Resource Management Act 1991

Christchurch City Council

Decision on Applications for Certificate of Compliance

(Section 139)

Application Numbers: `	**RMA/2023/2806** **RMA/2023/3100** **RMA/2023/3102**
Applicant:	Braeburn Property Limited and Specialised Container Services
Site address:	320 and 320A Cumnor Terrace, Woolston
Legal description:	Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298, and Lot 305 Deposited Plan 525615
Zone:	
District Plan:	Industrial General
Proposed Plan Change 14:	Industrial General
Overlays and map notations:	
District Plan:	Flood Management Area Fixed Minimum Floor Level Overlay in a Flood Management Area Liquefaction Management Area Down Stream Waterway 11m Building Height Limit
Proposed Plan Change 14:	Tsunami Management Area
Road classification:	Local
Description of Application:	Certificates of compliance for the operation of yard-based supplier activities

Appointment

1 We have been appointed by the Christchurch City Council (**the Council**) to hear and decide 3 certificate of compliance applications lodged by the Applicant. Usually, such applications are decided by council officers on the papers. However, a fundamental interpretive issue arises from these applications. We understand Council and the Applicant agreed that independent commissioners with relevant experience in interpretative issues be appointed to decide that fundamental interpretive issue and consequently the applications.

2 The Applicant sought a meeting before decisions were made. Council, while considering a meeting was unnecessary, left the choice to us. We decided to hold a meeting because it would enable us to better understand the competing positions on the interpretative issue and enable exploration of issues through questions.

3 The meeting took place on 14 December 2023 at Council offices. Council and the Applicant were represented by legal counsel, Rowan Ashton and Jo Appleyard and Stephanie de Groot respectively. Council's reporting officer Francis White was present along with other Council officers.

4 While not precisely stated, based on the papers, this issue has been outstanding for some time. The Applicant's activity on the site has drawn community feedback with concerns being raised as to adverse visual and other effects on amenity. We mention these matters, not because they are relevant to our decision (because they are not) but to provide reasons why both parties seek a decision as soon as possible.

5 We also record that at the commencement of the meeting and in initial discussions, we raised a number of points in relation to what might be described as the basic principles relating to certificates of compliance. This included that the applications contained a number of statements in the assessment against the various rules that it does comply or can comply. We noted that a number of those statements were not supported by evidence but were bare statements.

6 In discussions with counsel and Council staff at the hearing, it was made clear that the issue they wanted us to determine related to the "building" issue and they did not wish the other matters to inhibit us from making that determination. Our assessment is primarily focused on that issue.

Outcome – Summary

7 For the reasons set out in detail below we **decline** to issue all the certificate of compliance applications. It is our finding that the stacking of containers and other materials falls within the District Plan definition of building. Therefore, the activity described within the applications cannot be done lawfully on the subject site without a resource consent.

Applications

8 There are three separate applications. The first of these relates primarily to containers (dated 27 October 2023) and the second and third relate to haybales and stacking of car bodies (both dated 29 November 2023). These are detailed in the Council officer reports. The first report, relating primarily to shipping containers is undated but was received on 20 November 2023. That was updated following amendments proposed by the Applicant which are discussed below. The officer reports in relation to haybales and stacking of car bodies are both dated 11 December 2023.

9 Following the amendments, we were provided with the final officer report and decline recommendation written by Scott Blair dated 11 January 2024 on or about that same date. As matters progressed, the three applications appeared to coalesce into one. However, to avoid any uncertainty our decision relates to all three.

10 We do not need to detail the content of the applications but adopt the details provided within the applications and officers reports **attached** to this decision.

11 The activity is described in the original application documents as follows:

> *To establish a yard-based supplier activity on the site, comprising the use of land for selling or hiring products for construction or external use where more than 50% of the area devoted to sales or display is located within an uncovered external yard space.*

The activity will include the outdoor storage (for display, sale, or hire) of items including shipping containers; cargo/freight. including palletized goods; scrap metal including dismantled/crushed car bodies; metal, timber, concrete and other raw materials or manufactured products used in construction and civil works; and bundled waste or recycled materials. Such items will be stored to an unspecified maximum height but will expressly exceed 11m height.

Ancillary vehicle access to/from the site and on-site vehicle circulation and loading space is also proposed for the activity.

12 The specific components of the proposed activity are described in the original application document as:

The activity may include the outdoor storage (for display, sale, or hire) of various items, including:

(a) *shipping containers.*

(b) *cargo/freight including palletized goods.*

(c) *scrap metal including dismantled/crushed car bodies.*

(d) *metal, timber, concrete and other raw materials or manufactured products used in construction and civil works; and/or,*

(e) *bundled waste or recycled materials.*

The outdoor storage of the items described above may include items stacked/stored at any height (including heights exceeding 11m).

13 Following the 14 December meeting between the Applicant and the Commissioners appointed to decide whether a certificate of compliance can be issued the Council received an email with the following request on 21 December 2023:

For completeness, SCS and Braeburn seek to update the CoC application in respect of shipping containers only, to correct the activity category for shipping containers from "yard based supplier" activity (P11) to both an "industrial activity" (P2) and "warehousing and distribution" activity (P3), as provided for under Table 16.4.1.1 of the Christchurch District Plan.

14 The reporting officer in relation to this amendment noted that.

This update does not affect the application or the assessment of the application by (sic) in any substantive way, nor does it affect anything discussed during the meeting last week. This is because all three activity categories are permitted and subject to the same standards and provisions of the Christchurch City Plan.

15 We accept this advice.

16 The subject site is detailed within Appendix 2 of the applications. The site is only a small part of a larger site upon which container storage now takes place.

17 In the Portlink Industrial Park where the application site is located the maximum height of any building within the 11-metre building height limit area defined on the development plan in Appendix 16 point 8.3 within the District Plan is 11 metres. The applications specifically record that the container stack and stacks of other materials will exceed that 11-metre building height limit.

18 Accompanying the applications and the officer reports were a range of written legal opinions from the Council and the Applicant which we carefully considered before the meeting and fully discussed at the meeting.

19 During the meeting counsel for the Applicant advised the purpose in applying for the code compliance certificates was to establish a permitted baseline which may be utilised within other applications.

Section 139

20 The relevant provisions of Section 139 of the Act state:

> ***139 Consent authorities and Environmental Protection Authority to issue certificates of compliance***
>
> *(1) This section applies if an activity could be done lawfully in a particular location without a resource consent.*
>
> *(2) A person may request the consent authority to issue a certificate of compliance.*
>
> *(3) A certificate states that the activity can be done lawfully in a particular location without a resource consent.*
>
> *(4) The authority may require the person to provide further information if the authority considers that the information is necessary for the purpose of applying subsection (5).*
>
> *(5) The authority must issue the certificate if—*
>
> *(a) the activity can be done lawfully in the location without a resource consent; and*
>
> *(b) the person pays the appropriate administrative charge.*
>
> *(6) The authority must issue the certificate within 20 working days of the later of the following:*
>
> *(a) the date on which it received the request:*
>
> *(b) the date on which it received the further information under subsection (4).*
>
> *(7) The certificate issued to the person must—*
>
> *(a) describe the activity and the location; and*
>
> *(b) state that the activity can be done lawfully in the location without a resource consent as at the date on which the authority received the request.*
>
> *(8) The authority must not issue a certificate if—*
>
> *(a) the request for a certificate is made after a proposed plan is notified; and*
>
> *(b) the activity could not be done lawfully in the particular location without a resource consent under the proposed plan.*

Issues

21 The Applicant's assessment relies, to a large degree, upon shipping containers not being buildings that are subject to certain standards in the District Plan. Expressed another way, the critical issue or question is whether a stack of shipping containers and/or a stack of the other materials referred to in the applications meets the definition of buildings as defined in the District Plan.

22 As to context to consider the question we were advised empty shipping containers will be regularly transported to and from the site. Consequently, the individual container components of the stack will change from time to time. The same can be said for the other materials such as the bales of crushed car bodies and bales of hay. Bales will come and go from the site with the components of these stacks changing from time to time. However, the stack, even though its components and configuration will change over time, will be a constant.

23 We note that there is no temporal element specified in the certificates of compliance applications. In other words, the containers and other matters referred to within the applications may be stacked on the site for an indefinite period.

Definitions

24 The District Plan has several definitions that are relevant to answering the key question. We set them out below.

25 The definition of a building in the District Plan is:

> *Building means as the context requires:*
>
> *a. any structure or part of a structure, whether permanent, moveable, or immoveable; and/or*
>
> *b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and*
>
> *c. any vehicle, trailer, tent, marquee, shipping container, caravan, or boat, whether fixed or moveable, used onsite as a residential unit or place of business or storage; but excludes:*
>
> *d. any scaffolding or falsework erected temporarily for maintenance or construction purposes.*
>
> *e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy, or windbreak purposes, of up to 2 metres in height.*
>
> *f. retaining walls which are both less than 6^{m2} in area and less than 1.8 metres in height.*
>
> *g. structures which are both less than 6^{m2} in area and less than 1.8 metres in height.*
>
> *h. utility cabinets.*

i. masts, poles, radio, and telephone aerials less than 6 metres above mean ground level.

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues; P-420, 04.08.15 4 of 8

k. artificial crop protection structures and crop support structures; and in the case of Banks Peninsula only, … Advice note: 1.

26 We note this definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan. (Proposed Plan Change 14)

27 Both parties noted that structure is not defined in the District Plan but that is defined in Section 2 of the Resource Management Act 1991 (**RMA**) as:

> *Structure means any building, equipment, device, or other facility made by people and which is fixed to land and includes any raft.*

28 Both agreed that absent any contrary provision in the District Plan itself, the word 'structure' must have the same meaning as in the RMA when interpreting the District Plan. We accept that.

29 Definition of yard-based supplier:

> *Yard-based supplier means the use of any land and/or building for selling or hiring products for construction or external use (which includes activities such as sale of vehicles and garden supplies), where more than 50% of the area devoted to sales or display is located within covered or uncovered external yard or forecourt space, as distinct from within a secured and weatherproof building. Drive-in or drive-through covered areas devoted to storage and display of construction materials (including covered vehicle lanes) will be deemed yard area for the purpose of this definition.*

30 Definition of Industrial activity:

> *Industrial activity means the use of land and/or buildings for manufacturing, fabricating, processing, repairing, assembly, packaging, wholesaling, or storage of products. It excludes high technology industrial activity, mining exploration, quarrying activity, aggregates-processing activity, and heavy industrial activity.*

31 Definition of warehousing and distribution activities:

> *Warehousing and distribution activities means the storage and sorting of materials, goods or products pending distribution. Definition of gross leasable floor area Gross leasable floor area means the sum of the total area of all floors (within the external walls for buildings or within the boundary for outdoor areas) designed or used for tenant occupancy, but excluding:*
>
> *a. common lift wells and stairwells (including landing areas);*
>
> *b. common corridors and halls (other than food court areas).*
>
> *c. common toilets and bathrooms.*

d. any parking areas and/or loading areas; and for the purposes of calculating loading, car and cycle parking requirements and the high trip generator thresholds, it also excludes:

e. common seating areas (including food court seating areas); and

f. lobby areas within cinemas. (bold emphasis added) Definition of gross floor area P-420, 04.08.15 5 of 8 Gross floor area means the sum of the total area of all floors of all buildings, measured from the exterior faces of the exterior walls or from the centre line of walls separating two buildings. For the purposes of calculating loading spaces, mobility and cycle parking spaces and the high trip generator thresholds only, it excludes off-street parking areas and/or loading areas contained within the building.

Interpretive approach

32 What is the correct interpretive approach to planning documents? Both legal counsel for the Council and the Applicant initially appeared to agree on the interpretive approach applied to planning documents. However, as the meeting progressed a significant divergence arose. In any event Council and the Applicant arrived at a different result following their interpretive exercise. Council considered that the stacking of shipping containers does fall within the definition of building.

33 The Applicant offered an alternative interpretation namely the stacks of containers and of other materials does not constitute buildings under the District Plan and therefore the certificates of compliance must be issued pursuant to Section 139(5) of the RMA.

34 Rowan Ashton, for the Council, submitted that the correct interpretative approach required by the Legislation Act 2019, requires ascertaining the meaning of the relevant definition from its text and in the light of its purpose and its context. He agreed with the legal counsel for the Applicant, Jo Appleyard, and Stephanie de Groot, that *Powell v Dunedin City Council*[1] sets out the interpretive approach to planning documents, being in summary:

(a) The words of the document are to be given their ordinary meaning unless this is clearly contrary to the statutory purpose or social policy behind the plan in the rules or otherwise produces some injustice, absurdity, anomaly, or contradiction.

(b) The planning document should affect common law rights only where there is express provision to this end, or it follows as a matter of necessary implication.

(c) There is a need for certainty in the description of permitted activities and the operative parts of the plan. But the language used in the plan must be given its plain ordinary meaning, the test being *"what would an ordinary reasonable member of the public examining the plan, have taken from"* the planning document.

(d) The interpretation should not prevent the plan from achieving its purpose.

[1] [2004] NZRMA 49 (HC) at [35] and NZRMA 174(CA) at [12]

(e) If there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

35 Consistent with High Court authority in *Mount Field Limited v Queenstown-Lakes District Council*,[2] Mr Ashton submitted he also sought to find an interpretation that:

(a) Avoids absurd or anomalous results;

(b) Is consistent with the expectations of landowners; and

(c) Promotes administrative efficiency (rather than requiring lengthy historical research to assess lawfulness).

36 The Applicant recorded that there was no dispute between the parties as to the general principles of plan interpretation nor was there any dispute that the interpretation of planning provisions should result in the outcome set out in *Mount Field Limited*.

37 However, the Applicant considered that within the interpretive exercise matters (a) and (b) in paragraph 35 above are particularly relevant because in its view Council's interpretation resulted in absurdities and secondly did not support the anticipated outcomes of the industrial zones.

38 Furthermore, the Applicant had an additional argument in addition to the above interpretative principles by referring to an additional interpretive cannon that *'the specific overrides the general'*. The Applicant referred us to several Court decisions that it submitted confirmed that this principle is applicable to interpretation in a planning context. We address this point in a separate section of this decision.

39 Finally, the Applicant argued that the definition of building can be clearly ascertained from the text of the definition of 'Building' and consequently it does not include various items that are being stored outside for display, sale, and hire, including shipping containers.

Competing Positions – Subclause (a) and (b) of the District Plan Building Definition and RMA Structure Definition

40 Mr Ashton submitted both clauses (a) and (b) of the definition of Building apply to any structure that falls within those clauses. So, if stacked shipping containers can be said to be a structure, then clause (a) is sufficiently broad to include a shipping container as a moveable structure and clause (b) would include the placement and stacking of containers on land that is placement of a structure on or over land.

41 Considering the RMA definition of structure Mr Ashton submitted a shipping container would fall within the ordinary meaning of a device, which is defined in the Oxford Dictionary as *"a thing made or adapted for a particular purpose, especially a piece of equipment mechanical or electronic".*

[2] 31/110/08, Heath J, HC Invercargill CIV-2007-435-700

42 Accepting the RMA definition of structure requires a structure to be fixed to land, Mr Ashton detailed several Environment Court decisions[3] that considered the structure definition holding that to fall within the meaning of a structure the device does not need to be fixed permanently to the land nor does it require some form of connection to the land to be fixed.

43 Mr Ashton acknowledged that the structures in those cases had either a greater degree of permanence or potentially greater difficulty in being moved than a shipping container. Nevertheless, he contended given the weight of a shipping container is such that it cannot be easily moved and would require specialist machinery to shift it, it did bear some degree of similarity to the tiny home example in one of the cases he referred us to. His essential point was that the cases he referred us to are examples to illustrate that gravity itself may be sufficient to fix a structure to land and permanent site is not a requirement. In answer to our questions Mr Ashton accepted the examination of the degree permanency and connection were to be assessed along a continuum. As well he accepted the context in which the assessment was undertaken would be pivotal to the outcome.

44 Ms Appleyard, after acknowledging the RMA definition of structure and the Environment Court decisions Mr Ashton referenced, submitted that the findings that the structures in those decisions constituted buildings does not lend support for an interpretation that finds that any of the activities undertaken under the applications constitute a building.

45 The reasoning to support that submission was that the outdoor storage and stacking of these items is more transitory than as contemplated by the RMA definition of structure. For the same reasons she contended the activities do not fall within the definition of structure under subclauses (a) and (b) of the definition of building in the District Plan.

46 Within oral submissions Ms Appleyard detailed the life of a container, particularly emphasising that containers are continually in circulation and that storage or the holding of an individual container on the subject site would always be transitory. Furthermore, she made the point that the nature of the structures being considered in each of the Environment Court cases was clearly of a more permanent form than the outdoor storage of various items that are intended to be easily removed and transported at a specific storage facility.

47 While we understood the points about the transitory nature of the individual containers, our questions on this point related to the permanence or otherwise of the stack of containers rather than the movement and circulation of the individual container component of the stack. At the meeting, we discussed our familiarity with the site and that the height and width of the container stack has seemed consistent and generally one would be challenged to point out any differences.

48 While discussing the stack verses the individual container issue, we discussed how individual containers could and did form interlinked stacks while being stored and/or transported on say a container ship. We noted how the construction of a container enabled it to be linked into or connected to another container. We considered this linking characteristic supported the views the stack rather than the individual

[3] *Ohawini Bay v Whangarei District Council* Environment Court, Auckland, A068/06 and *Antoun v Hutt City Council* (2020) 21 ELRNZ 595

containers should be the focus. However, the Applicant did not accept the thrust of our questions answering that only the weight of the individual containers enabled them to be stacked. We do however note at paragraph 3.10(c) of the Applicant's written submission it is recorded *"shipping containers specifically are stacked with corner fittings designed for this purpose"*. The purpose is we consider stacking. We think containers are constructed in a manner enabling stacking for either storage and/or transporting.

49 While the Applicant did provide some information on the average duration of a container stay on the site, in our view that information did not demonstrate that the overall character and permanency of the stack would be markedly altered. Indeed, we were told in November 2023, 922 came into the site with 962 leaving. So overall neutral particularly in terms of any material impact on the permanency of the stack of containers. As noted above, we discussed this issue, noting from observations the stack of containers appears permanent.

50 Based on the above matters, and answers provided during questioning, we formed the view that the stack of containers, and the other proposed stacks, should realistically be viewed as a permanent feature of the subject site. We accept that at different times the shape or profile of the structure will change but only marginally given the entry and exit type movement of the individual components. Containers that leave the site will be replaced by new arriving containers. However, in our view the overall character of the stack, particularly its scale and height, would not be significantly altered by the comings and goings of individual containers.

51 On the issue of containers being moveable we found no dispute. However, we accept specialised machinery is need.

52 While we accept that containers and other stacks of materials are not as fixed to the land as the structures in the Environment Court decisions were, we accept that to fall within the meaning of a 'structure', permanent fixing to the land is not required, nor is some form of direct connection to fix to the land required. So, given this, we accept gravity of the item is sufficient to fix it to the land. The item can be held in place by its own weight so any foundation or some form of connection is superfluous.

53 Overall, while we agree that individual containers come and go, given the effect of the movements in and out is largely neutral, we consider the stack of containers is sufficiently permanent to satisfy the definition of structure in the RMA.

54 Further Mr Ashton noted that his interpretation was entirely consistent with the text of the building definition itself in the District Plain including "moveable" structures and the "*placement"* of structures on land. He observed while some of the containers stored at the site may be there on a transitory basis, there was no guarantee that that would inevitably be the case as there was nothing to prevent containers being stored on a longer-term basis. Based on the evidence available to us we accept that submission.

55 Also, in our view clause (b) given it covers "*any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over land*" is sufficiently broad to capture and provide for changes and alterations to the structure, being the stack of containers, due to

movements of individual containers. We find the same in relation to the stacks of other materials proposed.

Competing Positions on subclause (c) of the definition of building in the District Plan

56 Continuing from paragraph 38 above the Applicant submits subclause (c) of the definition applies given in part because the items stored on the site are not structures therefore they are not captured by (a) and (b). As well the Applicant argues subclause (c) is more specific in relation to vehicles and shipping containers so it should prevail over (a) and (b).

57 Mr Ashton submitted this interpretation would mean that the use of shipping containers on a site for any other purpose could never constitute a building and would be exempt from all standards applying to buildings. He contended this would result in an absurd outcome as other activities such as a Community Activities or Spiritual Activities taking place in structures comprised of shipping containers would be exempt from building standards.

58 To support his submission that care is needed to ensure the interpretive principle that the specific overrides the general is not applied as an inflexible rule, he referred us to the Environment Court decision particularly paragraph [40] in *Vortac*.[4] *Vortac* concerned whether a fence below 2m was a building/structure in the context of a particular District Plan. Applying the principle in *Vortac* to limb (c) he submitted the specific inclusions of containers within (c) does not exclude containers being a building under the limbs (a) and (b) in other circumstances.

59 The Applicant in response submitted paragraph [40] is obiter dictum because the Court concluded that the item in question was not a fence, the decision was made in a different context, under a different district plan with a different definition of 'building'. Finally, the Applicant submitted such an approach would render (c) nugatory.

60 We disagree. We consider it is available to identify and apply a principle in the manner that Mr Ashton does. As well we consider he appropriately respects the current context. We also do not consider Mr Ashton's approach renders (c) nugatory. We consider (c) applies in the specific circumstances set out within that clause.

61 We do not accept the Applicant's submission that given (c) is more specific it overrides (a) and (b). These are for the reasons advanced by Mr Ashton in his submissions on this point. We find that the specific inclusion of (c) in the definition is expressed to be in addition to the ordinary and usual meaning of building/structure within (a) and (b).

62 The other reason we found *Vortac* helpful was that paragraph [40] notes that where words have a very broad ordinary and usual meaning then they normally take their sense from the purpose for which and the context in which they are used. In the *Vortac* case that context in which the words were considered included the objectives and policies of the District Plan. We consider the same applies here. We note

[4] *Vortac v Western Bay of Plenty District Council* [2022] NZEnvC 178

both the Council and the Applicant consider the objectives, policies and rules of the District Plan as providing a context in which they undertook their interpretative exercise. We do so in our next section.

63 Summarising we find the text of the definitions broad enough to capture and include placement and stacking of shipping containers and that activity falls within limbs (a) and (b) as a movable structure and the placement of a structure on land. We consider even though we find changes to the stack are limited that (b) captures any changes to the container stack. Finally for the reasons detailed above we do not accept the Applicant's submissions on (c) preferring the position taken by the Council.

Purpose – Objectives and Policies

64 Both parties identified, with some exceptions the same objectives and policies. The Council placed more weight on Objective 16.2.3 which deals with effects of industrial activities. The Applicant placed more weight on Objective 16.2.1 which focuses on Recovery and growth of the district's industry being supported and strengthened in existing and new greenfield industrial zones.

65 The objectives and policies discussed were:

(a) Objectives 16.2.1 and 16.2.3:

> ***16.2.1 Objective – Recovery and growth***
>
> *a. The recovery and economic growth of the district's industry is supported and strengthened in existing and new greenfield industrial zones.*
>
> ***16.2.3 Objective – Effects of industrial activities***
>
> *a. Adverse effects of industrial activities and development on the environment are managed to support the anticipated outcome for the zone while recognising that sites adjoining an industrial zone will not have the same level of amenity anticipated by the Plan as other areas with the same zoning.*
>
> *b. The cultural values of Ngāi Tahu/ mana whenua are recognised, protected and enhanced through the use of indigenous species in landscaping and tree planting, a multi-value approach to stormwater management in greenfield areas, low impact urban design, and the protection and enhancement of wāhi tapu and wāhi taonga including waipuna.*

(b) Policies 16.2.3.1 and 16.2.3.2:

> ***16.2.3.1 Policy – Development in greenfield areas***
>
> *a. Manage effects at the interface between greenfield areas and arterial roads, rural and residential areas with setbacks and landscaping.*
>
> *b. Manage the development of greenfield areas in a manner aligned with the delivery of infrastructure, including upgrades to networks, to avoid adverse effects on networks serving these areas.*
>
> *c. Development shall recognise and support Ngāi Tahu cultural values through low impact urban design, the protection of sites of Ngāi Tahu cultural significance identified in Schedule 9.5.6.1, and recognition of other sites of*

Ngāi Tahu cultural significance identified in Appendix 9.5.6 including waterways, springs, wetlands and sites of indigenous vegetation where practicable.

d. Enable the ongoing use of land in the Industrial Heavy Zone (South West Hornby), (identified on Appendix 16.8.8) for rural activities and the associated irrigation of food processing wastewater at South West Hornby as an integral component of the adjoining industrial activity

16.2.3.2 Policy – Managing effects on the environment

a. The effects of development and activities in industrial zones, including reverse sensitivity effects on existing industrial activities as well as, visual, traffic, noise, glare and other effects, are managed through the location of uses, controls on bulk and form, landscaping and screening, particularly at the interface with arterial roads fulfilling a gateway function, and rural and residential areas, while recognising the functional needs of the activity.

b. Effects of industrial activities are managed in a way that the level of residential amenity (including health, safety, and privacy of residents) adjoining an industrial zone is not adversely affected while recognising that it may be of a lower level than other residential areas.

c. Development and activities are managed to avoid adverse effects on strategic infrastructure within or in proximity to industrial zones.

d. The quantity of wastewater discharged in areas over unconfined or semiconfined aquifers is restricted to minimise any risk of contamination.

e. The cultural values of Ngāi Tahu/mana whenua are recognised and supported through the protection of wāhi tapu and wāhi taonga, including waipuna, from the adverse effects of development, through the use of low impact urban design, use of indigenous species appropriate to the local environment, and stormwater management.

f. Development in the Industrial Park Zone is designed and laid out to promote a safe environment and reflects principles of Crime Prevention through Environmental Design (CPTED).

66 Mr Ashton submitted the objectives and policies contemplate management of adverse effects of industrial activities and development having regard to amenity values of adjoining areas. The techniques to achieve these outcomes include setbacks and landscaping and controls on bulk and form. Mr Ashton noted the Portlink Industrial Park contains bespoke rules in respect of maximum building height and building setbacks. He submitted these techniques would be completely ineffective in respect of shipping containers and not achieve their purpose, if these structures, which we take to mean the stack, were not covered by the rules resulting in shipping containers being able to be stacked to any height including in relation to boundaries. Consequently, he contended the purpose as expressed by the objectives and policies of the zone supported his textual interpretation of the definition of ‘building’ and ‘structure’.

67 The Applicant placed weight on recovery and growth of the district’s industry when seeking to establish the purpose of the objectives and policies. In detail the Applicant argued the Council interpretation would unduly constrain activities on site and on other sites seeking to undertake similar storage activities. This would, the Applicant contended, be contrary to the anticipated outcome and purpose of the zone as detailed in Objective 16.2.1. The activities proposed in the applications, the Applicant contended, are the

exact types of activities contemplated by the zone's functions as provided for by the objectives and policies and are an anticipated outcome.

68 Dealing with the objectives and policies that focus on adverse effects of industrial activities and the effects of developments, the Applicant had two approaches. First the controls, other than height controls, in the District Plan, such as setbacks and landscaping, would ensure Objective 16.2.3 and Policies 16.2.3.1 and 16.2.3.2 would be achieved. Second, height as a control on bulk only applies to buildings. However, this requires us to accept stacked shipping containers are not buildings which we do not.

69 Moreover, we agree with Mr Ashton that the Applicant did not produce any evidence to demonstrate a stack of shipping containers will have a lesser effect on amenity as compared to other structures. As well, in respect of the Applicant's contention about undue constraints on other sites in industrial zones seeking to undertake similar storage activities, we were informed that the 11m height restriction did not apply in all industrial zones (indeed, it does not apply to a large part of the Portlink zone). So, we disagree with the Applicant's submissions that the Council interpretation would result in undue constraints contrary to Objective 16.2.1. Rather, Council by including bespoke rules in the Portlink Industrial Park as to maximum building height and setbacks purposely set out to manage adverse effects of industrial activities and development on zones adjoining the Portlink Industrial Park.

70 We prefer Mr Ashton's interpretation of the objectives and policies rather than that of the Applicant because his interpretation fits comfortably with the words within them. We do not read the objectives and policies as placing an emphasis on supporting industrial recovery and growth at all costs. The adverse effects of industrial activities, which might include visual effects, and other effects including effects on amenity at the interface with residential areas, are to be managed by the means provided by the plan including for Portlink limits on height.

Other District Plan Provisions – Absurd and/or anomalous consequences of interpretive exercise

71 Mr Ashton's submissions included consideration of the context of the remainder of the District Plan checking for anomalous consequences. He considered whether an 'outdoor storage area' as defined in the District Plan and a 'building' are mutually exclusive. In other words, whether the land being an outdoor storage area within the meaning of the District Plan definition would mean that the containers cannot be a building.

72 Given the definition of a building anticipated that something moveable or temporary could fall within the meaning of a building it follows he says that storage areas could exist where buildings themselves are stored giving the example of tiny homes being constructed and stored. For the reasons he advances we agree.

73 Mr Ashton considered Chapter 16 of the District Plan and did not identify anything that would mean the definition of a building and an outdoor storage area are necessarily mutually exclusive. In conclusion, while noting there are built form standards that apply specifically to outdoor storage areas, he could not see any obvious reason as to why those standards would not apply in conjunction with other specific

standards that apply to buildings. We accept the results and his opinion arising from that review for the reasons set out in his written submissions.

74 As well Mr Ashton considered other industrial zone rules to check the implications of stacks of containers being classed as "*buildings*" for those rules. Buildings for industrial activities are permitted within the industrial zone (Rule 16.4.1.1.P.1). So, he concluded any container storage that meets the building height and setback standards can occur without the need for consent. If a consent is required because the containers breach the height limit, then in his view needing a resource consent is not an anomalous outcome because such an outcome is consistent with the direction and purpose of the objectives and policies. We agree for the above reasons.

75 The application of Rule 16.6.2.2 which deals with the maximum coverage of a site in the industrial park zone is identified by Mr Ashton as being possibly anomalous because it would limit the placement of containers to 50% of a site with consent needed to exceed this threshold.

76 Resource management reasons to support such a rule seem unclear according to Mr Ashton. However, he notes, and we agree, even if the application of this rule may not be apt, the requirement to obtain consent need not amount to an absurd result. This is because, as he explains, it is not unusual or uncommon for an activity to need to obtain consent under various rules some of which address technical requirements and some of which require careful management to address environmental effects. Again, we agree.

77 Mr Ashton considered how treating shipping containers as buildings would interact with the use of containers across the district including in terms of the district-wide rules in the District Plan. He focuses on whether any anomalous consequences would arise such as requiring consent for the temporary use of shipping containers in circumstance where that would be expected to be a permitted activity.

78 Mr Ashton, after considering Chapter 6 of the District Plan that provides an enabling regime for temporary activities, concludes the rules for temporary buildings provide for a range of situations where one would expect shipping containers to be used as a permitted activity. So, this he said led to the result that the temporary use of shipping containers across the district would generally be exempt from the other rules which generally apply to buildings such as bicycle parking requirements and minimum floor levels.

79 Mr Ashton points out these temporary activity rules would not apply in the industrial zones or the Portlink site because the rules provide they do not apply to activities and buildings anticipated by the rules in the relevant zones. So based on his opinion shipping containers are activities and buildings anticipated in the industrial zone they cannot be authorised under the temporary activities regardless of how long they are in place. We accept this opinion for the reasons noted.

80 Next the flood hazard rules are considered by Mr Ashton. Flood hazard rules are about protecting buildings from floods so applying those rules to shipping containers may appear to be unusual as the risk of damage to a container by flooding is we think quite different from the risk of damage to a building by flooding. But placing a stack of containers on land that is subject to a serious flood hazard is not a sensible choice and there may be significant resource management outcomes.

81 Even if the application of the flood hazard rules to the proposed activity may not be apt as put by Mr Ashton, we agree with him the potential requirement to obtain consent would not necessarily amount to an absurd consequence. The reason he advances is that it is not unusual for an activity to need consent under various rules some of which may be technical consent requirements and some of which address environmental effects which require careful management. We accept his opinion for the reasons noted above.

82 As well Mr Blair on page 5 of his 11 January report noted in respect of Rule 5.4.1.1.P1:

> *Because the shipping containers (item a. in the proposal description) are buildings the minimum required floor level specified in rule 5.4.1.1.P1 could apply. I note that the rule refers to new buildings, but as containers are moved into the site, they will become new buildings.*
>
> *However, I also note that Appendix 4 did not list as relevant, Rule 5.4.1.1 P16 Table 5.4.1.1b:*

Activity		***Activity specific standard***
P16	*Outdoor storage of transiting shipping containers in commercial and industrial zones.*	*Nil*

> *This means that in the Flood Management Area placement of transiting shipping containers are a permitted activity. The CoC application now describes the proposal as being stored at the site for a short duration. The shipping containers are therefore 'transiting'.*
>
> *I conclude that Rule 5.4.1.1 P16 is a relevant permitted activity in regard to the shipping containers in flood management areas; however, there is no change to my assessment that the container storage activity - as industrial activity and/or warehousing and distribution activity (rule 16.4.1.1 P2 and P3) in the Industrial General zone must comply with the built form standards, and that as the containers are buildings the built form standard for buildings is breached*.

83 There was considerable discussion at the meeting as to whether or not the shipping containers were "transiting". We consider that "transiting", in this context, relates to containers which are on a journey. It is our understanding that containers stacked on the site are not in transit. They are essentially stored until they are needed, albeit in terms of individual containers, that may be for a short duration. In any event, the stack cannot be said to be transitory. That individual containers forming part of the structure change does not alter that. Despite our different view in relation to the transiting issue, we accept Mr Blair's overall advice that an industrial activity and/or warehousing distribution activity (Rule 16.4.1.1 P2 and P3) in the Industrial General zone must comply with the built form standards for buildings. As we have found, the stack of containers is sufficiently permanent to satisfy the definition of structure in the RMA.

84 When considering other District Plan references to 'Containers' Mr Ashton detailed rules relating to the Specific Purpose (Lyttelton Port) Zone relating to maximum building height particularly Rule 13.8.4.2.1 clauses a. and g. He submitted the express reference to shipping containers in the context of clause a. and g. applying to buildings is strong contextual support for the view that containers are a type of building under the District Plan. In clause g. Mr Ashton drew our attention to the exclusion for transiting containers

that remain on the site for less than 72 hours noting no similar exclusion applies in the Portlink Industrial Park.

85 Ms Appleyard, relying on her involvement in the planning process that developed the Lyttelton Port Zone, disagreed arguing no such linkages with buildings were considered. However, we prefer Mr Ashton's opinion on this issue for the reasons he advances. In any event while of interest we do not consider this issue to be critical to the outcome.

86 The Applicant raises several matters it considers would be absurdities given the Council interpretation such as the requirement for cycle parking, mobility parking spaces and flood hazard minimum floor levels. The last matter we have already considered so needs no further consideration by us. As to the first two, given the Council's interpretation, these would arise for consideration during a resource consent if the stack were to exceed 11m. An effects-based assessment of those matters would then occur leading we think to a sensible outcome that cycle and mobility spaces are not required. So, we conclude that an absurdity does not arise. The Applicant also raised use of containers supporting structures post-earthquake as a further example of an absurdity. However, the Applicant did not provide sufficient information.

87 The Applicant contended the Council interpretation results in a misalignment with the expectations of landowners of industrial zone land. Further it contends Council's interpretation is unnecessary and a nuisance burden and expense for industrial operators storing items in industrial zones across the city. As well these consents would need to address technical noncompliance issues and serve no purpose being an inefficient use of resources. We disagree for reasons already advanced noting operators such as the Applicant have a range of choices of industrial zones in which the height limit does not apply.

88 We do not consider the need to obtain a resource consent if an operator chooses to locate in that part of the Portlink Industrial Park which contains the 11m height limit as either leading to an absurd outcome, or being an unnecessary burden and resulting in a misalignment with expectations of landowners particularly within the Portlink Industrial Park. We consider the objectives and policies we addressed earlier make it plain that adverse effects of industrial activities and developments need to be managed by a range of methods, including height limits.

Is the proposed Activity a Development under Rule 16.4.1.1.a

89 The Applicant relies on the advice note contained in Rule 16.4.1.1.a which provides the built form standards, including the height constraint, do not apply to an activity that does not involve any development contending the placement of containers on a site for transitory storage on the site is not a development. Expanding, the Applicant contends transitory storage does not involve any building or construction, nor count as improvements that might increase the value of land. These activities and outcomes are, the Applicant contends, in accord with the meaning of the word development that implies an aspect of building or construction.

90 So, the Applicant contends that even if we find the activities in the CoCs are buildings the built form standards do not apply and the CoCs must be issued.

91 After providing and considering several different dictionary definitions of the word development Mr Ashton considers, given the circularity of the issues, that Rule 16.4.1.1.a advances the issue of whether stacked shipping containers are buildings because generally a construction of a building would generally be considered a development. So, if stacking containers amounts to the placement of a "building" as defined in the District Plan then the activity is a development. We agree.

92 However, we also consider having regard to the dictionary definitions Mr Ashton references that the word development is capable of very broad meanings. While development is commonly associated with the activity of building, we consider the definitions referenced demonstrate that a change of use of land can be and is a development. At an earlier point in time based on our own knowledge of the site this site was in an undeveloped state characterised by rank grass growth. Then over time fill was placed onto the site, compacted, and further developed into a state suitable for the delivery of containers by road transport and developed to enable container movement and storage. We consider an additional development or change arose when the storage and stacking of containers occurred on the site.

93 So, for the circularity reasons given by Mr Ashton and our own views on development we conclude that the advice note to Rule 16.4.1.1.a does not assist the Applicant.

Other Matters

94 The Applicant contends Council's interpretation approach demonstrates confirmation bias because it is reverse engineering an interpretation of the District Plan on the assumption the District Plan should manage such an activity when there is a lacuna in the District Plan. We disagree.

95 We acknowledge the application of the definitions of a 'building' and 'structure' require careful consideration but that is to be expected given the myriad of circumstance the District Plan need provide for. As well we consider the objective and policy base is clear the adverse effects of industrial activities need to be managed and are to be managed by a range of methods in the District Plan. So for these reasons, we do not consider Council's interpretative approach demonstrates confirmation bias nor is there a lacuna and/or deficiency in the District Plan.

96 Further the Applicant contends this decision should not be used to fix a deficiency in the District Plan that Council have signalled will be the subject of a plan change that is in process. Council officers in answer to our questions advised a plan change is not in process. Rather while there is some consideration of the need for a plan change dealing with the subject matter of the industrial interface, it is not correct to describe it as a plan change in the preparation process. We accept that advice.

97 There are some other matters the Applicant raised such as what it considered to be other relevant definitions of containers, and the implications for SCS and the wider shipping industry. We consider those matters are either not relevant to our task or that either directly or by implication we have already addressed them.

Containers, Stacked Car Bodies/Scrap Metal, Stacked Haybales – The Applications

98 Given our conclusion that a stack of shipping containers is a building, and it is agreed between the parties this is the main issue, we do not need to cover the car bodies and/or haystacks in the same detail as containers because our findings on containers apply to car bodies and haystacks for the same reasons.

99 The Applicant considers the Council interpretation of 'building' and 'structure' in the context of the stack of containers is arbitrary and not one that supports administrative efficiency. The Applicant contends a party carrying out the scrap metal and haybales activity or similar should not have to measure the height and/or weight of the stack to determine if it is a building. Nor is duration relevant to the interpretative exercise. The Applicant contends that it is not clear at what point the height, size, weight, or duration of stored items be defined and assessed as a building.

100 On the other hand, Mr Ashton sets out his analysis in his opinion to the Council dated 7/12/23. The two applications are to establish a yard-based supplier activity, but we consider have due regard to the District Plan definition of yard-based supplier that the applications are for Outdoor Storage Areas which are as Mr Ashton points out mutually exclusive.

101 After noting the District Plan definition of 'building' does not provide express temporal and dimension standards specifying when stacked matter will come within its terms, Mr Ashton notes because the applications do not specify a scale or time parameter, then consideration is required of whether the stacked matter is a structure, which in turn requires an assessment of affixation to land.

102 We agree the same case law applies. The assessment is one of degree, including temporal considerations as to the duration of stay.

103 In Mr Ashton's assessment the long-term indefinite nature of the piles of scrap metal, the use of interlocking methodologies, supports a conclusion the scrap metal bales would be fixed to the land by its own weight and would therefore constitute a structure. As well the height, width, and interlocking of the scrap piles results in the outcome they would amount to a structure. We agree with that assessment for the reasons he advances.

104 We also agree with Mr Ashton that this scrap metal assessment outcome is supported by a purposive interpretation of the relevant objectives and policies we have detailed above in respect of the stack of containers.

105 Mr Ashton reaches the same outcome for the same reasons on the haybale applications. We agree with these conclusions on the haybales application and adopt them.

