boundaries of the site shall be undertaken within the first planting season following completion of the construction of the roundabout intersection with Middle Renwick Road, and the bulk earth working and infrastructure construction within the site.
- 32 All other planting, including within the carparking areas shall be undertaken within the first planting season following completion of the respective buildings to which the proposed planting is associated.

Construction

- 33 A detailed Site Management Plan in accordance with the requirements of Rule 29.17.2 of the Subdivision and Development Chapter of the Wairau-Awatere Resource Management Plan to the satisfaction of the Manager, Resource Consents, Marlborough District Council shall be prepared and

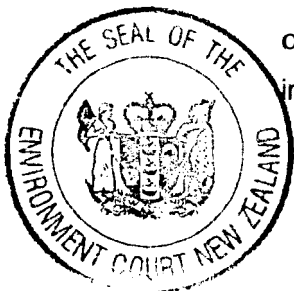


lodged with Marlborough District Council not later than two months prior to commencement of any construction activity. The Site Management Plan shall include traffic management, dust management and management of discharges during construction and shall set out a procedure for mitigating adverse effects and for responding to any adverse effects.

- 34 The Site Management Plan shall identify all potentially significant noise sources, set out the noise control measures planned to achieve compliance with the specified noise limits and establish a program of testing to ensure compliance.
- 35 During construction, New Zealand noise standard "NZS 6803:1999 Acoustics - Construction Noise" shall apply and that noise shall comply with the limits set down in Table 2 of NZS6803: 1999 or where that is impracticable alternative strategies to be outlined in the Noise Management Plan, shall be implemented to ensure that construction noise does not exceed agreed levels with affected persons.
- 36 The consent holder shall provide written notice to the occupants of each dwelling within 100m of the site boundary at least 48 hours prior to the start of construction works.

Easements

- 37 Electrical easements in gross are to be provided in the name of Marlborough Lines where cables provide multiple-customer power supplies over private property.
- 38 Telecommunication ducts shall be laid within the easements to service each lot. A plan shall be provided to Council's Operations and Maintenance Engineer showing the location and depth of the ducts. Written confirmation from the consent holder shall be provided stating that the ducts have been installed by a suitable contractor to Telecommunication Authority Standards. Ducts shall not terminate beneath paved surfaces.
- 39 Stormwater pipelines that are not privately owned and maintained by the consent holder shall be installed within easements to serve all buildings and impervious surfaces.



- 40 All water pipelines and sewerage connections to service buildings that are not privately owned and maintained by the consent holder shall be installed within easements.
- 41 All necessary easements shall be indicated on construction plans to be lodged with the building consent(s).

Financial Contributions

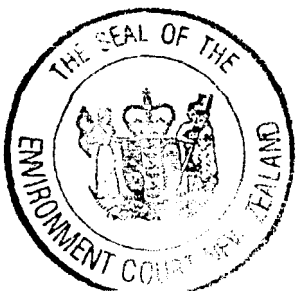
- 42 As required by Rule 29.2.19.2.1 of the Wairau-Awatere Resource Management Plan the developer shall pay to Council an amount not exceeding 0.5% of the value of the development as defined in Rule 29.2.19.2.

Refueling Facility

- 43 The refueling facility shall be designed in accordance with 'Environmental guidelines for water discharges from petroleum industry sites in New Zealand, Ministry of Environment, 1998. A separate Environmental Management Plan and Hazard Management Plan for the refueling facility shall be submitted to the Council for approval prior to the issue of the associated building consent. The refueling facility shall be established and operated generally in accordance with the Plans identified in Condition 1 (iii) above.

Review of Conditions and Monitoring Time Frame

- 44 Pursuant to Section 128 of the Resource Management Act 1991 Marlborough District Council may review the conditions of this consent at any time commencing on the 1st of January in each year and ending on the 31st of December in that year during the term of this consent for the purposes of dealing with any adverse effects which become apparent from the exercise of this consent and which are therefore appropriate to be dealt with at that later stage.



