

**HAGLEY/FERRYMEAD COMMUNITY BOARD  
7 OCTOBER 2010**

**Minutes of a meeting of the Hagley/Ferrymead Community Board  
held on Thursday 7 October 2010 at 9.30am in the Boardroom,  
Linwood Service Centre, 180 Smith Street, Linwood.**

**PRESENT:** Bob Todd (Chairperson), Tim Carter, Rod Cameron, David Cox,  
John Freeman, Brenda Lowe-Johnson and Yani Johanson.

**APOLOGIES:** Nil.

The Board reports that:

**PART A – MATTERS REQUIRING A COUNCIL DECISION**

**1. 13 THE SPUR – LICENCE TO OCCUPY LEGAL ROAD – PART ONE**

<b>General Manager responsible:</b>	General Manager City Environment, DDI 941 8608
<b>Officer responsible:</b>	Asset and Network Planning Unit Manager
<b>Author:</b>	Robert O'Connor, Solicitor, Legal Services Unit

**PURPOSE OF REPORT**

1. The purpose of this report is to:
  - (i) Provide an overview of the circumstances concerning the Deed of Licence to the owners of the property at 13 The Spur, Sumner (Vincent Joseph De Lorenzo and Susan Graham Wilson) to occupy a portion of legal road (Nayland Street) for the purposes of a cableway base station.
  - (ii) Present a recommendation from the Hagley/Ferrymead Community Board to the Council that it cancel a Deed of Licence for Occupation of Legal Road – Structures Cable Car Station at 13 The Spur, and invite the application to reapply.

**EXECUTIVE SUMMARY**

2. This report should be read in conjunction with Part Two of this report which is included in the public excluded agenda to be considered at the same meeting as this report. Part Two of this report contains additional advice from the Legal Services Unit to the Community Board and the Council.
3. On 8 November 2006 the Hagley/Ferrymead Community Board considered an application from the owners of 13 The Spur to erect a cableway base station and garage on legal road on Nayland Street. A copy of the 2006 staff report is attached to this report (refer **Attachment 1**).
4. The Community Board declined the part of the application relating to the garage, and resolved as follows with regard to the cableway base station:
  - (a) *To approve the application for the cableway compound structure only located on legal road adjoining 13 The Spur (Nayland Street) subject to the following conditions:*
    - (i) *Resource and building consents being obtained.*
    - (ii) *The owner being entirely responsible for the stability, safety and future maintenance of the bank, driveway and formation work associated with the structure.*
    - (iii) *The site being kept in a tidy condition at all times during the course of construction.*
    - (iv) *That the Ngaio tree, if removed, be replaced with an appropriate tree with all costs being borne by the applicant.*
  - (b) *To enter into a Deed of Licence for the proposed cableway compound with the owner of 13 The Spur (Nayland Street)."*

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### 1 Cont'd

5. Paragraph 4 of the 2006 staff report on this matter stated that the owners of 13 The Spur had *"obtained consent from the adjoining landowners for the location of the garage in front of their property and the cableway that runs parallel to their properties"*. However, the owners of the properties neighbouring 13 The Spur at 2 Nayland Street, 2 Aranoni Track and 12 The Spur made a deputation to the Community Board meeting of 4 August 2010 and asserted that they did not in fact provide consent for the proposed cableway in 2006. They have requested that the Licence be cancelled.
6. Council staff have conducted an investigation into why paragraph 4 was included in the 2006 staff report and the staff advice concerning that matter is detailed in Part Two of this report.
7. In the 'Background' section of the 2006 staff report it is recorded that the application from the owner of 13 The Spur complied with the Council's applicable Structures on Streets Policy and met the other criteria recorded in that report. Accordingly, the staff recommendation was to approve the application. The criteria in the Structures of Streets Policy have not changed.
8. On the authority of the Community Board's 8 November 2006 resolution, a Licence to place the cableway compound structure on legal road has been issued by the Council's Property Team to the owners of 13 The Spur. A copy of that licence is attached to this report (refer **Attachment 4**).
9. Under the Licence the Council as landowner of legal road authorises the owners of 13 The Spur to construct part of the cableway (the base station) on the legal road at the foot of the hill. The Licence cannot and does not operate as a general consent by the Council to the owner of 13 The Spur to construct the cableway in its entirety. Clause 21 of the Licence specifically provides that *"The Licensee acknowledges that the Structure will also encroach on areas which are subject to rights of way and other easements. The Licensee is solely responsible for obtaining all consents necessary from the owners of the dominant land having the benefit of the easements prior to the construction of the Structure on the Road. Council shall not be liable for any breach of the easements by the Licensee due to the construction of the Structure"*.
10. The issuing of the Licence by the Council is only one of a number of milestones that the owners of 13 The Spur will need to achieve in order to be able to build the proposed cable car facility.
11. The proposed route of the cable car over the Licensee's land follows the route of an existing right of way easement which exists for the benefit of the properties at 2 Nayland Street, 2 Aranoni Track and 12 The Spur. The owners of 13 The Spur have acknowledged, in Clause 21 of the Licence and in their application for a Project Information Memorandum, that the proposed cableway encroaches on this right of way easement.
12. It is anticipated that the work required to construct the cableway, and potentially the operation of the cableway, will interfere with the right of way easement. The owners of 13 The Spur will therefore need to obtain the consent of the owners of 2 Nayland Street, 2 Aranoni Track and 12 The Spur under the easement before any work is undertaken that will affect the right of way. This is a civil matter to be resolved between the various landowners concerned and will not directly involve the Council.
13. The granting of the Licence has not interfered with the rights of the neighbouring property owners to object to the construction of the proposed cableway under the easement. As a matter of civil law, the owners of the neighbouring properties have the ability to legally object to the construction of the cableway under the terms of the easement benefiting their properties if that work interferes with their easement rights.
14. The Licence does contain the Council's standard early cancellation provision allowing the Council to cancel for any reason on the giving of six months written notice. However, the Community Board does not have the delegated authority to cancel the Licence. A decision to cancel the Licence must be made by the full Council and may only be implemented in accordance with the provisions of the Property Law Act 2007.

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### 1 Cont'd

15. The owners of 13 The Spur must also obtain a building consent and potentially a resource consent for the cable car. No applications have been received for building consent or resource consent in relation to the proposed cableway at the date of writing of this report.
16. It is relevant to the issue at hand to record that an existing cable car has in recent years been constructed on the southern boundaries of 12 and 13 The Spur and 2 Aranoni Track. Title searches of the properties at 2 Aranoni Track, 12 The Spur and 7 Clifton Terrace confirm that these properties have the benefit of easement rights to use that cableway that was granted in 2007.
17. The plan showing land parcels (refer **Attachment 2**) and a plan prepared by Elliot Sinclair showing proposed position of the full cable car facility (refer **Attachment 3**) are included with this report. A letter from solicitors acting for the owners of 13 The Spur dated 6 August 2010 (refer **Attachment 5**) is attached.
18. On one hand, the owners of 13 The Spur appear to have acted in good faith in applying to the Community Board for a grant of the licence and entering into that Licence.
19. On the other hand, the owners of the properties at 12 The Spur, 2 Nayland Street and 2 Aranoni Track argue that they did not provide their consent before the 2006 Community Board resolution was adopted.
20. A number of options are available to the Community Board and the Council to deal with this matter. Details of these options are provided in this report, however additional commentary on these options is also contained in Part Two of this report.

#### FINANCIAL IMPLICATIONS

21. See Part Two of this report.

#### Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?