106 Contrary to the Applicant we do not consider the Council interpretation arbitrary for the reasons given above. Rather we see it as careful and considered. We do not consider it difficult for an applicant to measure the height of a proposed stack. The stack need not be weighed. We think it obvious that stacks of containers, car bodies scrap metal and haybales by their very nature are heavy. We consider duration is relevant and important because duration of the stack on site is directly relevant to the objectives and

policies when assessing the activity for any adverse effects. Further, just because a resource consent may be needed if a height limit is exceeded, that does not in our view result in administrative inefficiency.

Application Uncertainties

107 As noted earlier, we raised this issue at the hearing. As requested, we have focused on the interpretative issue.

108 The reporting officer does not agree with the Applicant's assessment/adequacy of information on high trip generation and water supply for firefighting noting the Applicant asserts compliance rather than demonstrates compliance within the application.

109 In detail the officer is concerned about the lack of survey data regarding traffic. He notes.

> *Further, and noting the request to amend the activity status of shipping containers (which are buildings) to an industrial activity, the threshold for an industrial activity before it is subject to the high trip generator rule is more than 5000m^2 of gross floor area. I also note that the amended activity description states that the shipping containers are a warehousing and distribution activity. Warehousing and distribution activities are subject to the high trip generator rule when the gross floor area is more than 10,000m^2. It is unclear what the gross floor area of the shipping containers is.*

110 The Applicant responds given Council is prepared to accept the Applicant's explanation as to compliance with other rules then traffic should be the same and subject to future monitoring and compliance action if required.

111 In our view traffic could be a significant adverse effect especially as the activity involves heavy vehicle movements on an already busy roading network which services the port of Lyttelton. As well if compliance were based on a will comply approach and compliance is not achieved then relying on enforcement can be challenging. We consider the preferred approach is to avoid having to cure the issue later by provision of survey data supporting the Applicant's will comply contention. The same reasoning applies to the Applicant providing information to confirm compliance with pro vision of water supply for firefighting.

Conclusion

112 For all the foregoing reasons we **decline** to issue certificate of compliance for all the applications detailed above pursuant to Section 139(8)(b) of the RMA.

Dated 29 January 2024

Commissioner Paul Rogers

Commissioner David Caldwell

Attachments: see over

Attachments: Applications and Officer Reports:

1. RMA/2023/2806 Application dated 27 October 2023
2. RMA/2023/3100 Application dated 29 November 2023
3. RMA/2023/3102 Application dated 29 November 2023
4. RMA/2023/2806 Officer Report dated 11 January 2024
5. RMA/2023/3100 Officer Report dated 11 December 2023
6. RMA/2023/3102 Officer Report dated 11 December 2023

1. RMA/2023/2806 Application dated 27 October 2023

Planning. Traffic. Development.

Certificate of Compliance application

prepared for

BRAEBURN PROPERTY LIMITED

320 & 320A Cumnor Terrace, Christchurch

October 2023

Certificate of Compliance application

prepared for

BRAEBURN PROPERTY LIMITED

320 & 320A Cumnor Terrace, Christchurch

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Prepared by:	Jeremy Phillips, Director & Senior Planner
Reviewed by	Tim Walsh, Senior Planner

Application for Certificate of Compliance
Under Section 139 of the Resource Management Act 1991

TO: Christchurch City Council

We: Braeburn Property Limited ('**the applicant**'), apply for a certificate of compliance for the activity described below.

1. The activity to which the application relates (the proposed activity) is as follows:

   To establish a yard-based supplier activity on the site, comprising the use of land for selling or hiring products for construction or external use where more than 50% of the area devoted to sales or display is located within an uncovered external yard space.

   The activity will include the outdoor storage (for display, sale or hire) of items including: shipping containers; cargo/freight including palletized goods; scrap metal including dismantled/crushed car bodies; metal, timber, concrete and other raw materials or manufactured products used in construction and civil works; and bundled waste or recycled materials. Such items will be stored to an unspecified maximum height, but will expressly exceed 11m height.

   Ancillary vehicle access to/from the site and on-site vehicle circulation and loading space is also proposed for the activity.

   The activity for which the certificate of compliance is sought will be undertaken in accordance with the details, information and plans that accompany and form part of the application.

2. The site at which the proposed activity is to occur is as follows:

   The application site is a nominal site of approximately 2.5 hectares, located at 320 & 320A Cumnor Terrace, Christchurch legally described as Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298 and Lot 305 Deposited Plan 525615.

   The relevant particulars of the site are set out in further detail within the details, information and plans that accompany and form part of this application.

3. The full name and address of each owner or occupier (other than the applicant) of the site to which the application relates are as follows:

   The applicant owns the site and leases it to:

   - NZ Express Transport (2006) Limited
     C/- Gabites Limited
     54 Cass Street
     ASHBURTON 7700

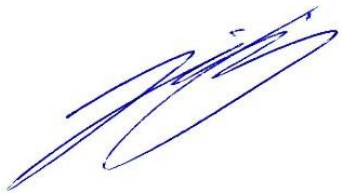
   - Pinnacle Corporation Limited
     Level 3 Woburn House
     40 Bloomfield Terrace
     LOWER HUTT 5010

   - International Primary Products (NZ) Limited
     C/- Nexia New Zealand

Level 1, 5 William Laurie Place
AUCKLAND 0632

- Champion Materials Limited
  C/- E3 Business Accountants Limited
  94 Disraeli Street
  CHRISTCHURCH 8023

4. We attach all necessary further information required to be included in this application by the Resource Management Act 1991, or any regulations made under that Act.



Jeremy Phillips, Director & Senior Planner **DATED:** 27 October 2023

(Signature of applicant or person authorised to sign on behalf)

Address for service:

Novo Group Limited
PO Box 365
CHRISTCHURCH 8140

Attention: Jeremy Phillips

T: 029 261 1310
E: jeremy@novogroup.co.nz

Address for Council fees:

Braeburn Property Limited
C/- Moore Walker Davey Searells Limited
Level 2, Building One, 181 High Street,
CHRISTCHURCH 8144

Attention: Richard Pebbles

T: 021 331 346
E: richard@peeblesgroup.co.nz

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Appendices

Introduction

1. The applicant seeks a certificate of compliance pursuant to section 139 of the Resource Management Act 1991 ('the Act') to establish and operate a yard-based supplier activity on the subject site, in accordance with the information and plans provided below. Notably, the activity entails the outdoor storage of various items for display, sale and hire, including (among other things): shipping containers, scrap metal and bundled waste. Certification is sought that such outdoor storage is not constrained in terms of its height, but it is expressly noted that the storage will exceed 11m in height above ground level.

The Site

2. The application site is a nominal site[1], located within the underlying property known as 320 & 320A Cumnor Terrace, Woolston, Christchurch which is legally described as Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298 and Lot 305 Deposited Plan 525615. Refer to the Record of Title in **Appendix 1**.

3. The subject site for the purposes of this application occupies a rectangular parcel of land approximately 25,000m^2 (2.5 hectares) in area, at the terminus of Kennaway Road in the northern part of the Portlink Industrial Park ('Portlink'). Portlink is bounded by the Heathcote River, Tunnel Road (State Highway 74), the Main Trunk Rail Line that terminates in Lyttelton, and Chapmans Road.

4. The site is generally flat and is formed with a compacted metal surface, established as part of the original subdivision and development of this stage of Portlink.

5. **Figure 1** over the page shows the underlying property (in red) which measures approximately 12 hectares in area. **Figure 2** shows the subject site in the context of the outline development plan ('ODP') that is applicable to the Industrial General (Portlink Industrial Park) Zone.

6. Kennaway Road extends from its intersection with Chapmans Road and terminates at a turning circle adjacent the application site.

7. Beyond Portlink and on the other side of the Heathcote River, industrial activities are located to the southwest/west, and residential properties are located to the northwest/north. Open space occupies the land to the east of Tunnel Road.

[1] See definition of 'site' in the District Plan, which means *'an area of land or volume of space shown on a plan with defined boundaries, whether legally or otherwise defined boundaries…'.*

Figure 1: Approximate location of site (dashed) and underlying property (red) (Source: Canterbury Maps)

Figure 2: Approximate site location relative to Portlink ODP (CDP, Appendix 16.8.3)

The Proposal

8. As described above, the applicant seeks certification that the establishment and operation of a yard-based supplier activity on the site (as described here) is a permitted activity.

9. For the purposes of the application, the yard-based supplier will entail the use of land for selling or hiring products for construction or external use where more than 50% of the area devoted to sales or display is located within and uncovered external yard space[2]. The activity may include the outdoor storage (for display, sale or hire) of various items, including:

    a. shipping containers;

    b. cargo/freight including palletized goods;

    c. scrap metal including dismantled/crushed car bodies;

    d. metal, timber, concrete and other raw materials or manufactured products used in construction and civil works; and/or,

    e. bundled waste or recycled materials.

10. The outdoor storage of the items described above may include items stacked/stored at any height (including heights exceeding 11m) within those areas identified on the plans in **Appendix 2**. Racking or other support structures are not proposed or necessary for storage, noting 'interlocking' of stacked items or other methodologies will be employed to ensure the safe and secure stacking of items at greater heights, where this is required (noting such requirements will vary according to the items being stored). Notably, shipping containers or dismantled car bodies could be stacked to heights exceeding 20m.

11. A small office/administration building of approximately 100m^2 Gross Floor Area is proposed adjacent to the site entry and will include storage space for cycles.

12. A singular vehicle access is provided to/from the site and this provides access to a yard area that caters for loading requirements. Formal car parking, cycle parking and loading spaces are not required by the District Plan for the activity and are not proposed.

13. The activity will only operate during daytime hours (typically 8am-5pm), from Monday to Friday. The site will be secured by fencing and security gates.

14. The site will have minimal staff, with an estimated 1-2 full time equivalent staff required to manage deliveries and pickups and the sorting of items on the site. Similarly, vehicle movements to and from the site will be minimal. Whilst the sale, hire or display of items on site will be possible, the majority of customers will view content online meaning minimal customer visits to the site. Delivery activity will also be of a modest scale, noting consignments of materials to the site will be periodic and collection of materials sold or hired from the site will also be periodic. For the purposes of the application, certification is

[2] This being consistent with the District Plan definition of a 'yard-based supplier'.

sought that up to 50 heavy vehicle trips and 100 other (non-heavy) vehicle trips per day is permitted.

15. A landscaping strip with trees is proposed along the site's eastern boundary with Tunnel Road, as required by the District Plan.

16. Given the site is generally flat and has an established, compacted metal surface that is suitable for the proposed activity, earthworks are not generally required. Some minor earthworks will be required for the purposes of forming the vehicle access and sealed apron at the entry to the site[3]. Given the small extent of works required, earthworks will not exceed a fill height >0.3m above ground level, or a cut of >0.6m below ground level, or a total volume of 20m^3.

17. Signage is not proposed as part of this application.

Statutory Framework

National Environmental Standard (NES) for Contaminants in Soil

18. The Environment Canterbury Listed Land Use Register identifies a Hazardous Activities and Industries List ('**HAIL**') activity within the site. The HAIL site (site 122022: Kennaway Farm) is indicated as having been partially investigated.

19. Resource consent RMA/2017/947 provides the following commentary relevant to NES considerations:

> *On the original site, the NES regulations do not apply as land contamination levels are below background levels. The site has been subject to extensive filling which currently still being completed and the consent includes provision to ensure that the fill is cleanfill. On this basis, consent is not required under the NES for the disturbance of earth or change of use.*

20. Consistent with this approach, the NES does not apply to the proposed activity.

Christchurch District Plan

Zoning & Planning Map Notations

21. The site is zoned *Industrial General (Portlink Industrial Park)* in the Christchurch District Plan ('District Plan' or 'Plan') and is subject to the following overlays and notations:

- Flood Management Area,
- Fixed Minimum Floor Level Overlay within Flood Management Area,
- Liquefaction Management Area,

[3] The access will have a legal and formed width of 7m, with the sealed apron extending 10m back into the site. Earthworks to a maximum depth of 200mm are proposed for this area, to allow for the sealing of this area with asphalt or concrete.

22. As shown in Figure 2 above, the site is within the boundaries of the *Portlink Industrial Park Outline Development Plan* in Appendix 16.8.3 of the District Plan. Of relevance, the site is partly within the 11m building height limit area on that ODP (hatched area in **Figure 2**).

Definitions

'Site' definition

23. As noted above, the subject site entails an area of land shown on a plan with defined boundaries and therefore accords with the District Plan definition of 'site', as follows:

> ***Site** means an area of land or volume of space shown on a plan with defined boundaries, whether legally or otherwise defined boundaries…*

Activity type (yard-based supplier)

24. The proposed activity as described above is a 'yard-based supplier', as defined below:

> ***Yard-based supplier** means the use of any land and/or building for selling or hiring products for construction or external use (which includes activities such as sale of vehicles and garden supplies), where more than 50% of the area devoted to sales or display is located within covered or uncovered external yard or forecourt space, as distinct from within a secured and weatherproof building. Drive-in or drive-through covered areas devoted to storage and display of construction materials (including covered vehicle lanes) will be deemed yard area for the purpose of this definition.*

Definition of 'Building'

25. The definition of 'building' in the Plan is set out below. **Appendix 3** includes three legal opinions that consider the application of this definition to shipping containers. The first opinion by Brookfields Lawyers (dated 26 July 2022) provides advice to Council on the matter and finds that shipping containers fall within the definition. The second and third opinions, prepared by Chapman Tripp (dated 6 October) and MinterEllisonRuddWatts (dated 7 October), provide a contrary assessment. We also append an excerpt of the IMO (International Maritime Organisation) International Convention of Safe Containers (CSC) 1972, setting out in its Interpretations and Guidelines a definition of 'container' as an article of transport equipment, which is referred to in the MinterEllisonRuddWatts legal opinion. While these opinions relate to another matter, they are directly relevant to this application. Further, there are other industry definitions that provide further support that containers are temporary in nature.[4] Based on the Chapman Tripp and MinterEllisonRuddWatts opinions, the assessment of compliance has been undertaken on the basis that shipping containers are <u>not</u> buildings, as defined in the District Plan.

> ***Building** means as the context requires:*
>
> *a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or*
>
> *b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and*

[4] An example of this is an industry definition of "Inland Container Depot", which is that it is a "public facility that offers services for handling and <u>temporary storage</u> of import/export laden containers or empty containers" [emphasis added].

c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;

e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;

f. retaining walls which are both less than 6m2 in area and less than 1.8 metres in height;

g. structures which are both less than 6m2 in area and less than 1.8 metres in height;

h. utility cabinets;

i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;

k. artificial crop protection structures and crop support structures; and

…

***Advice note:** 1. This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.*

Rules

26. An assessment of the proposal's compliance with the applicable rules in the District Plan is set out in **Appendix 4**.

27. Notably, the area-specific rules for the Industrial General Zone (Portlink Industrial Park), permit those activities listed and permitted in the Industrial General Zone in Rule 16.4.1.1 P1-P21, subject to compliance with the area-specific built form standards in 16.4.4.2 and Industrial General Zone built form standards in 16.4.2. In this regard:

    a. Yard-based suppliers are a permitted activity under Rule 16.4.1.1 P11.

    b. Area specific built form standards in 16.4.4.2 are complied with.

    c. Industrial General Zone built form standards in 16.4.2 are complied with.

28. As regards the built form standards referenced above, it is noted that the only building proposed on the site is the small site office at the entry to the site which complies with applicable rules relating to 'buildings' (e.g. height controls, boundary setbacks, etc). The areas of outdoor storage (including shipping containers and other items, of unspecified maximum heights but generally above 11m in height) otherwise comply with applicable built form standards. Notably, outdoor storage is not subject to any maximum height rules or controls.

29. Other (general) rules in the District Plan, including those relating to transport, earthworks and natural hazards are also complied with, as detailed in **Appendix 4**.

Activity status

30. Based on this assessment the proposal is a **permitted activity** and certification from Council pursuant to section 139 of the Act is sought, confirming that the proposal can lawfully proceed without a resource consent.

Appendix 1

Record of Title

RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD

Search Copy

R.W. Muir
Registrar-General
of Land

Identifier	**614676**
Land Registration District	**Canterbury**
Date Issued	11 July 2013

Prior References
578312

Estate	Fee Simple
Area	6319 square metres more or less
Legal Description	Lot 301 Deposited Plan 463785
Registered Owners	

Braeburn Property Limited

Interests

Appurtenant hereto is a right of way created by Transfer 811061 - 9.10.1970 at 2:00 pm

Subject to a right to drain water over part marked MB on DP 463785 created by Easement Instrument 9138592.7 - 13.8.2012 at 3:21 pm

Subject to a right to drain water over part marked H on DP 463785 created by Easement Instrument 9446208.9 - 11.7.2013 at 12:01 pm

The easements created by Easement Instrument 9446208.9 are subject to Section 243 (a) Resource Management Act 1991

9446208.13 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 11.7.2013 at 12:01 pm

9750370.7 Surrender of the right to drain water created by Easement Instrument 9446208.9 as appurtenant to Lots 502-3 DP 473298 - 9.6.2014 at 5:10 pm

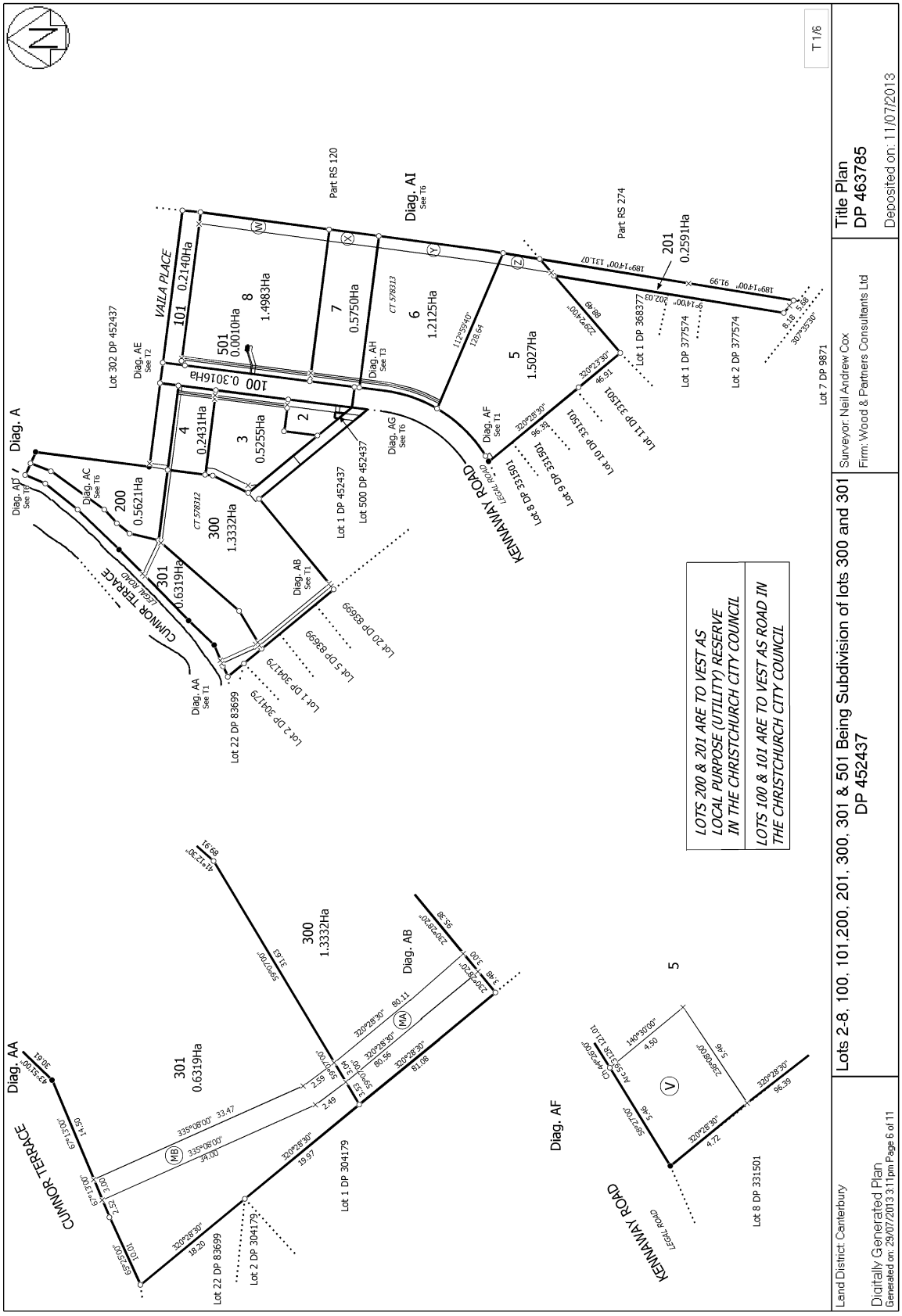
9750370.14 Encumbrance to Christchurch City Council - 9.6.2014 at 5:10 pm

10703567.1 Variation of Encumbrance 9750370.14 - 24.2.2017 at 2:10 pm

10838003.1 Variation of Encumbrance 9750370.14 - 8.8.2017 at 8:46 am

Fencing Covenant in Transfer 11545342.2 - 27.9.2019 at 4:36 pm

12209381.1 Variation of Encumbrance 9750370.14 - 22.12.2021 at 3:36 pm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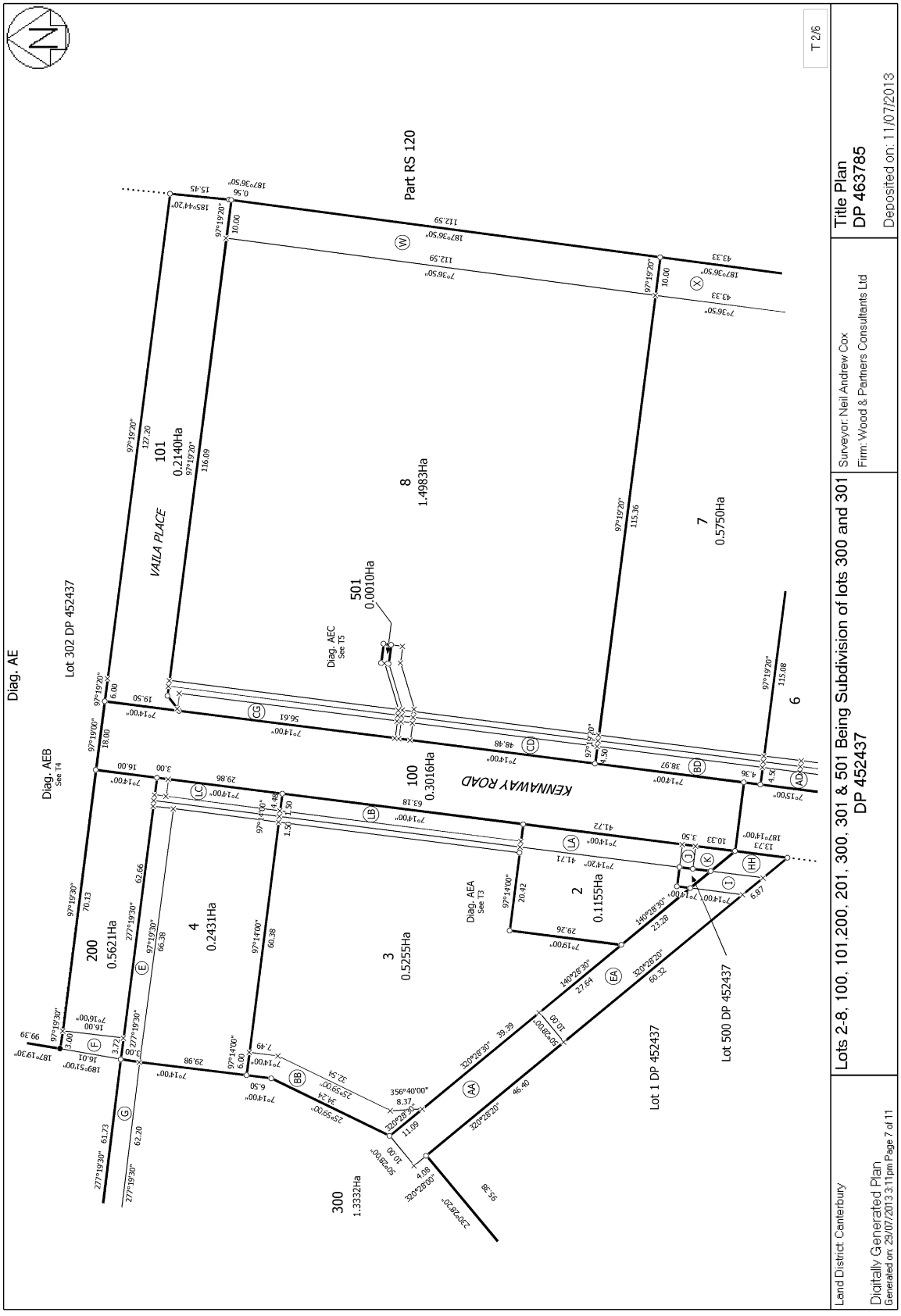
Title Plan
DP 463785
Deposited on: 11/07/2013
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
Lots 2-8, 100, 101,200, 201, 300, 301 & 501 Being Subdivision of lots 300 and 301 DP 452437
LOTS 200 & 201 ARE TO VEST AS LOCAL PURPOSE (UTILITY) RESERVE IN THE CHRISTCHURCH CITY COUNCIL
LOTS 100 & 101 ARE TO VEST AS ROAD IN THE CHRISTCHURCH CITY COUNCIL
Land District Canterbury
Digitally Generated Plan
Generated on: 29/07/2013 3:11pm Page 6 of 11
VAILA PLACE
KENNAWAY ROAD
CUMNOR TERRACE
Lot 302 DP 452437
Lot 1 DP 452437
Lot 500 DP 452437
Lot 22 DP 83699
Lot 2 DP 304179
Lot 1 DP 304179
Lot 1 DP 368377
Lot 1 DP 377574
Lot 2 DP 377574
Lot 7 DP 9871
Lot 8 DP 331501
Lot 9 DP 331501
Lot 10 DP 331501
Lot 11 DP 331501
Lot 20 DP 83699
Lot 5 DP 83699
Part RS 120
Part RS 274
CT 578312
CT 578313
Diag. A
Diag. AA
Diag. AB
Diag. AC
Diag. AD
Diag. AE
Diag. AF
Diag. AG
Diag. AH
Diag. AI
100 0.3016Ha
101 0.2140Ha
200 0.5621Ha
201 0.2591Ha
300 1.3332Ha
301 0.6319Ha
501 0.0010Ha
1 0.2431Ha
2
3 0.5255Ha
4 0.2431Ha
5 1.5027Ha
6 1.2125Ha
7 0.5750Ha
8 1.4983Ha


Part RS 120
VAILA PLACE
KENNAWAY ROAD
Lot 302 DP 452437
Lot 1 DP 452437
Lot 500 DP 452437
Diag. AE
Diag. AEB
See I4
Diag. AEC
See I5
Diag. AEA
See I3
101
0.2140Ha
8
1.4983Ha
7
0.5750Ha
6
501
0.0010Ha
100
0.3016Ha
200
0.5621Ha
4
0.2431Ha
3
0.5255Ha
2
0.1155Ha
300
1.3332Ha
T 2/6
Title Plan
DP 463785
Deposited on: 11/07/2013
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
Lots 2-8, 100, 101,200, 201, 300, 301 & 501 Being Subdivision of lots 300 and 301
DP 452437
Land District: Canterbury
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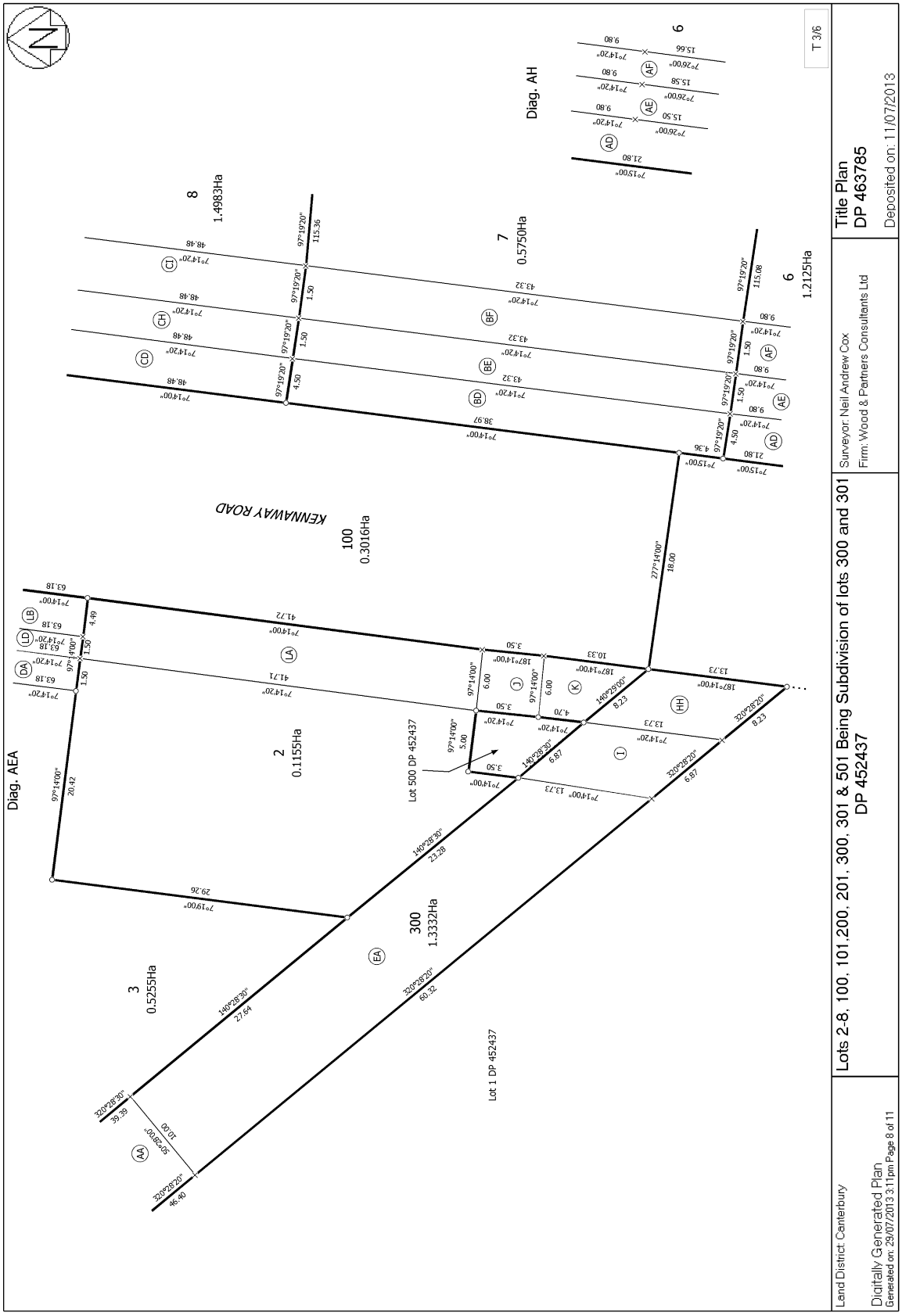
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DP 463785
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Surveyor: Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
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Land District: Canterbury
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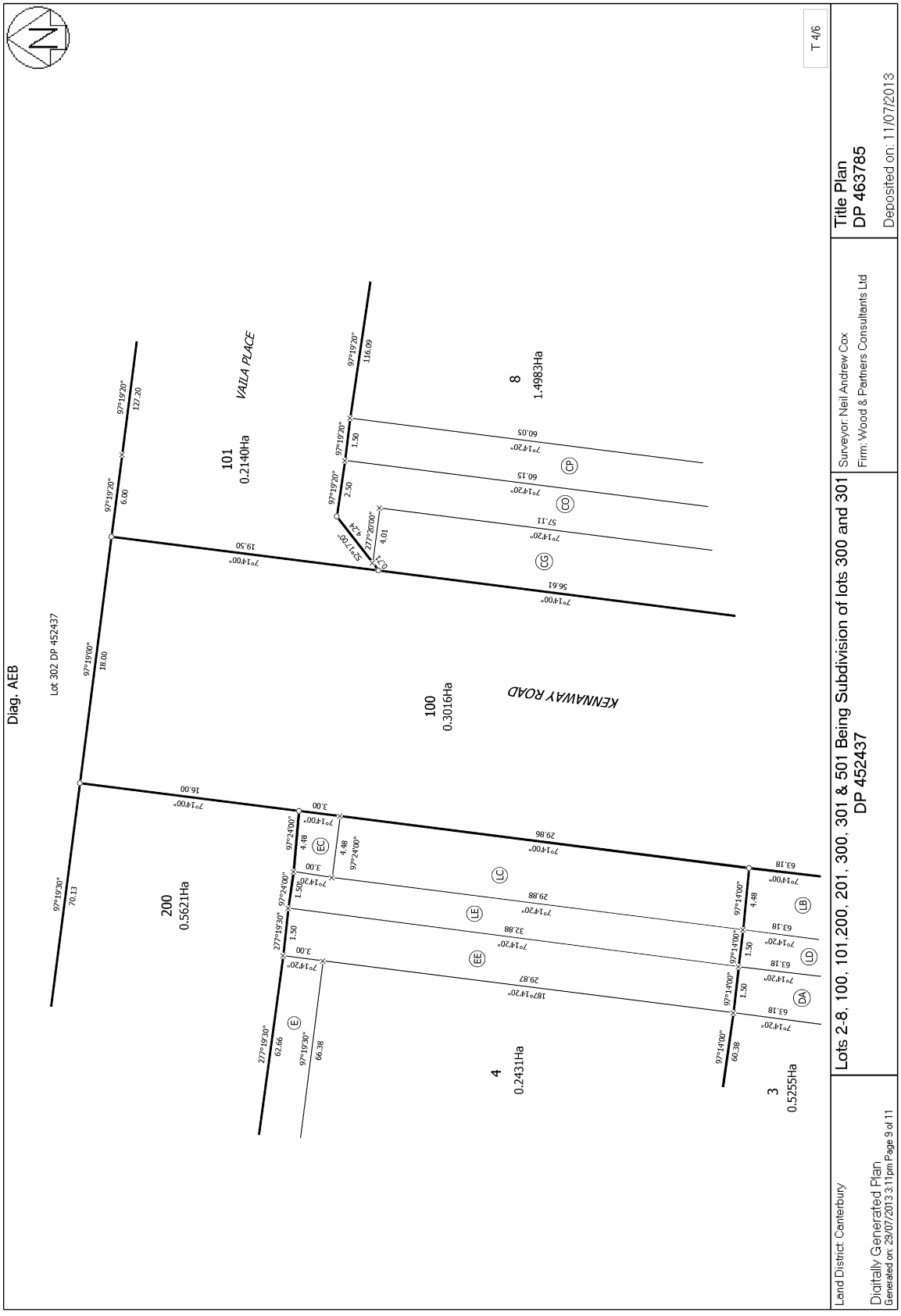
Generated on: 29/07/2013 3:11pm Page 8 of 11
T 3/6
KENNAWAY ROAD
Diag. AEA
Diag. AH
Lot 500 DP 452437
Lot 1 DP 452437
100
0.3016Ha
2
0.1155Ha
3
0.5255Ha
300
1.3332Ha
6
1.2125Ha
7
0.5750Ha
8
1.4983Ha


T 4/6
Diag. AEB
Lot 302 DP 452437
VAILA PLACE
KENNAWAY ROAD
101
0.2140Ha
100
0.3016Ha
200
0.5621Ha
8
1.4983Ha
4
0.2431Ha
3
0.5255Ha
Title Plan
DP 463785
Deposited on: 11/07/2013
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
Lots 2-8, 100, 101,200, 201, 300, 301 & 501 Being Subdivision of lots 300 and 301
DP 452437
Land District: Canterbury
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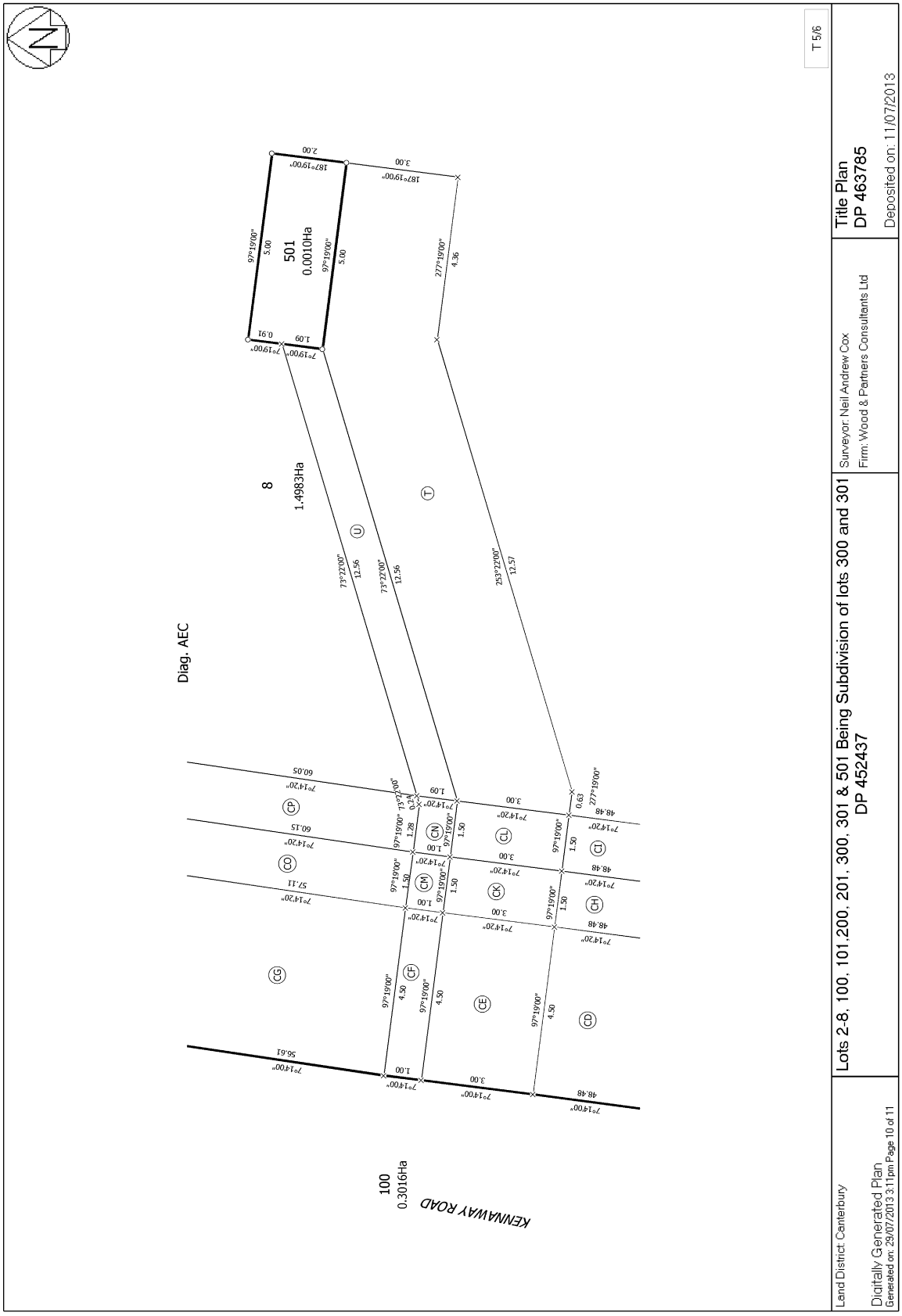
Generated on: 29/07/2013 3:11pm Page 9 of 11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Deposited on: 11/07/2013
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
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DP 452437
Land District: Canterbury
Digitally Generated Plan
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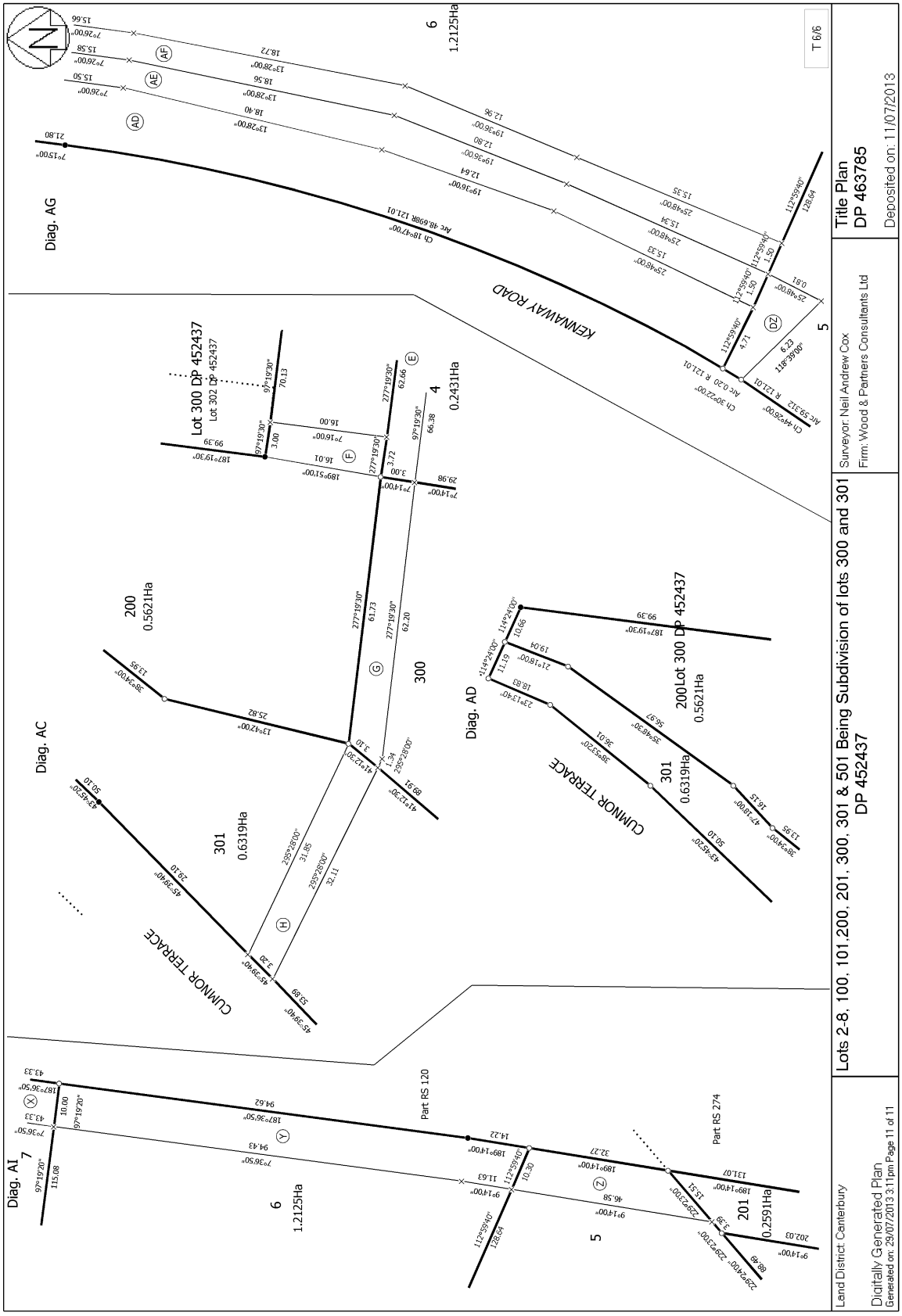
Diag. AEC
501
0.0010Ha
8
1.4983Ha
100
0.3016Ha
KENNAWAY ROAD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DP 463785
Deposited on: 11/07/2013
Surveyor: Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
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Land District: Canterbury
Digitally Generated Plan
Generated on: 29/07/2013 3:11pm Page 11 of 11
KENNAWAY ROAD
CUMNOR TERRACE
Diag. AG
Diag. AC
Diag. AD
Diag. AI
Lot 300 DP 452437
Lot 302 DP 452437
200
0.5621Ha
300
301
0.6319Ha
4
0.2431Ha
5
6
1.2125Ha
7
201
0.2591Ha
Part RS 120
Part RS 274

RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD

Search Copy

R.W. Muir
Registrar-General
of Land

Identifier **842854**
Land Registration District **Canterbury**
Date Issued 18 December 2018

Prior References
689371

Estate	Fee Simple
Area	12.0077 hectares more or less
Legal Description	Lot 305 Deposited Plan 525615 and Lot 302 Deposited Plan 473298

Registered Owners
Braeburn Property Limited

Interests

Appurtenant to Lot 302 DP 473298 herein and appurtenant to Lot 305 DP 525615 part formerly Lot 1 DP 53089 herein is a right of way created by Transfer 811061 - 9.10.1970 at 2:00 pm

9138592.2 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 13.8.2012 at 3:21 pm (affects Lot 302 DP 473298)

Appurtenant to Lot 302 DP 473298 herein is a right to drain water created by Easement Instrument 9446208.7 - 11.7.2013 at 12:01 pm

The easements created by Easement Instrument 9446208.7 are subject to Section 243 (a) Resource Management Act 1991

Appurtenant to Lot 302 DP 473298 herein is a right to drain water created by Easement Instrument 9446208.9 - 11.7.2013 at 12:01 pm

The easements created by Easement Instrument 9446208.9 are subject to Section 243 (a) Resource Management Act 1991

9750370.5 Variation of Consent Notice 9138592.2 pursuant to Section 221(5) Resource Management Act 1991 - 9.6.2014 at 5:10 pm

9750370.14 Encumbrance to Christchurch City Council - 9.6.2014 at 5:10 pm

10703567.1 Variation of Encumbrance 9750370.14 - 24.2.2017 at 2:10 pm

10838003.1 Variation of Encumbrance 9750370.14 - 8.8.2017 at 8:46 am

Subject to Section 241(2) Resource Management Act 1991 (affects DP 525615)

Subject to a right to drain water over part Lot 305 DP 525615 marked EE, H, J, DD, W, N & FF on DP 525615 created by Easement Instrument 11294647.5 - 18.12.2018 at 2:51 pm

The easements created by Easement Instrument 11294647.5 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right (in gross) to drain water over part Lot 305 DP 525615 marked EE, DD, FF & H on DP 525615 in favour of Christchurch City Council created by Easement Instrument 11294647.7 - 18.12.2018 at 2:51 pm

The easements created by Easement Instrument 11294647.7 are subject to Section 243 (a) Resource Management Act 1991

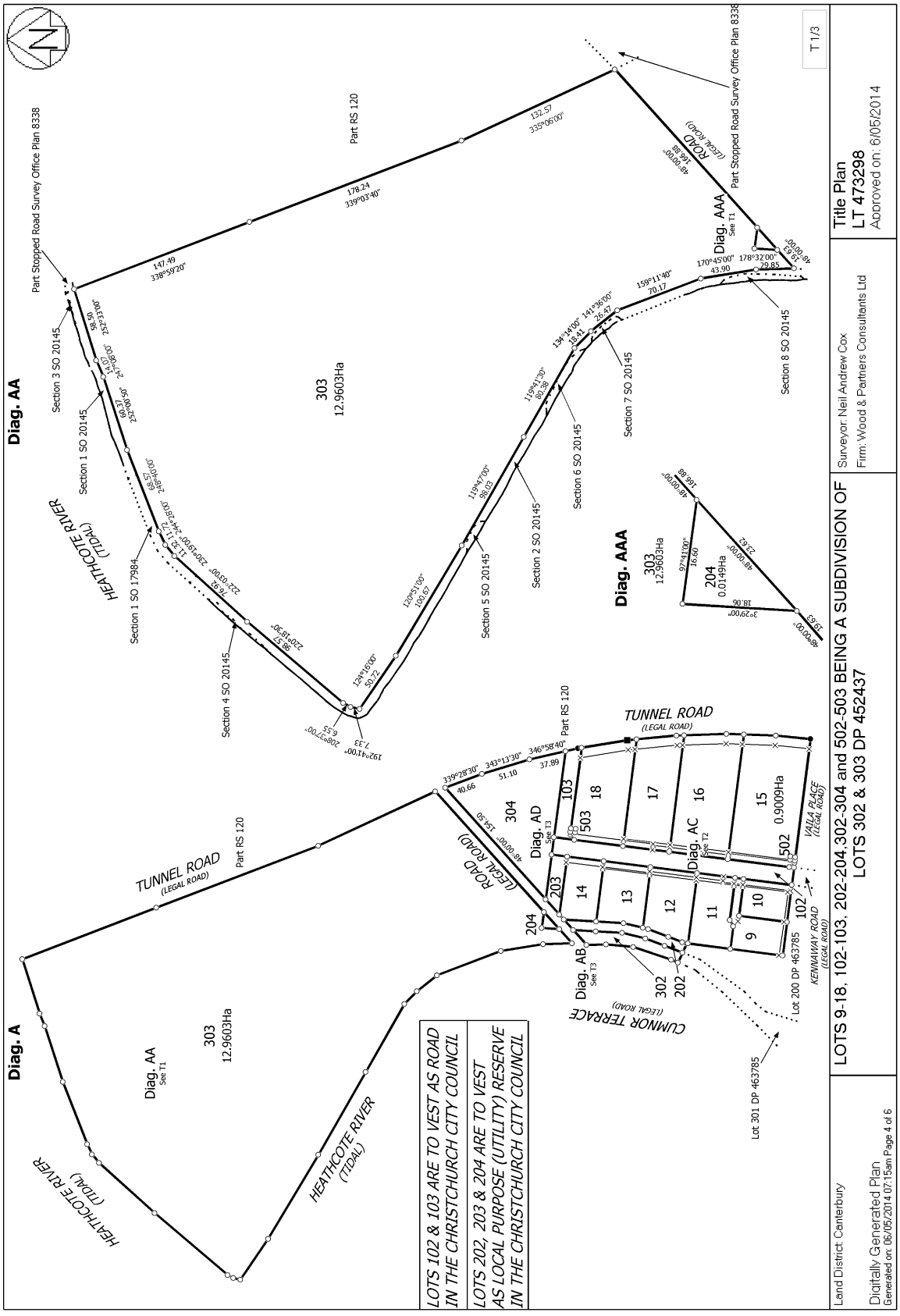
11294647.10 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 18.12.2018 at 2:51 pm (affects Lot 305 DP 525615)

11294647.23 Encumbrance to Christchurch City Council - 18.12.2018 at 2:51 pm (affects Lot 305 DP 525615)

Fencing Covenant in Transfer 11545342.2 - 27.9.2019 at 4:36 pm

12209381.1 Variation of Encumbrance 9750370.14 - 22.12.2021 at 3:36 pm

12397548.2 Mortgage to Bank of New Zealand - 18.3.2022 at 3:42 pm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Diag. A
Diag. AAA
Part Stopped Road Survey Office Plan 8338
Part RS 120
Section 3 SO 20145
Section 1 SO 20145
Section 1 SO 17984
Section 4 SO 20145
Section 5 SO 20145
Section 2 SO 20145
Section 6 SO 20145
Section 7 SO 20145
Section 8 SO 20145
303
12.9603Ha
204
0.0149Ha
HEATHCOTE RIVER (TIDAL)
TUNNEL ROAD (LEGAL ROAD)
ROAD (LEGAL ROAD)
CUMNOR TERRACE (LEGAL ROAD)
KENWAY ROAD (LEGAL ROAD)
VALLI PLACE (LEGAL ROAD)
Diag. AB
Diag. AC
Diag. AD
Lot 200 DP 463785
Lot 301 DP 463785
0.9009Ha
LOTS 102 & 103 ARE TO VEST AS ROAD IN THE CHRISTCHURCH CITY COUNCIL
LOTS 202, 203 & 204 ARE TO VEST AS LOCAL PURPOSE (UTILITY) RESERVE IN THE CHRISTCHURCH CITY COUNCIL
LOTS 9-18, 102-103, 202-204,302-304 and 502-503 BEING A SUBDIVISION OF LOTS 302 & 303 DP 452437
Land District Canterbury
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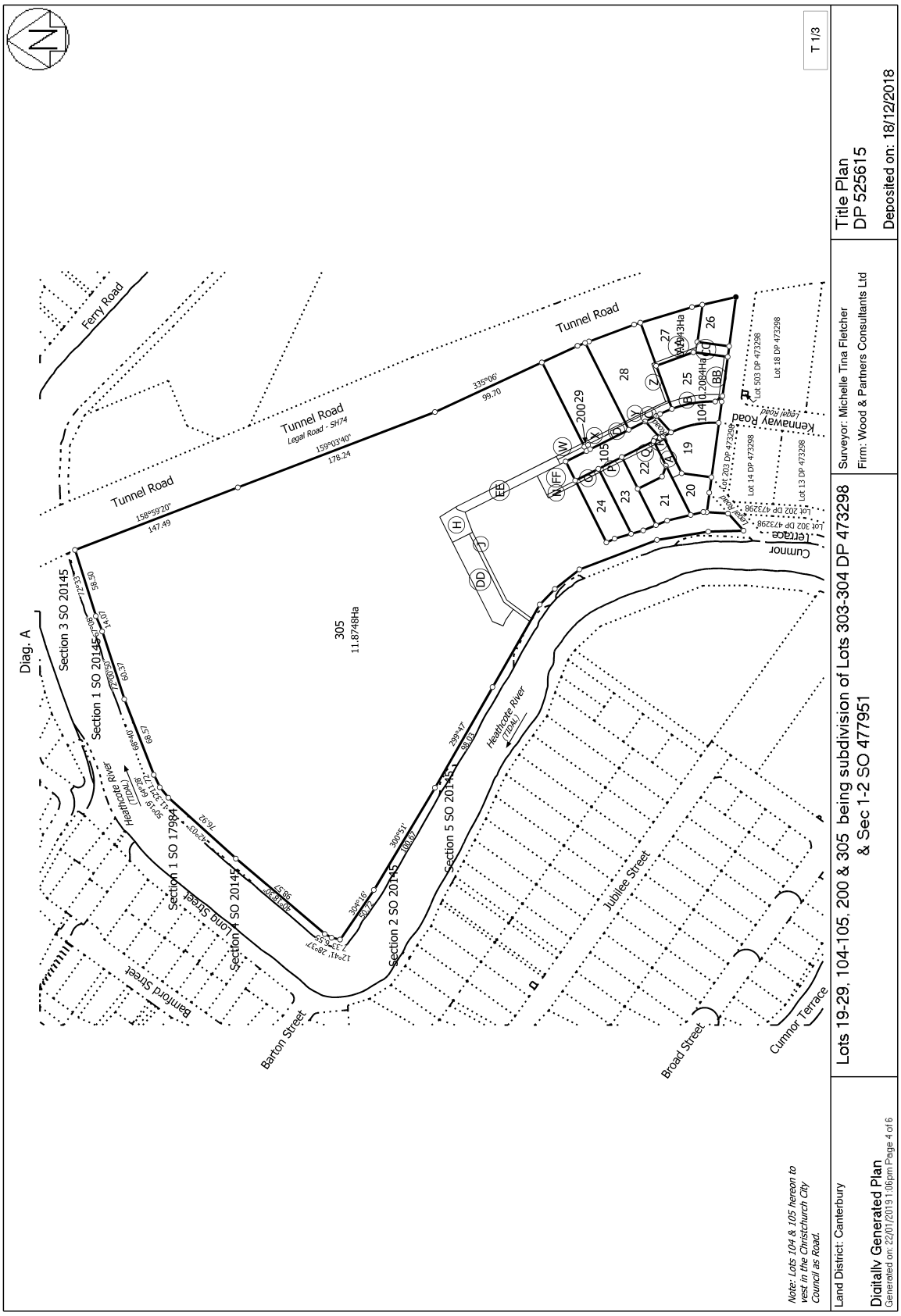
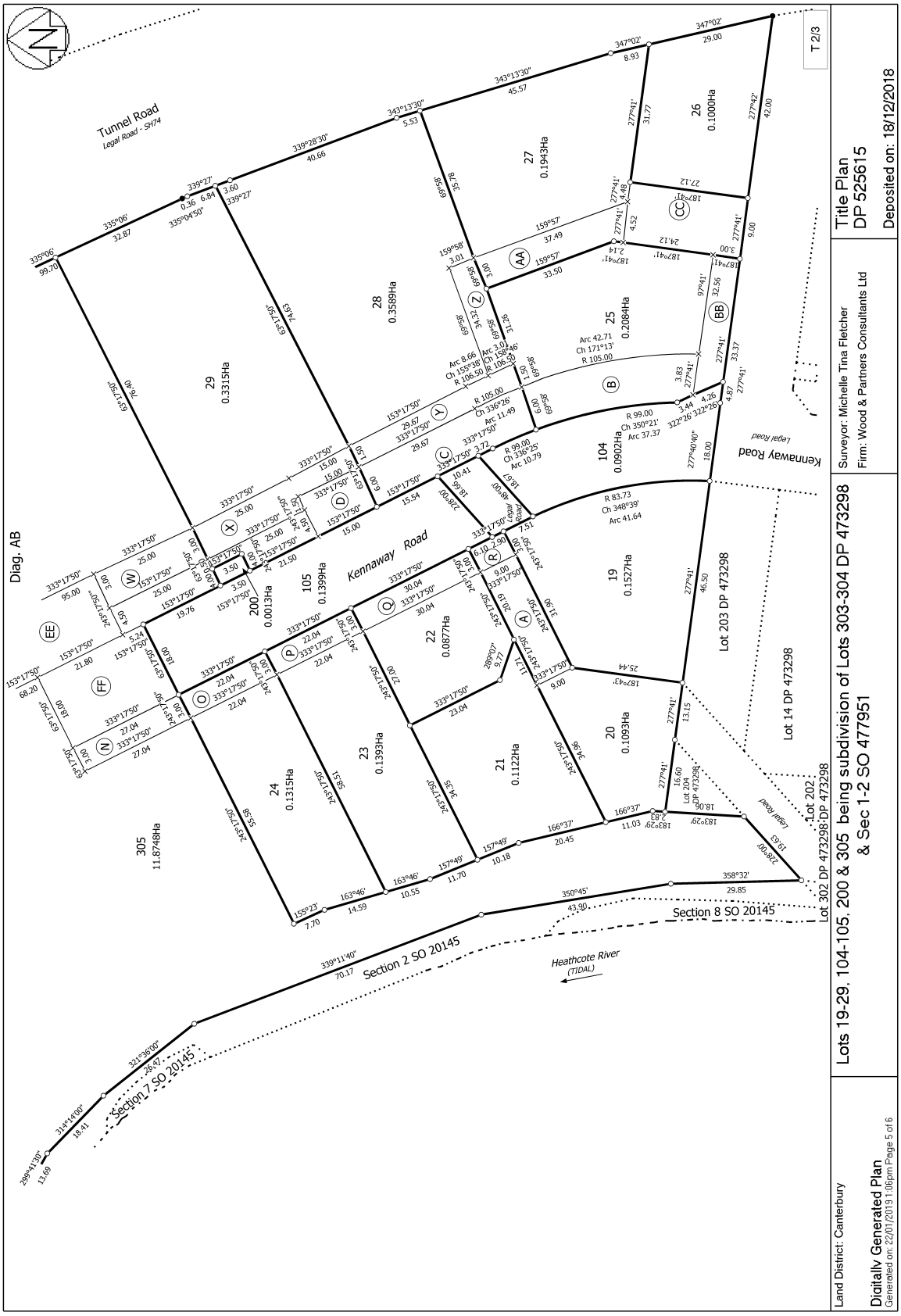
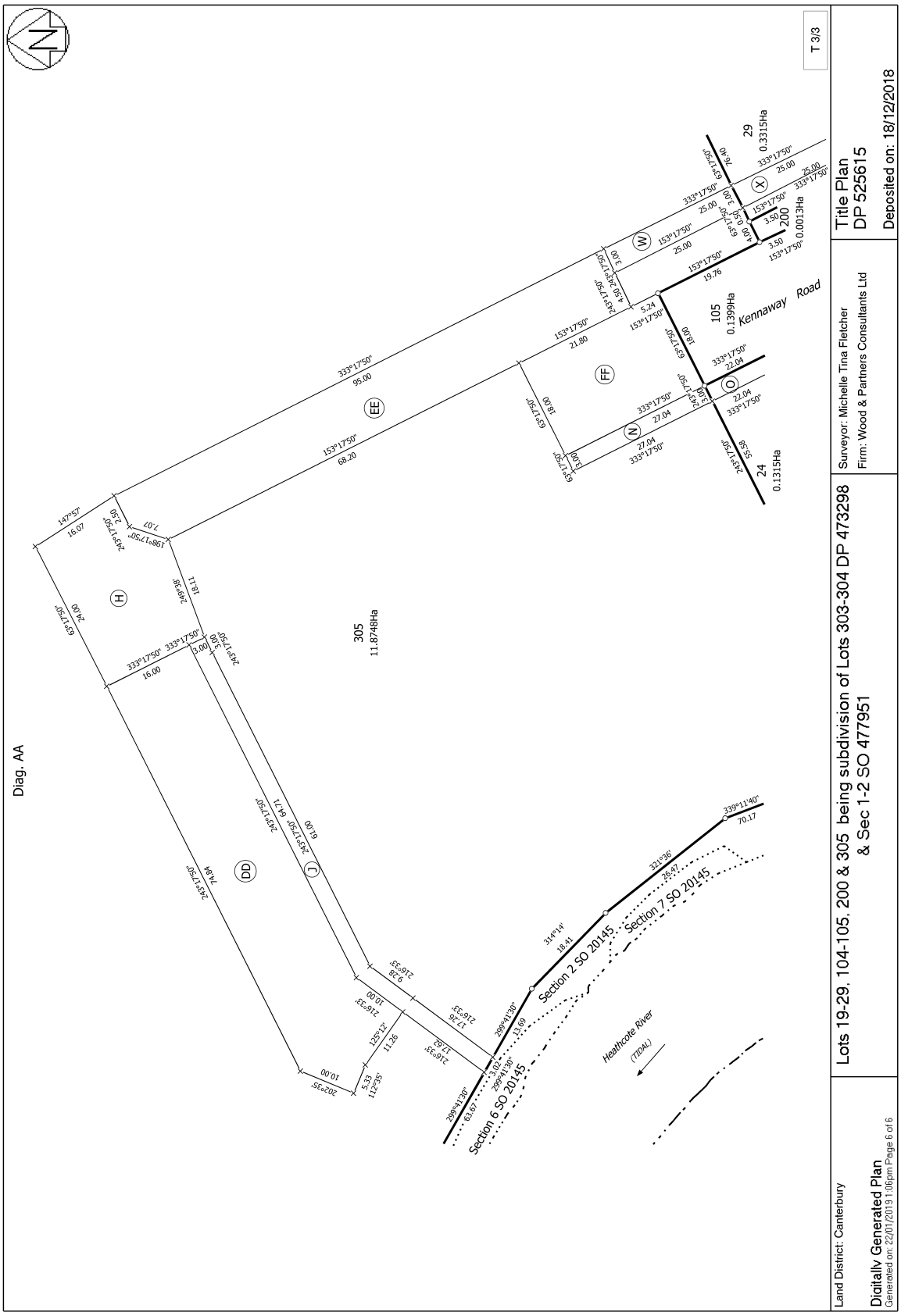
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
Title Plan
LT 473298
Approved on: 6/05/2014
T 1/3


T 1/3
Title Plan
DP 525615
Deposited on: 18/12/2018
Surveyor: Michelle Tina Fletcher
Firm: Wood & Partners Consultants Ltd
Lots 19-29, 104-105, 200 & 305 being subdivision of Lots 303-304 DP 473298
& Sec 1-2 SO 477951
Land District: Canterbury
Digitally Generated Plan
Generated on: 22/01/2013 1:06pm Page 4 of 6
Note: Lots 104 & 105 hereon to vest in the Christchurch City Council as Road.
Diag. A
Section 3 SO 20145
Section 1 SO 20145
Section 1 SO 17984
Section 2 SO 20145
Section 5 SO 20145
Tunnel Road
Legal Road - SH74
Ferry Road
Kennaway Road
Legal Road
Cumnor Terrace
Jubilee Street
Broad Street
Barton Street
Bamford Street
Long Street
Heathcote River
(Tidal)
305
11.8748Ha
104
0.2084Ha
200
29
Lot 503 DP 473298
Lot 18 DP 473298
Lot 201 DP 473298
Lot 14 DP 473298
Lot 13 DP 473298
Lot 302 DP 473298


Tunnel Road
Legal Road - SH74
Kennaway Road
Legal Road
Diag. AB
Lots 19-29, 104-105, 200 & 305 being subdivision of Lots 303-304 DP 473298 & Sec 1-2 SO 477951
Title Plan DP 525615
Deposited on: 18/12/2018
Surveyor: Michelle Tina Fletcher
Firm: Wood & Partners Consultants Ltd
Land District: Canterbury
Digitally Generated Plan
Generated on: 22/01/2013 1:06pm Page 5 of 6
T 2/3
Lot 203 DP 473298
Lot 14 DP 473298
Lot 202 DP 473298
Lot 204 DP 473298
Section 8 SO 20145
Section 2 SO 20145
Section 7 SO 20145
Heathcote River (TIDAL)


T 3/3
Diag. AA
Kennaway Road
Heathcote River
(TIDAL)
Section 2 SO 20145
Section 7 SO 20145
Section 6 SO 20145
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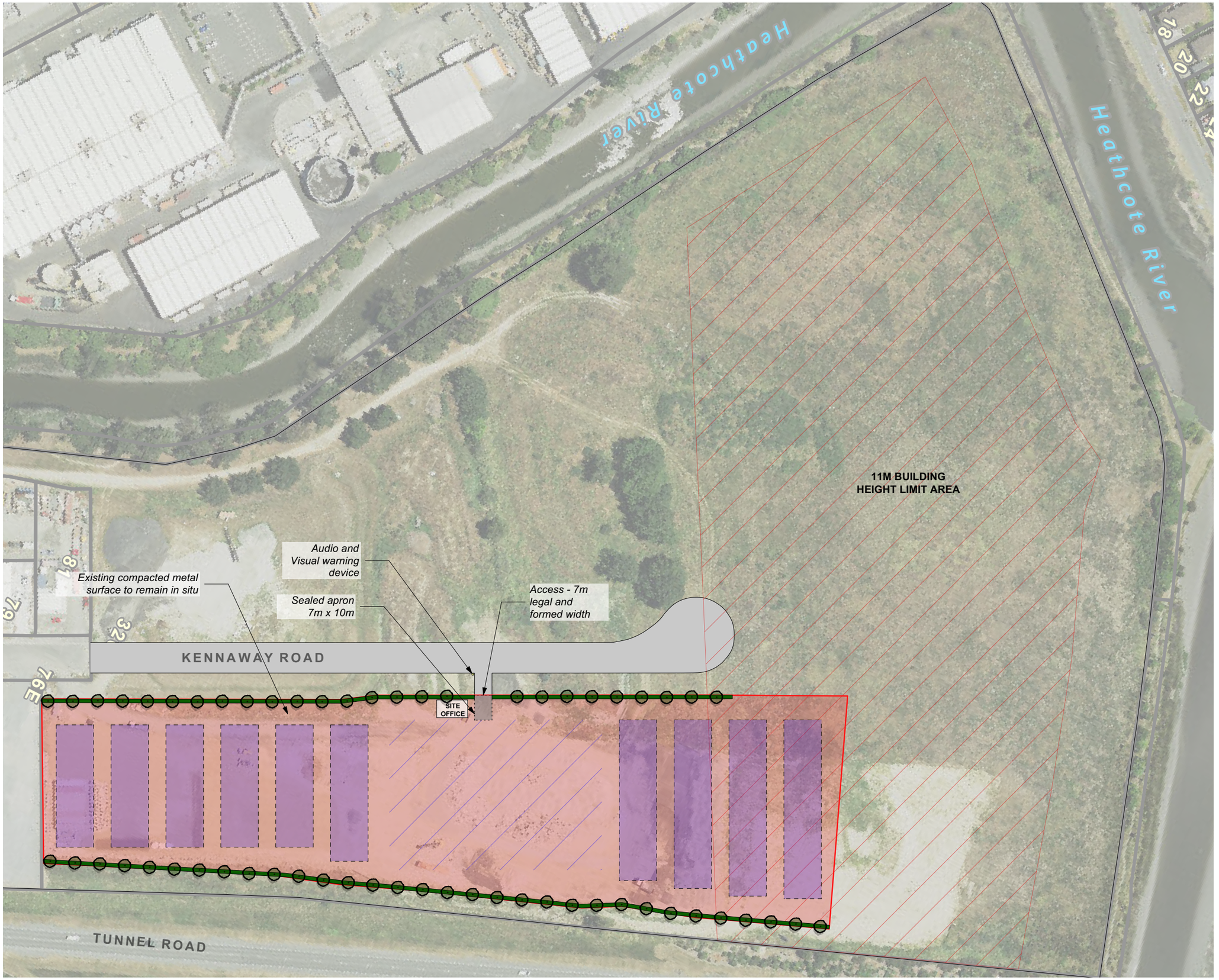
105
0.1399Ha
200
0.0013Ha
24
0.1315Ha
29
0.3315Ha
Land District: Canterbury
Digitally Generated Plan
Generated on: 22/01/2013 1:06pm Page 6 of 6
Lots 19-29, 104-105, 200 & 305 being subdivision of Lots 303-304 DP 473298 & Sec 1-2 SO 477951
Surveyor: Michelle Tina Fletcher
Firm: Wood & Partners Consultants Ltd
Title Plan
DP 525615
Deposited on: 18/12/2018

Appendix 2

Application Plan

Novo Group Limited
Level 1, 279 Montreal Street
PO Box 365, Christchurch 8140
O - 03 365 5570
info@novogroup.co.nz



KEY:

- SITE BOUNDARY - 25,111m^2 (APPROX)
- PROPOSED SITE OFFICE AND BIKE STORAGE (APPROX. 100M^2 GFA)
- YARD AREA
- OUTDOOR STORAGE STACKS
- 11M BUILDING HEIGHT LIMIT AREA
- PROPOSED 1.5M LANDSCAPE STRIP (1 TREE EVERY 10M OF ROAD FRONTAGE) WITH 1.8M FENCE

NOTE:

1. *Office building to have a minimum floor level that is a minimum of 12.3m above CCC datum'*

2. *Planting of trees and shrubs within the landscaping strip adjacent to Tunnel Road shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and shall meet the requirements specified in Part A of Appendix 6.11.6 of Chapter 6*

SITE PLAN

PORTLINK INDUSTRIAL PARK

REVISION

DRAWING N/Z	**DRAWN** NR
SCALE 1:1500	**DATE** 24/10/2023
JOB NO. 022074	**SHEET NO.** DWG - 1.00

Appendix 3

Legal Opinions

BROOKFIELDS
LAWYERS

NAVIGATING YOUR SUCCESS

26 July 2022

Christchurch City Council
53 Hereford Street
Christchurch 8013

By Email: Brent.Pizzey@ccc.govt.nz

LEX 24279 - CUMNOR TCE 320A - BUILDING DEFINITION

1. You have asked whether the stacking of containers within the Industrial General Zone and the Portlink Specific Zone falls within the definition of "Building" under the Christchurch District Plan. This letter of advice includes and expands upon our preliminary opinion provided on 22 July 2022.

2. In summary, we consider that shipping containers do fall within the definition. This interpretation is clearly supported by the text and the contextual indicators we have found in the time available are consistent with this.

INTERPRETIVE APPROACH

3. We have sought to ascertain the meaning of the relevant definition on the basis of its text and in light of its purpose.[1] Consistent with High Court authority, we have also sought to find an interpretation that:[2]

   (a) Avoids absurd or anomalous results;

   (b) Is consistent with the expectations of landowners; and

   (c) Promotes administrative efficiency (rather than requiring lengthy historical research to assess lawfulness).

TEXT OF THE DEFINITION

4. The relevant text of the definition states:

   means as the context requires:

---

1 Section 10 of the Legislation Act 2019, *Spackman v Queenstown Lakes District Council* [2007] NZRMA 327(HC).

2 *Mount Field Ltd v Queenstown-Lakes District Council* 31/10/08, Heath J, HC Invercargill CIV-2007-425-700.

Tower One, 205 Queen Street, Auckland, New Zealand. PO Box 240, Shortland Street, Auckland 1140
Tel: +64 9 379 9350 Fax: +64 9 379 3224 DX CP24134 www.brookfields.nz

a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or

b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and

c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;

e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;

f. retaining walls which are both less than 6m2 in area and less than 1.8 metres in height;

g. structures which are both less than 6m2 in area and less than 1.8 metres in height;

h. utility cabinets;

i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;

k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, excludes:

l. any dam that retains not more than 3 metres depth, and not more than 20,000 m3 volume of water, and any stopbank or culvert;

m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:

i. not exceeding 25,000 litres capacity and supported directly by the ground; or

ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and

n. stockyards up to 1.8 metres in height.

Advice note:

This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

5. Both clauses (a) and (b) apply to "any structure" that falls within those clauses. If it can be said to be a structure, clause a. is sufficiently broad to include a shipping container as

a 'moveable structure' and clause b. would include the placement and stacking of containers on land i.e. placement of a structure on or over land.

6. The District Plan does not contain a definition of a "structure", but this term is defined in section 2 of the RMA. Absent any contrary provision in the District Plan itself, the word "structure" must have the same meaning as in the RMA when interpreting the District Plan.[3] The RMA definition is "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*". While the definition is to some extent circular in that it defines a structure as being a building, a shipping container would fall within the ordinary meaning of a device, which is defined in the Oxford Dictionary as "*a thing made or adapted for a particular purpose, especially a piece of equipment mechanical or electronic*".

7. However, the RMA definition of a structure also requires a structure to be fixed to land. The Courts in considering this definition have previously held that in order to fall within the meaning of a structure, the device does not need to be fixed permanently to the land, nor does it require some form of connection to the land in order to be fixed. It may be fixed by the gravity of the device itself. For example, in *Ohawini Bay Ltd v Whangarei District Council*,[4] rocks placed on top of one another to form a seawall were held to be a structure despite only being fixed to the land by their own weight. Similarly, in *Antoun v Hutt City Council*,[5] a moveable tiny home sitting on top of a metal plate, but with no permanent foundations, was held to be sufficiently fixed to the land by gravity to fall within the meaning of a structure. We acknowledge that both types of structure in those cases had either a greater degree of permanence (in relation to the seawall) or potentially greater difficulty in being moved (in the case of the tiny home) than a shipping container. However, given the weight of a shipping container is such that it cannot be easily moved and would require a crane/forklift/straddle carrier to shift, it does bear some degree of similarity to the tiny home example. As such, we consider that there is a reasonably strong basis to conclude that a shipping container would fall within the meaning of a structure for the purposes of clauses a. and b. of the definition of a building.

8. Clause c. expressly refers to shipping containers as falling within the meaning of a "building", where it is *"used on-site as a residential unit or place of business or storage"*. On the facts it is unclear whether the containers themselves are being stored, or whether the containers are being used to store other items. If the latter, then that would be within the scope of clause c. If the former, then it is arguable that this would not be within the scope of clause c, although there is some basis to conclude that when a shipping container is in its original unconverted state, it is designed as a storage device and therefore would fall within this use regardless of whether at a specific point in time it is sitting empty.

9. We have also considered whether the express reference to shipping containers in clause c should be interpreted to mean that where a shipping container is not *"used on-site as a residential unit or place of business or storage"* then it cannot come within the other clauses of the definition of building. As a starting point, we note that shipping containers

[3] Section 20 of the Legislation Act 2019.
[4] Environment Court, Auckland, A068/06.
[5] (2020) 21 ELRNZ 595.

that are not *"used on-site as a residential unit or place of business or storage"* are not expressly excluded under clauses d.-n.

10. We consider that the definition is sufficiently broad on its face to include the placement and stacking of shipping containers within clauses (a) and (b) and also that it is arguable that stacked shipping containers that are either currently storing other goods or are placed on the site in preparation to be loaded with goods, are arguably being used for storage and therefore fall within clause (c).

11. We have also considered whether the activity of container storage could be considered an Outdoor storage area which is defined as:

> means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.

12. We have given greater thought to whether container storage nearly fits into this definition. The Oxford dictionary defines "equipment" broadly to mean "*items needed for a particular purpose*". A shipping container would potentially fall within this broad definition of equipment, as would almost anything. As something man-made, it could also potentially fall within the meaning of a "processed product". We note that the definition of an outdoor storage area only refers to equipment or products etc that are stored "outside of fully enclosed buildings". In the example you have given us, the containers are not themselves within a larger enclosed building, and therefore the land on which the containers are situated would appear to fall within the meaning of an outdoor storage area.

13. We have given consideration to whether the land potentially being an outdoor storage area within the meaning of the District Plan definition would mean that the container cannot also be a "building". On balance, we do not think that it would. Given that the definition of a building anticipates that something moveable or temporary could fall within the meaning of a building, it follows that storage areas could exist where buildings themselves are stored, for example, sites where tiny homes are constructed and stored, or sites where other relocateable dwellings or other buildings are stored. Such land could potentially fall within the meaning of an outdoor storage area, unless the use falls within the meaning of a yard-based supplier. We are not aware of whether in practice you have treated land used for the storage of relocateable buildings as an outdoor storage area, but we consider that unless there are other specific District Plan provisions that relate to such activities, it would make sense that if such sites are outdoor storage areas, so then would a shipping container yard, regardless of whether the shipping containers are also buildings.

14. In support of this interpretation, we have considered the provisions in chapter 16 of the District Plan. We did not identify anything that would mean that the definition of a building and an outdoor storage area are necessarily mutually exclusive. In particular, we note that rule 16.4.4.1.1 P1 for the Industrial General Zone (Portlink Industrial Park) provides that any activity listed in rule 16.4.1.1 P1-P21 is a permitted activity provided it complies with the built form standards in rule 16.4.4.2 and rule 16.4.2 (unless specified otherwise in rule 16.4.4.2). Rule 16.4.1.1 P1 provides that any new building or addition to a building for an activity listed in P2 to P21 is a permitted activity, provided it complies with the built form standards in 16.4.2. Those activities include an industrial activity (P2) and

warehousing and distribution activities (P3), either or both of which could potentially apply to the storage of shipping containers. There are built form standards that apply specifically to outdoor storage areas. We could not see any obvious reason as to why those standards could not apply in conjunction with other specific standards that apply to buildings.

15. We now consider this reading of the text in light of its purpose as expressed by the objectives and policies and other context of the Christchurch District Plan.

PURPOSE

Objectives and policies

16. We have reviewed the objectives and policies of Chapter 16 Industrial in the Christchurch District Plan. We note the following amenity focused objectives and policies which are relevant to a purposive interpretation of "building" in the context of the relevant zone:

> 16.2.3 Objective - Effects of industrial activities
>
> a. Adverse effects of industrial activities and development on the environment are managed to support the anticipated outcome for the zone while recognising that sites adjoining an industrial zone will not have the same level of amenity anticipated by the Plan as other areas with the same zoning.
>
> 16.2.3.1 Policy - Development in greenfield areas
>
> a. Manage effects at the interface between greenfield areas and arterial roads, rural and residential areas with setbacks and landscaping.
>
> 16.2.3.2 Policy - Managing effects on the environment
>
> a. The effects of development and activities in industrial zones, including reverse sensitivity effects on existing industrial activities as well as, visual, traffic, noise, glare and other effects, are managed through the location of uses, controls on bulk and form, landscaping and screening, particularly at the interface with arterial roads fulfilling a gateway function, and rural and residential areas, while recognising the functional needs of the activity.
>
> b. Effects of industrial activities are managed in a way that the level of residential amenity (including health, safety, and privacy of residents) adjoining an industrial zone is not adversely affected while recognising that it may be of a lower level than other residential areas.

17. Plainly these objectives and policies contemplate the management of adverse effects of industrial activities and development having regard to the amenity values of adjoining areas. Techniques include:

(a) setbacks and landscaping.

(b) controls on bulk and form.

18. The Industrial General Zone (Portlink Industrial Park) contains bespoke rules in respect of maximum building height and building setbacks. These techniques would be ineffective in respect of shipping containers if these structures were not covered by the relevant rules. The purpose as expressed by the objectives and policies of the zone therefore supports the textual interpretation identified above.

Zone rules

19. It is relevant to consider the implications of containers being classed as "buildings" on the relevant zone rules as a check to avoid anomalous outcomes. The starting point is that buildings for industrial activities are permitted within the zone (Rule 16.4.1.1.P1.). As such, any container storage that conforms to building height and setback standards can occur without the need for a consent which is consistent with enabling industrial activity to occur within the zone. We do not consider that anomalous outcomes arise from the application of height and setback rules to containers. These outcomes are consistent with the direction of the objectives and policies. However, the application of rule 16.6.2.2 Maximum building coverage, of a site could be considered anomalous because it would limit the placement of containers to 50% of a site and a resource consent would be required to exceed this threshold. We are uncertain as to whether there is a proper resource management reason for this threshold to apply to container storage e.g. impervious surfaces. On balance, we don't consider that the application of this standard could be sufficiently anomalous to supplant the textual and purposive interpretation outlined above.

Yours faithfully
BROOKFIELDS

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Partner

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6 October 2022

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Brent Pizzey
Counsel for Christchurch City Council

Craig Jorgensen
Compliance Officer – Resource Consents

by email: brent.pizzey@ccc.govt.nz / craig.jorgensen@ccc.govt.nz

Dear Brent and Craig

RE: PORTLINK INDUSTRIAL PARK

1 We act for Braeburn Property Limited (*Braeburn*).

2 We have been asked to respond to the legal advice Council obtained from Brookfields Lawyers dated 26 July 2022 (the *Opinion*) regarding the stacking of containers in the Industrial General Zone (*IGZ*) of the Christchurch District Plan (*District Plan*).