Lapsing of Consent

45. This consent shall lapse pursuant to Section 125(1) of the Resource Management Act 1991 in the event the consent is not given effect to within five years of the commencement of the consent.
46. The consent holder shall install the refueling facility in accordance with HSNO Regulations and Gazetted Controls and compliance with the Code of Practice for the Design, installation, and operation of Underground Petroleum Storage Systems. The refueling facility must also comply with the Hazardous Substances and New organisms Act 1996 and regulations, Gazette notices and Group Standards issued under the Act.
47. Any variations to the suite of plans identified in Condition 1 that are not considered by the Manager, Resource Consents, Marlborough District Council to be generally in accordance with those plans specified by Condition 1 will require an application pursuant to Section 127 of the Resource Management Act 1991.
48. Any plans for Buildings 2 and 3 that do not comply with the bulk and location development controls of the District Plan will require an application for resource consent pursuant to Section 88 of the Resource Management Act 1991.
49. The matters required to be completed in conditions 13, 18-28, 29-31, 43 and 46 shall be completed to the satisfaction of the Manager, Resource Consents, Marlborough District Council before commercial activity is undertaken on the site.



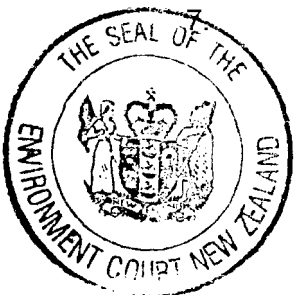
B. Discharge Permit (Discharges to Murphy's Creek):

That consent is **granted** to discharge 0.10m³/sec via the existing culvert (to Murphys Creek) and 0.16m³/sec via a new 450dia pipe (to Murphys Creek) from Lot 2 DP 10461 (CT 60043) and parts of Lot 2 DP 343796 (CT 179837) and Lot 2 DP 315225 (CT 60043) subject to the following conditions:

Conditions

1. The discharge shall be undertaken in accordance with the application, including the reports, plans and drawings prepared by Cuttriss Consultants as referred to in Condition 1 (v) ~~above~~ *of the land use consent conditions.*
2. An appropriately qualified and experienced engineer shall provide calculations for the size of the required stormwater connection to serve the development. This shall be provided to the Council's Operations and Maintenance Engineer. If the calculations show that the existing service requires a larger pipe size, the consent holder shall seek the approval of the Council's Operations and Maintenance Engineer clearly showing the proposed service position and form.
3. Discharges shall not commence until all necessary infrastructure and upgrades as approved by Council, have been completed.
4. The consent holder shall pay for the full cost of all stormwater upgrades caused by its development.
5. Other than water collected and used on-site for the purposes of irrigation, the roof water from the buildings shall be piped directly to the swales with sealed downpipes.
6. The car parks shall be designed to be higher than the adjacent swales so that there is free runoff from the carparks to the swales, for a rainfall event, having a return period of up to a 50 years, i.e., shall be designed for a Q50 event).

The swale system discharging into Murphy's Creek to have a capacity of at least 1151 m³.



8. The swale system, including its levels, interlinking pipes and its maintenance requirements shall be designed by a Chartered Professional Engineer to the satisfaction of Council's Stormwater Engineer.
9. The discharge of the 160 litres per second of stormwater via a new pipe along Middle Renwick Road from the south-east corner of the site to Murphy's Creek shall take priority over the existing culvert entrance,
10. The discharge of stormwater into the existing culvert located in the south east corner of the site that crosses the road into the head of Murphy's Creek shall be limited to 100 litres per second by a throttling device. This discharge shall only come into operation following the first 160 litres per second Middle Renwick Road pipe discharge.
11. Overland flow from the west shall be intercepted by a swale leading into the culvert under Middle Renwick Road and so into the head of Murphy's Creek. For the avoidance of doubt, this flow does not form part of the flow restricted by Condition 10 above.
12. A Chartered Professional Engineer is required to design and supervise the requirement to achieve Conditions 9-11.
13. This consent will expire fifteen years from its Commencement Date.
14. On completion of the works, a certificate signed by the person responsible for designing the stormwater system shall be submitted to the Manager, Compliance, Marlborough District Council to certify the system has been installed in accordance with the plans submitted and approved.
15. In the event of a spill of fuel or any other contaminant discharging into Murphys Creek the consent holder shall ensure all practical measures are taken to prevent further contaminants entering the watercourse.

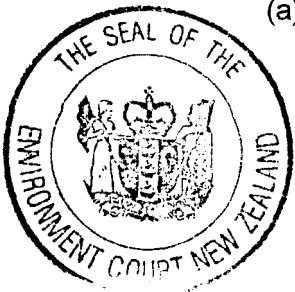
Where such a spill enters Murphys Creek, the consent holder shall:

- (i) Immediately notify the compliance section of Council, and
- (ii) Provide the Council, attention: Manager, Compliance within 24hrs, details as to the time, date, and duration of the spill, the procedures



undertaken to clean up the spill, and an assessment of any actual or potential effects.