22. Not applicable

#### LEGAL CONSIDERATIONS

##### Licence

23. Under the Licence the Council as landowner of the legal road authorises the owners of 13 The Spur to construct part of the cableway (the base station) on the legal road at the foot of the hill.
24. The Licence cannot and does not operate as a general consent by the Council to the owner of 13 The Spur to construct the cableway in its entirety.
25. The Licence was specifically entered into on the basis that the owners of 13 The Spur would be required to obtain all other approvals and consents required to enable the proposed cableway to be constructed. Specifically, clause 21 of the Licence provides that "*The Licensee acknowledges that the Structure will also encroach on areas which are subject to rights of way and other easements. The Licensee is solely responsible for obtaining all consents necessary from the owners of the dominant land having the benefit of the easements prior to the construction of the Structure on the Road. Council shall not be liable for any breach of the easements by the Licensee due to the construction of the Structure.*"
26. The Licence does contain the Council's standard early cancellation provision allowing the cancellation of the licence for any reason on the giving of six months written notice. However, the Community Board does not have the delegated authority to cancel the Licence. A decision to cancel the Licence must be made by the full Council and may only be implemented in compliance with the provisions of the Property Law Act 2007.

**1 Cont'd**

**Neighbours' easement rights**

27. The proposed route of the cable car falls within the legal boundaries of 13 The Spur, but follows the route of an existing right of way easement consisting of a walking track and steps. The application for the Project Information Memorandum received by the Council from Eliot Sinclair acting for the owners of 13 The Spur, states that provision has been made in the cable car plans to retain the walking track and steps, or to reconstruct them as necessary.
28. The right of way easement over 13 The Spur is for the benefit of the properties at 12 The Spur, 2 Nayland Street and 2 Aranoni Track. If the right of way easement will be interfered with by either the construction process, or by the operation of the cableway following construction, the owners of 13 The Spur will need to obtain the consent of the owners of these properties under the easement. It therefore appears that on the basis of the information available to the Council, the neighbouring properties at 12 The Spur, 2 Nayland Street and 2 Aranoni Track have a viable and straightforward remedy available to them if they do not wish the cableway to proceed. That remedy is that they can refuse to consent to any request from the owner of 13 The Spur to disturb their easement rights.
29. If the cableway work was to be proceeded with by the owner of 13 The Spur without obtaining that consent the owners of these properties would have a civil remedy available to them by applying to the Court to enforce their easement rights.
30. Any breach of the neighbours' easement rights is a civil matter between the parties and would not involve the Council.

**Regulatory consents required**

31. The cableway works will also require a building consent under the Building Act 2004. In addition it appears from the Project Information Memorandum issued to the owners of 13 The Spur that a resource consent under the Resource Management Act 1991 will also be required. At the date of writing this report no applications for a building consent or a resource consent have been received by the Council.
32. A resource consent application could possibly be processed on either a publicly notified or limited notification basis. If the application is notified this will provide an opportunity for affected residents to make submissions.
33. Whether a resource consent is required, and whether the application would be notified, cannot be determined with certainty at this stage. This will require an assessment of the final details of the cableway project against the relevant rules in the City Plan.
34. On the basis of the removal of a tree situated within the legal boundaries of 13 The Spur, the neighbours of 13 The Spur have suggested that work has already commenced on the construction of the cableway. The removal of an unprotected tree on private land is a matter exclusively for the owner of the land in question, unless that removal damages or undermines the property of another person. The neighbours acknowledged in their deputation to the Community Board on 4 August 2010 that the tree was situated within the legal boundaries of 13 The Spur. The Council is not aware of any work on the cableway being commenced, however if work has been undertaken that requires a resource consent or building consent the enforcement team will deal with these matters using the usual enforcement tools in the Resource Management Act 1991 and the Building Act 2004.

**Have you considered the legal implications of the issue under consideration?**

35. Yes, see above and Part Two of this report

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

36. Not applicable

1 Cont'd

**Do the recommendations of this report support a level of service or project in the 2009 -19 LTCCP?**

37. Not applicable.

**ALIGNMENT WITH STRATEGIES**

38. Not applicable

**Do the recommendations align with the Council's strategies?**

39. See above

**CONSULTATION FULFILMENT**

40. Section 78 Local Government Act 2002 requires the Community Board to take into account the views of all parties likely to be affected by its decision before any decision is made. This includes both the views of the owners of neighbouring properties and the views of the owners of 13 The Spur.

41. Accordingly, the parties likely to be affected by the decision have been advised that this report is to be considered by the Community Board and advised of their right to make a deputation to the Community Board meeting at which this report will be considered.

42. It is noted that representatives of the owners of a number of the properties neighbouring 13 The Spur made a deputation to the Community Board meeting of 4 August 2010.

**STAFF RECOMMENDATION**

It is recommended that the Hagley/Ferrymead Community Board acknowledges the deputations and submissions that it has received on the issue of the proposed cableway at 13 The Spur and, recognising the civil remedies available to the parties to settle this issue, resolves to take no further steps at this time.

**BOARD CONSIDERATION**

The Board considered the information within the report, and also the information and staff advice provided in Part Two of this report contained within the public excluded section of these minutes. The Board heard two deputations on this matter, clauses 2.1 and 2.2 refer.

**BOARD RECOMMENDATION**

It was **decided** unanimously on the motion of Bob Todd, seconded by Yani Johanson, that the Board recommend to the Council that the Deed of Licence for Occupation of Legal Road – Structures Cable Car Station at 13 The Spur, be cancelled and the applicant be invited to reapply.

**THE OPTIONS**

**Option 1 – Revoke the 8 November 2006 resolution**

43. If the Community Board wished to revoke the 8 November 2006 resolution it could do so. However, revocation of the resolution would have no impact on the Licence.

44. Standing Orders provide only two ways that a previous resolution of a Community Board may be revoked.

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45. Firstly, Standing Order 3.9.15 provides that a resolution may be revoked if a notice of motion to that effect is given to the Chief Executive by the Community Board member wishing to move it at least five clear working days before the meeting at which it is proposed to consider the motion. In addition, the Notice of Motion must be signed by not less than one third of the members of the particular Community Board. The Chief Executive is then required to give the Community Board members at least two clear working days notice of the intended motion.
46. Secondly, Standing Order 3.9.18 provides that a Community Board meeting may, on a recommendation contained in a report by the Chairperson or Chief Executive, revoke all or part of a resolution previously passed at a meeting. At least two clear working days notice of any meeting to consider the revocation must be given to Community Board members and the notice of the meeting must be accompanied by details of the proposal to be considered.
47. Given the procedural matters referred to above, the option of revoking the 8 November 2006 resolution will not be available to the Community Board at the meeting when this report is considered. This option would require adoption of either of the two procedures outlined above and consideration of any proposal at a subsequent meeting.

### **Option 2 – Recommend to the Council that the Licence be cancelled**

48. The Licence does contain the Council's standard early cancellation provision allowing the cancellation of the licence for any reason on the giving of six months written notice. However, the Community Board does not have the delegated authority to cancel the Licence. A decision to cancel the Licence must be made by the full Council and may only be implemented in compliance with the provisions of the Property Law Act 2007.
49. Staff do not recommend this option for the following reasons:
  - (a) Under clause 21 of the Licence the owner of 13 The Spur expressly acknowledges that the cableway will encroach on areas which are subject to the rights of way easements and that he is solely responsible for obtaining all consents necessary from the owners of the dominant land having the benefit of the easements prior to the construction of the cable way.
  - (b) The owners of the neighbouring properties at 2 Nayland Street, 2 Aranoni Track and 12 The Spur appear on the information available to Council staff to have a remedy available to them under the right of way easement. If that easement will be interfered with by either the construction process, or by the operation of the cableway following construction, the owners of 13 The Spur will need to obtain the consent of the owners of these properties under the easement. The neighbouring properties at 12 The Spur, 2 Nayland Street and 2 Aranoni Track therefore have a viable and straightforward remedy available to them if they do not wish the cableway to proceed. That remedy is that they can simply refuse to consent to any request from the owner of 13 The Spur to disturb their easement rights. They would also be entitled to enforce their rights through the Court if necessary.
  - (c) Such a decision would not take account of the fact that the original application from the owner of 13 The Spur complied with the Council's applicable 'Structures on Streets Policy' and met the other criteria recorded in the 2006 report. It would also ignore the fact that the owner of 13 The Spur appears to have acted in good faith in applying to the Community Board for a grant of the licence and entering into that Licence
50. Additional reasons are detailed in Part Two of this report.