3 As you are aware, Braeburn own and lease the site at the end of Cumnor Terrace, Woolston (Certificate of title 842854) for the temporary storage of transiting shipping containers.

4 As is apparent from **Annexure 1**, we disagree with the Council's position on the interpretation of "*building*" under the District Plan.

5 We are also concerned at the correspondence from the Council (including that from Craig Jorgensen dated 30 September 2022) whereby the Council has:

5.1 given notice to Braeburn to reduce the height of its shipping container stacks on site; and

5.2 advised that an abatement notice will be issued should Braeburn not complete the above.

6 While the interpretation issue is clearly in dispute, we consider it would not be appropriate for the Council to proceed to compliance action or the issue of an abatement notice (and we reserve our position fully around that). Similarly, even if the interpretation issue was not live, we do not consider that 7 days is in any circumstance a reasonable timeframe within which to require the removal of some 2,000 containers.

7 Having noted the above we also emphasise Braeburn's desire to work constructively with the Council to resolve the matter as soon as possible.

8 In this regard, Braeburn suggests meeting as soon as possible to talk through:

8.1 our more detailed view on the interpretation issue set out in **Annexure 1**; and

8.2 if it is not resolved:

(a) whether the Council would be supportive of jointly seeking urgent declaratory relief from the Court; and/or

(b) how the Council might process a resource consent application (on the basis that Braeburn would apply without prejudice to the position set out that no consent is required).

9 We think this is a much more constructive use of everyone's time. In the alternative, were an abatement notice to be issued, Braeburn would appeal the notice and request a stay on enforcement so that the activity can continue while the interpretation issue can be determined before the Court. Again, we think given Braeburn's commitment above there is nothing to be gained from that and we want to approach this constructively on the basis of the approach set out above.

10 Can the Council please urgently confirm it will not take further compliance action at this time, and send through some times for a possible meeting?

11 We look forward to hearing from you.

Yours sincerely

Jo Appleyard / Lucy Forrester
Partner / Senior Solicitor

ANNEXURE 1: IS A CONTAINER A BUILDING?

1 We agree with the first part of the Brookfield's Lawyers' advice (*the Opinion*) that it is helpful to consider at the forefront of this exercise, principles of interpretation that might assist in the proper understanding of the rules in the District Plan.

2 When interpreting rules in planning documents, *Powell v Dunedin City Council* established that (in summary):[1]

2.1 the words of the document are to be given their ordinary meaning unless it is clearly contrary to the statutory purpose or social policy behind the plan or otherwise creates an injustice or anomaly;

2.2 what is meant by plain and ordinary meaning should be determined with reference to "*what would an ordinary reasonable member of the public examining the plan, have taken from*" the planning document;

2.3 the interpretation should not prevent the plan from achieving its purpose; and

2.4 if there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

3 Reading the words of a planning document with reference to its plain and ordinary meaning is therefore the starting point to any interpretation exercise.

The definition

4 The definition of 'building' in the Christchurch District Plan is as follows:

Building

means as the context requires:

a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or

b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and

c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;

e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;

f. retaining walls which are both less than 6m2 in area and less than 1.8 metres in height;

g. structures which are both less than 6m2 in area and less than 1.8 metres in height;

h. utility cabinets;

i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;

k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, excludes:

l. any dam that retains not more than 3 metres depth, and not more than 20,000 m3 volume of water, and any stopbank or culvert;

m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:

   i. not exceeding 25,000 litres capacity and supported directly by the ground; or

   ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and

n. stockyards up to 1.8 metres in height.

[1] *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

5 'Structure' is not defined in the Christchurch District Plan but is defined in the RMA as meaning:

> "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*"

6 As noted, the definition of 'building' is divided between what it "*means*" (subclauses (a) to (c)) that is then supplemented by a list in subclauses (d) to (n) of activities that are then excluded from that meaning.

7 We also consider the relationship between each of (a) to (c) is important:

7.1 subclauses (a) and (b) are separated by an "*and/or*" which means to meet the definition of a 'building' you must meet either of (a) and/or (b):

7.2 whereas, subclause (c) is separate solely by an "*and*", which we read to mean that:

(a) if (c) is met, then it will be considered a building irrespective of whether (a) and/or (b) have been met; and

(b) conversely, if the matters listed in subclause (c) do not meet the further criteria in that subclause (i.e. used on-site as a residential unit or place of business or storage), then they should not fall within the definition of 'building'.

8 As we set out below, we consider that the specific reference to shipping containers in subclause (c) means it is the clause that should be the focus of the interpretation exercise. In light of the approach taken in the Opinion we nevertheless consider whether sub-clauses (a) and (b) apply.

Subclause (c) and the interpretative canon that the specific overrides the general

9 Subclause (c) lists specific activities that, despite not necessarily being structures (as we discuss later in this advice), will nevertheless in some circumstances fall within the definition of 'building' under the District Plan:

> "*any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage.*"

10 To understand how subclause (c) interacts with the rest of the definition (and with the principles of interpretation in mind), the starting point is that specific provisions must override general ones.

11 Here, (c) is the specific clause of the definition applying specifically to vehicles, trailers, tents, marquees, shipping containers, caravans, and boats, when certain circumstances apply. This means that for any of these activities to be considered a 'building' under this definition, it must also be:

11.1 used on-site either as:

(a) a residential unit; or

(b) a place of business; or

(c) a place of storage.

12 Accordingly, subclause (c) will prevail over the more general subclauses (a) and (b).

13 Similarly, if the activities listed in subclause (c) are not being used on-site for those purposes, then they do not fall within the definition of 'building'.

14 We consider the best example of this in practice is the reference to "*marquee*" which most likely would be a structure under the RMA definition (and therefore fall squarely within subclauses (a) and (b)):

14.1 there would be no point in including (c) if it was always going to fall within (a) and (b) anyway;

14.2 we consider the same argument can be made in relation to the other matters listed in (c).

15 The approach set out in the Opinion would result in potentially absurd outcomes, including at the more extreme, the potential for vehicles, trailers and tents within camping grounds, rental car/campervan depots and even car sales yards to be considered 'buildings' under the District Plan (i.e. on the basis that those matters might also be 'structures' under the broad definition provided by the RMA).

16 In fact, the Opinion[2] itself identifies a further possible absurdity as a result of its own interpretation of the definition – relating to the application of rules regarding maximum building coverage in the Industrial Park Zone. The Opinion does not go on to consider any other planning anomalies as a result of its interpretation – whereas we consider this raises further questions as to how the floor area of containers (or any other activity listed in subclause (c), should they be deemed 'buildings') could properly be used to inform requirements in the District Plan for the likes of cycle parking facilities, loading areas, and high trip generator requirements which are all assessed with reference to gross floor area in chapter 7 of the District Plan.

17 For completeness we note our acknowledgement that the definition of 'building' includes a list of specific exclusions to that definition, which do not include shipping containers. However, we consider this is because subclause (c) contemplates there might be situations (i.e. where it is being used on-site as a residential unit or place of business or storage) where a shipping container should be considered a 'building' and therefore there is no express exclusion of shipping containers, but rather, an express inclusion into the definition when certain circumstances arise.

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[2] At paragraph [19].

Subclause (c) and the further requirements that need to be met

18 With regards to the words '*used on-site as a residential unit or place of business or storage*', quite clearly, the containers are not being used as a residential unit or a place of business.

19 The Opinion, however, considers that on the facts it is unclear whether the containers:

19.1 are being used to store other items, in which case they would be within the scope of subclause (c); or

19.2 themselves are being stored on-site, which the Opinion considers there is an argument to say that a shipping container is designed as a storage device and therefore would fall within the scope of subclause (c) whether or not it was siting empty at the site.

20 We disagree, particularly with the latter, and consider the Opinion does not consider the plain and ordinary meaning of the wider subclause.

21 We read subclause (c) as saying that, for it to apply, the shipping containers must be used on-site as a place of storage. That is the plain and simple reading and meaning of those words – it is being used for on-site storage.

22 We agree that if the containers are being used on-site as a place of storage (i.e. are remaining on-site as a place where things are periodically stored and moved), which in and of itself implies some permanency, then yes the container would fall within the scope of subclause (c). However, this is not the case in this situation. The containers (irrespective of whether they contain any items) are not there for the purposes of being used for on-site storage. The containers are in transit and are themselves being stored on site until they are moved to their next destination.

23 We do not consider the fact that the containers themselves are being stored on site as constituting being 'used on-site as a place of storage.' And we also do not agree with the proposition that given shipping containers are designed as a storage device they would fall within subclause (c) regardless. The Opinion does not elaborate on how it has come to this stretched interpretation of the words in subclause (c). It is certainly not from a plain and ordinary reading of the words of the definition.

24 Without repeating the discussion set out in paragraphs [15] and [16], the same absurdities are also potentially engaged here – for example, a car dealership is effectively a place where cars are stored prior to sale. Again, the activity is the relevant matter being used on-site as a place of storage – rather than the storage of the matters themselves.

25 A similar question would also need to be asked regarding a container sitting on a truck that was being stored in a transport yard. Again, it is the use of the container for storage that is relevant, not the storage of the container itself.

Alternative argument: Subclauses (a) and (b) and the meaning of 'structure'

26 Subclauses (a) and (b) both refer to any 'structure', and the Opinion asserts that if a container is a 'structure' it will also be a 'building' under the District Plan definition.

27 The Opinion goes on to consider what a 'structure' is with reference to the Resource Management Act 1991 (*RMA*) definition and case law. As noted above, the RMA defines a 'structure' as meaning:

> "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*"

28 To inform this definition, the Opinion considers two cases and considers that these provide a reasonably strong basis to conclude that a shipping container is a 'structure' under the RMA definition.

29 We note that the cases referred to, while helpful, do not deal with 'structures' analogous to a shipping container. We therefore do not consider these provide any directly comparable analogy for the assertion that a shipping container is a 'structure':

***Ohawini Bay Ltd v Whangarei District Council*[3]**

29.1 In this case all parties accepted that the sea wall was not a 'building' as defined in the District Plan (as retaining walls were expressly excluded from the definition, and it was not disputed that a sea wall was a retaining wall). Rather, the case was concerned with whether this sea wall was a 'structure' and in particular the words 'fixed to land' within the RMA definition.

29.2 The Court looked to the dictionary definition of the word 'fixed' which read "*[d]efinitely and permanently placed or assigned; stationary or unchanging in relative position; definite, permanent, lasting*".[4]

29.3 The Court ultimately found that the sea wall/retaining wall was fixed to the land and therefore was a structure under the definition in the RMA:

(a) it did not consider the definition excluded things being held permanently in place by gravity.

(b) the sea wall was placed with the intention that it would remain permanently in place and that it was fixed to land (noting evidence that the wall was embedded into the sand using an excavator).[5]

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[3] EnvC Auckland A68/06, 31 May 2006.

[4] At [24].

[5] At [24].

Antoun v Hutt City Council[6]

29.4 This case concerned whether a tiny house was a 'structure' and therefore a 'building' requiring resource consent. Again, the Court considered the dictionary definition of 'fixed' as meaning "*placed or attached in a way that does not move easily*."[7]

29.5 The Court considered that the tiny house was fixed to the property in such a way to be a 'structure' as defined in the RMA, and therefore a 'building' under the District Plan, based on a number of factors specific to the facts of that case, including in particular:[8]

(a) the appearance of the tiny house as a dwelling house capable of being used for permanent occupation;

(b) the obvious design and capacity for the tiny house to be used as a dwelling house capable of permanent occupation;

(c) the intention displayed on the resource consent application papers to connect the tiny house to services such as electricity, water, and drainage;

(d) the evident legal and practical difficulties in moving the tiny house.

29.6 The Court in this case outright rejected the notion that this tiny house was for the purpose of temporary occupation;[9] and for completeness, we note the tiny house in this case was not a 'container house' as we sometimes see from time to time with tiny houses, but a more substantial two storey dwelling constructed in situ:

6 [2020] EnvC 6.

7 At [46].

8 At [58].

9 At [56].

30 We consider the shipping containers on the Braeburn site are quite clearly distinguishable from the specific facts of those two cases:

30.1 the sea wall was clearly a permanent form, embedded into the ground and not easily moved; and

30.2 the tiny house was a substantial form, which by virtue of the facts clearly intended to have some permanency and could not easily be moved from the site.

31 By contrast, the shipping containers in question:

31.1 are not fixed; they are quite clearly transitory in nature (given the activity occurring on site is the temporary storage of transiting shipping containers) and are not intended in any way to be permanently on site; and

31.2 are capable of being moved easily. Containers, by their nature, are intended to be moved from place to place. In terms of what is 'easily moved', we do not consider the Court to have required that this could be done by a single person. In the context of a container in an industrial zone, within a yard designed for the specific purpose of storing and transiting containers with all of the required equipment, the containers are capable of being easily moved, and in practice are regularly moved to, from and around the site as required.

32 On this basis, we do not consider the shipping containers on this site fall within the definition of 'structures' under the RMA.

Further matters relevant to interpretation

33 In addition to the primary and secondary positions set out above, we note:

Relevance of the definition of 'outdoor storage area'

33.1 We do not see the relevance of paragraphs 12 and 13 of the Opinion regarding consideration of an 'outdoor storage area'. The issue at hand is whether or not the containers are 'buildings' and therefore subject to the height limits in the District Plan. Regardless of what other activity a shipping container might constitute.

Purpose of the provisions

33.2 With respect to the purpose of the provisions in the zone, we agree that the objectives and policies in the District Plan provide for the management of adverse effects from industrial activities on amenity values of adjoining areas. But equally, we note that these recognise that sites adjoining an industrial zone will not have the same level of amenity anticipated by the District Plan as other areas with the same zoning.

33.3 The Opinion appears to reverse engineer the purpose of the zone provisions into its own interpretation of the definition of a 'building'. We do not agree that the objectives and policies of the District Plan require such an interpretation.

33.4 We accept that some of the methods provided in the plan to manage such effects include setbacks, landscaping, and bulk and form controls. However, we note that these controls on bulk and form apply to specific activities (which the Council when it prepared its District Plan must have deemed necessary to manage). Height, as a control on bulk, applies only to 'buildings'. It is our view that is because the District Plan contemplates the greatest effects of bulk on amenity is from buildings, and these need to be managed through the Plan.

Other statutory regimes

33.5 We recognise that care needs to be taken when approaching any definition of '*building'* under any other statutory regime,[10] but we note that section 9 of the Building Act 2004 (*Building Act*) excludes from the definition of building:

> 9 Building: what it does not include
>
> In this Act, building does not include—
>
> (g) containers as defined in regulations made under the Health and Safety at Work Act 2015; or

33.6 The Health and Safety at Work (Hazardous Substances) Regulations 2017 has a very broad definition of containers used for hazardous substance storage which would extend to shipping containers where they are used for hazardous substances storage.

33.7 Again, in the Building Act context, this position is consistent with Determination 2011/104[11] where the Ministry of Business Innovation and Employment determined that the use of containers for the storage of hazardous substances was not a building for the purposes of the Building Act. Other determinations have confirmed that the mere placement of containers will not generally be regarded as building work.[12]

34 For the additional above reasons (which are by no means exhaustive), we consider that the shipping containers on this particular site do not fall within the definition of a 'building' under the District Plan.

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[10] Particularly given the definition of 'building' in the District Plan expressly notes that it is different to the definition of 'building' contained in the Building Act.

[11] https://building.govt.nz/assets/Uploads/resolving-problems/determinations/2011/2011-104.pdf

[12] For example https://www.building.govt.nz/assets/Uploads/resolving-problems/determinations/2014/2014-030.pdf

MinterEllisonRuddWatts.

7 October 2022

By Email: brent.pizzey@ccc.govt.nz
craig.jorgensen@ccc.govt.nz
adrian.lambert@ccc.govt.nz

Attention: Brent Pizzey, Counsel
Craig Jorgensen, Compliance Officer – Resource Consents
Adrian Lambert, Compliance Officer – Regulatory Compliance Unit

Christchurch City Council
PO Box 73016
Christchurch 8154

Portlink Industrial Park shipping container depot

1. We act for Specialised Container Services (Christchurch) Limited (**SCS**) who sub-lease the site at 320A Cumnor Terrace, Woolston (**Site**), which is owned by Braeburn Property Limited (**Braeburn**). SCS operates a shipping container depot on the Site.

2. We understand Christchurch City Council (**Council**) currently holds the view that the shipping containers stacked on the Site constitute a 'building' for the purposes of the Christchurch District Plan (**Plan**), and that the shipping containers do not comply with the height and setback requirements applicable to buildings within the Portlink Industrial Park in the Industrial General Zone. We have been provided with a legal opinion prepared by Brookfields Lawyers dated 26 July 2022 that supports this view.

3. We have also been provided with a letter issued by Chapman Tripp to the Council on 6 October 2022 on behalf of Braeburn, which provides a contrary opinion and concludes that shipping containers do not fall within the definition of 'building' under the Plan. Chapman Tripp's letter proposes a way forward to address the differences in opinion.

4. This issue has potentially significant implications for SCS as the operator of the Site. Any requirement to reduce the height and footprint of the shipping containers would be a significant logistical exercise and could have a material impact on SCS' business and its ability to meet its customers' requirements. SCS is also committed to ensure that it complies with all relevant regulatory requirements and is concerned by the Council's suggestion that it will take enforcement action in respect of the issue. We have therefore been asked to provide our opinion on the interpretation issue and assist SCS to work constructively with Braeburn and the Council to resolve the matter.

5. To summarise:

   (a) We agree with Chapman Tripp's interpretation of the definition of 'building' in the Plan and its view that:

      (i) the shipping containers stacked on the Site do not fall within the definition; and

      (ii) therefore, the stacking of the shipping containers on the Site does not breach the height and setback requirements applicable to buildings under the Plan.

   (b) We agree with Chapman Tripp's proposal to meet with the Council to discuss the differences in opinion and a constructive way forward to resolving the matter; and

   (c) We suggest that the meeting proposed with SCS on Tuesday 11 October includes Braeburn and focusses on the matters for discussion set out in Chapman Tripp's letter.

6. We expand on these points below.

We agree with Chapman Tripp's interpretation of the definition of 'building' and its view that the shipping containers do not fall within the definition in this case

7. We agree with all aspects of the opinion set out in Annexure 1 of Chapman Tripp's letter, including Chapman Tripp's approach to interpreting the definition of 'building' and its conclusion that the stacking of shipping containers on the Site does not constitute a 'building'.

8. In particular, we agree with the following key points made by Chapman Tripp:

   (a) The specific overrides the general: The reference to shipping containers in subclause (c) of the definition means that this is the clause that should be the focus in interpreting the definition of 'building', on the basis that this is the more specific provision and should prevail over the more general subclauses (a) and (b). We agree that subclause (c) provides for express inclusion of shipping containers within the definition of "building" when certain circumstances arise, and that those circumstances do not arise in this case.

   (b) The shipping containers are not being used as a "place of business or storage", as required by subclause (c) of the definition. They are not being used to store any items (they are empty) and are not being used as a place of business (e.g., by being converted into a business premises or similar). Rather the containers themselves are being stored on Site on a temporary basis in transit between client shipping requirements.

   (c) A shipping container is not a 'structure': Even if subclause (c) were found not to prevail over the more general subclauses (a) and (b), a shipping container is not a 'structure' (as defined in the Resource Management Act 1991) and therefore does not meet the requirements of subclauses (a) and (b). We agree with Chapman Tripp's assessment of the two cases relied on in the Council's legal opinion (*Ohawini Bay Ltd v Whangarei District Council*[1] and *Autoun v Hutt City Council*[2]) and that these cases are distinguishable on the basis that the two structures in those cases (a sea wall and 'tiny home') were clearly intended to have permanence and are not easily moved. Conversely, the shipping containers in this case are clearly transitory in nature and are capable of being easily moved in the context of a depot designed for storing and transiting shipping containers for the use of transporting goods. For example, over the five days ending on 5 October 2022, SCS moved an average of 83 twenty foot equivalent unit containers (TEU) per day in and out of the Site. Further, just because gravity is holding them to the land does not mean that they are 'fixed'.

9. In addition, we consider that the following points further support the opinion offered by Chapman Tripp:

   (a) The interpretative canon that the 'specific overrides the general' is a fundamental principle of interpretation, including in the planning context, and is supported by the following authorities:

      (i) In *Environmental Defence Society Inc v New Zealand King Salmon* the Supreme Court found that "a requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction".[3] This was endorsed by the High Court in *Transpower New Zealand Limited v Auckland Council* in the context of directives in policy instruments.[4]

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1 *Ohawini Bay Ltd v Whangarei District Council* EnvC Auckland A68/06, 31 May 2006.

2 *Antoun v Hutt City Council* [2020] EnvC 6.

3 *Environmental Defence Society Incorporated v New Zealand King Salmon Co Ltd [2014] 1 NZLR 593, [2014] NZSC 38 at [80].*

4 *Transpower New Zealand Ltd v Auckland Council* [2017 NZHC 281 at [78], citing *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593 at [80].

(ii) In *Urban Auckland v Auckland Council*, the High Court accepted a submission that an activity status in the precinct takes precedence over the activity status in the zone, as consistent with the principle of interpretation that "the specific overrides the general."[5]

(b) The definition of 'Container' in the International Convention for Safe Containers (CSC) 1972 and supports the position that a shipping container is not a 'structure':

(i) The term 'Container' is defined in the International Convention for Safe Containers 1972 (**CSC**). This convention was convened by the International Maritime Organisation, a specialised agency of the United Nations responsible for measures to improve the safety and security of international shipping. New Zealand has acceded to this Convention. A copy of this is **attached**.

(ii) The term 'Container' is defined in this Convention as follows:

A Container is defined as an article of transport which is:

1. of a permanent character and accordingly strong enough to be suitable for repeated use;

2. specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading;

3. designed to be secured or readily handled, having corner fittings for these purposes;

4. and, of a size such that the area enclosed by the four outer bottom corners is either

a. at least 14m2 (150 sq ft) or

b. at least 7m2 (75 sq ft) if it is fitted with top corner fittings.

(iii) The CSC definition describes a container as an article of transport (not a building or structure) that is robust and strong enough for repeated use and ready handling, indicating that the nature of a container is transitory and intended to be repeatedly moved and relocated. This negates any concept of permanence. While capable of being "secured" this is for the purpose of stabilising a container while it is being moved, not for securing the container to land.

10. We do not agree with the approach to interpretation, or the conclusion advanced by Brookfields Lawyers. We agree with Chapman Tripp (particularly paragraphs 15 and 16 of Annexure 1) that the approach set out by Brookfields Lawyers could result in absurd planning outcomes. This conflicts with the High Court authority cited in Brookfields Lawyers' opinion (paragraph 3) that an interpretation should avoid absurd or anomalous results.

11. For the above reasons it is clear that the stacking of shipping containers on the Site does not require compliance with the setback and height area-specific rules for 'buildings' applicable to the Portlink Industrial Park (as set out in 16.4.4.2), and we refute any suggestion that SCS is breaching these rules.

We agree with Chapman Tripp's proposal to meet with the Council to discuss the difference in opinion on interpretation issue and a constructive way forward to resolving the matter

12. We agree with Chapman Tripp, that given the interpretation issue is clearly in dispute, it would not be appropriate for the Council to proceed to any compliance or enforcement action, including issuing an abatement notice.

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[5] *Urban Auckland v Auckland Council* [2015] NZHC 1382 at [175].

13. As noted, SCS wishes to work co-operatively with Braeburn and the Council to resolve this matter as soon as possible and agrees with the way forward suggested by Chapman Tripp. That is, to meet with the Council to discuss:

    (a) The legal opinions that have been provided on the interpretation issue; and

    (b) If the issue remains unresolved, the option of seeking urgent declaratory relief from the Environment Court; and / or

    (c) How the Council might approach any resource consent application filed by Braeburn (on a without prejudice basis to the position advanced by Braeburn (and SCS) that a resource consent is not required).

14. We note that if any abatement notice were issued to SCS that it would appeal the notice and seek a stay on enforcement. We agree with Chapman Tripp that there is nothing to be gained from such an approach, and Chapman Tripp's proposed approach to resolve the matter (summarised above) is more constructive.

We suggest that the meeting proposed with SCS on Tuesday 11 October includes Braeburn and focusses on the matters for discussion summarised above

15. On 6 October 2022 the Council confirmed that it was willing to meet SCS at 12pm on Tuesday 11 October to discuss this matter.

16. In light of the opinion that has been filed by Chapman Tripp, and our consideration of the issue, we suggest that the meeting includes Braeburn and focusses on the matters for discussion summarised above.

17. The Council has requested information from SCS ahead of the meeting proposed on Tuesday 11 October on how it will address the "non-compliance" at the Site and standards and safety measures that SCS implements in relation to the stacking of shipping containers. Respectfully, SCS's position is that the issue of compliance remains in dispute and needs to be discussed and resolved between the parties.

18. However, without prejudice to SCS' position expressed in this letter, we note in response to the Council's information request that any requirement to reduce the footprint and height of the shipping containers stacked on the Site:

    (a) Would require a reduction in the number of shipping containers stored at the Site by approximately 30 percent. This is because there is not enough space within the yard to re-place the shipping containers and they would need to be stored off-site.

    (b) Would give rise to a significant logistical exercise. SCS does not have another local facility available to store them and expects that finding another site within the region will be difficult. The current facility was established because of a lack of container yard capacity in the Canterbury region. SCS cannot estimate how long it could take for SCS to find an alternative location in the area where they could be stored. In reality, because of a lack of alternative storage, it may be that SCS has to require shipping lines (container owners and SCS' customers) to repatriate containers via their own services (ships) from Canterbury to other locations.

    (c) Could have a material impact on SCS' business and its ability to meet its customers' requirements. Re-locating the shipping containers or requiring them to be repatriated will potentially constrain supply to the region's exporters. Whatever the response is, this will add cost to international supply chains, which will ultimately be borne by importers/exporters and final consumers.

19. SCS is happy to provide details of the workplace standard used for stacking containers, the safety measures implemented during adverse weather conditions and current operating hours. SCS will endeavour to provide this information to the Council as soon as possible and by the morning of Monday 10 October 2022, as requested.

20. We look forward to hearing from you.

Yours faithfully
MinterEllisonRuddWatts

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3 GUIDELINES

3.1 OBJECTIVES

3.1.1 The objectives of the Convention for Safe Containers are:

.1 to maintain a high level of safety of human life in the transport and handling of containers by providing generally acceptable test procedures and related strength requirements which have proved to be adequate over the years, and,

.2 to facilitate the international transport of containers by providing uniform international safety Regulations, which are equally applicable to all modes of surface transport. This will avoid the proliferation of divergent national safety Regulations.

3.1.2 The first of these objectives is achieved by setting out requirements to be implemented by the Contracting States to the Convention for the safety approval and maintenance of containers and for the relevant data to be included on a Safety Approval Plate on the container. The second is achieved by the reciprocal acceptance of safety-approved containers by other Contracting States to enable the containers to move in international transport with minimum safety control formalities.

3.2 SCOPE

3.2.1 The Convention applies to all new and existing containers as defined (see 3.2.2), which are used in **international transport**[1] other than those which are specially designed for transport by air. Although the Convention does not apply to containers used solely on internal movements within a State, there is no reason why a State cannot apply the Convention to such containers and a number of states have done so. Therefore, unless specifically included by the countries' legislation, **domestic containers**[2] are not included within the convention.

3.2.2 A Container is defined as an article of transport equipment which is:

.1 of a permanent character and accordingly strong enough to be suitable for repeated use;

.2 specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading;

.3 designed to be secured and/or readily handled, having corner fittings for these purposes;

.4 and, of a size such that the area enclosed by the four outer bottom corners is either

.1 at least 14 m^2 (150 sq ft) or

.2 at least 7 m^2 (75 sq ft) if it is fitted with top corner fittings,

Note: There are smaller containers manufactured which are designed to form into a 20 ft module either three or four per unit and are then transported internationally as a 20 ft unit. The area enclosed by the four bottom corner fittings is 4.5 m^2 and 3.5 m^2 respectively.

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1 ***International Transport*** means transport between points of departure and destination that are situated in the territories of two countries to which at least one of which the present Convention applies. The present Convention shall also apply when part of a transport operation between two countries takes place in a territory of a country to which the present Convention applies.

2 ***Domestic container*** means a container that is used only within the national boundaries of a country. This can however include off shore islands that are considered part of the mainland. For example the Canaries are considered as part of the mainland of Spain.

Annex 4 ISO STANDARDS RELATING TO CONTAINERS

ISO 668	Series 1 freight containers - Classification, dimensions and ratings.
ISO 830	Freight containers - Terminology. Trilingual edition.
ISO 1161	Series 1 freight containers - Corner fittings - Specification.
ISO 1496	Series 1 freight containers - Specification and testing
Part 1:	General cargo containers for general purposes.
Part 2:	Thermal containers.
Part 3:	Tank containers for liquids, gasses and pressurised dry bulk.
Part 4:	Non-pressurised containers for dry bulk.
Part 5:	Platform and Platform - based containers.
ISO 3874	Series 1 freight containers - handling and securing.
ISO 6346	Freight containers - Coding, identification and marking.
ISO 8323	Freight containers - Air/surface (intermodal) general purpose containers Specification and tests.
ISO 9669	Series 1 freight containers - Interface connections for tank containers
ISO 9711	Freight containers - Information related to containers on board vessels.
Part 1:	Bay plan system.
Part 2:	Telex data transmission.
ISO 9897	Freight containers - Container equipment data exchange (CEDEX).
Part 1:	General communication codes.
Part 3:	Message types for electronic data interchange.
ISO 10368	Freight thermal containers - remote condition monitoring.
ISO 10374	Freight containers - Automatic identification.
ISO/TR 15070	Series 1 freight containers - Rationale for structural test criteria.

Appendix 4

Compliance Assessment

DISTRICT PLAN

RULE	COMPLIANCE ASSESSMENT	STATUS
Chapter 5 Natural Hazards (Flood Hazards)		
5.4.1 Activities and earthworks in the Flood Management Area		
5.4.1.1 P1	New buildings located within the Fixed Minimum Floor Level Overlay, unless specified in P5, P6, P7, P8 or P9 in Rule 5.4.1.1. a. Minimum floor levels shall be the highest of the following: i. flooding predicted to occur in a 0.5% AEP (1 in 200--year) rainfall event concurrent with a 5% AEP (1 in 20--year) tidal event, including 1 metre sea level rise plus 400mm freeboard, as predicted by the relevant Council model and version identified in Table 5.4.1.1a; or ii. flooding predicted to occur in a 0.5% AEP (1 in 200-year) tidal event concurrent with a 5% (1 in 20-year) rainfall event, including 1m sea level rise plus 400mm freeboard, as predicted by the relevant Council model and version identified in Table 5.4.1.1a; or iii. 12.3 metres above Christchurch City Council Datum. **Comment:** *The office building will have a minimum floor level that is a minimum of 12.3m above CCC datum.*	Complies
5.4.1.1 P14	Filling or excavation in commercial and industrial zones that is not provided for under Rule 5.4.1.1 P10-P12 or P17. b. A maximum height of 0.3m of filling above ground level and 0.6m depth of excavation below ground level; and c. A maximum volume of filling above ground level of $20m^3$ per site, and a maximum cumulative volume of filling and excavation of $50m^3$ per site, in each case within any continuous period of 10 years. Or d. The excavation and filling is associated with the maintenance and/or replacement of underground petroleum storage systems and where, following reinstatement of the underground petroleum storage systems, the site will have a finished contour that is equivalent to the ground level at the commencement of the works. **Comment:** *Earthworks are not generally required for the activity. To the extent that formation of the vehicle crossing and site entry/apron may entail some earthworks this will not exceed a fill height >0.3m above ground level, or a cut of >0.6m below ground level, or a volume of $20m^3$.*	Complies
5.4.1.1 P16	Outdoor storage of transiting shipping containers in commercial and industrial zones.	Permitted
Chapter 6 General Rules and Procedures		
6.1.5 Noise		
6.1.5.1 Activity status tables		
6.1.5.1.1 P1	Outside the Central City, any activity that generates noise and which is not exempt by Rule 6.1.4.2 or specified in Rule 6.1.5.1.1 P2 below. Any activity that generates noise shall meet the Zone noise limits outside the Central City in Rule 6.1.5.2.1.	**Permitted**

6.1.5.2 Noise Standards		
6.1.5.2.1 Zone noise limits outside the Central City	Outside the Central City, any activity that generates noise shall meet the Zone noise limits in Table 1 below at any site receiving noise from that activity, as relevant to the zone of the site receiving the noise. l. Industrial General Zone – all hours- 70dB LAeq Except that noise levels shall not exceed 50 dB LAeq/75dB LAmax at any residential unit lawfully established prior to 6 March 2017 during the hours of 22:00 to 07:00. **Comment:** *The activities will be operated during daytime hours only and are therefore only subject to the daytime noise standard of 70db LAeq. Accounting for this the activity can readily comply with the applicable noise standards.*	Complies
6.3 Outdoor lighting		
6.3.4.1 Glare P1	Any activity involving artificial outdoor lighting, other than activities specified in Rule 6.3.4.3 NC1 or NC2. a. All fixed exterior lighting shall, as far as practicable, be aimed, adjusted and/or screened to direct lighting away from the windows of habitable spaces of sensitive activities, other than residential units located in industrial zones, so that the obtrusive effects of glare on occupants are minimised. b. Artificial outdoor lighting shall not result in a greater than 2.5 lux spill (horizontal or vertical) into any part of a major or minor arterial road or arterial route identified in Appendix 7.12 where this would cause driver distraction. **Comment:** *The proposed lighting will be designed to comply (and it is otherwise noted that minimal lighting is required given the activity will operate during daytime hours only).*	Complies
6.3.5.1 Light Spill P1	Any activity involving outdoor artificial lighting. a. Any outdoor artificial lighting shall comply: i. with the light spill standards in Rule 6.3.6 as relevant to the zone in which it is located, and; ii. where the light from an activity spills onto another site in a zone with a more restrictive standard, the more restrictive standard shall apply to any light spill received at that site. **Comment:** *The proposed lighting will be designed to comply (and it is otherwise noted that minimal lighting is required given the activity will operate during daytime hours only).*	Complies
6.8 Signs		
6.8.4.1 Activity Status Tables		
Signage P1	Any sign not specifically provided for as a permitted, controlled, restricted discretionary, discretionary or non-complying activity. Activity specific standards – a. relevant built form standards in Rule 6.8.4.2. **Comment:** *Any future signage will comply with the relevant built form standards, or a separate resource consent will be obtained.*	Complies

Chapter 7 Transport		
7.4.3 Standards		
7.4.3.1 Minimum and maximum number and dimensions of car parking spaces required	**Comment:** *No car parking spaces are proposed on the site.*	Not applicable
7.4.3.2 Minimum number of cycle parking facilities required	At least the minimum amount of cycle parking facilities in accordance with Appendix 7.5.2 shall be provided on the same site as the activity. **Comment:** *For yard-based suppliers 1 visitor space is required per 1000m^2 GLFA and 1 staff space is required per 750 m2 GLFA. Given the small size of the building (100m^2) less than 0.5 cycle visitor and 0.5 staff cycle spaces are required, meaning both requirements are disregarded and there is a nil requirement.*	Complies
7.4.3.3 Minimum number of loading spaces required	At least the minimum amount of loading spaces in accordance with Appendix 7.5.3 shall be provided on the same site as the activity. **Comment:** *For yard-based suppliers 1 loading bay is required per 1600m^2 GLFA. Given the small size of the building (100m^2) less than 0.5 of a loading bay is required, meaning the requirements are disregarded and there is a nil requirement.*	Complies
7.4.3.4 Manoeuvring for parking and loading areas	a. Any activity with a vehicle access: On-site manoeuvring area shall be provided in accordance with Appendix 7.5.6. b. Any activity with a vehicle access to… **Comment:** *a. A large on-site manoeuvring area is provided in the yard area adjacent to the access in accordance with Appendix 7.5.6.* *b. Not applicable.*	Complies
7.4.3.5 Gradient of parking and loading areas	For all non-residential activities with vehicle access: - Gradient of surfaces at 90 degrees to the angle of parking (i.e. parking stall width) - Gradient shall be ≤ 1:16 (6.25%) - Gradient of surfaces parallel to the angle of parking (i.e. parking stall length) - Gradient shall be ≤ 1:20 (5%) - Gradient of mobility car park spaces. - Gradient shall be ≤ 1:50 (2%) **Comment:** *The gradient of surfaces complies with the applicable standards.*	Complies
7.4.3.6 Design of parking and loading areas	a. All non-residential activities with parking and/or loading areas used during hours of darkness: the lighting of parking and loading areas shall be maintained at a minimum level of two lux, with high uniformity, during the hours of operation. b. Any urban activity: the surface of all car parking, loading, and associated access areas shall be formed, sealed and drained and car parking spaces permanently marked.	Complies

	Comment: *a. Does not apply, as these areas will not be used during hours of darkness.* *b. Parking and loading areas are not required. However, to the extent that access, loading and associated manoeuvring areas are provided these will be formed, sealed and drained as required.*	
7.4.3.7 Access design	a. Any activity with vehicle access: the access shall be provided in accordance with Appendix 7.5.7. b. Not applicable. c. Outside the Central City, any vehicle access: (i) to an urban road serving more than 15 car parking spaces or more than 10 heavy vehicle movements per day; and/or (ii) on a key pedestrian frontage. - Either an audio and visual method of warning pedestrians of the presence of vehicles or a visibility splay in accordance with Appendix 7.5.9 shall be provided. If any part of the access lies within 20m of a Residential Zone any audio method should not operate between 20:00 and 08:00 hours. d. Not applicable e. Not applicable **Comment:** *a. The access complies with the applicable standards in Appendix 7.5.7 (noting the 7m legal and formed width of the access complies with table 7.5.7.1 row e).* *b. An audio and visual warning device will be provided at the site entry.*	Complies
7.4.3.8 Vehicle crossings	Any activity with a vehicle access to any road or service lane: a vehicle crossing shall be provided constructed from the property boundary to the edge of the carriageway / service lane. b.-g. Not applicable **Comment:** *Complies.*	Complies
7.4.3.9 Location of buildings and access in relation to road/rail level crossings	Any new road or access that crosses a railway line: no new road or access shall cross a railway line. All new road intersections located less than 30 metres from a rail level crossing limit line: the road intersection shall be designed to give priority to rail movements at the level crossing through road traffic signals. All new vehicle crossings located less than 30 metres from a rail level crossing limit line: no new vehicle crossing shall be located less than 30 metres from a rail level crossing limit line unless the boundaries of a site do not enable the vehicle crossing to be more than 30 metres from a rail level crossing limit line. Any building located close to a level crossing not controlled by automated warning devices (such as alarms and/or barrier arms): buildings shall be located outside of the sight triangles in Appendix 7.5.13. **Comment:** *No rail level crossings are located near the site.*	N/A
7.4.3.10 High trip generators	This rule applies to activities located outside the Central City, and activities within the Central City that are not exempt from this rule under b. below, that exceed the following thresholds.	Complies

	Comment: *Yard based suppliers are an 'other activity' for the purposes of this rule. However, given the nature of the activity it will not generate more than 50 vehicle movements in the peak hour or 250 heavy vehicle trips per day. Accordingly the activity complies with this standard.*	
Chapter 8 Earthworks		
8.9.2 Activity status tables		
8.9.2.1 P1	a. Earthworks shall not exceed the volumes in Table 9 over any 12 month time period. b. Earthworks in zones listed in Table 9 shall not exceed a maximum depth of 0.6m, other than in relation to farming activities, quarrying activities or permitted education activities. c. Earthworks shall not occur on land which has a gradient that is steeper than 1 in 6. d. Earthworks involving soil compaction methods which create vibration shall comply with DIN 4150 1999-02 and compliance shall be certified through a statement of professional opinion provided to the Council from a suitably qualified and experienced chartered or registered engineer. e. Earthworks involving mechanical or illuminating equipment shall not be undertaken outside the hours of 0700 – 1900 in a Residential Zone. Advice note 1. between 0700 and 1900 hours, the noise standards in Chapter 6 Rule 6.1.5.2 and the light spill standards at Chapter 6 Rule 6.3.6 both apply. f. Earthworks involving mechanical equipment, other than in residential zones, shall not occur outside the hours of 0700 and 2200 except where compliant with NZS6803:1999. Advice note 1. between 0700 and 2200 hours, the noise standards in Chapter 6 Rule 6.1.5.2 apply except where NZS6803.1999 is complied with, and the light spill standards in Chapter 6 Rule 6.3.6 apply. g. Fill shall consist of clean fill. h. The activity standards listed in Rule 8.9.2.1 P3, P4 and P5. i. Earthworks shall not occur within 5 metres of a heritage item or within a heritage setting listed in Appendix 9.3.7.2. **Comment:** *Earthworks are not generally required for the activity. To the extent that formation of the vehicle crossing and site entry may entail some earthworks this will not exceed a depth of 0.6m or a volume of 1000m^3/hectare.*	Complies
Chapter 16 Industrial (Industrial General Zone)		
16.4.1 Activity status tables		
P10	Yard-based supplier **Comment:** *The activity is a yard-based supplier and no activity standards apply.*	Permitted
17.5.2 Built form standards		
16.4.2.1 Maximum height for buildings	The maximum height of any building within 20 metres of a residential zone shall be 15 metres **Comment:** *No buildings are proposed within 20m of a residential zone.*	Not applicable
16.4.2.2 Minimum building setback from road	The minimum building setback from a road boundary and a rail corridor boundary shall be as follows:	Complies

boundaries/ railway corridor	i. Any activity unless specified below: 1.5 metres ii. Any activity fronting on to an arterial road or opposite a residential zone unless specified in (iii): 3 metres iii. Buildings, balconies and decks on sites adjacent to or abutting railway lines: 4 metres from the rail corridor boundary **Comment:** *No buildings are located within the applicable setbacks. In particular, the office building will be located >1.5m from the road boundary.*	
16.4.2.3 Minimum building setback from the boundary with a residential zone	The minimum building setback from the boundary with a residential zone shall be as follows: All buildings within sites which share a boundary with a residential zone: 3 metres **Comment:** *The site does not share a boundary with a residential zone.*	Not applicable
16.4.2.4 Sunlight and outlook at boundary with a residential zone and road	Where an internal site boundary adjoins a residential zone, no part of any building shall project beyond a building envelope contained by a recession plane measured at any point 2.3 metres above the internal boundary in accordance with the relevant diagram in Appendix 16.8.11. **Comment:** *The site does not share a boundary with a residential zone.*	Not applicable
16.4.2.5 Outdoor storage of materials	Any outdoor storage areas shall: i. not be located within the minimum setbacks specified in Rule 16.4.2.2. ii. be screened by landscaping, fencing or other screening to a minimum of 1.8 metres in height from any adjoining residential zone. **Comment:** *The outdoor storage areas proposed are not located within the setbacks specified in Rule 16.4.2.2 (noting the site does not adjoin a residential zone).*	Complies
16.4.2.6 Landscaped areas	Landscaping and trees shall be provided as follows: i. The road frontage of all sites opposite a residential zone or listed below shall have a landscaping strip with a minimum width of 1.5 metres, and minimum of 1 tree for every 10 metres of road frontage or part thereof. A. Sites adjoining Main North Road (SH1) between Dickeys Road and Factory Road; B. Sites adjoining Main South Road, between Barters Road and Halswell Junction Road; and C. Sites adjoining Tunnel Road. D. This standard shall not apply to an emergency service facility or vehicle access to any site. ii. On sites adjoining a residential zone, trees shall be planted adjacent to the shared boundary at a ratio of at least 1 tree for every 10 metres of the boundary or part thereof. iii. All landscaping / trees required by these rules shall be in accordance with the provisions in Appendix 6.11.6 of Chapter 6.	Complies

	Comment: *The site adjoins Tunnel Road and provides the required landscaping.*	
16.4.2.7 Visual amenity and screening	Where a site adjoins an Open Space, Specific Purpose (School), Specific Purpose (Cemetery) or Specific Purpose (Tertiary Education) Zone, provision shall be made for landscaping, fence(s), wall(s) or a combination to at least 1.8 metres in height along the length of the zone boundary, excluding any road frontages. Where landscaping is provided, it shall be continuous and for a minimum depth of 1.5 metres along the zone boundary. **Comment:** *The site adjoins an Open Space Zone to the east. Landscaping will be provided in accordance with this standard.*	Complies
16.4.2.8 Access to Industrial General Zone (Deans Avenue)	Any activity in the Industrial General zone bound by Deans Avenue, Lester Lane and the railway line shall only have access from Lester Lane. In the event that Lester Lane is realigned, site access shall be solely from the realigned Lester Lane. **Comment:** *Not applicable.*	Not applicable
16.4.2.9 Water supply for fire fighting	Provision for sufficient water supply and access to water supplies for firefighting shall be made available to all buildings via Council's urban reticulated system (where available) in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS: 4509:2008). **Comment:** *The proposed office building will be connected to the reticulated water supply which is understood to comply.*	Complies
16.4.4.1 Area-specific activities - Industrial General Zone (Portlink Industrial Park)		
16.4.4.1.1 P1	Activities listed in Rule 16.4.1.1 P1-P21. Activity specific standards: a. Development shall comply with: i. The key structuring element on the Portlink Industrial Park Development Plan (Appendix 16.8.3), being: A. Road access ii. Built form standards in Rule 16.4.4.2, and Rule 16.4.2 unless specified otherwise in Rule 16.4.4.2. **Comment:** *The proposal complies with the key structuring element (Road access) on the ODP and otherwise complies with the relevant built form standards in 16.4.4.2 and 16.4.2.*	Complies
16.4.4.2 Area-specific built form standards - Industrial General Zone (Portlink Industrial Park)		
16.4.4.2.1 Maximum height of buildings	The maximum height of any building within the '11m Building Height Limit Area' defined on the development plan in Appendix 16.8.3 shall be 11 metres. **Comment:** *Not applicable, buildings are not proposed within the 11m building height limit area.* *To the extent that outdoor storage is proposed within this area and will exceed 11m height, the items proposed to be stored are not 'buildings' as defined in the District Plan. Refer to Appendix 3 for a copies of the legal opinions by Chapman Tripp and MinterEllisonRuddWatts explaining why a shipping container is not a*	Not applicable.