16. During the construction phase, all practicable measures shall be taken to minimize sediment-laden stormwater discharging into Murphys Creek.
17. The consent holder shall ensure that the discharge of stormwater, does not at any time, result in:
 - (a) The production of conspicuous oil or grease films, scums, foams or floatable or suspended materials;
 - (b) Objectionable odours; and
 - (c) Decrease the colour and visual clarity of receiving waterway defined as a decrease greater than 33% reduction in the visual clarity of the receiving water as measured by the black disk method below discharge following reasonable immixing as specified in the definitions section of the plan.
18. All stormwater drains/sumps feeding into this system are to be clearly marked with a green fish icon or equivalent to inform persons that only stormwater can be discharged.
19. The discharge shall not alter the natural course of Murphys Creek.
20. The discharge shall not cause erosion, scour and or instability of the bed or banks of Murphys Creek.
21. The discharge point and its associated structures shall be maintained in a condition such that it is clear of debris and is structurally sound.
22. In accordance with Section 128 of the Resource Management Act 1991, the Marlborough District Council may review the conditions of this resource consent. This review may be conducted annually in July for the duration of the consent for the following purposes:
 - (a) To review the effectiveness of the existing resource consent conditions in avoiding or mitigating any adverse effects on the



environment from the exercise of this consent and, if necessary, to avoid, remedy or mitigate such effects by way of further or amended conditions; or

- (b) To review the adequacy of and necessity for monitoring the effect of the discharge on the environment; or
- (c) To require the consent holder to adopt best practicable option to remove or reduce adverse effects on the surrounding environment.



ATTACHMENT 1.

COVENANT

[Section 108(2)(d) Resource Management Act 1991]

PARTIES

1. **OUTER LIMITS LIMITED**, being a duly incorporated company
2. **MARLBOROUGH DISTRICT COUNCIL**, a unitary authority
3. **OPTION 5 INCORPORATED**, an incorporated society

BACKGROUND

- (A) Outer Limits Limited has applied for and been granted resource consent in relation to land at Middle Renwick Road, Blenheim.
- (B) It is a condition of consent that a covenant be entered into addressing the following issues;
- i. Further commercial activity on the Site as defined;
 - ii. The limitation on subdivision in respect of individual tenancies on the land;
 - iii. Supplementary matters as agreed between Outer Limits Limited and Option 5 Incorporated.
- (C) The parties hereto covenant as follows.

1. INTERPRETATION

In this Land Covenant unless the context otherwise requires:

“Cafe” means a premise of no more than 300m² and where there is no drive through takeaway facility of a kind typical of a fast food chain.

“Central Business Zone”

“CBZ” means the Central Business Zone as identified in the Wairau Awatere Resource Management Plan as at 30 April 2010.

“Commercial Activity”

means Commercial Activity as defined in the Wairau Awatere Resource Management Plan as at 30 day of April 2010.

“Council”

means the Marlborough District Council (in its capacity as local authority).

“Covenants”

means the covenants in this instrument.



2.7.2

Handwritten signatures and initials, including a large signature and the initials "JE".

“Land / Site” means the land / site which comprises CT 274058, 60043, 60042 as outlined in the **attached** plan to the extent shown on the **attached** plans and marked in red.

“Land Covenant” means this instrument

“Owner” means (initially) Outer Limits Limited and its successors in title who are the registered proprietors of the Land from time to time.

“Permitted Activity” means any activity defined as a permitted activity in the Rural 3 Zone of the Wairau Awatere Resource Management Plan.

“Plan” means the relevant District Plan which applies from time to time in relation to the district where the Land is located.

“Resource Consent” means Land Use Consent granted by the Environment Court in ~~Decision Number A/~~ _____.

“Rural Supplies Store” means a Commercial Activity that provides goods and services to support rural activities including agriculture (including horticulture), forestry or commercial fishing and including but not limited to specialised machinery and equipment retailing or servicing. The range of commercial activities permitted shall be of a kind customarily undertaken by PGG Wrightson, CRT or similar providers of goods and services.