1 Cont'd

**Option 3 – Recommend to the Council that the Licence be cancelled and recommence the Licence application process.**

51. This option is a viable option that could be considered by the Community Board and the Council.
52. However, staff do not recommend this option for the following reason:
  - (a) The owners of the neighbouring properties at 2 Nayland Street, 2 Aranoni Track and 12 The Spur appear on the information available to Council staff to have a remedy available to them under the right of way easement. If that easement will be interfered with by either the construction process, or by the operation of the cableway following construction, the owners of 13 The Spur will need to obtain the consent of the owners of these properties under the easement. The neighbouring properties at 12 The Spur, 2 Nayland Street and 2 Aranoni Track therefore have a viable and straightforward remedy available to them if they do not wish the cableway to proceed. That remedy is that they can simply refuse to consent to any request from the owner of 13 The Spur to disturb their easement rights. They would also be entitled to enforce their rights through the Court if necessary.
53. Additional reasons are detailed in Part Two of this report.

**Option 4 – Take no further steps (the preferred option)**

54. The reasons why this is the preferred option are as follows:
  - (a) On one hand, it appears that the owners of 13 The Spur have acted in good faith in applying to the Community Board for a grant of the licence and entering into that Licence. Their application complied with the applicable policy and met the criteria relevant at the time.
  - (b) On the other hand, the owners of the properties at 12 The Spur, 2 Nayland Street and 2 Aranoni Track argue that they did not provide their consent before the 2006 Community Board resolution was adopted.
  - (c) The owners of the neighbouring properties at 12 The Spur, 2 Nayland Street and 2 Aranoni Track have a remedy available to them under the right of way easement. If that easement will be interfered with by either the construction process, or by the operation of the cableway following construction, the owners of 13 The Spur will need to obtain the consent of the owners of these properties under the easement. The neighbouring properties at 12 The Spur, 2 Nayland Street and 2 Aranoni Track therefore have a viable and straightforward remedy available to them if they do not wish the cableway to proceed. That remedy is that they can refuse to consent to any request from the owner of 13 The Spur to disturb their easement rights. Further, they would be entitled to enforce that right through the Court if that was necessary.
  - (d) Under clause 21 of the Licence the owner of 13 The Spur expressly acknowledges that the cableway will encroach on areas which are subject to the rights of way easements and that he is solely responsible for obtaining all consents necessary from the owners of the dominant land having the benefit of the easements prior to the construction of the cable way.
  - (e) Accordingly, as the owners of the neighbouring properties have a civil remedy available to them to prevent or control the proposed cableway by acting to enforce their easement rights, the staff recommendation is that the Council should adopt a pragmatic stance and not take any steps to disturb the 2006 resolution or the Licence.
55. Additional reasons are detailed in Part Two of this report.

1 Cont'd

**Investigation into paragraph 4 of the 2006 staff report**

56. Paragraph 4 of the 2006 staff report on this matter stated that the owners of 13 The Spur had "obtained consent from the adjoining landowners for the location of the garage in front of their property and the cableway that runs parallel to their properties". However, the owners of a number of the properties neighbouring 13 The Spur made a deputation to the Community Board meeting of 4 August 2010 and asserted that they did not in fact provide consent for the proposed cableway in 2006.
57. Council staff have conducted an investigation into why paragraph 4 was included in the 2006 staff report. It now appears that the staff member who wrote the report in 2006 misunderstood the Council's obligations to consult with interested or affected persons. It appears that the report writer considered that the proposed garage affected the 'frontager' rights of the property at 8 The Spur and that the consent of that owner was therefore required. Council staff understand that consent was in fact obtained from the owner at 12 The Spur in relation to the proposed garage that was not proceeded with. However, as it was considered that the proposed cableway base station only impacted on the 'frontager' rights of 13 The Spur it was concluded that no further consents from other persons were required. 'Frontager' rights are the legal rights that a landowner possesses to access their property from all points of an adjacent legal road. It appears that the report writer was unaware of the Council's obligations under section 78 of the Local Government Act 2002 to consider the views and preferences of persons likely to be affected by, or having an interest, in the matter.
58. New reporting templates and report approval processes have been implemented since 2006 to ensure that staff are aware of the Council's consultation obligations under the Local Government Act 2002.

**PART B - REPORTS FOR INFORMATION**

**2. DEPUTATIONS BY APPOINTMENT**

**2.1 MERRYLN DUNMILL AND MARK YOUNG**

Merryn Dunmill and Mark Young, property owners neighbouring 13 The Spur, addressed the Board in relation 13 The Spur – Licence to Occupy Legal Road, in opposition to the staff recommendation. Ms Dunmill and Mr Young expressed concern at the process for the granting of the licence, the impacts upon affected neighbours, and provided comments on points raised in the staff report. A written statement was submitted to the Board on this matter.

Following questions from the Board, the Chairperson thanked Ms Dunmill and Mr Young for their deputation to the Board. This matter was considered during discussion on clause 1 of these minutes.

**2.2 ALAN BRUCE AND MARTON SINCLAIR, REPRESENTING THE OWNERS OF 13 THE SPUR, MR DE LORENZO AND MS WILSON.**

Alan Bruce and Marton Sinclair, representing the owners of 13 The Spur, Mr De Lorenza and Ms Wilson, addressed the Board in relation to 13 The Spur – Licence to Occupy Legal Road, in support of the staff recommendation. Mr Bruce stated that the property owners had followed due process, and that the planned cableway base station does not encroach onto the neighbours' shared access way.

Following questions from the Board, the Chairperson thanked Mr Bruce and Mr Sinclair for their deputation to the Board. This matter was considered during discussion on clause 1 of these minutes.



**PART C - REPORT ON DELEGATED DECISIONS TAKEN BY THE BOARD**

**3. RESOLUTION TO EXCLUDE THE PUBLIC**

It was **resolved** on the motion of Rod Cameron, seconded by Tim Carter, that the public be excluded from the following parts of the proceedings of this meeting, namely item 5.

The public were excluded from the meeting at 10.48am, and readmitted at 12noon.

On behalf of the Board, the Chairperson acknowledged John Freeman's 18 years service on the Community Board. John Freeman expressed his thanks for the interesting experiences he has had as a member of the Board, and wished all members well for the future.

On behalf of the Board, the Chairperson extended his thanks and appreciation to all staff at the Linwood Service Centre for their input and contributions to the work and decisions made by the Board over the last three years.

The meeting was declared closed at 12.05pm.

**SIGNED BY THE CHAIRPERSON OF THE BOARD  
AND THE COMMUNITY BOARD ADVISER PURSUANT TO STANDING ORDER 3.18.2**

**CONFIRMED ON THIS 8th DAY OF OCTOBER 2010**

**BOB TODD  
CHAIRPERSON**

**JO DALY  
COMMUNITY BOARD ADVISER**

9. STRUCTURE ON STREET APPLICATION FOR 13 THE SPUR (NAYLAND STREET)

General Manager responsible:	General Manager City Environment, DDI 941-8656
Officer responsible:	Transport and Greenspace Unit Manager
Author:	Tony Lange, Asset Engineer

PURPOSE OF REPORT

1. The purpose of this report is to seek approval from the Board to erect structures on street at 13 The Spur (Nayland Street).