	'building' and a copy of the relevant excerpt of the Interpretations and Guidelines of the IMO International Convention on Safe Containers (CSC) 1972 providing the definition of a 'container' as an article of transport equipment.	
16.4.4.2.2 Minimum building setback from road boundaries	The minimum building setback from the road boundary with Tunnel Road shall be 3 metres. **Comment:** *No buildings are proposed to be located within 3 metres of Tunnel Road.*	Complies
16.4.4.2.3 Landscaped areas	Landscaping and trees shall be provided as follows: i. Tunnel Road frontage only A. Any site that adjoins Tunnel Road shall have a landscaping strip with a minimum width of 1.5 metres along the site boundary with Tunnel Road with the exception of that part defined on the development plan in Appendix 16.8.3 as 'Landscape and stormwater area (Green Space)'; and B. Planting of trees and shrubs within the landscaping strip adjacent to Tunnel Road shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and shall meet the requirements specified in Part A of Appendix 6.11.6 of Chapter 6; and C. The landscaping required under Rule 16.4.4.2.3 i. shall be completed as a condition of subdivision consent, or if there is no subdivision required, in conjunction with development in the locations that clause (a) relates to as a permitted activity standard. ii. Landscaping adjacent to the Heathcote River and within the zone A. Planting of trees and shrubs within the 'Landscape and stormwater area (Green Space)' defined on the development plan in Appendix 16.8.3 adjacent to the Heathcote River shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and the requirements specified in Part A of Appendix 6.11.6 of Chapter 6; and B. Legal public access ways within the landscaping strip adjoining the Heathcote River shall be provided as indicated by 'Pedestrian access' on the development plan in Appendix 16.8.3; and C. There shall be no erection of buildings, fences, the display of outdoor advertisements, parking of vehicles or use for any purpose other than landscaping, passive recreation or ecological enhancement within the 'Landscape and Stormwater Area (Green Space)' defined on the development plan in Appendix 16.8.3, and D. Existing vegetation as marked on the development plan in Appendix 16.8.3 as 'Existing vegetation to be retained' shall be maintained. **Comment:** *Compliant landscaping is proposed in respect of the Tunnel Road frontage.* *Clause ii does not apply.*	Complies

2. RMA/2023/3100 Application dated 29 November 2023

novo group
Planning. Traffic. Development.

Certificate of Compliance application

prepared for

BRAEBURN PROPERTY LIMITED

320 & 320A Cumnor Terrace, Christchurch

November 2023

Certificate of Compliance application

prepared for

BRAEBURN PROPERTY LIMITED

320 & 320A Cumnor Terrace, Christchurch

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Project Reference:	022074
Project Manager:	Jeremy Phillips, Director & Senior Planner
Prepared by:	Georgia Brown, Senior Planner
Reviewed by	Jeremy Phillips, Director & Senior Planner

Application for Certificate of Compliance
Under Section 139 of the Resource Management Act 1991

TO: Christchurch City Council

We: Braeburn Property Limited ('**the applicant**'), apply for a certificate of compliance for the activity described below.

1. The activity to which the application relates (the proposed activity) is as follows:

   To establish a yard-based supplier activity on the site, comprising the use of land for selling or hiring products for construction or external use where more than 50% of the area devoted to sales or display is located within an uncovered external yard space.

   The activity will include the outdoor storage (for display, sale or hire) of garden supplies, including haybales, which will be stored to an unspecified maximum height, but will expressly exceed 11m height.

   Ancillary vehicle access to/from the site and on-site vehicle circulation and loading space is also proposed for the activity.

   The activity for which the certificate of compliance is sought will be undertaken in accordance with the details, information and plans that accompany and form part of the application.

2. The site at which the proposed activity is to occur is as follows:

   The application site is a nominal site of approximately 2.5 hectares, located at 320 & 320A Cumnor Terrace, Christchurch legally described as Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298 and Lot 305 Deposited Plan 525615.

   The relevant particulars of the site are set out in further detail within the details, information and plans that accompany and form part of this application.

3. The full name and address of each owner or occupier (other than the applicant) of the site to which the application relates are as follows:

   The applicant owns the site and leases it to:

   - NZ Express Transport (2006) Limited
     C/- Gabites Limited
     54 Cass Street
     ASHBURTON 7700

   - Pinnacle Corporation Limited
     Level 3 Woburn House
     40 Bloomfield Terrace
     LOWER HUTT 5010

   - International Primary Products (NZ) Limited
     C/- Nexia New Zealand
     Level 1, 5 William Laurie Place
     AUCKLAND 0632

- Champion Materials Limited
  C/- E3 Business Accountants Limited
  94 Disraeli Street
  CHRISTCHURCH 8023

4. We attach all necessary further information required to be included in this application by the Resource Management Act 1991, or any regulations made under that Act.

Georgia Brown, Senior Planner **DATED:** 29 November 2023

(Signature of applicant or person authorised to sign on behalf)

Address for service:

Novo Group Limited
PO Box 365
CHRISTCHURCH 8140

Attention: Tim Walsh

T: 027 267 0000
E: tim@novogroup.co.nz

Address for Council fees:

Braeburn Property Limited
C/- Moore Walker Davey Searells Limited
Level 2, Building One, 181 High Street,
CHRISTCHURCH 8144

Attention: Richard Pebbles

T: 021 331 346
E: richard@peeblesgroup.co.nz

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List of Figures and Tables

Appendices

Introduction

1. The applicant seeks a certificate of compliance pursuant to section 139 of the Resource Management Act 1991 ('the Act') to establish and operate a yard-based supplier activity on the subject site, in accordance with the information and plans provided below. Notably, the activity entails the outdoor storage of garden supplies for display, sale and hire, including (among other things): haybales ('a processed product') and other garden supplies. Certification is sought that such outdoor storage is not constrained in terms of its height, but it is expressly noted that the storage will exceed 11m in height above ground level.

The Site

2. The application site is a nominal site[1], located within the underlying property known as 320 & 320A Cumnor Terrace, Woolston, Christchurch which is legally described as Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298 and Lot 305 Deposited Plan 525615. Refer to the Record of Title in **Appendix 1**.

3. The subject site for the purposes of this application occupies a rectangular parcel of land approximately 25,000m^2 (2.5 hectares) in area, at the terminus of Kennaway Road in the northern part of the Portlink Industrial Park ('Portlink'). Portlink is bounded by the Heathcote River, Tunnel Road (State Highway 74), the Main Trunk Rail Line that terminates in Lyttleton, and Chapmans Road.

4. The site is generally flat and is formed with a compacted metal surface, established as part of the original subdivision and development of this stage of Portlink.

5. **Figure 1** over the page shows the underlying property (in red) which measures approximately 12 hectares in area. **Figure 2** shows the subject site in the context of the outline development plan (ODP) that is applicable to the Industrial General (Portlink Industrial Park) Zone.

6. Kennaway Road extends from its intersection with Chapmans Road and terminates at a turning circle adjacent the application site.

7. Beyond Portlink and on the other side of the Heathcote River, industrial activities are located to the southwest/west, and residential properties are located to the northwest/north. Open space occupies the land to the east of Tunnel Road.

[1] See definition of 'site' in the District Plan, which means *'an area of land or volume of space shown on a plan with defined boundaries, whether legally or otherwise defined boundaries…'.*

Figure 1: Approximate location of site (dashed) and underlying property (red) (Source: Canterbury Maps)

Figure 2: Approximate site location relative to Portlink ODP (CDP, Appendix 16.8.3)

The Proposal

8. As described above, the applicant seeks certification that the establishment and operation of a yard-based supplier activity on the site (as described here) is a permitted activity.

9. For the purposes of the application, the yard-based supplier will entail the use of land for selling or hiring products for construction or external use where more than 50% of the area devoted to sales or display is located within and uncovered external yard space[2]. The activity will entail the outdoor storage (for display, sale or hire) of various garden supplies and items, including haybales.

10. The outdoor storage of the items described above may include items stacked/stored at any height (including heights exceeding 11m) within those areas identified on the plans in **Appendix 2**. Racking or other support structures are not proposed or necessary for storage, noting 'interlocking' of the bales or other methodologies will be employed to ensure the safe and secure stacking of items at greater heights, where this is required.

11. A small office/administration building of approximately 100m^2 Gross Floor Area is proposed adjacent to the site entry and will include storage space for cycles.

12. A singular vehicle access is provided to/from the site and this provides access to a yard area that caters for loading requirements. Formal car parking, cycle parking and loading spaces are not required by the District Plan for the activity and are not proposed.

13. The activity will only operate during daytime hours (typically 8am-5pm), from Monday to Friday. The site will be secured by fencing and security gates.

14. The site will have minimal staff, with an estimated 1-2 full time equivalent staff required to manage deliveries and pickups and the sorting of items on the site. Similarly, vehicle movements to and from the site will be minimal. Whilst the sale, hire or display of items on site will be possible, the majority of customers will view content online meaning minimal customer visits to the site. Delivery activity will also be of a modest scale, noting consignments of materials to the site will be periodic and collection of materials sold or hired from the site will also be periodic. For the purposes of the application, certification is sought that up to 50 heavy vehicle trips and 100 other (non-heavy) vehicle trips per day is permitted. The CoC is sought explicitly on the basis of complying within the limits for High Traffic Generating (HTG) activities, consistent with the approach taken by the Council Officer in RMA/2023/2806 in determining the CoC could be sought explicitly on the basis that it could comply with other District Plan standards including lighting, glare and noise standards.

15. A landscaping strip with trees is proposed along the site's eastern boundary with Tunnel Road, as required by the District Plan.

16. Given the site is generally flat and has an established, compacted metal surface that is suitable for the proposed activity, earthworks are not generally required. Some minor earthworks will be required for the purposes of forming the vehicle access and sealed apron

[2] This being consistent with the District Plan definition of a 'yard-based supplier'.

at the entry to the site[3]. Given the small extent of works required, earthworks will not exceed a fill height >0.3m above ground level, or a cut of >0.6m below ground level, or a total volume of 20m^3.

17. Signage is not proposed as part of this application.

Statutory Framework

National Environmental Standard (NES) for Contaminants in Soil

18. The Environment Canterbury Listed Land Use Register identifies a Hazardous Activities and Industries List ('**HAIL**') activity within the site. The HAIL site (site 122022: Kennaway Farm) is indicated as having been partially investigated.

19. Resource consent RMA/2017/947 provides the following commentary relevant to NES considerations:

> *On the original site, the NES regulations do not apply as land contamination levels are below background levels. The site has been subject to extensive filling which currently still being completed and the consent includes provision to ensure that the fill is cleanfill. On this basis, consent is not required under the NES for the disturbance of earth or change of use.*

20. Consistent with this approach, the NES does not apply to the proposed activity.

Christchurch District Plan

Zoning & Planning Map Notations

21. The site is zoned *Industrial General (Portlink Industrial Park)* in the Christchurch District Plan ('District Plan' or 'Plan') and is subject to the following overlays and notations:

- Flood Management Area,
- Fixed Minimum Floor Level Overlay within Flood Management Area,
- Liquefaction Management Area,

22. As shown in Figure 2 above, the site is within the boundaries of the *Portlink Industrial Park Outline Development Plan* in Appendix 16.8.3 of the District Plan. Of relevance, the site is partly within the 11m building height limit area on that ODP (hatched area in **Figure 2**).

[3] The access will have a legal and formed width of 7m, with the sealed apron extending 10m back into the site. Earthworks to a maximum depth of 200mm are proposed for this area, to allow for the sealing of this area with asphalt or concrete.

Definitions

'Site' definition

23. As noted above, the subject site entails an area of land shown on a plan with defined boundaries and therefore accords with the District Plan definition of 'site', as follows:

> ***Site*** *means an area of land or volume of space shown on a plan with defined boundaries, whether legally or otherwise defined boundaries…*

Activity type (yard-based supplier)

24. The proposed activity as described above is a 'yard-based supplier', noting that this definition expressly refers to garden supplies. The definition is set out in full below:

> ***Yard-based supplier*** *means the use of any land and/or building for selling or hiring products for construction or external use (which includes activities such as sale of vehicles and garden supplies), where more than 50% of the area devoted to sales or display is located within covered or uncovered external yard or forecourt space, as distinct from within a secured and weatherproof building. Drive-in or drive-through covered areas devoted to storage and display of construction materials (including covered vehicle lanes) will be deemed yard area for the purpose of this definition.*

Definition of 'Outdoor storage' and 'building'

25. The definition of 'outdoor storage' and 'building' in the Plan is set out below. **Appendix 3** includes a legal opinion by Brookfields Lawyers (dated 16 November 2023) which provides advice to Council on the definition of 'building' as it relates to shipping containers. This opinion also discusses 'outdoor storage' and the relationship between the two definitions, confirming that they are not mutually exclusive.

26. The definition of 'outdoor storage area' below, includes *processed products,* of which a haybale would be considered to fall within.

> ***Outdoor storage areas*** *means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.*

27. Based on the Brookfields opinion, land used for the storage of haybales would be considered 'outdoor storage area'. However, the Brookfields opinion goes on to conclude that the haybales would therefore also be considered to fall within the definition of 'building'.

28. At paragraph 57 the opinion considers this interpretation as it could relate to the storage of other matter, which is directly relevant to the application. At paragraph 60, Brooksfields consider that the circumstances in which stacked equipment is unlikely to fall within the meaning of a building is where:

    a) The stacks are relatively small in height and size;

    b) Individual components are small/lightweight;

    c) The stack is short-term;

d) The stack is unsupported.

29. The above interpretation of 'building' and 'outdoor storage area' is considered arbitrary, and not one which supports administrative efficiency. An applicant should not have to measure the height/weight of said stacked equipment to determine whether it is a building, nor should the duration sought to stack such equipment determine whether it is a building or not. Moreover, it would be unclear to users of the Plan at what point the height, size, weight or duration of a stored item would result in an item of outdoor storage then being defined and assessed as a building.

30. Given the above, the assessment of compliance has proceeded on the basis that haybales are not buildings, as defined in the District Plan as follows:

> ***Building*** *means as the context requires:*
>
> *a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or*
>
> *b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and*
>
> *c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but*
>
> *excludes:*
>
> *d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;*
>
> *e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;*
>
> *f. retaining walls which are both less than 6m2 in area and less than 1.8 metres in height;*
>
> *g. structures which are both less than 6m2 in area and less than 1.8 metres in height;*
>
> *h. utility cabinets;*
>
> *i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;*
>
> *j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;*
>
> *k. artificial crop protection structures and crop support structures; and*
>
> *…*
>
> ***Advice note:*** *1. This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.*

Rules

31. An assessment of the proposal's compliance with the applicable rules in the District Plan is set out in **Appendix 4**.

32. Notably, the area-specific rules for the Industrial General Zone (Portlink Industrial Park), permit those activities listed and permitted in the Industrial General Zone in Rule 16.4.1.1 P1-P21, subject to compliance with the area-specific built form standards in 16.4.4.2 and Industrial General Zone built form standards in 16.4.2. In this regard:

    a. Yard-based suppliers are a permitted activity under Rule 16.4.1.1 P11.

    b. Area specific built form standards in 16.4.4.2 are complied with.

    c. Industrial General Zone built form standards in 16.4.2 are complied with.

33. In regards the built form standards referenced above, it is noted that the only building proposed on the site is the small site office at the entry to the site which complies with applicable rules relating to 'buildings' (e.g. height controls, boundary setbacks, etc). The areas of outdoor storage (including haybales and other items, of unspecified maximum heights but generally above 11m in height) otherwise comply with applicable built form standards. Notably, outdoor storage is not subject to any maximum height rules or controls.

34. Other (general) rules in the District Plan, including those relating to transport, earthworks and natural hazards are also complied with, as detailed in **Appendix 4**.

Activity status

35. Based on this assessment the proposal is a **permitted activity** and certification from Council pursuant to section 139 of the Act is sought, confirming that the proposal can lawfully proceed without a resource consent.

Appendix 1

Record of Title

RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD

Search Copy

R.W. Muir
Registrar-General
of Land

Identifier	**614676**
Land Registration District	**Canterbury**
Date Issued	11 July 2013

Prior References
578312

Estate	Fee Simple
Area	6319 square metres more or less
Legal Description	Lot 301 Deposited Plan 463785
Registered Owners	

Braeburn Property Limited

Interests

Appurtenant hereto is a right of way created by Transfer 811061 - 9.10.1970 at 2:00 pm

Subject to a right to drain water over part marked MB on DP 463785 created by Easement Instrument 9138592.7 - 13.8.2012 at 3:21 pm

Subject to a right to drain water over part marked H on DP 463785 created by Easement Instrument 9446208.9 - 11.7.2013 at 12:01 pm

The easements created by Easement Instrument 9446208.9 are subject to Section 243 (a) Resource Management Act 1991

9446208.13 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 11.7.2013 at 12:01 pm

9750370.7 Surrender of the right to drain water created by Easement Instrument 9446208.9 as appurtenant to Lots 502-3 DP 473298 - 9.6.2014 at 5:10 pm

9750370.14 Encumbrance to Christchurch City Council - 9.6.2014 at 5:10 pm

10703567.1 Variation of Encumbrance 9750370.14 - 24.2.2017 at 2:10 pm

10838003.1 Variation of Encumbrance 9750370.14 - 8.8.2017 at 8:46 am

Fencing Covenant in Transfer 11545342.2 - 27.9.2019 at 4:36 pm

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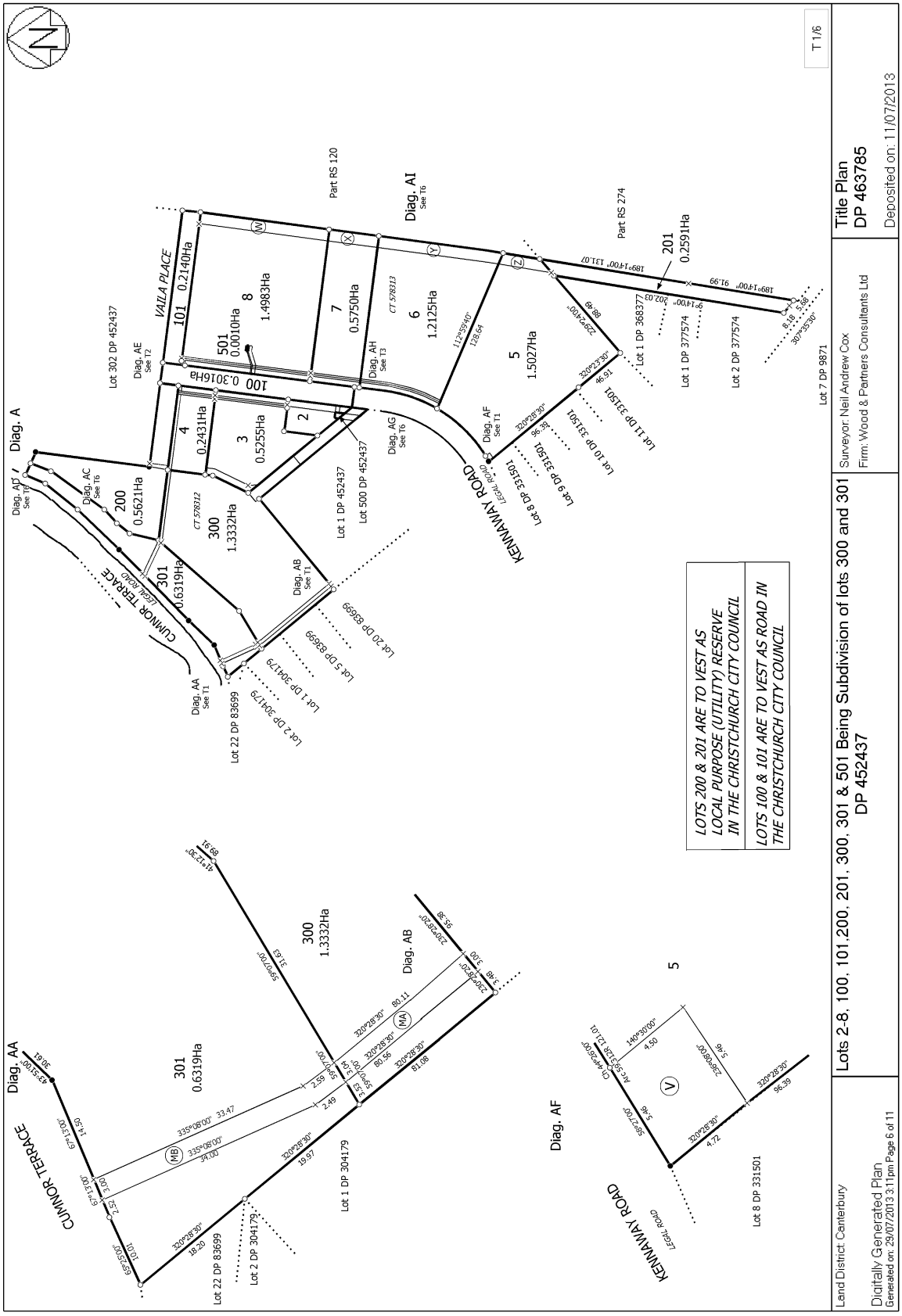
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LOTS 100 & 101 ARE TO VEST AS ROAD IN THE CHRISTCHURCH CITY COUNCIL
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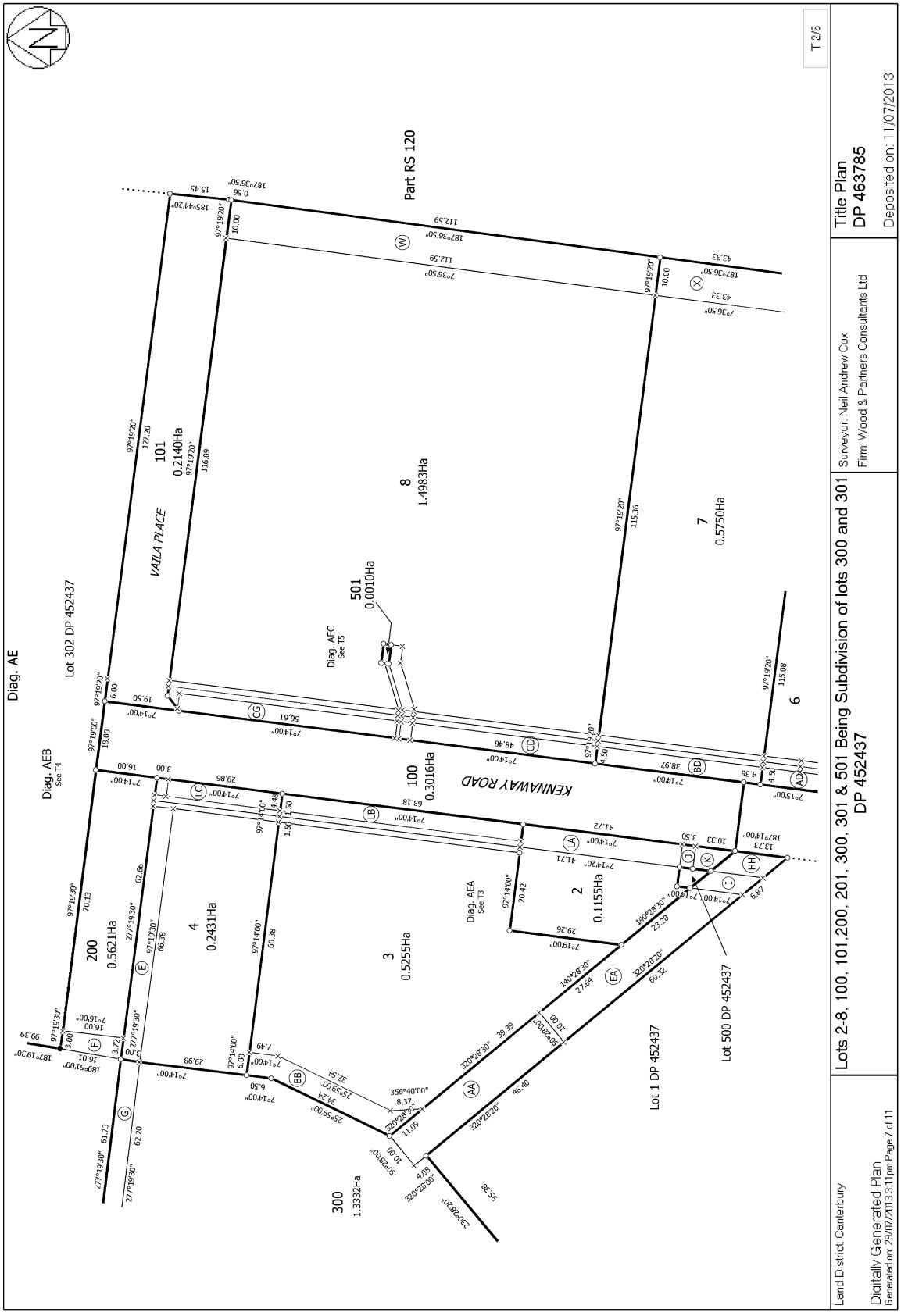
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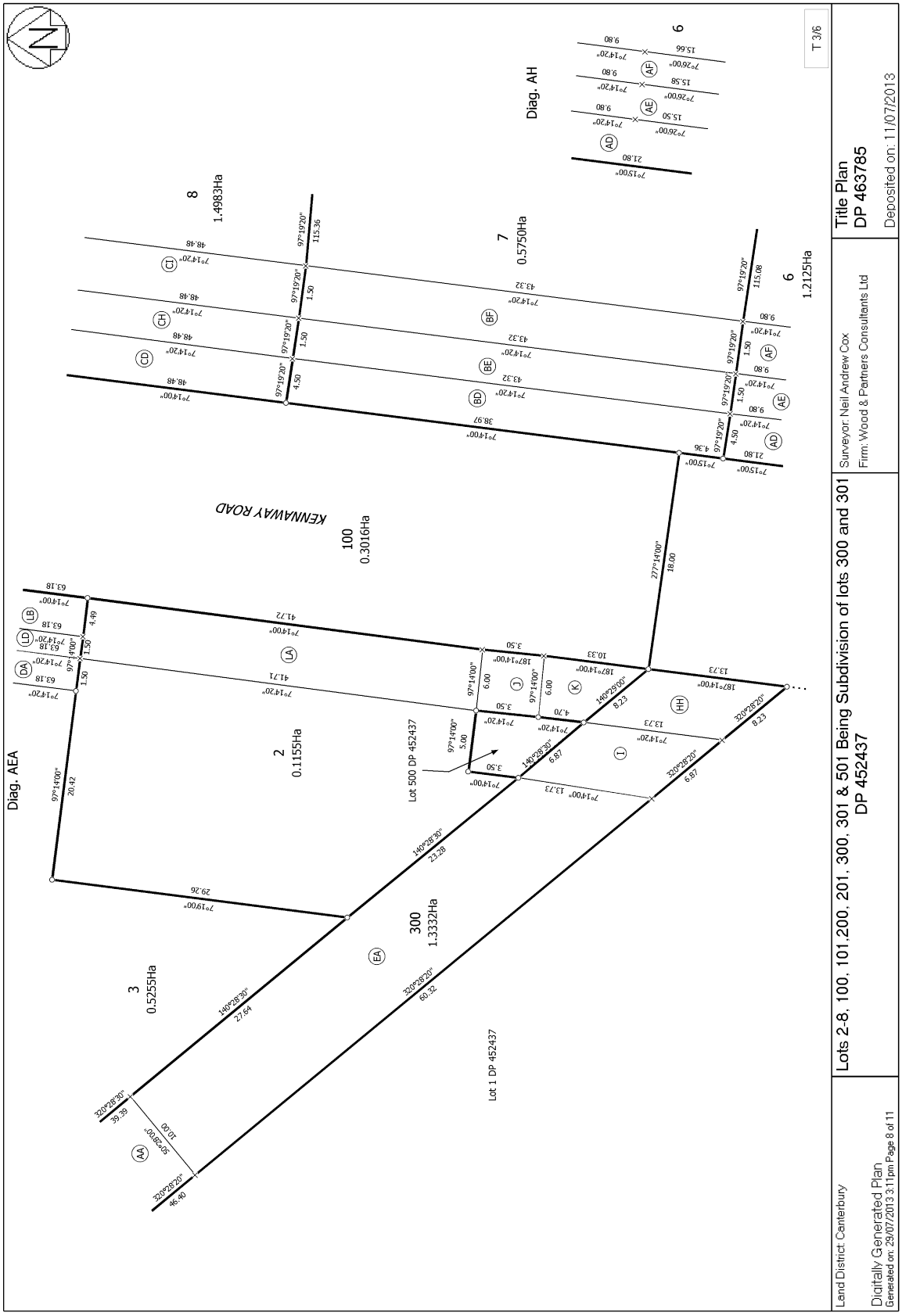
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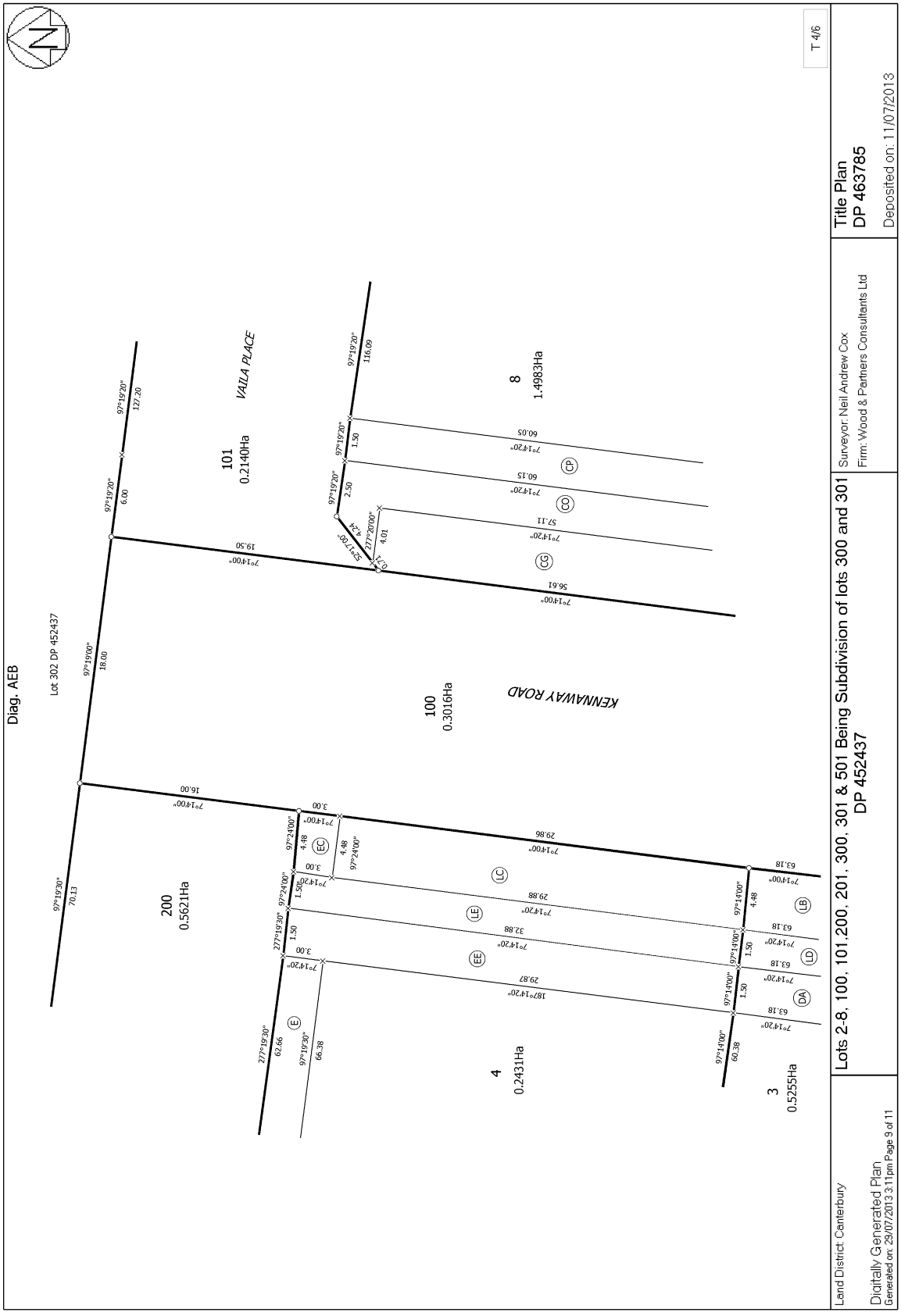
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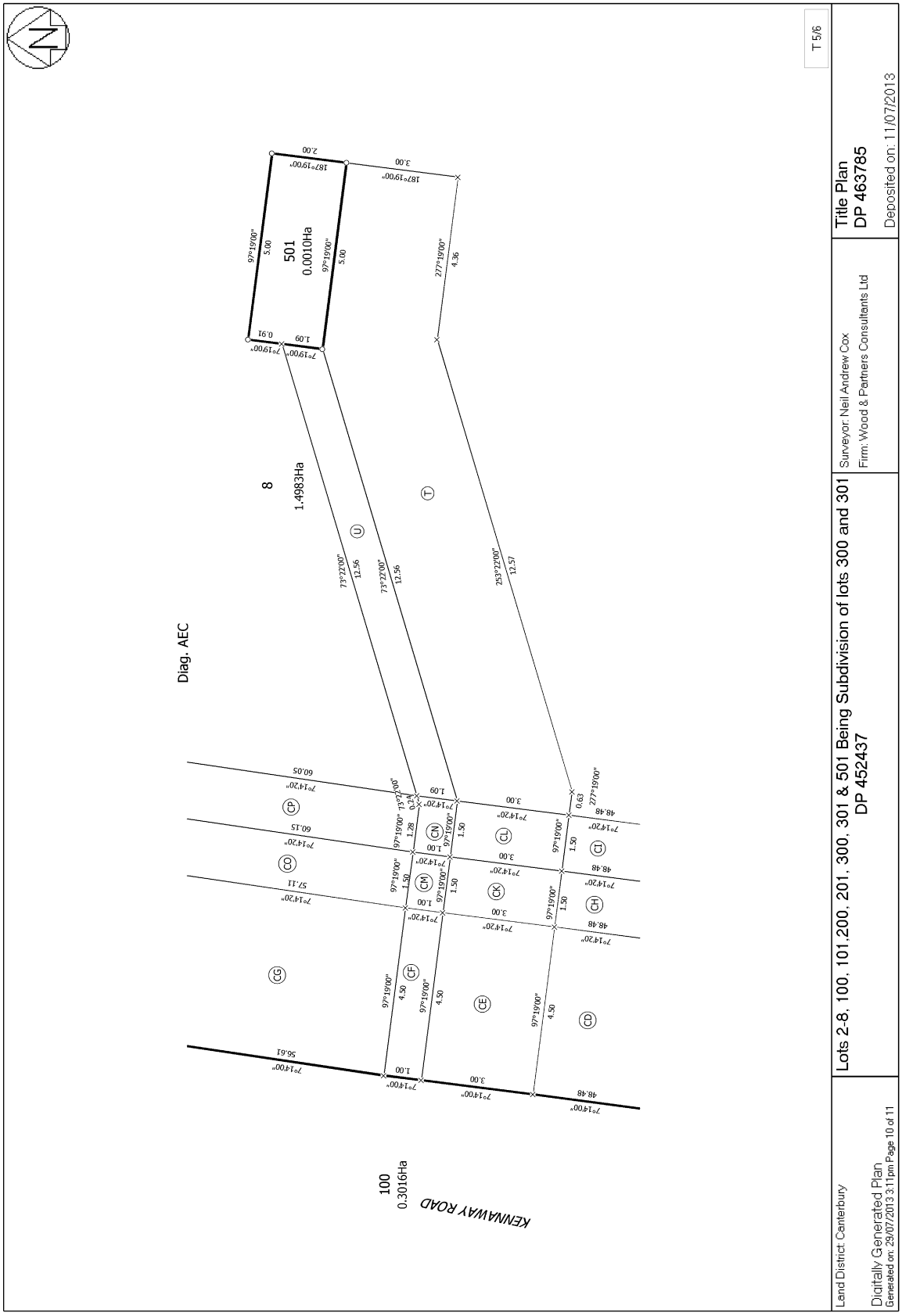
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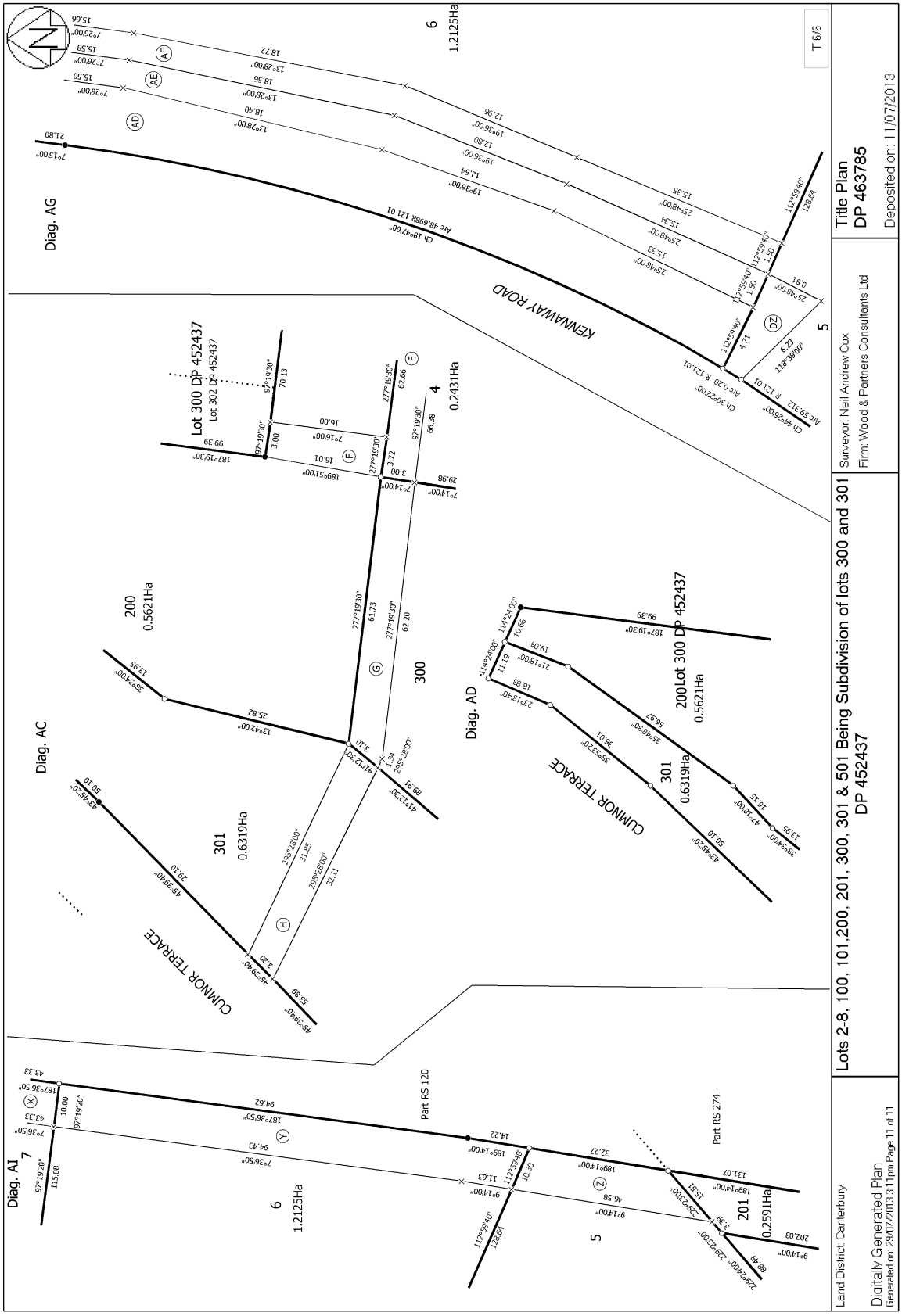
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Deposited on: 11/07/2013
Surveyor: Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
Lots 2-8, 100, 101,200, 201, 300, 301 & 501 Being Subdivision of lots 300 and 301 DP 452437
Land District: Canterbury
Digitally Generated Plan
Generated on: 29/07/2013 3:11pm Page 11 of 11
KENNAWAY ROAD
CUMNOR TERRACE
Diag. AG
Diag. AC
Diag. AD
Diag. AI
Lot 300 DP 452437
Lot 302 DP 452437
200
0.5621Ha
300
301
0.6319Ha
4
0.2431Ha
5
6
1.2125Ha
7
201
0.2591Ha
Part RS 120
Part RS 274

RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD

Search Copy

R.W. Muir
Registrar-General
of Land

Identifier **842854**
Land Registration District **Canterbury**
Date Issued 18 December 2018

Prior References
689371

Estate	Fee Simple
Area	12.0077 hectares more or less
Legal Description	Lot 305 Deposited Plan 525615 and Lot 302 Deposited Plan 473298

Registered Owners
Braeburn Property Limited

Interests

Appurtenant to Lot 302 DP 473298 herein and appurtenant to Lot 305 DP 525615 part formerly Lot 1 DP 53089 herein is a right of way created by Transfer 811061 - 9.10.1970 at 2:00 pm

9138592.2 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 13.8.2012 at 3:21 pm (affects Lot 302 DP 473298)

Appurtenant to Lot 302 DP 473298 herein is a right to drain water created by Easement Instrument 9446208.7 - 11.7.2013 at 12:01 pm

The easements created by Easement Instrument 9446208.7 are subject to Section 243 (a) Resource Management Act 1991

Appurtenant to Lot 302 DP 473298 herein is a right to drain water created by Easement Instrument 9446208.9 - 11.7.2013 at 12:01 pm

The easements created by Easement Instrument 9446208.9 are subject to Section 243 (a) Resource Management Act 1991

9750370.5 Variation of Consent Notice 9138592.2 pursuant to Section 221(5) Resource Management Act 1991 - 9.6.2014 at 5:10 pm

9750370.14 Encumbrance to Christchurch City Council - 9.6.2014 at 5:10 pm

10703567.1 Variation of Encumbrance 9750370.14 - 24.2.2017 at 2:10 pm

10838003.1 Variation of Encumbrance 9750370.14 - 8.8.2017 at 8:46 am

Subject to Section 241(2) Resource Management Act 1991 (affects DP 525615)

Subject to a right to drain water over part Lot 305 DP 525615 marked EE, H, J, DD, W, N & FF on DP 525615 created by Easement Instrument 11294647.5 - 18.12.2018 at 2:51 pm

The easements created by Easement Instrument 11294647.5 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right (in gross) to drain water over part Lot 305 DP 525615 marked EE, DD, FF & H on DP 525615 in favour of Christchurch City Council created by Easement Instrument 11294647.7 - 18.12.2018 at 2:51 pm

The easements created by Easement Instrument 11294647.7 are subject to Section 243 (a) Resource Management Act 1991

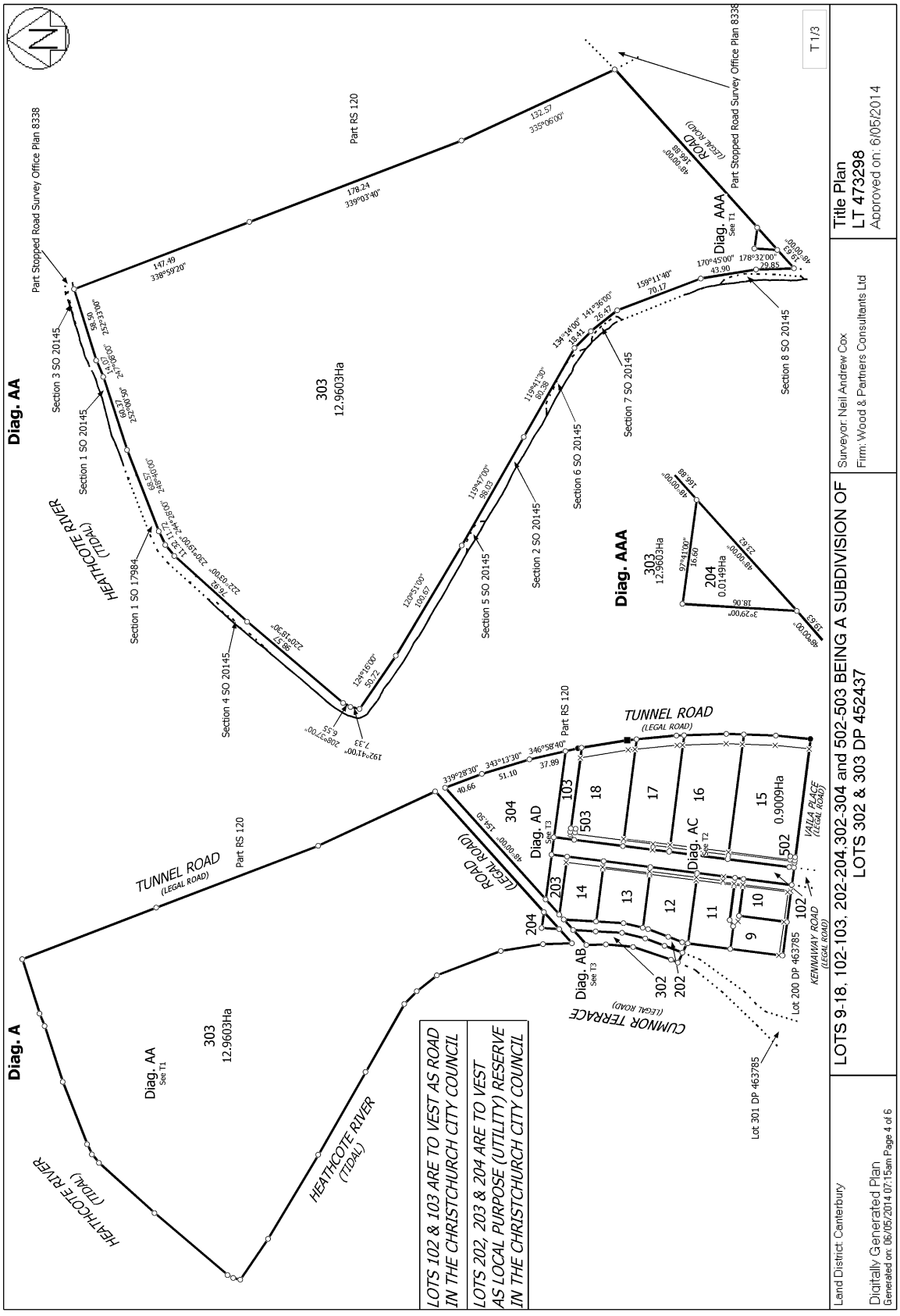
11294647.10 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 18.12.2018 at 2:51 pm (affects Lot 305 DP 525615)

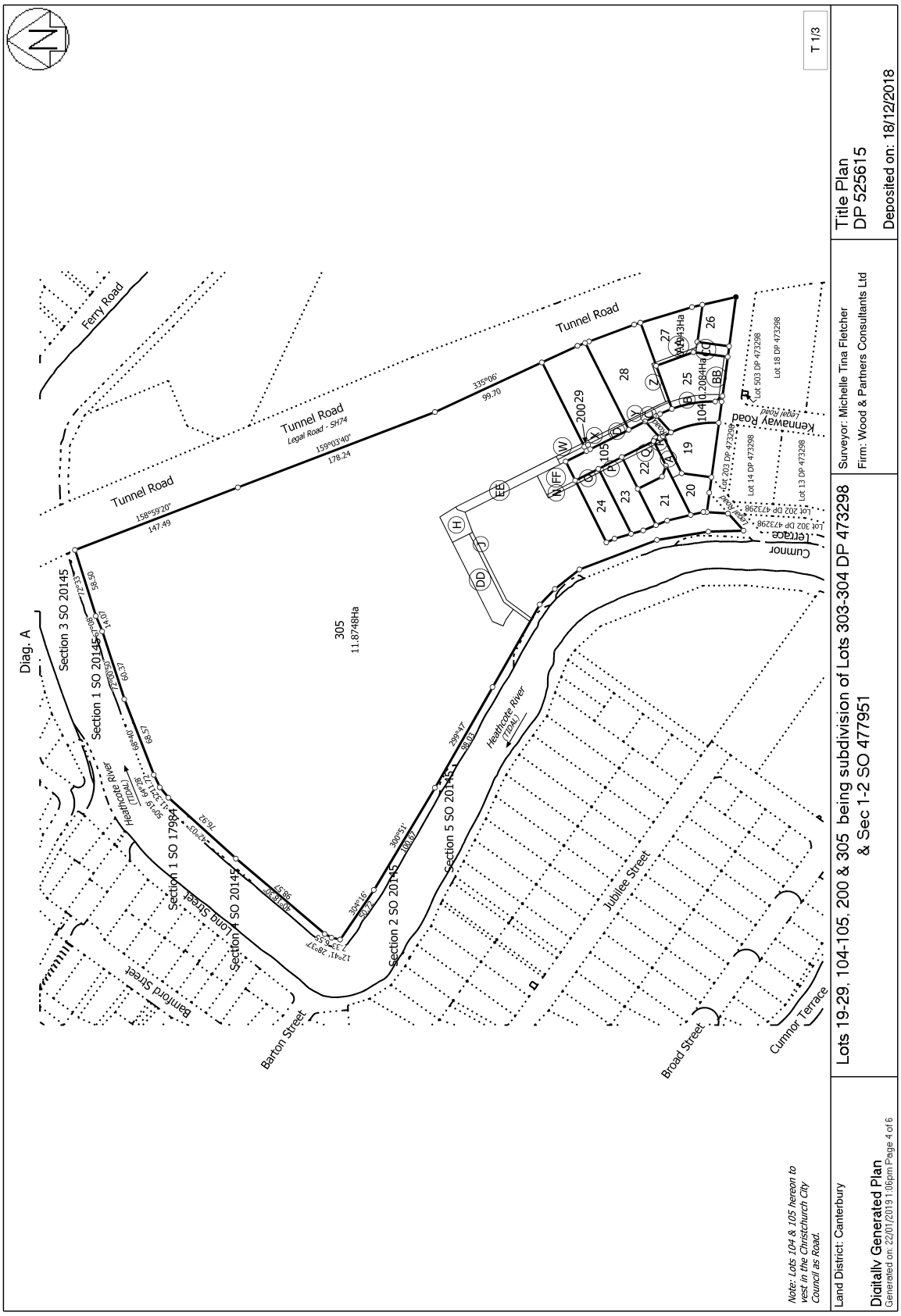
11294647.23 Encumbrance to Christchurch City Council - 18.12.2018 at 2:51 pm (affects Lot 305 DP 525615)

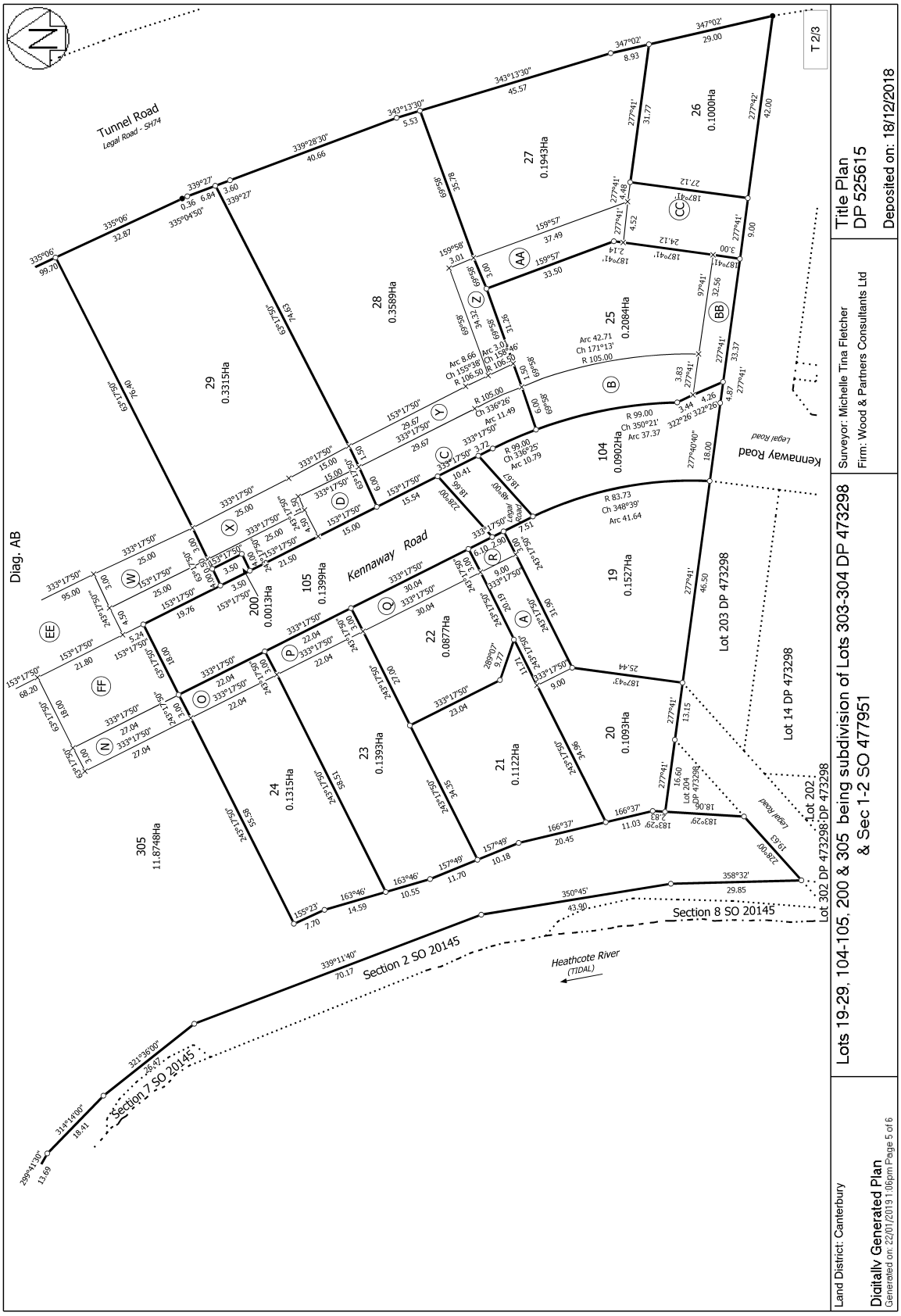
Fencing Covenant in Transfer 11545342.2 - 27.9.2019 at 4:36 pm

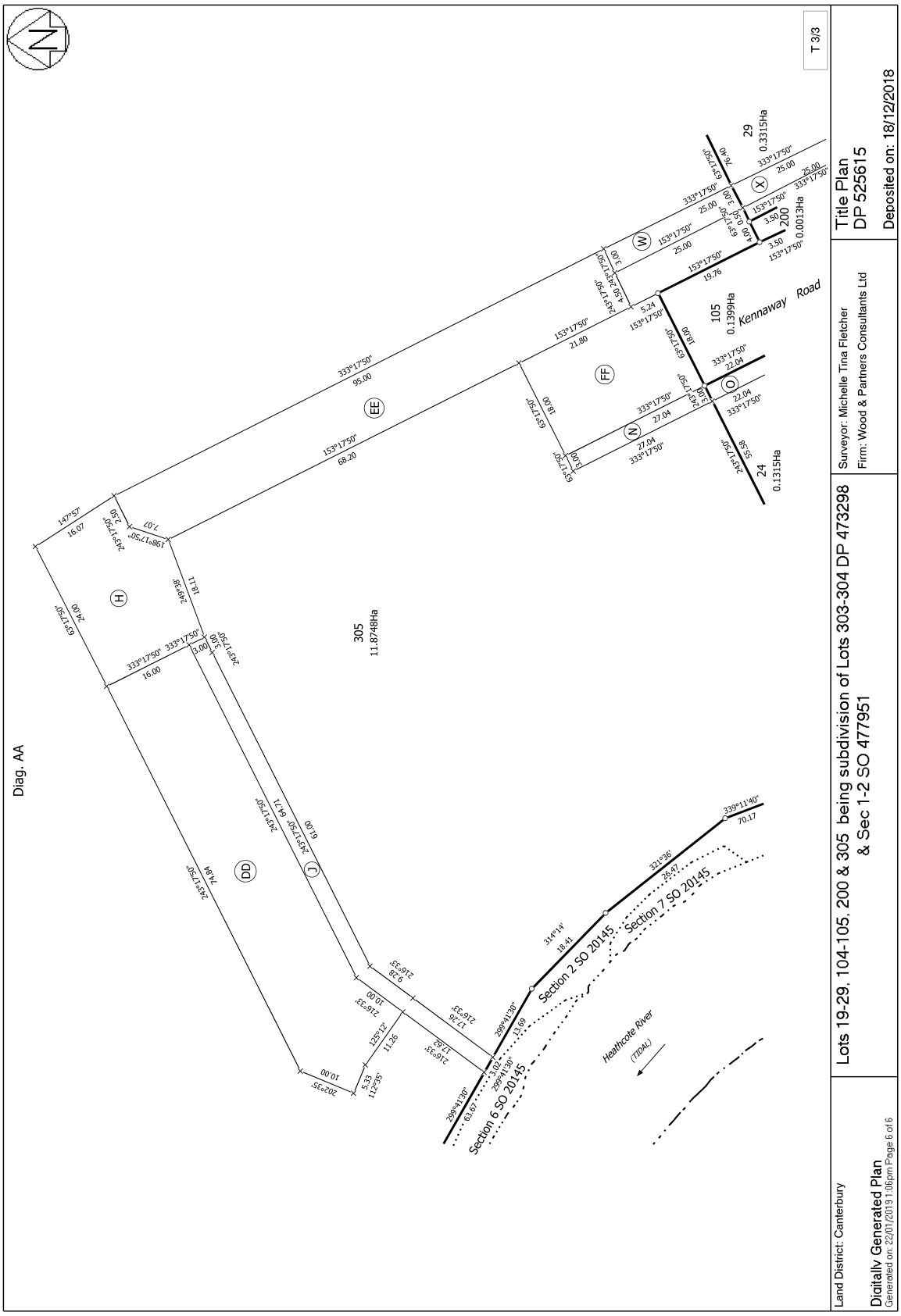
12209381.1 Variation of Encumbrance 9750370.14 - 22.12.2021 at 3:36 pm

12397548.2 Mortgage to Bank of New Zealand - 18.3.2022 at 3:42 pm


Diag. AA
Diag. A
Diag. AAA
Part Stopped Road Survey Office Plan 8338
Part RS 120
Section 3 SO 20145
Section 1 SO 20145
Section 1 SO 17984
Section 4 SO 20145
Section 5 SO 20145
Section 2 SO 20145
Section 6 SO 20145
Section 7 SO 20145
Section 8 SO 20145
303
12.9603Ha
204
0.0149Ha
HEATHCOTE RIVER (TIDAL)
TUNNEL ROAD (LEGAL ROAD)
ROAD (LEGAL ROAD)
CUMNOR TERRACE (LEGAL ROAD)
KENWAY ROAD (LEGAL ROAD)
VALLI PLACE (LEGAL ROAD)
Diag. AB
Diag. AC
Diag. AD
Lot 200 DP 463785
Lot 301 DP 463785
0.9009Ha
LOTS 102 & 103 ARE TO VEST AS ROAD IN THE CHRISTCHURCH CITY COUNCIL
LOTS 202, 203 & 204 ARE TO VEST AS LOCAL PURPOSE (UTILITY) RESERVE IN THE CHRISTCHURCH CITY COUNCIL
LOTS 9-18, 102-103, 202-204,302-304 and 502-503 BEING A SUBDIVISION OF LOTS 302 & 303 DP 452437
Land District Canterbury
Digitally Generated Plan
Generated on: 06/05/2014 07:15am Page 4 of 6
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
Title Plan
LT 473298
Approved on: 6/05/2014
T 1/3


T 1/3
Title Plan
DP 525615
Deposited on: 18/12/2018
Surveyor: Michelle Tina Fletcher
Firm: Wood & Partners Consultants Ltd
Lots 19-29, 104-105, 200 & 305 being subdivision of Lots 303-304 DP 473298
& Sec 1-2 SO 477951
Land District: Canterbury
Digitally Generated Plan
Generated on: 22/01/2013 1:06pm Page 4 of 6
Note: Lots 104 & 105 hereon to vest in the Christchurch City Council as Road.
Diag. A
Section 3 SO 20145
Section 1 SO 20145
Section 1 SO 17984
Section 2 SO 20145
Section 5 SO 20145
Tunnel Road
Legal Road - SH74
Ferry Road
Kennaway Road
Legal Road
Cumnor Terrace
Jubilee Street
Broad Street
Barton Street
Bamford Street
Long Street
Heathcote River
(Tidal)
305
11.8748Ha
104
0.2084Ha
200
29
Lot 503 DP 473298
Lot 18 DP 473298
Lot 201 DP 473298
Lot 14 DP 473298
Lot 13 DP 473298
Lot 302 DP 473298

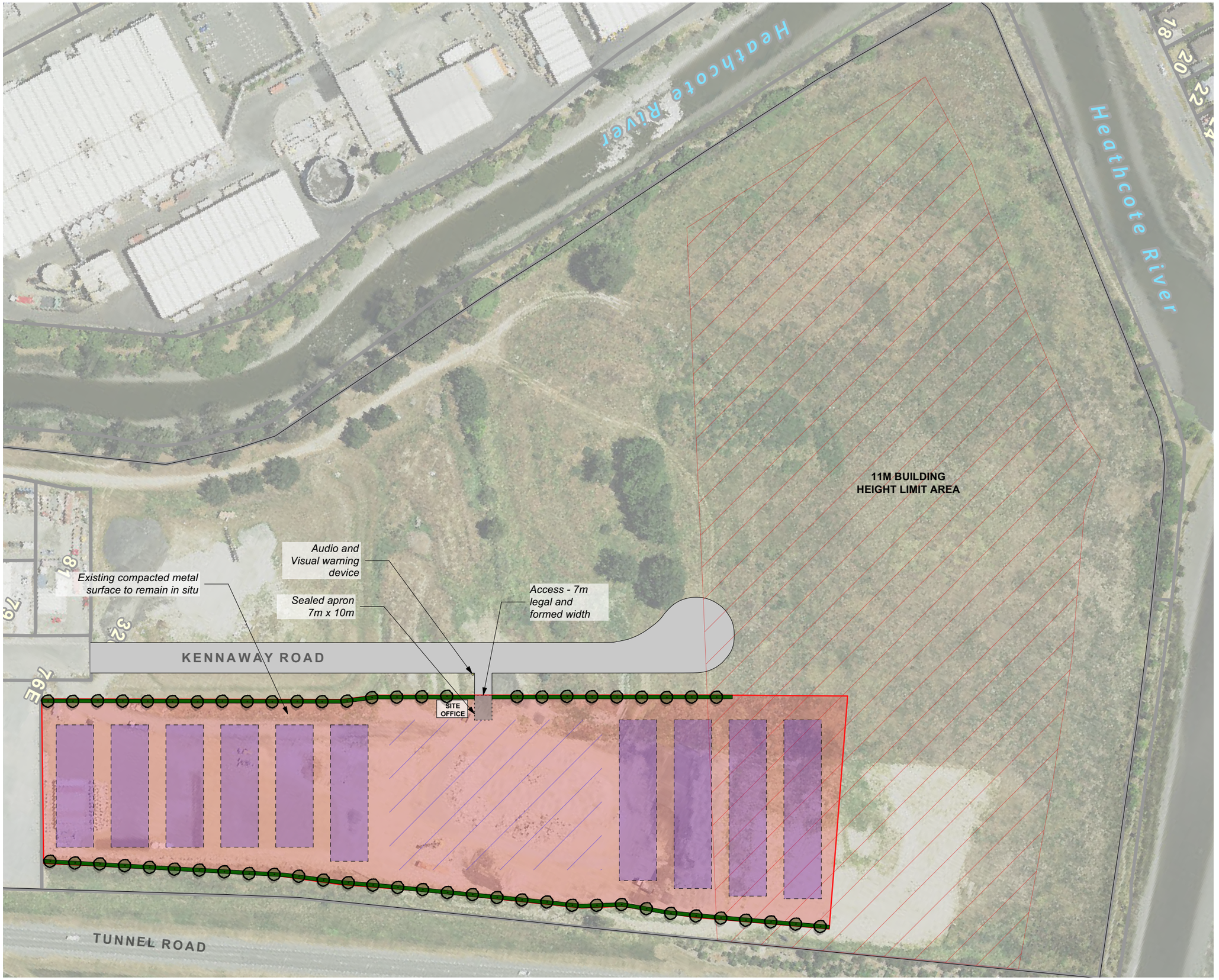

Tunnel Road
Legal Road - SH74
Kennaway Road
Legal Road
Diag. AB
Lots 19-29, 104-105, 200 & 305 being subdivision of Lots 303-304 DP 473298 & Sec 1-2 SO 477951
Title Plan DP 525615
Deposited on: 18/12/2018
Surveyor: Michelle Tina Fletcher
Firm: Wood & Partners Consultants Ltd
Land District: Canterbury
Digitally Generated Plan
Generated on: 22/01/2013 1:06pm Page 5 of 6
T 2/3
Lot 203 DP 473298
Lot 14 DP 473298
Lot 202 DP 473298
Lot 204 DP 473298
Section 8 SO 20145
Section 2 SO 20145
Section 7 SO 20145
Heathcote River (TIDAL)


T 3/3
Diag. AA
Kennaway Road
Heathcote River
(TIDAL)
Section 2 SO 20145
Section 7 SO 20145
Section 6 SO 20145
305
11.8748Ha
105
0.1399Ha
200
0.0013Ha
24
0.1315Ha
29
0.3315Ha
Land District: Canterbury
Digitally Generated Plan
Generated on: 22/01/2013 1:06pm Page 6 of 6
Lots 19-29, 104-105, 200 & 305 being subdivision of Lots 303-304 DP 473298 & Sec 1-2 SO 477951
Surveyor: Michelle Tina Fletcher
Firm: Wood & Partners Consultants Ltd
Title Plan
DP 525615
Deposited on: 18/12/2018

Appendix 2

Application Plan

Novo Group Limited
Level 1, 279 Montreal Street
PO Box 365, Christchurch 8140
O - 03 365 5570
info@novogroup.co.nz



KEY:

- SITE BOUNDARY - 25,111m^2 (APPROX)
- PROPOSED SITE OFFICE AND BIKE STORAGE (APPROX. 100M^2 GFA)
- YARD AREA
- OUTDOOR STORAGE STACKS
- 11M BUILDING HEIGHT LIMIT AREA
- PROPOSED 1.5M LANDSCAPE STRIP (1 TREE EVERY 10M OF ROAD FRONTAGE) WITH 1.8M FENCE

NOTE:

1. *Office building to have a minimum floor level that is a minimum of 12.3m above CCC datum'*

2. *Planting of trees and shrubs within the landscaping strip adjacent to Tunnel Road shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and shall meet the requirements specified in Part A of Appendix 6.11.6 of Chapter 6*

SITE PLAN

PORTLINK INDUSTRIAL PARK

REVISION

DRAWING N/Z	**DRAWN** NR
SCALE 1:1500	**DATE** 24/10/2023
JOB NO. 022074	**SHEET NO.** DWG - 1.00

Appendix 3

Legal Opinions

BROOKFIELDS
LAWYERS

NAVIGATING YOUR SUCCESS

26 July 2022

Christchurch City Council
53 Hereford Street
Christchurch 8013

By Email: Brent.Pizzey@ccc.govt.nz

LEX 24279 - CUMNOR TCE 320A - BUILDING DEFINITION

1. You have asked whether the stacking of containers within the Industrial General Zone and the Portlink Specific Zone falls within the definition of "Building" under the Christchurch District Plan. This letter of advice includes and expands upon our preliminary opinion provided on 22 July 2022.

2. In summary, we consider that shipping containers do fall within the definition. This interpretation is clearly supported by the text and the contextual indicators we have found in the time available are consistent with this.

INTERPRETIVE APPROACH

3. We have sought to ascertain the meaning of the relevant definition on the basis of its text and in light of its purpose.[1] Consistent with High Court authority, we have also sought to find an interpretation that:[2]

   (a) Avoids absurd or anomalous results;

   (b) Is consistent with the expectations of landowners; and

   (c) Promotes administrative efficiency (rather than requiring lengthy historical research to assess lawfulness).

TEXT OF THE DEFINITION

4. The relevant text of the definition states:

   means as the context requires:

---

1 Section 10 of the Legislation Act 2019, *Spackman v Queenstown Lakes District Council* [2007] NZRMA 327(HC).

2 *Mount Field Ltd v Queenstown-Lakes District Council* 31/10/08, Heath J, HC Invercargill CIV-2007-425-700.

Tower One, 205 Queen Street, Auckland, New Zealand. PO Box 240, Shortland Street, Auckland 1140
Tel: +64 9 379 9350 Fax: +64 9 379 3224 DX CP24134 www.brookfields.nz

a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or

b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and

c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;

e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;

f. retaining walls which are both less than 6m2 in area and less than 1.8 metres in height;

g. structures which are both less than 6m2 in area and less than 1.8 metres in height;

h. utility cabinets;

i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;

k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, excludes:

l. any dam that retains not more than 3 metres depth, and not more than 20,000 m3 volume of water, and any stopbank or culvert;

m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:

i. not exceeding 25,000 litres capacity and supported directly by the ground; or

ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and

n. stockyards up to 1.8 metres in height.

Advice note:

This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

5. Both clauses (a) and (b) apply to "any structure" that falls within those clauses. If it can be said to be a structure, clause a. is sufficiently broad to include a shipping container as

a 'moveable structure' and clause b. would include the placement and stacking of containers on land i.e. placement of a structure on or over land.

6. The District Plan does not contain a definition of a "structure", but this term is defined in section 2 of the RMA. Absent any contrary provision in the District Plan itself, the word "structure" must have the same meaning as in the RMA when interpreting the District Plan.[3] The RMA definition is "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*". While the definition is to some extent circular in that it defines a structure as being a building, a shipping container would fall within the ordinary meaning of a device, which is defined in the Oxford Dictionary as "*a thing made or adapted for a particular purpose, especially a piece of equipment mechanical or electronic*".

7. However, the RMA definition of a structure also requires a structure to be fixed to land. The Courts in considering this definition have previously held that in order to fall within the meaning of a structure, the device does not need to be fixed permanently to the land, nor does it require some form of connection to the land in order to be fixed. It may be fixed by the gravity of the device itself. For example, in *Ohawini Bay Ltd v Whangarei District Council*,[4] rocks placed on top of one another to form a seawall were held to be a structure despite only being fixed to the land by their own weight. Similarly, in *Antoun v Hutt City Council*,[5] a moveable tiny home sitting on top of a metal plate, but with no permanent foundations, was held to be sufficiently fixed to the land by gravity to fall within the meaning of a structure. We acknowledge that both types of structure in those cases had either a greater degree of permanence (in relation to the seawall) or potentially greater difficulty in being moved (in the case of the tiny home) than a shipping container. However, given the weight of a shipping container is such that it cannot be easily moved and would require a crane/forklift/straddle carrier to shift, it does bear some degree of similarity to the tiny home example. As such, we consider that there is a reasonably strong basis to conclude that a shipping container would fall within the meaning of a structure for the purposes of clauses a. and b. of the definition of a building.

8. Clause c. expressly refers to shipping containers as falling within the meaning of a "building", where it is *"used on-site as a residential unit or place of business or storage"*. On the facts it is unclear whether the containers themselves are being stored, or whether the containers are being used to store other items. If the latter, then that would be within the scope of clause c. If the former, then it is arguable that this would not be within the scope of clause c, although there is some basis to conclude that when a shipping container is in its original unconverted state, it is designed as a storage device and therefore would fall within this use regardless of whether at a specific point in time it is sitting empty.

9. We have also considered whether the express reference to shipping containers in clause c should be interpreted to mean that where a shipping container is not *"used on-site as a residential unit or place of business or storage"* then it cannot come within the other clauses of the definition of building. As a starting point, we note that shipping containers

[3] Section 20 of the Legislation Act 2019.
[4] Environment Court, Auckland, A068/06.
[5] (2020) 21 ELRNZ 595.

that are not *"used on-site as a residential unit or place of business or storage"* are not expressly excluded under clauses d.-n.

10. We consider that the definition is sufficiently broad on its face to include the placement and stacking of shipping containers within clauses (a) and (b) and also that it is arguable that stacked shipping containers that are either currently storing other goods or are placed on the site in preparation to be loaded with goods, are arguably being used for storage and therefore fall within clause (c).

11. We have also considered whether the activity of container storage could be considered an Outdoor storage area which is defined as:

> means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.

12. We have given greater thought to whether container storage nearly fits into this definition. The Oxford dictionary defines "equipment" broadly to mean "*items needed for a particular purpose*". A shipping container would potentially fall within this broad definition of equipment, as would almost anything. As something man-made, it could also potentially fall within the meaning of a "processed product". We note that the definition of an outdoor storage area only refers to equipment or products etc that are stored "outside of fully enclosed buildings". In the example you have given us, the containers are not themselves within a larger enclosed building, and therefore the land on which the containers are situated would appear to fall within the meaning of an outdoor storage area.

13. We have given consideration to whether the land potentially being an outdoor storage area within the meaning of the District Plan definition would mean that the container cannot also be a "building". On balance, we do not think that it would. Given that the definition of a building anticipates that something moveable or temporary could fall within the meaning of a building, it follows that storage areas could exist where buildings themselves are stored, for example, sites where tiny homes are constructed and stored, or sites where other relocateable dwellings or other buildings are stored. Such land could potentially fall within the meaning of an outdoor storage area, unless the use falls within the meaning of a yard-based supplier. We are not aware of whether in practice you have treated land used for the storage of relocateable buildings as an outdoor storage area, but we consider that unless there are other specific District Plan provisions that relate to such activities, it would make sense that if such sites are outdoor storage areas, so then would a shipping container yard, regardless of whether the shipping containers are also buildings.

14. In support of this interpretation, we have considered the provisions in chapter 16 of the District Plan. We did not identify anything that would mean that the definition of a building and an outdoor storage area are necessarily mutually exclusive. In particular, we note that rule 16.4.4.1.1 P1 for the Industrial General Zone (Portlink Industrial Park) provides that any activity listed in rule 16.4.1.1 P1-P21 is a permitted activity provided it complies with the built form standards in rule 16.4.4.2 and rule 16.4.2 (unless specified otherwise in rule 16.4.4.2). Rule 16.4.1.1 P1 provides that any new building or addition to a building for an activity listed in P2 to P21 is a permitted activity, provided it complies with the built form standards in 16.4.2. Those activities include an industrial activity (P2) and

warehousing and distribution activities (P3), either or both of which could potentially apply to the storage of shipping containers. There are built form standards that apply specifically to outdoor storage areas. We could not see any obvious reason as to why those standards could not apply in conjunction with other specific standards that apply to buildings.

15. We now consider this reading of the text in light of its purpose as expressed by the objectives and policies and other context of the Christchurch District Plan.

PURPOSE

Objectives and policies

16. We have reviewed the objectives and policies of Chapter 16 Industrial in the Christchurch District Plan. We note the following amenity focused objectives and policies which are relevant to a purposive interpretation of "building" in the context of the relevant zone:

> 16.2.3 Objective - Effects of industrial activities
>
> a. Adverse effects of industrial activities and development on the environment are managed to support the anticipated outcome for the zone while recognising that sites adjoining an industrial zone will not have the same level of amenity anticipated by the Plan as other areas with the same zoning.
>
> 16.2.3.1 Policy - Development in greenfield areas
>
> a. Manage effects at the interface between greenfield areas and arterial roads, rural and residential areas with setbacks and landscaping.
>
> 16.2.3.2 Policy - Managing effects on the environment
>
> a. The effects of development and activities in industrial zones, including reverse sensitivity effects on existing industrial activities as well as, visual, traffic, noise, glare and other effects, are managed through the location of uses, controls on bulk and form, landscaping and screening, particularly at the interface with arterial roads fulfilling a gateway function, and rural and residential areas, while recognising the functional needs of the activity.
>
> b. Effects of industrial activities are managed in a way that the level of residential amenity (including health, safety, and privacy of residents) adjoining an industrial zone is not adversely affected while recognising that it may be of a lower level than other residential areas.