“Supermarket” means an individual retail outlet, including related back of house unloading, storage, preparation, staff and equipment space, within a larger store and selling a comprehensive range of:

- (a) fresh meat and produce; and
- (b) chilled, frozen, packaged, canned and bottled foods and beverages including alcohol; and
- (c) general housekeeping and personal goods, including (but not limited to) cooking, cleaning and washing products; kitchenwares; toilet paper, diapers, and other paper tissue products; magazines and newspapers; greeting cards and stationery; cigarettes and related product; barbeque and heating fuels; batteries, flashlights and light bulbs; films; pharmaceutical, health and personal hygiene products and other toiletries; and



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- (d) ancillary offices for the management and operation of the supermarket.

COVENANTS

1. This Covenant is entered into pursuant to Sections 108(2)(d) and 109 of the Resource Management Act 1991 and pursuant to Condition 4 of the Resource Consent and is to run with the land.
2. The Land may be developed in accordance with the Resource Consent provided that the Commercial Activities referred to in the Resource Consent shall be limited to;
 - a. A Supermarket and associated unmanned fuelling facility
 - b. A building and home improvement and garden centre in the style or nature of "Bunnings" or similar;
 - c. Two Rural Supplies Stores;
 - d. A Cafe

(all as defined above).

Subject to Clause 4, this restriction shall only apply while the Site remains zoned Rural 3 or equivalent, and shall not at any time preclude any activities provided for as Permitted Activities on the Site or preclude any application for any other activity that is not a Commercial Activity.

3. Apart from boundary adjustments or subdivisions for the vesting of roads and infrastructure services required in the course of the development of the Site, there shall be no further subdivision of the Site while it remains zoned Rural 3 or equivalent except that there may be a boundary adjustment on the cross hatched area shown as the "Extent of Westwood Business Park" on the attached plan so long as no more than two title identifiers result in that area.

OPTION 5

4. Unless otherwise agreed the Owner covenants with Option 5 that for a period of five (5) years from the commencement of the Resource Consent there shall be no further Commercial Activity on the Site of the kind represented in the CBZ being those activities identified below:
 - specialised food;
 - manchester and other textile goods;
 - china, glassware and houseware;
 - electrical and electronic goods;
 - computer and computer peripheral goods;
 - sporting and recreational goods, including camping, diving and fishing;
 - clothing;



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- footwear;
- personal accessories including jewellery;
- department store (Australia and New Zealand Standard Industrial Classification 2006);
- pharmaceutical;
- books and stationery;
- Plastic ware;
- Communications equipment including telephones and accessories;
- Babywear, toys and games;
- Pet shop and pet products;
- Music and entertainment;
- Travel shops and agencies;
- Eyewear;
- Haircare;
- Office Supplies;
- Gift shops;
- Florists;
- Cafes, bars and restaurants (except the cafe provided for in this Covenant).

4.1 For the avoidance of doubt, the prohibition in Clause 4 does not include:

- Building and home improvement stores;
- Trade supplies;
- Floor coverings and furnishings;
- Automotive and marine supplies, including sales and servicing;
- Rural supplies;
- Furniture, including office furniture.

5. Unless otherwise agreed, for the period of 10 years from the commencement of the Resource Consent, the Owner Covenants with Option 5 that the Owner shall not seek to accommodate or provide a tenancy to any business, tenant or occupant (other than those listed in Clause 4.1) that is either located within the CBZ, or who has vacated the CBZ for a period of less than 12 months.

LAPSE OF COVENANT

6. This Covenant shall lapse on the earlier of ten years after commencement of the Resource Consent or 30 April 2025.

COVENANT BINDING

7. This Covenant will be registered and will bind the Owner's successors in title so that contemporaneously with the acquisition of any interest in the Land all such successors in title become bound to comply with this Covenant.

VOLUNTARY NATURE OF COVENANT



The parties record that this Covenant has been volunteered by the Applicant as a condition of the Resource Consent.

2.11.2

VARIATION OF COVENANT

9. All parties agree that the terms of the Covenant as they relate to Council may be varied by the Council in the exercise of its powers to vary any resource consent condition in accordance with section 127 of the Act and further as they relate to other parties may be varied by agreement.

Date 27 April 2010

SIGNED by OUTER LIMITS LIMITED

in the presence of:

[Handwritten signature]

[Handwritten signature]

(Director)

Witness

Signature:.....