EXECUTIVE SUMMARY

2. A structure on street application for a new garage and cableway compound sited on legal road has been made by a representative of the owners (see **attached** plan).
3. Staff have assessed the siting of the structures against the Structure on Street Policy and have deemed that the structures will have minimal effect of the function of the road now and in the future.
4. The owner has obtained consent from the adjoining landowners for the location of the garage in front of their property and the cableway that runs parallel to their properties.
5. The proposed garage structure and cableway compound will be constructed with a stone facing with roof planting (see cross section on **attached** plan). This will mitigate the loss of a mature Ngaio tree.
6. Approval to erect the structures will require the removal of a ngaio tree. A Council arborist has inspected the tree and while the tree is in good health there is a potential issue relating to the growth angle of the tree and its root structure with the rock wall (see **attached** memo).
7. It is recommended that the Board seek a contribution from the owner for the cost of a replacement tree to be sited close by. The cost of a suitable replacement tree is \$250 excluding GST.

FINANCIAL AND LEGAL CONSIDERATIONS

8. Community Boards have been delegated authority to approve structure on street applications for garages and parking platforms.
9. The application is subject to compliance with other Council requirements, ie resource and building consents.
10. The owner is responsible for the cost to relocate any services.
11. A Deed of Licence fee for the occupation of legal road will accrue to the Council.

STAFF RECOMMENDATIONS

It is recommended that the Board:

- (a) Approve the application for the structures located on legal road adjoining 13 The Spur (Nayland Street) subject to the following conditions:
  - Resource and building consents being obtained.
  - The owner being entirely responsible for the stability, safety and future maintenance of the bank, driveway and formation work associated with the structure.
  - The site being kept in a tidy condition at all times during the course of construction.
- (b) Enter into a Deed of Licence for the proposed single garage and cableway compound with the owner of 13 The Spur (Nayland Street).
- (c) Approve the removal of the Ngaio tree.
- (d) Recover costs from the owner of \$250 excluding GST for a replacement tree.

CHAIRPERSON'S RECOMMENDATION

For discussion.

**BACKGROUND**

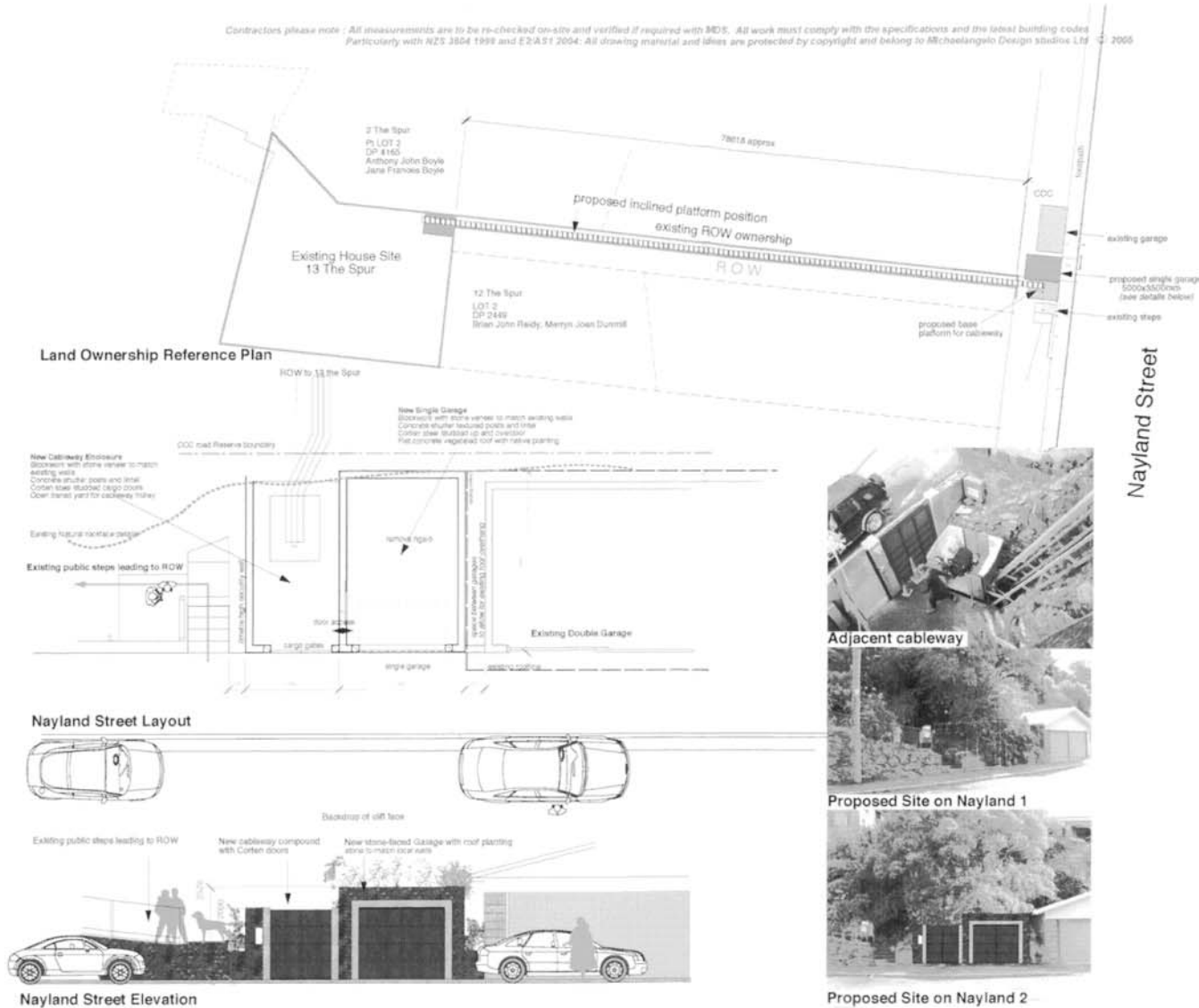
12. The owners of 13 The Spur (Nayland Street) have made a structure on street application to erect a new single garage and cableway compound located on legal road (see **attached** plan).
13. The Structure on Street Policy states that when considering the application the Council must be satisfied that:
  - Safety of all road users is not compromised.
  - Legal right of access is maintained for individual property owners.
  - The applicant is unable to construct the structure on his or her land because of the nature of the terrain.
  - The proposal is consistent with the City Plan objectives on property access and parking requirements.
  - The road environment is not unduly compromised with the presence of the structure.
  - The visual intrusion to the streetscape will have minimal effect to road users. (road users include pedestrians, cyclists and other commuters).
14. Staff have assessed the location of the structures in terms of road status and any future plans for network growth. Nayland Street is classified as a local road. A road with this classification typically carries up to 1,000 vehicles per day and has a carriageway width of between 7.5 and 14 metres in width. The current width of the carriageway at this location is 8.8 metres. There are no future plans which require the carriageway to be widened in this location.
15. The topography of the site is such that there is little likelihood that any further widening will occur where the proposed garage is sited (see **attached** photos).
16. The proposed site consists of trees and vegetation. A mature Ngaio tree that occupies the site is of significance and will need to be removed to allow for the proposed structures. However, the design of the structures will mitigate the loss of the tree. The proposed structures will have stone facings and roof planting for the garage.
17. There are a number of existing structures located on Nayland Street that provide off street parking for residents of The Spur. An existing cableway operates in Nayland Street (see photos). On street parking demand will be eased by the owners request to provide off street parking.