17. Plainly these objectives and policies contemplate the management of adverse effects of industrial activities and development having regard to the amenity values of adjoining areas. Techniques include:

(a) setbacks and landscaping.

(b) controls on bulk and form.

18. The Industrial General Zone (Portlink Industrial Park) contains bespoke rules in respect of maximum building height and building setbacks. These techniques would be ineffective in respect of shipping containers if these structures were not covered by the relevant rules. The purpose as expressed by the objectives and policies of the zone therefore supports the textual interpretation identified above.

Zone rules

19. It is relevant to consider the implications of containers being classed as "buildings" on the relevant zone rules as a check to avoid anomalous outcomes. The starting point is that buildings for industrial activities are permitted within the zone (Rule 16.4.1.1.P1.). As such, any container storage that conforms to building height and setback standards can occur without the need for a consent which is consistent with enabling industrial activity to occur within the zone. We do not consider that anomalous outcomes arise from the application of height and setback rules to containers. These outcomes are consistent with the direction of the objectives and policies. However, the application of rule 16.6.2.2 Maximum building coverage, of a site could be considered anomalous because it would limit the placement of containers to 50% of a site and a resource consent would be required to exceed this threshold. We are uncertain as to whether there is a proper resource management reason for this threshold to apply to container storage e.g. impervious surfaces. On balance, we don't consider that the application of this standard could be sufficiently anomalous to supplant the textual and purposive interpretation outlined above.

Yours faithfully
BROOKFIELDS

Andrew Green
Partner

Direct dial: +64 9 979 2172
email: green@brookfields.co.nz

6 October 2022

From: Jo Appleyard / Lucy Forrester
Direct: +64 3 353 0022 / +64 3 353 0939
Mobile: +64 27 444 7641
Email: jo.appleyard@chapmantripp.com / lucy.forrester@chapmantripp.com
Ref: 100552396/1873109.3

Brent Pizzey
Counsel for Christchurch City Council

Craig Jorgensen
Compliance Officer – Resource Consents

by email: brent.pizzey@ccc.govt.nz / craig.jorgensen@ccc.govt.nz

Dear Brent and Craig

RE: PORTLINK INDUSTRIAL PARK

1 We act for Braeburn Property Limited (*Braeburn*).

2 We have been asked to respond to the legal advice Council obtained from Brookfields Lawyers dated 26 July 2022 (the *Opinion*) regarding the stacking of containers in the Industrial General Zone (*IGZ*) of the Christchurch District Plan (*District Plan*).

3 As you are aware, Braeburn own and lease the site at the end of Cumnor Terrace, Woolston (Certificate of title 842854) for the temporary storage of transiting shipping containers.

4 As is apparent from **Annexure 1**, we disagree with the Council's position on the interpretation of "*building*" under the District Plan.

5 We are also concerned at the correspondence from the Council (including that from Craig Jorgensen dated 30 September 2022) whereby the Council has:

5.1 given notice to Braeburn to reduce the height of its shipping container stacks on site; and

5.2 advised that an abatement notice will be issued should Braeburn not complete the above.

6 While the interpretation issue is clearly in dispute, we consider it would not be appropriate for the Council to proceed to compliance action or the issue of an abatement notice (and we reserve our position fully around that). Similarly, even if the interpretation issue was not live, we do not consider that 7 days is in any circumstance a reasonable timeframe within which to require the removal of some 2,000 containers.

7 Having noted the above we also emphasise Braeburn's desire to work constructively with the Council to resolve the matter as soon as possible.

8 In this regard, Braeburn suggests meeting as soon as possible to talk through:

8.1 our more detailed view on the interpretation issue set out in **Annexure 1**; and

8.2 if it is not resolved:

(a) whether the Council would be supportive of jointly seeking urgent declaratory relief from the Court; and/or

(b) how the Council might process a resource consent application (on the basis that Braeburn would apply without prejudice to the position set out that no consent is required).

9 We think this is a much more constructive use of everyone's time. In the alternative, were an abatement notice to be issued, Braeburn would appeal the notice and request a stay on enforcement so that the activity can continue while the interpretation issue can be determined before the Court. Again, we think given Braeburn's commitment above there is nothing to be gained from that and we want to approach this constructively on the basis of the approach set out above.

10 Can the Council please urgently confirm it will not take further compliance action at this time, and send through some times for a possible meeting?

11 We look forward to hearing from you.

Yours sincerely

Jo Appleyard / Lucy Forrester
Partner / Senior Solicitor

ANNEXURE 1: IS A CONTAINER A BUILDING?

1 We agree with the first part of the Brookfield's Lawyers' advice (*the Opinion*) that it is helpful to consider at the forefront of this exercise, principles of interpretation that might assist in the proper understanding of the rules in the District Plan.

2 When interpreting rules in planning documents, *Powell v Dunedin City Council* established that (in summary):[1]

2.1 the words of the document are to be given their ordinary meaning unless it is clearly contrary to the statutory purpose or social policy behind the plan or otherwise creates an injustice or anomaly;

2.2 what is meant by plain and ordinary meaning should be determined with reference to "*what would an ordinary reasonable member of the public examining the plan, have taken from*" the planning document;

2.3 the interpretation should not prevent the plan from achieving its purpose; and

2.4 if there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

3 Reading the words of a planning document with reference to its plain and ordinary meaning is therefore the starting point to any interpretation exercise.

The definition

4 The definition of 'building' in the Christchurch District Plan is as follows:

Building

means as the context requires:

a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or

b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and

c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;

e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;

f. retaining walls which are both less than 6m2 in area and less than 1.8 metres in height;

g. structures which are both less than 6m2 in area and less than 1.8 metres in height;

h. utility cabinets;

i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;

k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, excludes:

l. any dam that retains not more than 3 metres depth, and not more than 20,000 m3 volume of water, and any stopbank or culvert;

m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:

   i. not exceeding 25,000 litres capacity and supported directly by the ground; or

   ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and

n. stockyards up to 1.8 metres in height.

[1] *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

5 'Structure' is not defined in the Christchurch District Plan but is defined in the RMA as meaning:

> "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*"

6 As noted, the definition of 'building' is divided between what it "*means*" (subclauses (a) to (c)) that is then supplemented by a list in subclauses (d) to (n) of activities that are then excluded from that meaning.

7 We also consider the relationship between each of (a) to (c) is important:

7.1 subclauses (a) and (b) are separated by an "*and/or*" which means to meet the definition of a 'building' you must meet either of (a) and/or (b):

7.2 whereas, subclause (c) is separate solely by an "*and*", which we read to mean that:

(a) if (c) is met, then it will be considered a building irrespective of whether (a) and/or (b) have been met; and

(b) conversely, if the matters listed in subclause (c) do not meet the further criteria in that subclause (i.e. used on-site as a residential unit or place of business or storage), then they should not fall within the definition of 'building'.

8 As we set out below, we consider that the specific reference to shipping containers in subclause (c) means it is the clause that should be the focus of the interpretation exercise. In light of the approach taken in the Opinion we nevertheless consider whether sub-clauses (a) and (b) apply.

Subclause (c) and the interpretative canon that the specific overrides the general

9 Subclause (c) lists specific activities that, despite not necessarily being structures (as we discuss later in this advice), will nevertheless in some circumstances fall within the definition of 'building' under the District Plan:

> "*any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage.*"

10 To understand how subclause (c) interacts with the rest of the definition (and with the principles of interpretation in mind), the starting point is that specific provisions must override general ones.

11 Here, (c) is the specific clause of the definition applying specifically to vehicles, trailers, tents, marquees, shipping containers, caravans, and boats, when certain circumstances apply. This means that for any of these activities to be considered a 'building' under this definition, it must also be:

11.1 used on-site either as:

(a) a residential unit; or

(b) a place of business; or

(c) a place of storage.

12 Accordingly, subclause (c) will prevail over the more general subclauses (a) and (b).

13 Similarly, if the activities listed in subclause (c) are not being used on-site for those purposes, then they do not fall within the definition of 'building'.

14 We consider the best example of this in practice is the reference to "*marquee*" which most likely would be a structure under the RMA definition (and therefore fall squarely within subclauses (a) and (b)):

14.1 there would be no point in including (c) if it was always going to fall within (a) and (b) anyway;

14.2 we consider the same argument can be made in relation to the other matters listed in (c).

15 The approach set out in the Opinion would result in potentially absurd outcomes, including at the more extreme, the potential for vehicles, trailers and tents within camping grounds, rental car/campervan depots and even car sales yards to be considered 'buildings' under the District Plan (i.e. on the basis that those matters might also be 'structures' under the broad definition provided by the RMA).

16 In fact, the Opinion[2] itself identifies a further possible absurdity as a result of its own interpretation of the definition – relating to the application of rules regarding maximum building coverage in the Industrial Park Zone. The Opinion does not go on to consider any other planning anomalies as a result of its interpretation – whereas we consider this raises further questions as to how the floor area of containers (or any other activity listed in subclause (c), should they be deemed 'buildings') could properly be used to inform requirements in the District Plan for the likes of cycle parking facilities, loading areas, and high trip generator requirements which are all assessed with reference to gross floor area in chapter 7 of the District Plan.

17 For completeness we note our acknowledgement that the definition of 'building' includes a list of specific exclusions to that definition, which do not include shipping containers. However, we consider this is because subclause (c) contemplates there might be situations (i.e. where it is being used on-site as a residential unit or place of business or storage) where a shipping container should be considered a 'building' and therefore there is no express exclusion of shipping containers, but rather, an express inclusion into the definition when certain circumstances arise.

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[2] At paragraph [19].

Subclause (c) and the further requirements that need to be met

18 With regards to the words '*used on-site as a residential unit or place of business or storage*', quite clearly, the containers are not being used as a residential unit or a place of business.

19 The Opinion, however, considers that on the facts it is unclear whether the containers:

19.1 are being used to store other items, in which case they would be within the scope of subclause (c); or

19.2 themselves are being stored on-site, which the Opinion considers there is an argument to say that a shipping container is designed as a storage device and therefore would fall within the scope of subclause (c) whether or not it was siting empty at the site.

20 We disagree, particularly with the latter, and consider the Opinion does not consider the plain and ordinary meaning of the wider subclause.

21 We read subclause (c) as saying that, for it to apply, the shipping containers must be used on-site as a place of storage. That is the plain and simple reading and meaning of those words – it is being used for on-site storage.

22 We agree that if the containers are being used on-site as a place of storage (i.e. are remaining on-site as a place where things are periodically stored and moved), which in and of itself implies some permanency, then yes the container would fall within the scope of subclause (c). However, this is not the case in this situation. The containers (irrespective of whether they contain any items) are not there for the purposes of being used for on-site storage. The containers are in transit and are themselves being stored on site until they are moved to their next destination.

23 We do not consider the fact that the containers themselves are being stored on site as constituting being 'used on-site as a place of storage.' And we also do not agree with the proposition that given shipping containers are designed as a storage device they would fall within subclause (c) regardless. The Opinion does not elaborate on how it has come to this stretched interpretation of the words in subclause (c). It is certainly not from a plain and ordinary reading of the words of the definition.

24 Without repeating the discussion set out in paragraphs [15] and [16], the same absurdities are also potentially engaged here – for example, a car dealership is effectively a place where cars are stored prior to sale. Again, the activity is the relevant matter being used on-site as a place of storage – rather than the storage of the matters themselves.

25 A similar question would also need to be asked regarding a container sitting on a truck that was being stored in a transport yard. Again, it is the use of the container for storage that is relevant, not the storage of the container itself.

Alternative argument: Subclauses (a) and (b) and the meaning of 'structure'

26 Subclauses (a) and (b) both refer to any 'structure', and the Opinion asserts that if a container is a 'structure' it will also be a 'building' under the District Plan definition.

27 The Opinion goes on to consider what a 'structure' is with reference to the Resource Management Act 1991 (*RMA*) definition and case law. As noted above, the RMA defines a 'structure' as meaning:

> "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*"

28 To inform this definition, the Opinion considers two cases and considers that these provide a reasonably strong basis to conclude that a shipping container is a 'structure' under the RMA definition.

29 We note that the cases referred to, while helpful, do not deal with 'structures' analogous to a shipping container. We therefore do not consider these provide any directly comparable analogy for the assertion that a shipping container is a 'structure':

***Ohawini Bay Ltd v Whangarei District Council*[3]**

29.1 In this case all parties accepted that the sea wall was not a 'building' as defined in the District Plan (as retaining walls were expressly excluded from the definition, and it was not disputed that a sea wall was a retaining wall). Rather, the case was concerned with whether this sea wall was a 'structure' and in particular the words 'fixed to land' within the RMA definition.

29.2 The Court looked to the dictionary definition of the word 'fixed' which read "*[d]efinitely and permanently placed or assigned; stationary or unchanging in relative position; definite, permanent, lasting*".[4]

29.3 The Court ultimately found that the sea wall/retaining wall was fixed to the land and therefore was a structure under the definition in the RMA:

(a) it did not consider the definition excluded things being held permanently in place by gravity.

(b) the sea wall was placed with the intention that it would remain permanently in place and that it was fixed to land (noting evidence that the wall was embedded into the sand using an excavator).[5]

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[3] EnvC Auckland A68/06, 31 May 2006.

[4] At [24].

[5] At [24].

Antoun v Hutt City Council[6]

29.4 This case concerned whether a tiny house was a 'structure' and therefore a 'building' requiring resource consent. Again, the Court considered the dictionary definition of 'fixed' as meaning "*placed or attached in a way that does not move easily*."[7]

29.5 The Court considered that the tiny house was fixed to the property in such a way to be a 'structure' as defined in the RMA, and therefore a 'building' under the District Plan, based on a number of factors specific to the facts of that case, including in particular:[8]

(a) the appearance of the tiny house as a dwelling house capable of being used for permanent occupation;

(b) the obvious design and capacity for the tiny house to be used as a dwelling house capable of permanent occupation;

(c) the intention displayed on the resource consent application papers to connect the tiny house to services such as electricity, water, and drainage;

(d) the evident legal and practical difficulties in moving the tiny house.

29.6 The Court in this case outright rejected the notion that this tiny house was for the purpose of temporary occupation;[9] and for completeness, we note the tiny house in this case was not a 'container house' as we sometimes see from time to time with tiny houses, but a more substantial two storey dwelling constructed in situ:

6 [2020] EnvC 6.

7 At [46].

8 At [58].

9 At [56].

30 We consider the shipping containers on the Braeburn site are quite clearly distinguishable from the specific facts of those two cases:

30.1 the sea wall was clearly a permanent form, embedded into the ground and not easily moved; and

30.2 the tiny house was a substantial form, which by virtue of the facts clearly intended to have some permanency and could not easily be moved from the site.

31 By contrast, the shipping containers in question:

31.1 are not fixed; they are quite clearly transitory in nature (given the activity occurring on site is the temporary storage of transiting shipping containers) and are not intended in any way to be permanently on site; and

31.2 are capable of being moved easily. Containers, by their nature, are intended to be moved from place to place. In terms of what is 'easily moved', we do not consider the Court to have required that this could be done by a single person. In the context of a container in an industrial zone, within a yard designed for the specific purpose of storing and transiting containers with all of the required equipment, the containers are capable of being easily moved, and in practice are regularly moved to, from and around the site as required.

32 On this basis, we do not consider the shipping containers on this site fall within the definition of 'structures' under the RMA.

Further matters relevant to interpretation

33 In addition to the primary and secondary positions set out above, we note:

Relevance of the definition of 'outdoor storage area'

33.1 We do not see the relevance of paragraphs 12 and 13 of the Opinion regarding consideration of an 'outdoor storage area'. The issue at hand is whether or not the containers are 'buildings' and therefore subject to the height limits in the District Plan. Regardless of what other activity a shipping container might constitute.

Purpose of the provisions

33.2 With respect to the purpose of the provisions in the zone, we agree that the objectives and policies in the District Plan provide for the management of adverse effects from industrial activities on amenity values of adjoining areas. But equally, we note that these recognise that sites adjoining an industrial zone will not have the same level of amenity anticipated by the District Plan as other areas with the same zoning.

33.3 The Opinion appears to reverse engineer the purpose of the zone provisions into its own interpretation of the definition of a 'building'. We do not agree that the objectives and policies of the District Plan require such an interpretation.

33.4 We accept that some of the methods provided in the plan to manage such effects include setbacks, landscaping, and bulk and form controls. However, we note that these controls on bulk and form apply to specific activities (which the Council when it prepared its District Plan must have deemed necessary to manage). Height, as a control on bulk, applies only to 'buildings'. It is our view that is because the District Plan contemplates the greatest effects of bulk on amenity is from buildings, and these need to be managed through the Plan.

Other statutory regimes

33.5 We recognise that care needs to be taken when approaching any definition of '*building'* under any other statutory regime,[10] but we note that section 9 of the Building Act 2004 (*Building Act*) excludes from the definition of building:

> 9 Building: what it does not include
>
> In this Act, building does not include—
>
> (g) containers as defined in regulations made under the Health and Safety at Work Act 2015; or

33.6 The Health and Safety at Work (Hazardous Substances) Regulations 2017 has a very broad definition of containers used for hazardous substance storage which would extend to shipping containers where they are used for hazardous substances storage.

33.7 Again, in the Building Act context, this position is consistent with Determination 2011/104[11] where the Ministry of Business Innovation and Employment determined that the use of containers for the storage of hazardous substances was not a building for the purposes of the Building Act. Other determinations have confirmed that the mere placement of containers will not generally be regarded as building work.[12]

34 For the additional above reasons (which are by no means exhaustive), we consider that the shipping containers on this particular site do not fall within the definition of a 'building' under the District Plan.

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[10] Particularly given the definition of 'building' in the District Plan expressly notes that it is different to the definition of 'building' contained in the Building Act.

[11] https://building.govt.nz/assets/Uploads/resolving-problems/determinations/2011/2011-104.pdf

[12] For example https://www.building.govt.nz/assets/Uploads/resolving-problems/determinations/2014/2014-030.pdf

MinterEllisonRuddWatts.

7 October 2022

By Email: brent.pizzey@ccc.govt.nz
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Attention: Brent Pizzey, Counsel
Craig Jorgensen, Compliance Officer – Resource Consents
Adrian Lambert, Compliance Officer – Regulatory Compliance Unit

Christchurch City Council
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Portlink Industrial Park shipping container depot

1. We act for Specialised Container Services (Christchurch) Limited (**SCS**) who sub-lease the site at 320A Cumnor Terrace, Woolston (**Site**), which is owned by Braeburn Property Limited (**Braeburn**). SCS operates a shipping container depot on the Site.

2. We understand Christchurch City Council (**Council**) currently holds the view that the shipping containers stacked on the Site constitute a 'building' for the purposes of the Christchurch District Plan (**Plan**), and that the shipping containers do not comply with the height and setback requirements applicable to buildings within the Portlink Industrial Park in the Industrial General Zone. We have been provided with a legal opinion prepared by Brookfields Lawyers dated 26 July 2022 that supports this view.

3. We have also been provided with a letter issued by Chapman Tripp to the Council on 6 October 2022 on behalf of Braeburn, which provides a contrary opinion and concludes that shipping containers do not fall within the definition of 'building' under the Plan. Chapman Tripp's letter proposes a way forward to address the differences in opinion.

4. This issue has potentially significant implications for SCS as the operator of the Site. Any requirement to reduce the height and footprint of the shipping containers would be a significant logistical exercise and could have a material impact on SCS' business and its ability to meet its customers' requirements. SCS is also committed to ensure that it complies with all relevant regulatory requirements and is concerned by the Council's suggestion that it will take enforcement action in respect of the issue. We have therefore been asked to provide our opinion on the interpretation issue and assist SCS to work constructively with Braeburn and the Council to resolve the matter.

5. To summarise:

   (a) We agree with Chapman Tripp's interpretation of the definition of 'building' in the Plan and its view that:

      (i) the shipping containers stacked on the Site do not fall within the definition; and

      (ii) therefore, the stacking of the shipping containers on the Site does not breach the height and setback requirements applicable to buildings under the Plan.

   (b) We agree with Chapman Tripp's proposal to meet with the Council to discuss the differences in opinion and a constructive way forward to resolving the matter; and

   (c) We suggest that the meeting proposed with SCS on Tuesday 11 October includes Braeburn and focusses on the matters for discussion set out in Chapman Tripp's letter.

6. We expand on these points below.

We agree with Chapman Tripp's interpretation of the definition of 'building' and its view that the shipping containers do not fall within the definition in this case

7. We agree with all aspects of the opinion set out in Annexure 1 of Chapman Tripp's letter, including Chapman Tripp's approach to interpreting the definition of 'building' and its conclusion that the stacking of shipping containers on the Site does not constitute a 'building'.

8. In particular, we agree with the following key points made by Chapman Tripp:

   (a) The specific overrides the general: The reference to shipping containers in subclause (c) of the definition means that this is the clause that should be the focus in interpreting the definition of 'building', on the basis that this is the more specific provision and should prevail over the more general subclauses (a) and (b). We agree that subclause (c) provides for express inclusion of shipping containers within the definition of "building" when certain circumstances arise, and that those circumstances do not arise in this case.

   (b) The shipping containers are not being used as a "place of business or storage", as required by subclause (c) of the definition. They are not being used to store any items (they are empty) and are not being used as a place of business (e.g., by being converted into a business premises or similar). Rather the containers themselves are being stored on Site on a temporary basis in transit between client shipping requirements.

   (c) A shipping container is not a 'structure': Even if subclause (c) were found not to prevail over the more general subclauses (a) and (b), a shipping container is not a 'structure' (as defined in the Resource Management Act 1991) and therefore does not meet the requirements of subclauses (a) and (b). We agree with Chapman Tripp's assessment of the two cases relied on in the Council's legal opinion (*Ohawini Bay Ltd v Whangarei District Council*[1] and *Autoun v Hutt City Council*[2]) and that these cases are distinguishable on the basis that the two structures in those cases (a sea wall and 'tiny home') were clearly intended to have permanence and are not easily moved. Conversely, the shipping containers in this case are clearly transitory in nature and are capable of being easily moved in the context of a depot designed for storing and transiting shipping containers for the use of transporting goods. For example, over the five days ending on 5 October 2022, SCS moved an average of 83 twenty foot equivalent unit containers (TEU) per day in and out of the Site. Further, just because gravity is holding them to the land does not mean that they are 'fixed'.

9. In addition, we consider that the following points further support the opinion offered by Chapman Tripp:

   (a) The interpretative canon that the 'specific overrides the general' is a fundamental principle of interpretation, including in the planning context, and is supported by the following authorities:

      (i) In *Environmental Defence Society Inc v New Zealand King Salmon* the Supreme Court found that "a requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction".[3] This was endorsed by the High Court in *Transpower New Zealand Limited v Auckland Council* in the context of directives in policy instruments.[4]

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1 *Ohawini Bay Ltd v Whangarei District Council* EnvC Auckland A68/06, 31 May 2006.

2 *Antoun v Hutt City Council* [2020] EnvC 6.

3 *Environmental Defence Society Incorporated v New Zealand King Salmon Co Ltd [2014] 1 NZLR 593, [2014] NZSC 38 at [80].*

4 *Transpower New Zealand Ltd v Auckland Council* [2017 NZHC 281 at [78], citing *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593 at [80].

(ii) In *Urban Auckland v Auckland Council*, the High Court accepted a submission that an activity status in the precinct takes precedence over the activity status in the zone, as consistent with the principle of interpretation that "the specific overrides the general."[5]

(b) The definition of 'Container' in the International Convention for Safe Containers (CSC) 1972 and supports the position that a shipping container is not a 'structure':

(i) The term 'Container' is defined in the International Convention for Safe Containers 1972 (**CSC**). This convention was convened by the International Maritime Organisation, a specialised agency of the United Nations responsible for measures to improve the safety and security of international shipping. New Zealand has acceded to this Convention. A copy of this is **attached**.

(ii) The term 'Container' is defined in this Convention as follows:

A Container is defined as an article of transport which is:

1. of a permanent character and accordingly strong enough to be suitable for repeated use;

2. specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading;

3. designed to be secured or readily handled, having corner fittings for these purposes;

4. and, of a size such that the area enclosed by the four outer bottom corners is either

a. at least 14m2 (150 sq ft) or

b. at least 7m2 (75 sq ft) if it is fitted with top corner fittings.

(iii) The CSC definition describes a container as an article of transport (not a building or structure) that is robust and strong enough for repeated use and ready handling, indicating that the nature of a container is transitory and intended to be repeatedly moved and relocated. This negates any concept of permanence. While capable of being "secured" this is for the purpose of stabilising a container while it is being moved, not for securing the container to land.

10. We do not agree with the approach to interpretation, or the conclusion advanced by Brookfields Lawyers. We agree with Chapman Tripp (particularly paragraphs 15 and 16 of Annexure 1) that the approach set out by Brookfields Lawyers could result in absurd planning outcomes. This conflicts with the High Court authority cited in Brookfields Lawyers' opinion (paragraph 3) that an interpretation should avoid absurd or anomalous results.

11. For the above reasons it is clear that the stacking of shipping containers on the Site does not require compliance with the setback and height area-specific rules for 'buildings' applicable to the Portlink Industrial Park (as set out in 16.4.4.2), and we refute any suggestion that SCS is breaching these rules.

We agree with Chapman Tripp's proposal to meet with the Council to discuss the difference in opinion on interpretation issue and a constructive way forward to resolving the matter

12. We agree with Chapman Tripp, that given the interpretation issue is clearly in dispute, it would not be appropriate for the Council to proceed to any compliance or enforcement action, including issuing an abatement notice.

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[5] *Urban Auckland v Auckland Council* [2015] NZHC 1382 at [175].

13. As noted, SCS wishes to work co-operatively with Braeburn and the Council to resolve this matter as soon as possible and agrees with the way forward suggested by Chapman Tripp. That is, to meet with the Council to discuss:

    (a) The legal opinions that have been provided on the interpretation issue; and

    (b) If the issue remains unresolved, the option of seeking urgent declaratory relief from the Environment Court; and / or

    (c) How the Council might approach any resource consent application filed by Braeburn (on a without prejudice basis to the position advanced by Braeburn (and SCS) that a resource consent is not required).

14. We note that if any abatement notice were issued to SCS that it would appeal the notice and seek a stay on enforcement. We agree with Chapman Tripp that there is nothing to be gained from such an approach, and Chapman Tripp's proposed approach to resolve the matter (summarised above) is more constructive.

We suggest that the meeting proposed with SCS on Tuesday 11 October includes Braeburn and focusses on the matters for discussion summarised above

15. On 6 October 2022 the Council confirmed that it was willing to meet SCS at 12pm on Tuesday 11 October to discuss this matter.

16. In light of the opinion that has been filed by Chapman Tripp, and our consideration of the issue, we suggest that the meeting includes Braeburn and focusses on the matters for discussion summarised above.

17. The Council has requested information from SCS ahead of the meeting proposed on Tuesday 11 October on how it will address the "non-compliance" at the Site and standards and safety measures that SCS implements in relation to the stacking of shipping containers. Respectfully, SCS's position is that the issue of compliance remains in dispute and needs to be discussed and resolved between the parties.

18. However, without prejudice to SCS' position expressed in this letter, we note in response to the Council's information request that any requirement to reduce the footprint and height of the shipping containers stacked on the Site:

    (a) Would require a reduction in the number of shipping containers stored at the Site by approximately 30 percent. This is because there is not enough space within the yard to re-place the shipping containers and they would need to be stored off-site.

    (b) Would give rise to a significant logistical exercise. SCS does not have another local facility available to store them and expects that finding another site within the region will be difficult. The current facility was established because of a lack of container yard capacity in the Canterbury region. SCS cannot estimate how long it could take for SCS to find an alternative location in the area where they could be stored. In reality, because of a lack of alternative storage, it may be that SCS has to require shipping lines (container owners and SCS' customers) to repatriate containers via their own services (ships) from Canterbury to other locations.

    (c) Could have a material impact on SCS' business and its ability to meet its customers' requirements. Re-locating the shipping containers or requiring them to be repatriated will potentially constrain supply to the region's exporters. Whatever the response is, this will add cost to international supply chains, which will ultimately be borne by importers/exporters and final consumers.

19. SCS is happy to provide details of the workplace standard used for stacking containers, the safety measures implemented during adverse weather conditions and current operating hours. SCS will endeavour to provide this information to the Council as soon as possible and by the morning of Monday 10 October 2022, as requested.

20. We look forward to hearing from you.

Yours faithfully
MinterEllisonRuddWatts

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3 GUIDELINES

3.1 OBJECTIVES

3.1.1 The objectives of the Convention for Safe Containers are:

.1 to maintain a high level of safety of human life in the transport and handling of containers by providing generally acceptable test procedures and related strength requirements which have proved to be adequate over the years, and,

.2 to facilitate the international transport of containers by providing uniform international safety Regulations, which are equally applicable to all modes of surface transport. This will avoid the proliferation of divergent national safety Regulations.

3.1.2 The first of these objectives is achieved by setting out requirements to be implemented by the Contracting States to the Convention for the safety approval and maintenance of containers and for the relevant data to be included on a Safety Approval Plate on the container. The second is achieved by the reciprocal acceptance of safety-approved containers by other Contracting States to enable the containers to move in international transport with minimum safety control formalities.

3.2 SCOPE

3.2.1 The Convention applies to all new and existing containers as defined (see 3.2.2), which are used in **international transport**[1] other than those which are specially designed for transport by air. Although the Convention does not apply to containers used solely on internal movements within a State, there is no reason why a State cannot apply the Convention to such containers and a number of states have done so. Therefore, unless specifically included by the countries' legislation, **domestic containers**[2] are not included within the convention.

3.2.2 A Container is defined as an article of transport equipment which is:

.1 of a permanent character and accordingly strong enough to be suitable for repeated use;

.2 specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading;

.3 designed to be secured and/or readily handled, having corner fittings for these purposes;

.4 and, of a size such that the area enclosed by the four outer bottom corners is either

.1 at least 14 m^2 (150 sq ft) or

.2 at least 7 m^2 (75 sq ft) if it is fitted with top corner fittings,

Note: There are smaller containers manufactured which are designed to form into a 20 ft module either three or four per unit and are then transported internationally as a 20 ft unit. The area enclosed by the four bottom corner fittings is 4.5 m^2 and 3.5 m^2 respectively.

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1 ***International Transport*** means transport between points of departure and destination that are situated in the territories of two countries to which at least one of which the present Convention applies. The present Convention shall also apply when part of a transport operation between two countries takes place in a territory of a country to which the present Convention applies.

2 ***Domestic container*** means a container that is used only within the national boundaries of a country. This can however include off shore islands that are considered part of the mainland. For example the Canaries are considered as part of the mainland of Spain.

Annex 4 ISO STANDARDS RELATING TO CONTAINERS

ISO 668	Series 1 freight containers - Classification, dimensions and ratings.
ISO 830	Freight containers - Terminology. Trilingual edition.
ISO 1161	Series 1 freight containers - Corner fittings - Specification.
ISO 1496	Series 1 freight containers - Specification and testing
Part 1:	General cargo containers for general purposes.
Part 2:	Thermal containers.
Part 3:	Tank containers for liquids, gasses and pressurised dry bulk.
Part 4:	Non-pressurised containers for dry bulk.
Part 5:	Platform and Platform - based containers.
ISO 3874	Series 1 freight containers - handling and securing.
ISO 6346	Freight containers - Coding, identification and marking.
ISO 8323	Freight containers - Air/surface (intermodal) general purpose containers Specification and tests.
ISO 9669	Series 1 freight containers - Interface connections for tank containers
ISO 9711	Freight containers - Information related to containers on board vessels.
Part 1:	Bay plan system.
Part 2:	Telex data transmission.
ISO 9897	Freight containers - Container equipment data exchange (CEDEX).
Part 1:	General communication codes.
Part 3:	Message types for electronic data interchange.
ISO 10368	Freight thermal containers - remote condition monitoring.
ISO 10374	Freight containers - Automatic identification.
ISO/TR 15070	Series 1 freight containers - Rationale for structural test criteria.

BROOKFIELDS
LAWYERS

NAVIGATING YOUR SUCCESS

16 November 2023

Christchurch City Council
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Christchurch 8013

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LEX 24279 - CUMNOR TCE 320A - BUILDING DEFINITION

INTRODUCTION

1. You have asked whether the stacking of shipping containers within the Industrial General Zone (Portlink Industrial Park) falls within the definition of "Building" under the Christchurch District Plan (**District Plan**).

2. This letter of advice consolidates various pieces of advice that have been given in relation to this issue since July 2022. In summary, we consider that the stacking of shipping containers does fall within the definition of building (**Opinion**).

3. We have included in our Opinion our response to the letters from Chapman Tripp (**CT**) and Minter Ellison Rudd Watts (**ME**), dated 6 October and 7 October respectively, (together referred to as "**Alternative Interpretation**") in relation to the interpretation of "Building" under the District Plan.

4. In terms of the background facts, we understand that:

   (a) Thousands of shipping containers are stored on the Portlink Site.[1]

   (b) In a given week an average of 83 twenty foot equivalent containers moved in and out of the site per day, as cited by the operator.[2]

   (c) Large stacks of shipping containers (at least 6 containers/20m high) are in place long term, with the individual container components of the stacks changing from time to time.

   (d) In the Portlink Industrial Park the maximum height of any building within the '11m Building Height Limit Area' defined on the development plan in Appendix 16.8.3 is 11 metres.

1 CT Letter of 6 October 2022 paragraph 6
2 ME letter of 7 October paragraph 8(c).

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(e) Concerns have been raised by surrounding residential land uses as to adverse visual amenity effects.

5. We understand that this letter will be used to inform assessment of a certificate of compliance application lodged by Braeburn Property Limited for a notional activity which includes the stacking of containers in excess of 11m on a portion of the Portlink Industrial Park. The application also includes the stacking of various other matter (e.g. crushed car bodies) in excess of 11m. No temporal element is specified in the certificate of compliance application i.e. the containers and other matter may be stacked for an indefinite period.

INTERPRETIVE APPROACH

6. As required by the Legislation Act 2019, we have sought to ascertain the meaning of the relevant definition from its text and in the light of its purpose and its context.[3]

7. We agree with the CT Letter that *Powell v Dunedin City Council*[4] sets out the interpretive approach to planning documents, being in summary:

(a) The words of the document are to be given their ordinary meaning unless this is clearly contrary to the statutory purpose or social policy behind the plan in the rules or otherwise produces some injustice, absurdity, anomaly or contradiction;

(b) The planning document should affect common law rights only where there is express provision to this end or it follows as a matter of necessary implication;

(c) There is a need for certainty in the description of permitted activities and the operative parts of the plan. But the language used in the plan must be given its plain ordinary meaning, the test being "what would an ordinary reasonable member of the public examining the plan, have taken from" the planning document;

(d) The interpretation should not prevent the plan from achieving its purpose;

(e) If there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

8. Consistent with High Court authority in *Mount Field Ltd v Queenstown-Lakes District Council*, we have also sought to find an interpretation that:[5]

(a) Avoids absurd or anomalous results;

(b) Is consistent with the expectations of landowners; and

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3 Section 10 of the Legislation Act 2019, *Spackman v Queenstown Lakes District Council* [2007] NZRMA 327(HC).

4 *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

5 *Mount Field Ltd v Queenstown-Lakes District Council* 31/10/08, Heath J, HC Invercargill CIV-2007-425-700.

(c) Promotes administrative efficiency (rather than requiring lengthy historical research to assess lawfulness).

TEXT OF THE DEFINITION

9. The relevant text of the definition states:

> **Building**
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> means as the context requires:
>
> a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or
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> b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and
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> c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but
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> excludes:
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> d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;
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> e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;
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> f. retaining walls which are both less than $6m^2$ in area and less than 1.8 metres in height;
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> g. structures which are both less than $6m^2$ in area and less than 1.8 metres in height;
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> h. utility cabinets;
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> i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;
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> j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;
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> k. artificial crop protection structures and crop support structures; and
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> in the case of Banks Peninsula only, excludes:
>
> l. any dam that retains not more than 3 metres depth, and not more than 20,000 m^3 volume of water, and any stopbank or culvert;
>
> m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:
>
> i. not exceeding 25,000 litres capacity and supported directly by the ground; or
>
> ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and
>
> n. stockyards up to 1.8 metres in height.
>
> Advice note:

> This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

Subclauses (a) and (b)

10. Both clauses (a) and (b) apply to "any structure" that falls within those clauses. If stacked shipping containers can be said to be a structure, clause (a) is sufficiently broad to include them as a 'moveable structure' and clause (b) would include the placement and stacking of containers on land i.e. placement of a structure on or over land.

11. The District Plan does not contain a definition of a "structure", but this term is defined in section 2 of the RMA. Absent any contrary provision in the District Plan itself, the word "structure" must have the same meaning as in the RMA when interpreting the District Plan.[6] The RMA definition is "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*". While the definition is to some extent circular in that it defines a structure as being a building, a shipping container would fall within the ordinary meaning of a device, which is defined in the Oxford Dictionary as "*a thing made or adapted for a particular purpose, especially a piece of equipment mechanical or electronic"*.

12. The RMA definition of a structure also requires a structure to be fixed to land. The Courts in considering this definition have previously held that in order to fall within the meaning of a structure, the device does not need to be fixed permanently to the land, nor does it require some form of connection to the land in order to be fixed. It may be fixed by the gravity of the device itself. For example, in *Ohawini Bay Ltd v Whangarei District Council*,[7] rocks placed on top of one another to form a seawall were held to be a structure despite only being fixed to the land by their own weight. Similarly, in *Antoun v Hutt City Council*,[8] a moveable tiny home sitting on top of a metal plate, but with no permanent foundations, was held to be sufficiently fixed to the land by gravity to fall within the meaning of a structure. We acknowledge that both types of structure in those cases had either a greater degree of permanence (in relation to the seawall) or, potentially, greater difficulty in being moved (in the case of the tiny home) than a shipping container. However, given the weight of a shipping container is such that it cannot be easily moved and would require a crane/forklift/straddle carrier to shift, it does bear some degree of similarity to the tiny home example.

13. The CT letter distinguishes the facts of *Ohawini Bay* and *Antoun* in order to argue that the shipping containers are not structures. We readily acknowledge that the degree of permanency was greater in *Ohawini Bay* and, potentially, the difficulty of movement greater in *Antoun*. These cases are simply examples to illustrate that gravity may be sufficient to "fix" a structure to land and permanency is not a requirement. This

[6] Section 20 of the Legislation Act 2019.
[7] Environment Court, Auckland, A068/06.
[8] (2020) 21 ELRNZ 595.

interpretation is entirely consistent with the text of the definition itself in the District Plan including "moveable" structures, and the "placement" of structures on land.

14. In addition, while some of the containers stored at the site may be there on a transitory basis, there is no guarantee that will invariably be the case and equally there would be nothing to prevent containers being stored on a longer-term basis.

Subclause (c)

15. Clause (c) expressly refers to shipping containers as falling within the meaning of a "building", where it is *"used on-site as a residential unit or place of business or storage"*. On the facts, it is unclear whether the containers themselves are being stored, or whether the containers are being used to store other items. If the latter, then that would be within the scope of clause c. If the former, then it is arguable that this would not be within the scope of clause c, although there is some basis to conclude that when a shipping container is in its original unconverted state, it is designed as a storage device and therefore would fall within this use regardless of whether at a specific point in time it is sitting empty.

16. We note the argument in the Alternative Interpretation that an empty shipping container being stored is not itself being used "on site as a place of storage". Our Opinion remains that, arguably, a shipping container is designed as a storage device and therefore, in its unaltered form, would fall within this category, regardless of whether at a specific point in time it is empty. This is consistent with the way in which the Courts have interpreted "use" in a district plan to mean the use for which it is designed, rather than any subjective intentions of an individual as to how it will be used.[9]

17. We have also considered whether the express reference to shipping containers in clause (c) should be interpreted to mean that where a shipping container is not *"used on-site as a residential unit or place of business or storage"* then it cannot come within the other clauses of the definition of building. As a starting point, we note that shipping containers that are not *"used on-site as a residential unit or place of business or storage"* are not expressly excluded under clauses d.-n. This drafting approach would have been available if it were the intent.

18. The Alternative Interpretation argues that this specific clause (c) should override and exclude the general clauses (a) and (b).[10] In our view this seeks to elevate the interpretive principle/canon that the specific overrides the general into an inflexible rule. We note the authorities cited in the ME letter that support the application of the principle in the context of policy interpretation and addressing the interrelationship between zone and precinct rules. However, as the Court of Appeal held in *Pora v R* [2001] 2 NZLR 37, context is important, and care should be taken in the application of the principle s*pecialia generalibus derogant*.[11]

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9 *Landeman v Cavanagh* [1998] 4 ELRNZ 1 (CA).