Full name:.....

Address:.....

Occupation:.....

SIGNED for

MARLBOROUGH DISTRICT COUNCIL

in the presence of:

[Handwritten signature]

[Handwritten signature]

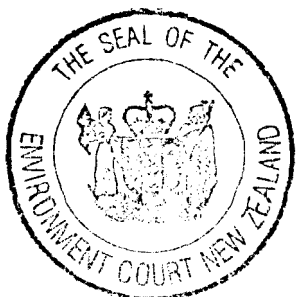
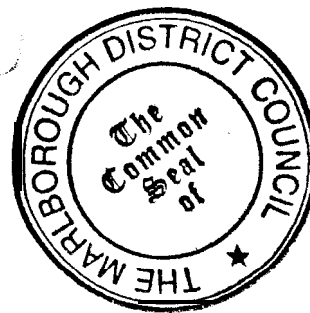
Witness

Signature:.....

Full name:.....

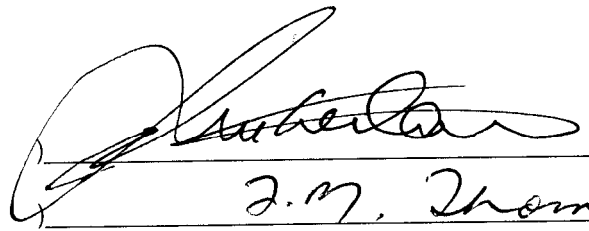
Address:.....

Occupation:.....




SIGNED by Option 5 Incorporated

in the presence of:

 Treasurer
2.17. Thomas
Chapman

Witness

Signature: 

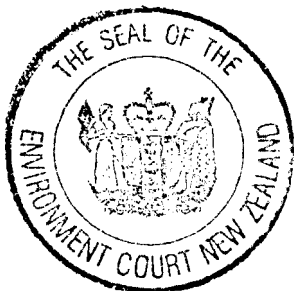
Full name: David Julian Clark

Address: Solicitor
Blenheim

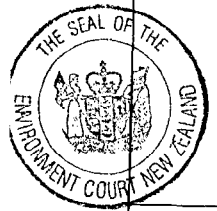
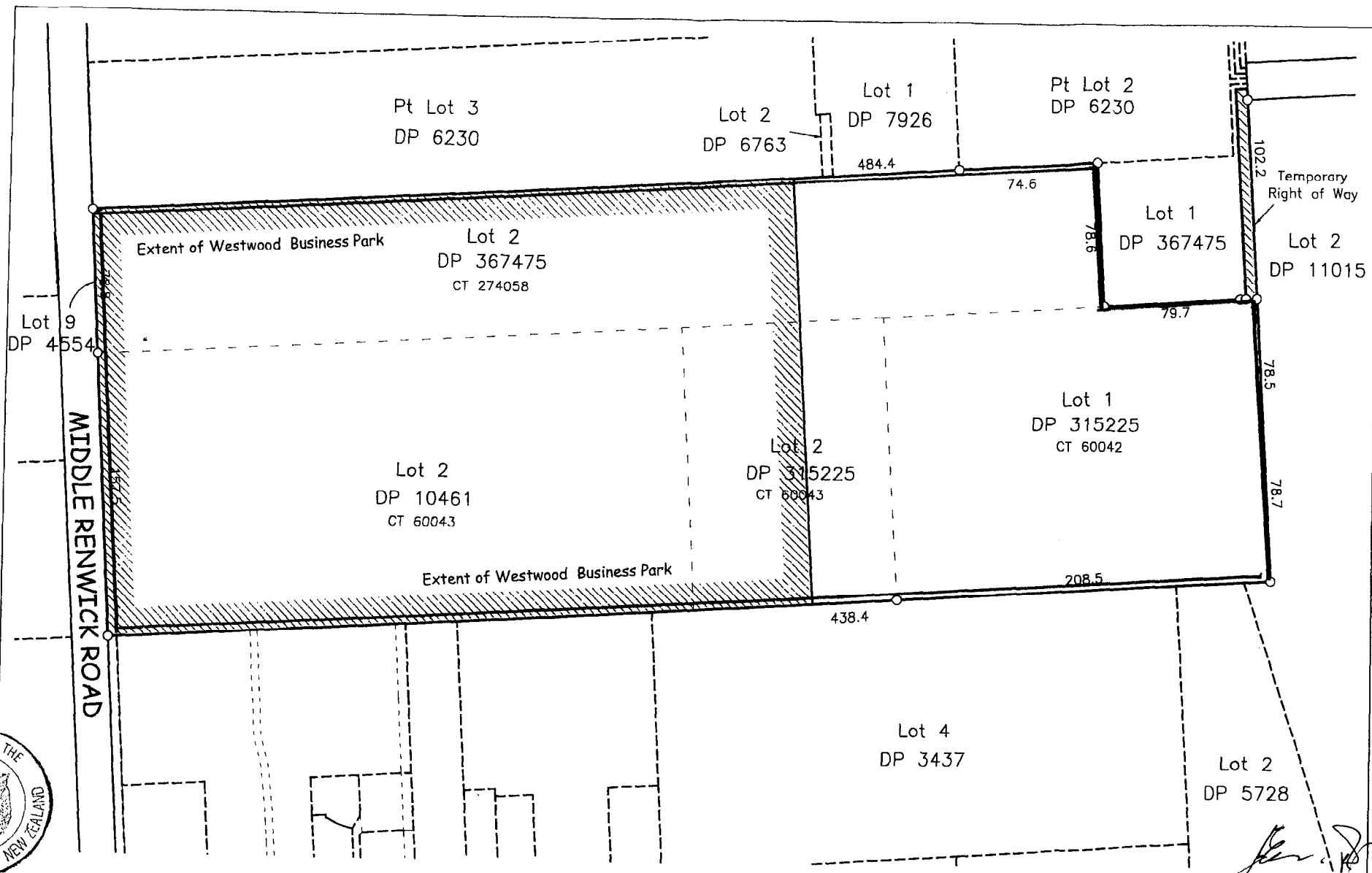
Occupation:

MWK-511800-23-192-V7

Covenant_EC7CA207-0551-4071-9CE4-B33D85F82C10_10.50am_270410



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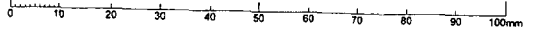


Ayson and Partners Ltd
 REGISTERED PROFESSIONAL SURVEYORS
 Consultants in Surveying, Resource Management, Subdivision and Land Development

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 4 Nelson Street, P.O. Box 256
 Blenheim, New Zealand
 Ph 03 579 2099, Fax 03 578 7028
 Email: office@aysonandpartners.co.nz
 www.aysonandpartners.co.nz

WESTWOOD BUSINESS PARK - MIDDLE RENWICK ROAD, AND LAND HOLDINGS OF OUTER LIMITS LIMITED
 COMPRISED IN : CT 274058, CT 60043 and CT 60042
 APPLICANTS : OUTER LIMITS LIMITED

SCALES		JOB NUMBER	
1:2000 A3		10264	
DATE	SHEET	ISSUE	
April 2010	10	A	
LB	CHECK		
GW	TM		



2.7.2

ATTACHMENT 2 - SIGNAGE

		Width	Height
6 x Gabion stacks (dimensions vary –but no signs on them)		3.50	x 1.50 m
Unit 1, East	Sign 1	15.450	x 3.60 m
Unit 1, South	Sign 1	7.20	x 1.635 m
Refuelling Facility	Sign 1 (x4)	4.0	x 0.60 m
	Sign 2	2.90	x 1.34 m
	Sign 3	1.50	x 1.50 m
Unit 2, East	Sign 1	5.00	x 1.50 m
	Sign 2	5.00	x 1.50 m
	Sign 3	12.00	x 1.50 m
Unit 4, East	Sign 1	9.00	x 0.85 m
Unit 4, South	Sign 1	9.00	x 0.85 m
Unit 4, North	Sign 1	9.00	x 0.85 m
Unit 5, South	Sign 1	5.75	x 18.2 m
Unit 5, West	Sign 1	18.20	x 5.75 m
	Sign 2	18.425	x 7.20 m
Unit 3, South	Sign 1	6.00	x 1.50 m
	Sign 2	3.00	x 1.00 m
Unit 3, East	Sign 1	10.00	x 1.50 m
	Sign 2	10.00	x 1.50 m
Entry Sign (as Gabion stack with Westwood logo 3.5m x 1.1m) and tenant panels (1.75m x 1.1m) affixed		4.00	x 6.00 m