**OPTIONS**

18. To decline the application.
19. To approve the application subject to the following conditions:
  - Deed of Licence being entered into with the Council.
  - Resource and building consents being obtained.
  - The owner being entirely responsible for the stability, safety and future maintenance of the bank, driveway and formation work associated with the structure.
  - The site being kept in a tidy condition at all times during the course of construction.
  - Maintaining clear access for pedestrians.
  - Recover costs for a replacement tree.

**PREFERRED OPTION**

20. To approve the application subject to approval for other consents and relocation of services (if required) as listed in paragraph 19.



Notes
revision order:
client: Vincent DeLorenzo
project title: 13 The Spur - Summer
sheet title: Garage on Nayland St
 MICHAELANGELO DESIGN STUDIOS 03 3948300 021 4667711 www.michelangelodesignstudios.co.nz
scale @ A2 : 1:200 and 1:100
date : 17/05/06
name      number      title      status 12506      3

**Christchurch City Council  
Transport & Greenspace Unit**

**Memorandum**

**Date:** 05<sup>th</sup> October 2006

**From:** GRAHAM CLARK  
ARBORIST

**To:** TONY LANGE  
Asset Engineer, Asset and Network Planning

**13 NAYLAND STREET – TREE REMOVAL REQUEST**

Tony,

Following your request to seek advice in respect to the removal of a large Ngaio, (*Myoporum laetum*) for the purpose of installation of a new garage and cableway to service the property at 13 The Spur, Sumner can you please consider the following points.

1. The tree in question is a mature ngaio. A brief assessment of the tree concludes that the tree is healthy, of a significant age (30 yrs plus) and its situation contributes to the amenity value of Nayland Street.
2. The tree's structure is such that it has grown out towards Nayland Street. The tree is growing at an angle of 45 degrees with the root system connected to the rock wall to the rear of the tree. There is potential as the tree increases in size for the trees root structure to fail in the future causing some disturbance to the rock face to the rear of the tree.
3. The tree is not dead, diseased, dying or dangerous in its present condition and therefore approval for the removal of the tree is required from the Hagley / Ferrymead Community Board.
4. Transport and Greenspace do not have funding under the LTCCP to facilitate removal of healthy trees but would wish to action the removal (excluding stump) and request that recovery of all associated costs (estimated removal cost \$350 Excl GST) is sought from the applicant.
5. Transport and Greenspace would notify immediately affected neighbours of the removal as per standard operating procedures.
6. The applicant has as mitigation for the tree removal included in their proposed designs roof top planting which would in my opinion assist in reducing the loss of amenity value from the trees removal.
7. The applicant should also as mitigation contribute the sum of \$250 Excl GST to cover replacement planting of another tree at a location close to the location where the original tree was removed. Transport and Greenspace suggest that potentially a Norfolk Island Pine (*Araucaria heterophylla*) be planted in one of the reserves located in close (500m) proximity of the property to replace the lost amenity value of the mature Ngaio.

MEMO-NAYLAND STREET 13.DOC

Contact: Graham Clark

File Ref: +

**One Team, Making It Happen With Integrity And Passion**

8. The land on which the tree is situated is Council owned.
9. On street parking is at a premium in this area and the proposed development will assist in reducing the number of vehicles parked on Nayland Street.

I therefore support the removal of the ngiao tree from the Council land adjacent to Nayland Street to allow the proposed development to continue subject to the above points being taken into consideration.

Yours truly,

Graham Clark  
Arborist  
Transport & Greenspace Unit

**Photo 1**

Existing cableway and compound, note the use of local materials and how well the structures 'fit' the environment.





**Photo 2 and 3**  
Existing walkway and proposed site



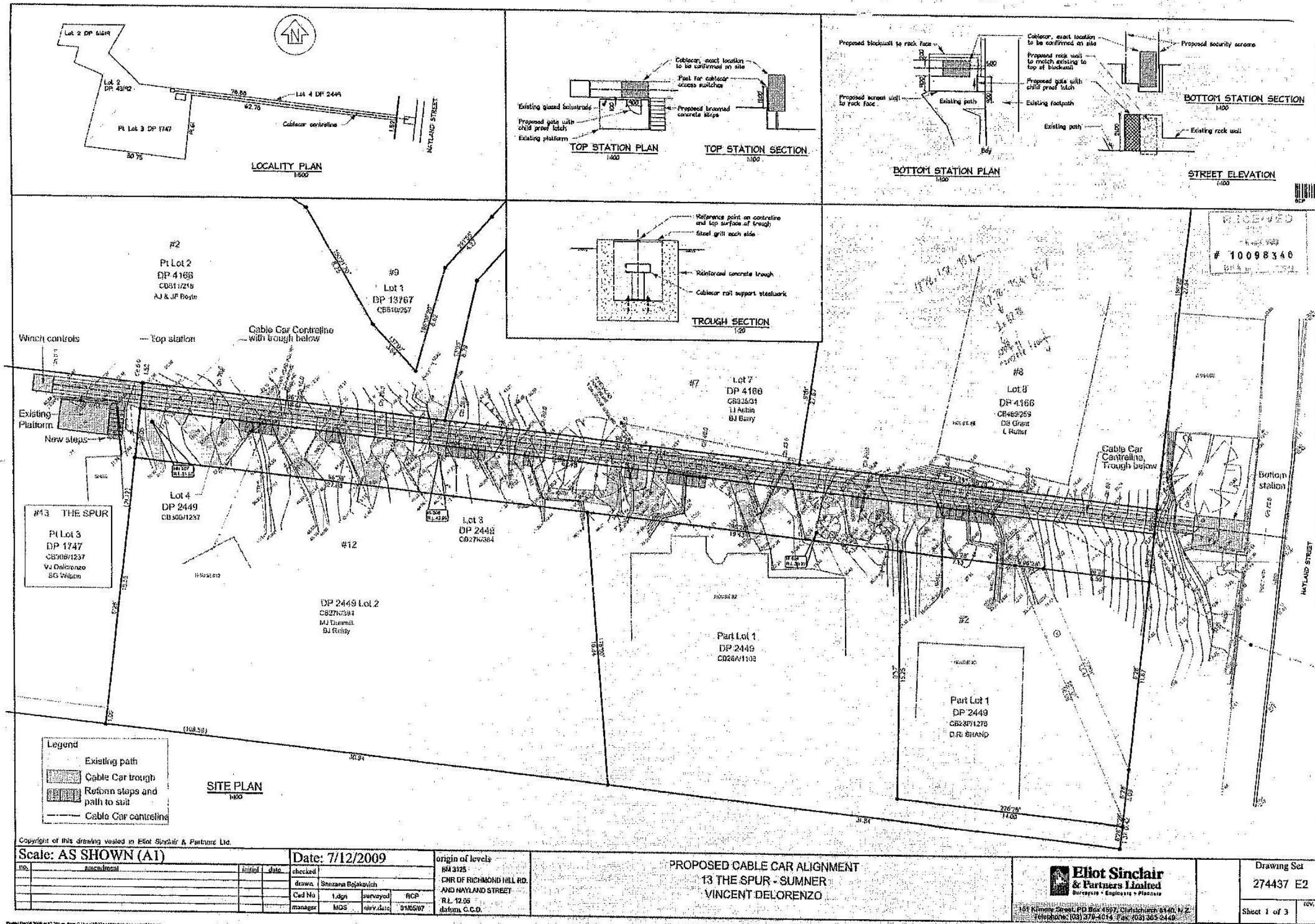


Print Preview

Page 2 of 3



*Attachment 2*



A Heckwood 3

Attachment 4

LICENCE FOR OCCUPATION OF  
LEGAL ROAD – STRUCTURES  
CABLE CAR STATION

CHRISTCHURCH CITY COUNCIL

The Licensee  
Vincent Joseph De Lorenzo  
and Susan Graham Wilson



CIVIC OFFICES • 163-173 TUAM STREET • PO BOX 237 • CHRISTCHURCH  
NEW ZEALAND • TELEPHONE (03) 941-8999 • FAX (03) 941-6441

THIS LICENCE dated the 9<sup>th</sup> day of July 2010

**PARTIES**

- (1) CHRISTCHURCH CITY COUNCIL at Christchurch ("Council")
- (2) VINCENT JOSEPH DE LORENZO and SUSAN GRAHAM WILSON at Christchurch ("Licensee")

**BACKGROUND**

- A. The Council owns the road known as The Spur, Christchurch ("the Road")
- B. The Licensee owns the property at 13 The Spur, Christchurch held and comprised in Computer Freehold Register CB 30B/1237 ("Licensee's Property")
- C. The Licensee acknowledges that the cable car station encroaches onto that part of the Road shown red on the plan annexed as Schedule A ("Structure")
- D. Pursuant to Section 357(1) of the Local Government Act 1974 the Council is empowered to authorise encroachments on the Road.
- E. The parties wish to set out the terms and conditions whereby the Licensee can retain and use the Structure encroaching on the Road.

**THIS LICENCE WITNESSES:**

- 1. Interpretation
  - 1.1 Expressions defined in the main body of this Licence have the defined meaning in the whole of this Licence including the background.
  - 1.2 Clause and other headings are for ease of reference only and do not form any part of the context nor affect the interpretation of this Licence
  - 1.3 Words importing the singular number shall include the plural and vice versa.
  - 1.4 References to clauses are references to clauses of this Licence.
  - 1.5 The schedules of this Licence and the provisions and conditions contained in such schedules, shall have the same effect as if set out in the body of this Licence.
  - 1.6 A reference to any Act, Regulation or Bylaw shall unless the context otherwise requires, include references to all subsequent Acts, Regulations or Bylaws made in amendment or in substitution and for the time being in force.
  - 1.7 Any obligation not to do any thing shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.

**2. Grant of Licence**

- 2.1 The Licensee shall have the right to retain and use that part of the Structure that encroaches on the Road during the term of this Licence

**3. Term**

- 3.1 This Licence shall come into force on the date of execution of this Licence and shall continue in force until the sale of the Licensee's Property or the Licence is cancelled in accordance with this Licence

**4. Licence Fee**

- 4.1 During the Term of this Licence, the Licensee shall pay to the Council an annual licence fee of \$165 00 inclusive of Goods and Services Tax under the Goods and Services Tax Act 1985 ("Annual Licence Fee") to be paid annually on the anniversary date of the commencement of this Licence if demanded ("the Licence Fee Payment Date"). The Annual Licence Fee shall be apportioned between the Council and the Licensee in respect of periods current at the commencement and cancellation of this Licence
- 4.2 If, during the 12 months preceding the Licence Fee Payment Date, there has been no breach of the obligations under this Licence by the Licensee, then the Licence Fee payable under this Licence will be deemed to have been paid.

**5. Use of Structure**

- 5.1 The Licensee shall be responsible (including for all costs incurred) for the stability, safety and maintenance of the Structure and any associated formation work.
- 5.2 The Licensee shall retain and use the Structure in a safe, clean and orderly manner and at all times to the satisfaction of the Council
- 5.3 The Licensee shall maintain the Structure to the satisfaction of the Council. The Council may at any time require the Licensee (at the Licensee's cost) to carry out any repairs the Council considers necessary to the satisfaction of the Council
- 5.4 The Licensee shall ensure that:
- (a) no excavation is undertaken on the Structure without the prior consent in writing of the Council. Such consent may be given or withheld by the Council in its sole and absolute discretion;
  - (b) no "hazardous substances" (as defined in Section 2 of the Hazardous Substances and New Organisms Act 1996) are stored on the Structures otherwise than in accordance with the provisions of the Hazardous Substances and New Organisms Act 1996 and all regulations made under that Act;
  - (c) any landscaped areas are maintained to good horticultural standards
  - (d) placards, posters or advertising matter are not displayed on the Structure without the prior written consent of the Council and such consent may be given or withheld by the Council at its sole and absolute discretion.
- 5.5 The Licensee shall permit officers of the Council to inspect the Structure while they are being used by the Licensee for the purpose of examining the condition of the Structure as to maintenance and compliance with the terms of this Licence

- 6. Financial Liability**
- 6.1 The Licensee shall make good at their expense all damage to the Structure.
- 6.2. The Licensee shall pay all taxes, rates and assessments from time to time charged, assessed or imposed in respect of the Structure.
- 6.3 The Licensee shall bear all costs incidental to the operation of the Licence
- 6.4 Where any works shall be executed by the Council at the expense of the Licensee in accordance with the provisions of this Licence the certificate of the Council as to the cost of those works shall be conclusive and the costs so certified shall be payable forthwith to the Council by the Licensee.
- 7. No Assignment**
- 7.1 The Licensee shall not assign, sub-licence, mortgage or charge any of the rights granted to the Licensee under this Licence. Any attempt to breach this clause shall be void
- 8. Compliance with Statutory Obligations**
- 8.1 The Licensee shall at all times comply with all statutes, regulations, bylaws and the Council's district plan affecting the use of the Structure.
- 9. Indemnity**
- 9.1 The Licensee shall be responsible for and keep the Council indemnified from and against all actions, suits, proceedings, claims, costs and demands which may be made or brought against the Council (including legal fees and costs incurred) by reason of the permission granted to the Licensee and including damage or injury to any person or property arising from any act of the Licensee's agents, employees, contractors or invitees.
- 10. Default and Cancellation**
- 10.1 The Council may (in addition to the Council's right to apply to the Court for an order for possession) cancel this Licence by re-entering the area where the Structure is located at the time or any time afterwards if:
- (a) the Licensee fails to perform or observe any of the Licensee's obligations under this Licence and the Licensee has failed to remedy that breach within the period specified in a notice served on the Licensee in accordance with section 246 of the Property Law Act 2007;
  - (b) execution is levied against any of the Licensee's assets;
  - (c) the Licensee is declared bankrupt or insolvent according to law or assigns the Licensee's estate or enters into a composition or scheme of arrangement for the benefit of all or a class of the Licensee's creditors;
  - (d) the Licensee, being a company:
    - (i) goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the Licensor);
    - (ii) is wound up or dissolved; or

- (iii) is declared to be subject to statutory management under the Corporations (Investigation and Management) Act 1989;
  - (e) a receiver or manager is appointed of any of the assets of the Licensee,
  - (f) the Licensee has an application made to a court for, or a resolution proposed for, or any other step is taken in anticipation of, the appointment of an administrator or has an administrator appointed; or
  - (g) the Licensee assigns or attempts to assign this Licence, or sub-licenses or attempts to sub-license all or any of the rights under this Licence.
- 10.2 No consent or waiver, expressed or implied, by the Council to or of the Licensee's breach of any term of this Licence will be construed as a consent or waiver to or of any other breach of that or any other term of this Licence. The Council's failure to exercise any of the Council's rights relating to the Licensee's breach will not constitute a waiver of that breach.
- 10.3 If the Council cancels this Licence under clause 10.1, then:
- (a) the Licensee will be treated as having breached an essential term of this Licence;
  - (b) the Licensee must compensate the Council for the Council's losses which arise as a result of cancellation following the Licensee's breach;
  - (c) the Council may recover damages for that breach;
  - (d) the Licensee must compensate the Council for the loss of benefits (including receipt of the Licence Fee) which the Council would have received if not for the cancellation, and the Council's entitlement to damages will include this loss; and
  - (e) subject to clause 10.3(d), this Licence and the parties' respective rights and obligations under this Licence will cease from the date of cancellation, but without prejudice to any rights which have accrued up to the date of cancellation.
- 10.4 In addition to the rights of cancellation specified in clause 10.1, the Council may cancel this Licence at any time for any reason by giving 6 months notice in writing to the Licensee.
- 10.5 At any time after the cancellation of this Licence, the Council may remove the Structures (including any part standing on land belonging to the Licensee and for this purpose the Licensee shall permit the Council, by its officers or agents, to enter upon the Licensee's land) at the expense of the Licensee and dispose of the materials as the Council sees fit without any liability for compensation to the Licensee.
- 11. Sale of Licensee's Property**
- 11.1 The Licensee will, at a time prior to transferring ownership of the Licensee's Property, advise the purchaser that it will be necessary for them to make an application to the Council's Transport and City Streets Manager for the right to continue using the Structures. The Licensee will also advise the Council's Transport and City Streets Manager the name of the purchaser of the Licensee's Property.
- 12. The Council acting as Territorial Authority**
- 12.1 The Licensee acknowledges that:
- (a) The Council, in its capacity as a territorial authority, is required to carry out its statutory functions under the Building Act 2004, the Resource Management Act 1991 and the Local



Government Act 1974 and Local Government Act 2002 in accordance with the provisions of those statutes

- (b) The granting by the Council of any consent or approval by the Council as territorial authority under either of those Acts will not of itself be deemed to be a consent or approval by the Council under this Licence.
- (c) The Council is bound by statutory obligations to exercise its powers, including discretionary powers and duties under either of those Acts without regard to any relationship it may have with the Licensee under this Licence
- (d) The Council will not be liable to the Licensee or any other party if, in its regulatory capacity, the Council declines or imposes conditions on any consent or permission that the Licensee or any other party seeks for any purpose associated with this Licence.

**13. Notices**

13.1 Any notice or document required or authorised to be given or served under this Licence may be given or served:

- (a) in the case of a notice under sections 245 or 246 of the Property Law Act 2007, in the manner prescribed by section 353 of that Act 2007; and
- (b) in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007;
  - (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
  - (ii) by personal delivery, or by posting by registered mail or ordinary mail, or by facsimile, or by email.

13.2 In respect of the means of service specified in clause 13.1(b)(ii) any notice or other document will be treated as given or served and received by the other party:

- (a) when received by the addressee;
- (b) three (3) working days (as that term is defined in the Property Law Act 2007) after being posted to the addressee's last known address in New Zealand;
- (c) on completion of an error free transmission, when sent by facsimile; or
- (d) when acknowledged by the addressee by return email or otherwise in writing.

13.3 Any notice or document to be given or served under this lease must be in writing and may be signed by:

- (a) the party giving or serving the notice;
- (b) any attorney for the party serving or giving the notice; or
- (c) the solicitor or any director, officer, employee or other agent who has authority to give or serve the notice.

13.4 Address for notices to the Council:

Christchurch City Council  
163-173 Tuam Street  
Christchurch  
Attention: Transport and City Streets Manager



13.5 Address for notices to the Licensee:

P O Box 17668  
Sumner  
Christchurch 8840

14. **Dispute Resolution Notice**

14.1 In the event of any dispute or difference arising between the parties at any time as to the interpretation of this Licence, or as to any matter or thing arising out of or in connection with this Licence, either party may serve to the other written notice adequately identifying the subject matter of that dispute or difference ("Dispute Resolution Notice"). The giving of this notice will be a condition precedent to the commencement by either party of proceedings (whether by way of mediation, arbitration or litigation) in respect of any dispute or difference. This clause does not, however, limit the right of either party to seek urgent interlocutory relief by way of Court proceedings.

15. **Arbitration**

15.1 Where either party serves to the other a Dispute Resolution Notice, the parties shall attempt to resolve the dispute or difference by negotiation.

15.2 If the dispute or difference has not been resolved within ten (10) working days (as that term is defined in the Property Law Act 2007) of service of the Dispute Resolution Notice, the dispute or difference shall be referred to the arbitration of a single arbitrator if one can be agreed upon by the parties. If the parties cannot agree to the appointment of an arbitrator within ten (10) working days (as that term is defined in the Property Law Act 2007), the dispute or difference shall be submitted to a single arbitrator appointed by the President for the time being of the New Zealand Law Society.

15.3 Any arbitration in terms of this clause 16 shall be conducted in accordance with the provisions of the Arbitration Act 1996 or any re-enactment or modification of that Act.

16. **Public Indemnity Insurance**

16.1 The Licensee must take out and maintain at their own cost, at all times during the term of this licence, public liability insurance policy in the joint names of the Council and the Licensee for an amount of, not less than \$2,000,000.00. The insurance policy shall be on such terms and with such insurers as the Council may reasonably require. The Licensee shall, if requested by the Council, provide the Council with written evidence that the public liability insurance is in force and the Licensee shall produce, whenever reasonably required by the Council, the relevant policies and evidence of payment of the current premiums.

17. **No Lease**

17.1 The Licensee acknowledges that:

- (a) the Licensee's rights under this Licence are in personam rights only; and
- (b) the granting of this Licence does not create a lease or an interest in land relating to the Road on which the Structure is located or otherwise confer on the Licensee any rights of exclusive possession of the Road on which the Structure is located

**18 Default Interest**

18.1 If the Licensee fails to pay any instalment of the licence fee or any other money payable under this Licence for ten (10) working days (as that term is defined in the Property Law Act 2007) after:

- (a) the due date for payment; or
- (b) the date of the Council's demand, if there is no due date;

then the Licensee must pay on demand interest at 15% on the money unpaid from the due date or the date of the Council's demand (as the case may be) down to the date of payment.

**19 Costs**

19.1 The Licensee must pay to the Council on demand all reasonable costs (including legal costs), charges and other expenses incurred by the Council of and incidental to:

- (a) the negotiation, preparation and execution of this Licence and of any variation or surrender of this Licence;
- (b) the Council remedying the Licensee's breach of any term of this Licence;
- (c) the Council's exercise or attempted exercise or enforcement of any power, right or remedy conferred on the Council by this Licence; and
- (d) the consideration and approval (if given) of any proposals made to the Council by the Licensee in respect of this Licence.

**20. Limitation of Liability**

20.1 If any person enters into this agreement as trustee of a trust, then that person warrants that:

- (a) that person has power to enter into this agreement under the terms of the trust;
- (b) that person has properly signed this agreement in accordance with the terms of the trust;
- (c) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this agreement; and
- (d) all of the persons who are trustees of the trust have approved entry into this agreement; and

20.2 If that person has no right to or interest in any of the assets of the trust except in that person's capacity as trustee of the trust, that person's liability under this agreement shall not be personal and unlimited but shall be limited to an amount equal to the value of the assets of the trust that are available to meet that person's liability unless the right of that person to be indemnified from the assets of the trust has been lost and, as a result, the other party to this agreement is unable to recover from that person that amount.

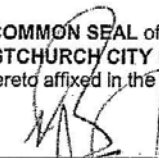

**21. Special Condition**

21.1 The Licensee acknowledges that the Structure will also encroach on areas which are subject to registered rights of way and other easements. The Licensee is solely responsible for obtaining

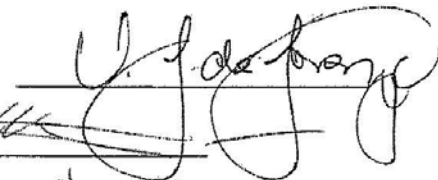
all consents necessary from the owners of the dominant land having the benefit of the easements prior to the construction of the Structure on the Road Council shall not be liable for any breach of the easements by the Licensee due to construction of the Structure

In witness of which this Licence has been executed

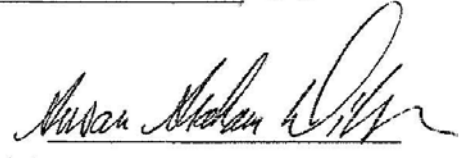
THE COMMON SEAL of the )  
CHRISTCHURCH CITY COUNCIL )  
was hereto affixed in the presence of: )

  
\_\_\_\_\_  
Mayer/Councillor  
  
\_\_\_\_\_  
Authorised Officer

SIGNED by the said VINCENT JOSEPH )  
DE LORENZO in the presence of: )

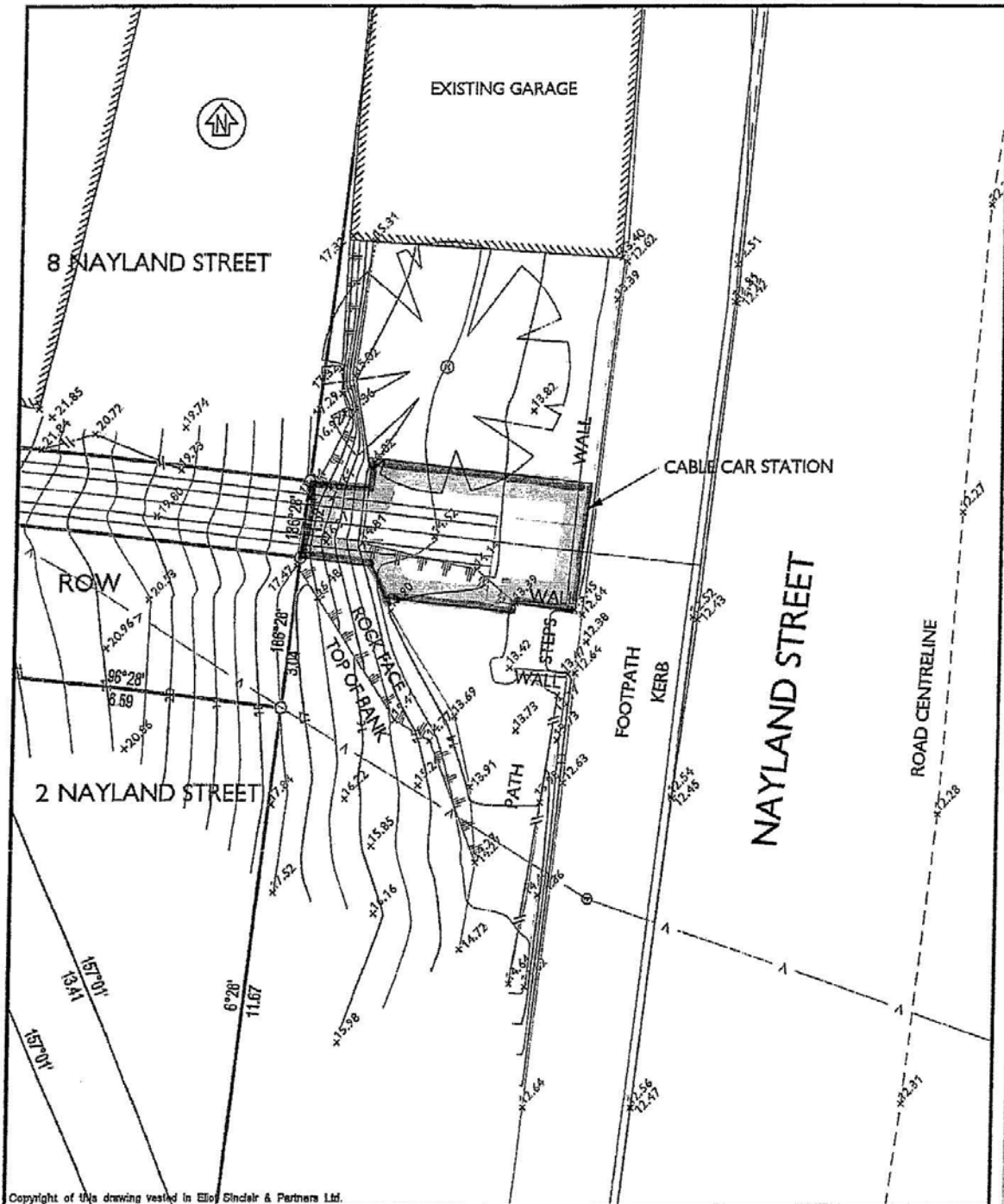
  
\_\_\_\_\_  
Signature of Witness:  
Full Name of Witness: Melanie Clare Morris  
Occupation of Witness: Company Director  
Address of Witness: Cl- maritime House, 25 Oxford St, Lyttelton

SIGNED by the said SUSAN GRAHAM )  
WILSON in the presence of: )


  
\_\_\_\_\_  
Signature of Witness:  
Full Name of Witness: Melanie Clare Morris  
Occupation of Witness: Company Director  
Address of Witness: Cl- maritime House, 25 Oxford St  
Lyttelton.

**SCHEDULE A**

Attach Plan of the Structure



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<p><b>DEED OF LICENCE</b> 13 THE SPUR (NAYLAND STREET)</p>		 <p><b>Eliot Sinclair &amp; Partners Limited</b> Surveyors - Engineers - Planners</p> <p>161 Kilmore Street, PO Box 4687, Christchurch 8140, N.Z. Telephone: (03) 378-4014 Fax: (03) 385-2449</p>	<p>DRAFT</p>	<p>Drawing Set 274437 M1</p> <p>Plot width / Date: Jtd</p>																															
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Attachment 5

# Helmore Ayers

LAWYERS

6 August 2010

Christchurch City Council  
PO Box 237  
CHRISTCHURCH 8011

Attention: Robert O'Connor

**RE: DE LORENZO & WILSON - 13 THE SPUR, SUMNER - CABLE WAY STATION**

We refer to our telephone conversation of yesterday and have now spoken with the consultant who prepared the application.

The cable car station was specifically designed to fit within the projected boundaries of our clients' lot onto the road area so that its position and construction had no effect on any neighbouring landowner.

Apparently, Tony Lange decided to contact the owner of the garage (also built on the road) which would be next door to the cable way station.

Clearly Council established for itself that there were no effects on neighbours relating to the cable way station proposal and no consents were necessary.

Our understanding is that this is the same criteria applied today to structures on roads that stay within the projected boundaries.

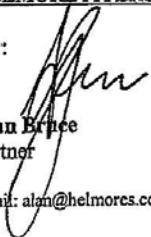
As stated in your report to the community board, Council has already granted the licence and it has already taken account of the effects on neighbours or, more particularly, the lack of them.

We do not believe therefore that Council has grounds to revoke the licence and if the power is used capriciously or in response to irrelevant considerations then that decision would be reviewable in Court.

We are also advised that a number of neighbours present at the meeting of 4 August themselves have cable car stations and cable cars to access their properties from Nayland Street.

Yours faithfully  
**HELMORE AYERS**

Per:

  
**Alan Bruce**  
Partner

Email: alan@halmores.co.nz

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Established 1884  
Phone: +64 3 366 5086  
Fax: +64 3 366 5542  
Email: lawyers@halmores.co.nz  
Web: www.halmores.co.nz

Level 4  
90 Armagh Street  
PO Box 13331  
Christchurch 8141  
New Zealand