10 CT letter, Annexure 1, paragraph 7.2; ME Letter, paragraph 8(a).

11 *[43] The obverse proposition that special provisions override general ones (specialia generalibus derogant) is less well-supported on the authorities and is inherently less useful even as a rule of thumb because so sensitive to particular context. If applied generally, some of the most important overarching principles expressed in legislation would be unacceptably insecure, confounding clear legislative purpose.*

19. Plainly the specific exemptions to the definition of building override the general inclusions. However, the Alternative Interpretation seeks to elevate an express inclusion of shipping containers as buildings in certain circumstances into an implicit exclusion of shipping containers as buildings in other circumstances. This does not necessarily follow. Clause (c) of the definition expressly includes as a "building" shipping containers used on site as:

    (a) a residential unit; or

    (b) a place of business; or

    (c) a place of storage.

20. The Alternative Interpretation would mean that the use of shipping containers on a site for any other purpose could never constitute a building and would be exempt from all standards applying to buildings. This would be an absurd outcome as other activities such a Community Activities or Spiritual Activities taking place in structures comprised of shipping containers would be exempt from building standards.

21. In *Vortac New Zealand Ltd v Western Bay of Plenty District Council* [2022] NZEnvC 176 the Environment Court considered whether the specific inclusion in the definition of building/structure of a fence or wall exceeding 2m in height precluded a lower wall or fence also constituting a building or structure. The Court held:

> [40] The definition of building/structure specifically includes a fence or wall exceeding 2m in height. On the principle of interpretation that the expression of one thing excludes its alternative, by implication that inclusion in the definition might exclude a fence or wall below that height from being a building. The specific inclusion is, however, expressed to be in addition to the ordinary and usual meaning of building/structure. Those two words have very broad ordinary and usual meanings and, like other words of broad meaning in common usage, normally take their particular sense from the purpose for which and the context in which they are used. In this case that sense must be considered in terms of the objectives and policies of Section 8 of the District Plan.

22. Similarly, limb (c) of the District Plan definition of Building is in addition to limbs (a) and (b) ("and"). We therefore consider that the same principle from *Vortac* should apply to limb (c) i.e. the specific inclusion of containers in the circumstances in (c) does not exclude containers being a building under the limbs (a) and (b) in other circumstances.

Summary in relation to text

23. In summary, we consider that the definition is sufficiently broad on its face to include the placement and stacking of shipping containers. The primary basis for our Opinion remains that the placement and stacking of shipping containers falls within limbs (a) and (b) of the definition as:

    (a) A moveable structure; and

    (b) The placement of a structure on land.

24. We also consider that it is arguable that stacked shipping containers that are either currently storing other goods or are placed on the site in preparation to be loaded with goods, are being used for storage and therefore fall within clause (c).

25. We now consider this reading of the text in light of its:

    (a) purpose as expressed by the objectives and policies and other context of the Christchurch District Plan;

    (b) context within the scheme of rules in the Christchurch District Plan.

PURPOSE

26. We have reviewed the objectives and policies of Chapter 16 Industrial in the District Plan which set out the relevant purpose against which to interpret related rules. We note the following amenity focused objectives and policies which are relevant to a purposive interpretation of "building":

> 16.2.3 Objective - Effects of industrial activities
>
> a. Adverse effects of industrial activities and development on the environment are managed to support the anticipated outcome for the zone while recognising that sites adjoining an industrial zone will not have the same level of amenity anticipated by the Plan as other areas with the same zoning.
>
> 16.2.3.1 Policy - Development in greenfield areas
>
> a. Manage effects at the interface between greenfield areas and arterial roads, rural and residential areas with setbacks and landscaping.
>
> 16.2.3.2 Policy - Managing effects on the environment
>
> a. The effects of development and activities in industrial zones, including reverse sensitivity effects on existing industrial activities as well as, visual, traffic, noise, glare and other effects, are managed through the location of uses, controls on bulk and form, landscaping and screening, particularly at the interface with arterial roads fulfilling a gateway function, and rural and residential areas, while recognising the functional needs of the activity.
>
> b. Effects of industrial activities are managed in a way that the level of residential amenity (including health, safety, and privacy of residents) adjoining an industrial zone is not adversely affected while recognising that it may be of a lower level than other residential areas.

27. These objectives and policies contemplate the management of adverse effects of industrial activities and development having regard to the amenity values of adjoining areas. Techniques to achieve these outcomes include:

    (a) setbacks and landscaping.

    (b) controls on bulk and form.

28. The Industrial General Zone (Portlink Industrial Park) contains bespoke rules in respect of maximum building height and building setbacks. These techniques would be completely ineffective in respect of shipping containers, and not achieve their purpose, if these structures were not covered by the rules and shipping containers could be stacked to any height, including in relation to boundaries. The purpose as expressed by the objectives and policies of the zone therefore supports the textual interpretation we identify above.

29. As to purpose, the CT letter states that:[12]

> We accept that some of the methods provided in the plan to manage such effects include setbacks, landscaping, and bulk and form controls. However, we note that these controls on bulk and form apply to specific activities (which the Council whine it prepared its District Plan must have deemed necessary to manage). Height, as a control on bulk, applies only to 'buildings'. It is our view that is because the District Plan contemplates the greatest effects of bulk on amenity is from buildings, and these need to be managed through he plan.

30. Implicit in this statement is the view that stacked shipping containers are not buildings. However, no evidence or logical justification is provided for the assertion that over height stacks of shipping containers will have a lesser effect on amenity as compared to other structures.

CONTEXT

31. We have considered our interpretation in light of the context of the remainder of the District Plan, including to check whether any anomalous consequences would arise. We have checked:

(a) The definition of Outdoor storage area;

(b) Other Industrial General Zone rules;

(c) Application to other stacked matter such as car bodies

(d) Other district plan references to "containers"

(e) District-wide Rules

Outdoor storage area

32. The activity of container storage could also be considered an Outdoor storage area which is defined as:

> means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.

[12] CT letter paragraph 33.4

33. It is therefore relevant to consider whether "outdoor storage area" and "building" are mutually exclusive. For the reasons that follow we have concluded that they are not.

34. The Oxford dictionary defines "equipment" broadly to mean "*items needed for a particular purpose*". A shipping container would potentially fall within this broad definition of equipment, as would almost anything. As something man-made, it could also potentially fall within the meaning of a "processed product".

35. We have given consideration to whether the land potentially being an outdoor storage area within the meaning of the District Plan definition would mean that the container cannot also be a "building". We do not think that it would. Given that the definition of a building anticipates that something moveable or temporary could fall within the meaning of a building, it follows that storage areas could exist where buildings themselves are stored, for example, sites where tiny homes are constructed and stored, or sites where other relocateable dwellings or other buildings are stored. Such land could potentially fall within the meaning of an outdoor storage area, unless the use falls within the meaning of a yard-based supplier. We are not aware of whether in practice you have treated land used for the storage of relocateable buildings as an outdoor storage area, but we consider that unless there are other specific District Plan provisions that relate to such activities, it would make sense that if such sites are considered to be outdoor storage areas, so then would a shipping container yard, regardless of whether the shipping containers are also buildings.

36. We have considered the provisions in Chapter 16 of the District Plan. We did not identify anything that would mean that the definition of a building and an outdoor storage area are necessarily mutually exclusive. In particular, we note that rule 16.4.4.1.1 P1 for the Industrial General Zone (Portlink Industrial Park) provides that any activity listed in rule 16.4.1.1 P1-P21 is a permitted activity provided it complies with the built form standards in rule 16.4.4.2 and rule 16.4.2 (unless specified otherwise in rule 16.4.4.2). Rule 16.4.1.1 P1 provides that any new building or addition to a building for an activity listed in P2 to P21 is a permitted activity, provided it complies with the built form standards in 16.4.2. Those activities include an industrial activity (P2) and warehousing and distribution activities (P3), either or both of which could potentially apply to the storage of shipping containers. There are built form standards that apply specifically to outdoor storage areas. We could not see any obvious reason as to why those standards would not apply in conjunction with other specific standards that apply to buildings.

Other Industrial zone rules

37. It is relevant to consider the implications of stacks of containers being classed as "buildings" for the relevant zone rules as a check to avoid anomalous outcomes. The starting point is that buildings for industrial activities are permitted within the zone (Rule 16.4.1.1.P1.). As such, any container storage that conforms to building height and setback standards can occur without the need for a consent, which is consistent with enabling industrial activity to occur within the zone. We do not consider that anomalous outcomes arise from the application of height and setback rules to containers. These outcomes are consistent with the direction of the objectives and policies. Consent can of course be sought to stack containers to a greater height in appropriate locations.

38. However, the application of rule 16.6.2.2 Maximum building coverage of a site in the Industrial Park Zone could be considered anomalous because it would limit the placement of containers to 50% of a site and a resource consent would be required to exceed this threshold. We are uncertain as to whether there is a proper resource management reason for this threshold to apply to container storage. There may very well be e.g. impervious surfaces or amenity considerations. Even if the application of this rule to the activity in question may not be apt, we do not consider that the potential requirement to obtain consent for a rule breach of itself would amount to an absurd consequence. It is not unusual for an activity to need to obtain consent under various rules, some of which may be technical consent requirements in the particular case and some of which address environmental effects which require careful management. The same point applies to rules relating to flood management areas, which we discuss below.

39. Rule 16.4.1.1 Permitted activities states "The activities listed below are permitted activities in the Industrial General Zone if they meet the activity specific standards set out in this table and the built form standards in Rule 16.4.2. *Note, the built form standards do not apply to an activity that does not involve any development*." If the activity of stacking containers does not amount to "development" then even if this is a "building" the built form standards do not apply.

40. The Christchurch District Plan and the RMA do not define "Development". The Spiller's NZ law dictionary also does not define "Development". The following dictionary definitions are of some assistance:

Collins English Law Dictionary New Zealand Edition

- an area or tract of land that has been developed.
- Develop: to improve the value or change the use of land, as by building.

Cambridge Dictionary

- an area on which new buildings are built in order to make a profit
- The process of growing and changing and becoming more advanced.

Merriam Webster dictionary

- the state of being developed
- a tract of land that has been made available or usable: a developed tract of land *especially*: one with houses built on it.

Black's Law Dictionary Ninth Edition Bryan A. Garner

- (1885) 1. A substantial human-created change to improved or unimproved real estate, including the construction of buildings or other structures.
- 2. An activity, action, or alteration that changes underdeveloped property into developed property.

Lexis Advance Fourth Edition Words and Phrases Legally Defined Volume 1 A-K

Development of property

- "…development means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land." – (Town Country Planning Act 1990).

41. There is a circularity to this issue as the construction of "buildings" would generally be considered to amount to "development". As such, if the stacking of shipping containers amounts to the placement of a "building" then the activity is "development". Given the circularity of the issues, we don't consider that Rule 16.4.1.1 advances much the issue of whether or not stacked shipping containers are buildings.

Other district plan references to "containers"

42. Other relevant provisions of the District Plan also form context which supports the interpretation that shipping containers are within the definition of "buildings".

43. Rule 13.8.4.2.1 of the Specific Purpose (Lyttelton Port) Zone relates to Maximum Building Height. Clause a. of this rule applies to:

> Quayside and container cranes, lighting towers and container storage (except containers located within Height Area C as shown in Appendix 13.8.6.4)

44. Clause a. specifies no height limit. The express reference to shipping containers in the context of a rule applying to buildings is strong contextual support for the view that containers are a type of building under the District Plan.

45. Clause g. of the rule applies to:

> Buildings not otherwise provided for under (a) with frontage to Norwich Quay and containers located within Height Area C as shown in Appendix 13.8.6.4. This standard shall not apply to temporary structures erected for noise mitigation, construction activities or transiting containers that remain on site for less than 72 hours.

46. A permitted limit of 15m applies with restricted discretionary consent required beyond this height. Again, the express reference to shipping containers in the context of a rule applying to buildings is strong contextual support for the view that containers are a type of building. The exclusion from the standard of "transiting containers that remain on site for less than 72 hours" also implies that, but for this exclusion, these containers would be regulated by the building height rule. No similar exclusion for transiting shipping containers is found in the plan provisions applying to Portlink Industrial Park.

47. We note that the standard in Rule 13.8.4.2.1(a) applies to "container storage" which would encompass the storage of both full and empty containers. This is logical as the contents of a container do not have any impact on the amenity effects caused by the heights of container stacks.

District-wide Rules

48. We have considered how treating shipping containers as buildings would interact with the use of containers across the District, including in terms of the district-wide rules in the District Plan. This is particularly to understand whether any anomalous consequence would arise e.g. requiring consent for the temporary use of shipping containers in circumstances where one would expect that to be a permitted activity.

49. First, we do not consider that shipping containers in transit would be classed as a Building for the purposes of the District Plan as they would no longer have the requisite degree of affixation to land.

50. Secondly, Chapter 6 of the District Plan provides an enabling regime for temporary buildings which provides for the temporary ancillary use of shipping containers throughout the District. Rule 6.2.3 sets out how to interpret and apply the rules for temporary activities and buildings. In summary:

    (a) The rules that apply to temporary activities and buildings in all zones are contained in the activity status tables (including activity specific standards) in Rule 6.2.4.

    (b) Temporary activities and buildings are exempt from the rules in the relevant zone chapters and other District Plan rules, except as specified in activity specific standards in Rule 6.2.4; and

    (c) The activity status tables and standards in the following chapters and sub-chapters apply to temporary activities and buildings (where relevant):

        4. Hazardous Substances and Contaminated Land.

        5. Natural Hazards

           Rule 5.6 Slope Instability;

        6. General Rules and Procedures

           6.3 Outdoor Lighting (except as otherwise specified in Rule 6.2.4);

           6.1 Noise (except as otherwise specified in Rule 6.2.4);

           6.8 Signage (as specified in that sub-chapter and as specified in Rule 6.2.4);

        7. Transport (as specified in Rule 6.2.4);

        8. Subdivision, Development and Earthworks;

        9. Natural and Cultural Heritage; and

        11. Utilities and Energy.

51. Rule 6.2.4.1.1 P1 provides as a permitted activity for temporary buildings ancillary to an approved building, construction, land subdivision or demolition project. The following activity specific standards apply:

    (a) No single building shall exceed 50m² of GFA; except that, in the Commercial Central City Business, Industrial General, Industrial Heavy, Rural Quarry, Specific Purpose (Tertiary Education) or Specific Purpose (Airport) Zones, the GFA of a temporary construction building is not restricted provided that buildings are not placed in any setbacks required by the relevant zone.

    (b) Temporary buildings shall be removed from the site within one month of completion of the project or, in the case of land subdivision sales offices, within one month of the sale of the last allotment in the subdivision.

    (c) Temporary land subdivision sales offices shall meet the signage rules for the Commercial Local Zone in Sub-chapter 6.8 Signs.

52. Rule 6.2.4.1.1 P4 provides as a permitted activity for temporary buildings or other structures ancillary to an event listed in Rule 6.2.4.1.1 P2.[13] The following activity specific standards apply:

    (a) Temporary buildings or other structures shall not be erected on or remain on the site for more than two weeks before or after the event opens or closes to participants.

    (b) Where events occur on non-consecutive days, on days between instances of the event opening to participants, public access to parts of the site that are normally accessible shall not be impeded.

53. In our opinion, these rules for temporary buildings provide for the range of situations where one would expect shipping containers to be able to be used as a permitted activity, in conjunction with other activities, and subject to a limited set of performance standards. This enables temporary use of shipping containers across the district generally to be exempt from other rules which apply generally to buildings e.g. bicycle parking requirements and minimum floor levels.

54. We note however that these temporary activity rules would not apply in the industrial zones or the Portlink site. This is because Chapter 6 interpretation rule 6.2.3 d. states:

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[13] Community gatherings, celebrations, non-motorised sporting events and performances including:
a. carnivals and fairs;
b. festivals;
c. holiday observances;
d. races;
e. parades;
f. concerts; and
g. exhibitions.

> Rule 6.2.4 does not apply to activities and buildings anticipated by the rules in the relevant zone chapters or within the expected scope of operations for permanent facilities

55. This rule is consistent with the purpose of the objective and policies in Chapter 6 – 6.6.2. that the temporary activity provisions are for buildings and activities that are not anticipated in the zone but are only there for a short time. In our view, shipping containers are activities and buildings anticipated in the Industrial Zone and therefore cannot be authorised under the temporary activities regardless of how long they are there.

56. We have also considered the application of our interpretation to flood hazard rules which apply to buildings (noting that these rules do not apply to temporary buildings). The key policy driver for these rules is the protection of buildings from material damage. We note that the likelihood of containers being materially damaged by flood waters would appear low, although equally the prospect of storing containers within a floodplain does not appear to be a sensible resource management outcome if the land is subject to serious flood hazard. As noted above, even if the application of flood hazard rules to the activity in question may not be apt, we do not consider that the potential requirement to obtain consent for a rule breach of itself would amount to an absurd consequence. It is not unusual for an activity to need to obtain consent under various rules, some of which may be technical consent requirements in the particular case and some of which address environmental effects which require careful management.

Application to other stacked matter such as car bodies

57. It is also relevant to consider the application of the principles which underpin our Opinion, to the storage of other matter (vehicles, pallets, containers/boxes, equipment, machinery, products, etc).

58. Subject to the important qualification that the definition of a building in the District Plan supersedes the ordinary meaning of a building, we note that a shipping container also shares common characteristics ordinarily associated with a building, such as having walls and a roof. However, we do not interpret the definition of building as necessarily excluding other forms of stacked equipment or devices.

59. Having regard to the way in which “building” is defined in the District Plan, the question of whether stacked equipment or devices is or is not a building would turn on the particular circumstances. We consider that the following factors will be relevant:

    (a) The size and bulk of individual components within a stack, as well as the overall height of the stack (these factors will be relevant to whether it can be said that the stacked equipment is fixed to the land by its own weight).

    (b) The degree of permanence of the stacked equipment or devices. While permanence is not necessarily a requisite characteristic to fall within subclause (a) of the building definition, where something is placed on the land on a longer-term basis, this may support a finding that it is a structure.

    (c) Where stacked equipment and devices rely upon other works to stabilise them and fix them in place, those works themselves could fall within the meaning of a building. We note for example, that scaffolding or falsework is only excluded from

the meaning of a building if it is used temporarily for maintenance and construction purposes.[14] Similarly, a fence or a wall that has a structural function of supporting stacks of equipment would not fall within the fencing exception.[15] Where stacks of equipment are secured to other devices that are themselves affixed to the land and would fall within the meaning of a building, it could be arguable that the structure in its entirety, including both the supporting structure and the stacked equipment, could fall within the meaning of a building.

60. Applying these general matters, we consider that the circumstances in which stacked equipment or devices are unlikely to fall within the meaning of a building are where:

(a) The stacks are relatively small in height and size (particularly if they are both less than 6m^2 in area and less than 1.8 metres in height);[16]

(b) Where the individual component parts are small and/or lightweight;

(c) Where the stack is short-term;

(d) Where the stack is not supported by or affixed to any structure to stabilise it or fix it in place, this may be indicative that it does not form part of a structure. However, this is something that would need to be considered in conjunction with the other factors described above, and on its own would not necessarily be determinative of whether the stacked equipment or device is or is not a building.

MATTERS WHICH ARE NOT RELEVANT

61. The certificate of compliance application refers to:[17]

(a) An excerpt of the IMO (International Maritime Organisation) International Convention of Safe Containers (CSC) 1972, setting out in its Interpretations and Guidelines a definition of 'container' as an article of transport equipment (this is also referenced in the ME Letter).

(b) The industry definition of "Inland Container Depot", which is that it is a "public facility that offers services for handling and temporary storage of import/export laden containers or empty containers"

62. These documents do not form part of the District Plan definition and are not incorporated by reference. We do not consider that these extraneous definitions can have any relevance to the interpretation of the Christchurch District Plan which exists for a fundamentally different purpose (i.e. sustainable management).

63. The CT letter cites the definition of "building" in the Building Act 2004 which expressly excludes containers as defined in regulations made under the Health and Safety at Work

14 Clause (d) of the definition of a building.
15 Clause (e) of the definition of a building.
16 See the clause (g) exception to the meaning of a building.
17 Paragraph 25 of the application

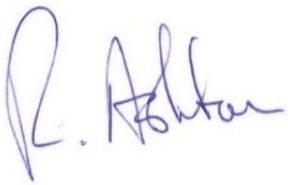
Act 2015. We do not consider that this is relevant given that the definition in the District Plan includes the following advice note:

> This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

CONCLUSION

64. We trust that this letter assists with the question you have asked. Please do not hesitate to make contact should you have any further questions arising.

Yours faithfully
BROOKFIELDS



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Appendix 4

Compliance Assessment

DISTRICT PLAN

RULE	COMPLIANCE ASSESSMENT	STATUS
Chapter 5 Natural Hazards (Flood Hazards)		
5.4.1 Activities and earthworks in the Flood Management Area		
5.4.1.1 P1	New buildings located within the Fixed Minimum Floor Level Overlay, unless specified in P5, P6, P7, P8 or P9 in Rule 5.4.1.1. a. Minimum floor levels shall be the highest of the following: i. flooding predicted to occur in a 0.5% AEP (1 in 200--year) rainfall event concurrent with a 5% AEP (1 in 20--year) tidal event, including 1 metre sea level rise plus 400mm freeboard, as predicted by the relevant Council model and version identified in Table 5.4.1.1a; or ii. flooding predicted to occur in a 0.5% AEP (1 in 200-year) tidal event concurrent with a 5% (1 in 20-year) rainfall event, including 1m sea level rise plus 400mm freeboard, as predicted by the relevant Council model and version identified in Table 5.4.1.1a; or iii. 12.3 metres above Christchurch City Council Datum. **Comment:** *The office building will have a minimum floor level that is a minimum of 12.3m above CCC datum.*	Complies
5.4.1.1 P14	Filling or excavation in commercial and industrial zones that is not provided for under Rule 5.4.1.1 P10-P12 or P17. b. A maximum height of 0.3m of filling above ground level and 0.6m depth of excavation below ground level; and c. A maximum volume of filling above ground level of $20m^3$ per site, and a maximum cumulative volume of filling and excavation of $50m^3$ per site, in each case within any continuous period of 10 years. Or d. The excavation and filling is associated with the maintenance and/or replacement of underground petroleum storage systems and where, following reinstatement of the underground petroleum storage systems, the site will have a finished contour that is equivalent to the ground level at the commencement of the works. **Comment:** *Earthworks are not generally required for the activity. To the extent that formation of the vehicle crossing and site entry/apron may entail some earthworks this will not exceed a fill height >0.3m above ground level, or a cut of >0.6m below ground level, or a volume of $20m^3$.*	Complies
Chapter 6 General Rules and Procedures		
6.1.5 Noise		
6.1.5.1 Activity status tables		
6.1.5.1.1 P1	Outside the Central City, any activity that generates noise and which is not exempt by Rule 6.1.4.2 or specified in Rule 6.1.5.1.1 P2 below. Any activity that generates noise shall meet the Zone noise limits outside the Central City in Rule 6.1.5.2.1.	**Permitted**
6.1.5.2 Noise Standards		

6.1.5.2.1 Zone noise limits outside the Central City	Outside the Central City, any activity that generates noise shall meet the Zone noise limits in Table 1 below at any site receiving noise from that activity, as relevant to the zone of the site receiving the noise. l. Industrial General Zone – all hours- 70dB LAeq Except that noise levels shall not exceed 50 dB LAeq/75dB LAmax at any residential unit lawfully established prior to 6 March 2017 during the hours of 22:00 to 07:00. **Comment:** *The activities will be operated during daytime hours only and are therefore only subject to the daytime noise standard of 70db LAeq. Accounting for this the activity can readily comply with the applicable noise standards.*	Complies
6.3 Outdoor lighting		
6.3.4.1 Glare P1	Any activity involving artificial outdoor lighting, other than activities specified in Rule 6.3.4.3 NC1 or NC2. a. All fixed exterior lighting shall, as far as practicable, be aimed, adjusted and/or screened to direct lighting away from the windows of habitable spaces of sensitive activities, other than residential units located in industrial zones, so that the obtrusive effects of glare on occupants are minimised. b. Artificial outdoor lighting shall not result in a greater than 2.5 lux spill (horizontal or vertical) into any part of a major or minor arterial road or arterial route identified in Appendix 7.12 where this would cause driver distraction. **Comment:** *The proposed lighting will be designed to comply (and it is otherwise noted that minimal lighting is required given the activity will operate during daytime hours only).*	Complies
6.3.5.1 Light Spill P1	Any activity involving outdoor artificial lighting. a. Any outdoor artificial lighting shall comply: i. with the light spill standards in Rule 6.3.6 as relevant to the zone in which it is located, and; ii. where the light from an activity spills onto another site in a zone with a more restrictive standard, the more restrictive standard shall apply to any light spill received at that site. **Comment:** *The proposed lighting will be designed to comply (and it is otherwise noted that minimal lighting is required given the activity will operate during daytime hours only).*	Complies
6.8 Signs		
6.8.4.1 Activity Status Tables		
Signage P1	Any sign not specifically provided for as a permitted, controlled, restricted discretionary, discretionary or non-complying activity. Activity specific standards – a. relevant built form standards in Rule 6.8.4.2. **Comment:** *Any future signage will comply with the relevant built form standards, or a separate resource consent will be obtained.*	Complies

Chapter 7 Transport		
7.4.3 Standards		
7.4.3.1 Minimum and maximum number and dimensions of car parking spaces required	**Comment:** *No car parking spaces are proposed on the site*	Not applicable
7.4.3.2 Minimum number of cycle parking facilities required	At least the minimum amount of cycle parking facilities in accordance with Appendix 7.5.2 shall be provided on the same site as the activity. **Comment:** *For yard-based suppliers 1 visitor space is required per 1000m^2 GLFA and 1 staff space is required per 750 m2 GLFA. Given the small size of the building (100m^2) less than 0.5 cycle visitor and 0.5 staff cycle spaces are required, meaning both requirements are disregarded and there is a nil requirement.*	Complies
7.4.3.3 Minimum number of loading spaces required	At least the minimum amount of loading spaces in accordance with Appendix 7.5.3 shall be provided on the same site as the activity. **Comment:** *For yard-based suppliers 1 loading bay is required per 1600m^2 GLFA. Given the small size of the building (100m^2) less than 0.5 of a loading bay is required, meaning the requirements are disregarded and there is a nil requirement.*	Complies
7.4.3.4 Manoeuvring for parking and loading areas	a. Any activity with a vehicle access: On-site manoeuvring area shall be provided in accordance with Appendix 7.5.6. b. Any activity with a vehicle access to… **Comment:** *a. A large on-site manoeuvring area is provided in the yard area adjacent to the access in accordance with Appendix 7.5.6.* *b. Not applicable*	Complies
7.4.3.5 Gradient of parking and loading areas	For all non-residential activities with vehicle access: - Gradient of surfaces at 90 degrees to the angle of parking (i.e. parking stall width) - Gradient shall be ≤ 1:16 (6.25%) - Gradient of surfaces parallel to the angle of parking (i.e. parking stall length) - Gradient shall be ≤ 1:20 (5%) - Gradient of mobility car park spaces. - Gradient shall be ≤ 1:50 (2%) **Comment:** *The gradient of surfaces complies with the applicable standards.*	Complies
7.4.3.6 Design of parking and loading areas	a. All non-residential activities with parking and/or loading areas used during hours of darkness: the lighting of parking and loading areas shall be maintained at a minimum level of two lux, with high uniformity, during the hours of operation. b. Any urban activity: the surface of all car parking, loading, and associated access areas shall be formed, sealed and drained and car parking spaces permanently marked.	Complies

	Comment: *a. Does not apply, as these areas will not be used during hours of darkness.* *b. Parking and loading areas are not required. However, to the extent that access, loading and associated manoeuvring areas are provided these will be formed, sealed and drained as required.*	
7.4.3.7 Access design	a. Any activity with vehicle access: the access shall be provided in accordance with Appendix 7.5.7. b. Not applicable. c. Outside the Central City, any vehicle access: (i) to an urban road serving more than 15 car parking spaces or more than 10 heavy vehicle movements per day; and/or (ii) on a key pedestrian frontage. - Either an audio and visual method of warning pedestrians of the presence of vehicles or a visibility splay in accordance with Appendix 7.5.9 shall be provided. If any part of the access lies within 20m of a Residential Zone any audio method should not operate between 20:00 and 08:00 hours. d. Not applicable e. Not applicable **Comment:** *a. The access complies with the applicable standards in Appendix 7.5.7 (noting the 7m legal and formed width of the access complies with table 7.5.7.1 row e).* *b. An audio and visual warning device will be provided at the site entry.*	Complies
7.4.3.8 Vehicle crossings	Any activity with a vehicle access to any road or service lane: a vehicle crossing shall be provided constructed from the property boundary to the edge of the carriageway / service lane. b.-g. Not applicable **Comment:** *Complies*	Complies
7.4.3.9 Location of buildings and access in relation to road/rail level crossings	Any new road or access that crosses a railway line: no new road or access shall cross a railway line. All new road intersections located less than 30 metres from a rail level crossing limit line: the road intersection shall be designed to give priority to rail movements at the level crossing through road traffic signals. All new vehicle crossings located less than 30 metres from a rail level crossing limit line: no new vehicle crossing shall be located less than 30 metres from a rail level crossing limit line unless the boundaries of a site do not enable the vehicle crossing to be more than 30 metres from a rail level crossing limit line. Any building located close to a level crossing not controlled by automated warning devices (such as alarms and/or barrier arms): buildings shall be located outside of the sight triangles in Appendix 7.5.13. **Comment:** *No rail level crossings are located near the site.*	N/A
7.4.3.10 High trip generators	This rule applies to activities located outside the Central City, and activities within the Central City that are not exempt from this rule under b. below, that exceed the following thresholds.	Complies

	Comment: *Yard based suppliers are an 'other activity' for the purposes of this rule. However, given the nature of the activity it will not generate more than 50 vehicle movements in the peak hour or 250 heavy vehicle trips per day. The activity is explicitly sought on the basis of complying with this limit and accordingly the activity complies with this standard.*	
Chapter 8 Earthworks		
8.9.2 Activity status tables		
8.9.2.1 P1	a. Earthworks shall not exceed the volumes in Table 9 over any 12 month time period. b. Earthworks in zones listed in Table 9 shall not exceed a maximum depth of 0.6m, other than in relation to farming activities, quarrying activities or permitted education activities. c. Earthworks shall not occur on land which has a gradient that is steeper than 1 in 6. d. Earthworks involving soil compaction methods which create vibration shall comply with DIN 4150 1999-02 and compliance shall be certified through a statement of professional opinion provided to the Council from a suitably qualified and experienced chartered or registered engineer. e. Earthworks involving mechanical or illuminating equipment shall not be undertaken outside the hours of 0700 – 1900 in a Residential Zone. Advice note 1. between 0700 and 1900 hours, the noise standards in Chapter 6 Rule 6.1.5.2 and the light spill standards at Chapter 6 Rule 6.3.6 both apply. f. Earthworks involving mechanical equipment, other than in residential zones, shall not occur outside the hours of 0700 and 2200 except where compliant with NZS6803:1999. Advice note 1. between 0700 and 2200 hours, the noise standards in Chapter 6 Rule 6.1.5.2 apply except where NZS6803.1999 is complied with, and the light spill standards in Chapter 6 Rule 6.3.6 apply. g. Fill shall consist of clean fill. h. The activity standards listed in Rule 8.9.2.1 P3, P4 and P5. i. Earthworks shall not occur within 5 metres of a heritage item or within a heritage setting listed in Appendix 9.3.7.2. **Comment:** *Earthworks are not generally required for the activity. To the extent that formation of the vehicle crossing and site entry may entail some earthworks this will not exceed a depth of 0.6m or a volume of 1000m^3/hectare.*	Complies
Chapter 16 Industrial (Industrial General Zone)		
16.4.1 Activity status tables		
P10	Yard-based supplier **Comment:** *The activity is a yard-based supplier and no activity standards apply.*	Permitted
17.5.2 Built form standards		
16.4.2.1 Maximum height for buildings	The maximum height of any building within 20 metres of a residential zone shall be 15 metres **Comment:** *No buildings are proposed within 20m of a residential zone.*	Not applicable

16.4.2.2 Minimum building setback from road boundaries/ railway corridor	The minimum building setback from a road boundary and a rail corridor boundary shall be as follows: i. Any activity unless specified below: 1.5 metres ii. Any activity fronting on to an arterial road or opposite a residential zone unless specified in (iii): 3 metres iii. Buildings, balconies and decks on sites adjacent to or abutting railway lines: 4 metres from the rail corridor boundary **Comment:** *No buildings are located within the applicable setbacks. In particular, the office building will be located >1.5m from the road boundary.*	Complies
16.4.2.3 Minimum building setback from the boundary with a residential zone	The minimum building setback from the boundary with a residential zone shall be as follows: All buildings within sites which share a boundary with a residential zone: 3 metres **Comment:** *The site does not share a boundary with a residential zone.*	Not applicable
16.4.2.4 Sunlight and outlook at boundary with a residential zone and road	Where an internal site boundary adjoins a residential zone, no part of any building shall project beyond a building envelope contained by a recession plane measured at any point 2.3 metres above the internal boundary in accordance with the relevant diagram in Appendix 16.8.11. **Comment:** *The site does not share a boundary with a residential zone.*	Not applicable
16.4.2.5 Outdoor storage of materials	Any outdoor storage areas shall: i. not be located within the minimum setbacks specified in Rule 16.4.2.2. ii. be screened by landscaping, fencing or other screening to a minimum of 1.8 metres in height from any adjoining residential zone. **Comment:** *The outdoor storage areas proposed are not located within the setbacks specified in Rule 16.4.2.2 (noting the site does not adjoin a residential zone).*	Complies
16.4.2.6 Landscaped areas	Landscaping and trees shall be provided as follows: i. The road frontage of all sites opposite a residential zone or listed below shall have a landscaping strip with a minimum width of 1.5 metres, and minimum of 1 tree for every 10 metres of road frontage or part thereof. A. Sites adjoining Main North Road (SH1) between Dickeys Road and Factory Road; B. Sites adjoining Main South Road, between Barters Road and Halswell Junction Road; and C. Sites adjoining Tunnel Road. D. This standard shall not apply to an emergency service facility or vehicle access to any site. ii. On sites adjoining a residential zone, trees shall be planted adjacent to the shared boundary at a ratio of at least 1 tree for every 10 metres of the boundary or part thereof.	Complies

	iii. All landscaping / trees required by these rules shall be in accordance with the provisions in Appendix 6.11.6 of Chapter 6. **Comment:** *The site adjoins Tunnel Road and provides the required landscaping.*	
16.4.2.7 Visual amenity and screening	Where a site adjoins an Open Space, Specific Purpose (School), Specific Purpose (Cemetery) or Specific Purpose (Tertiary Education) Zone, provision shall be made for landscaping, fence(s), wall(s) or a combination to at least 1.8 metres in height along the length of the zone boundary, excluding any road frontages. Where landscaping is provided, it shall be continuous and for a minimum depth of 1.5 metres along the zone boundary. **Comment:** *The site adjoins an Open Space Zone to the east. Landscaping will be provided in accordance with this standard.*	Complies
16.4.2.8 Access to Industrial General Zone (Deans Avenue)	Any activity in the Industrial General zone bound by Deans Avenue, Lester Lane and the railway line shall only have access from Lester Lane. In the event that Lester Lane is realigned, site access shall be solely from the realigned Lester Lane. **Comment:** *Not applicable.*	Not applicable
16.4.2.9 Water supply for fire fighting	Provision for sufficient water supply and access to water supplies for firefighting shall be made available to all buildings via Council's urban reticulated system (where available) in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS: 4509:2008). **Comment:** *The proposed office building will be connected to the reticulated water supply which is understood to comply.*	Complies
16.4.4.1 Area-specific activities - Industrial General Zone (Portlink Industrial Park)		
16.4.4.1.1 P1	Activities listed in Rule 16.4.1.1 P1-P21. Activity specific standards: a. Development shall comply with: i. The key structuring element on the Portlink Industrial Park Development Plan (Appendix 16.8.3), being: A. Road access ii. Built form standards in Rule 16.4.4.2, and Rule 16.4.2 unless specified otherwise in Rule 16.4.4.2. **Comment:** *The proposal complies with the key structuring element (Road access) on the ODP and otherwise complies with the relevant built form standards in 16.4.4.2 and 16.4.2.*	Complies
16.4.4.2 Area-specific built form standards - Industrial General Zone (Portlink Industrial Park)		
16.4.4.2.1 Maximum height of buildings	The maximum height of any building within the '11m Building Height Limit Area' defined on the development plan in Appendix 16.8.3 shall be 11 metres. **Comment:** *Not applicable, buildings are not proposed within the 11m building height limit area.*	Not applicable.

	To the extent that outdoor storage is proposed within this area and will exceed 11m height, the items proposed to be stored are not 'buildings' as defined in the District Plan.	
16.4.4.2.2 Minimum building setback from road boundaries	The minimum building setback from the road boundary with Tunnel Road shall be 3 metres. **Comment:** *No buildings are proposed to be located within 3 metres of Tunnel Road.*	Complies
16.4.4.2.3 Landscaped areas	Landscaping and trees shall be provided as follows: i. Tunnel Road frontage only A. Any site that adjoins Tunnel Road shall have a landscaping strip with a minimum width of 1.5 metres along the site boundary with Tunnel Road with the exception of that part defined on the development plan in Appendix 16.8.3 as 'Landscape and stormwater area (Green Space)'; and B. Planting of trees and shrubs within the landscaping strip adjacent to Tunnel Road shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and shall meet the requirements specified in Part A of Appendix 6.11.6 of Chapter 6; and C. The landscaping required under Rule 16.4.4.2.3 i. shall be completed as a condition of subdivision consent, or if there is no subdivision required, in conjunction with development in the locations that clause (a) relates to as a permitted activity standard. ii. Landscaping adjacent to the Heathcote River and within the zone A. Planting of trees and shrubs within the 'Landscape and stormwater area (Green Space)' defined on the development plan in Appendix 16.8.3 adjacent to the Heathcote River shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and the requirements specified in Part A of Appendix 6.11.6 of Chapter 6; and B. Legal public access ways within the landscaping strip adjoining the Heathcote River shall be provided as indicated by 'Pedestrian access' on the development plan in Appendix 16.8.3; and C. There shall be no erection of buildings, fences, the display of outdoor advertisements, parking of vehicles or use for any purpose other than landscaping, passive recreation or ecological enhancement within the 'Landscape and Stormwater Area (Green Space)' defined on the development plan in Appendix 16.8.3, and D. Existing vegetation as marked on the development plan in Appendix 16.8.3 as 'Existing vegetation to be retained' shall be maintained. **Comment:** *Compliant landscaping is proposed in respect of the Tunnel Road frontage.* *Clause ii does not apply.*	Complies

3. RMA/2023/3102 Application dated 29 November 2023

novo group
Planning. Traffic. Development.

Certificate of Compliance application

prepared for

BRAEBURN PROPERTY LIMITED

320 & 320A Cumnor Terrace, Christchurch

November 2023

Certificate of Compliance application

prepared for

BRAEBURN PROPERTY LIMITED

320 & 320A Cumnor Terrace, Christchurch

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Project Manager:	Jeremy Phillips, Director & Senior Planner
Prepared by:	Georgia Brown, Senior Planner
Reviewed by	Jeremy Phillips, Director & Senior Planner

Application for Certificate of Compliance
Under Section 139 of the Resource Management Act 1991

TO: Christchurch City Council

We: Braeburn Property Limited ('**the applicant**'), apply for a certificate of compliance for the activity described below.

1. The activity to which the application relates (the proposed activity) is as follows:

   To establish a yard-based supplier activity on the site, comprising the use of land for selling or hiring products for construction or external use where more than 50% of the area devoted to sales or display is located within an uncovered external yard space.

   The activity will include the outdoor storage (for display, sale or hire) of items including dismantled/crushed car bodies and baled scrap metal. Such items will be stored to an unspecified maximum height but will expressly exceed 11m height.

   Ancillary vehicle access to/from the site and on-site vehicle circulation and loading space is also proposed for the activity.

   The activity for which the certificate of compliance is sought will be undertaken in accordance with the details, information and plans that accompany and form part of the application.

2. The site at which the proposed activity is to occur is as follows:

   The application site is a nominal site of approximately 2.5 hectares, located at 320 & 320A Cumnor Terrace, Christchurch legally described as Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298 and Lot 305 Deposited Plan 525615.

   The relevant particulars of the site are set out in further detail within the details, information and plans that accompany and form part of this application.

3. The full name and address of each owner or occupier (other than the applicant) of the site to which the application relates are as follows:

   The applicant owns the site and leases it to:

   - NZ Express Transport (2006) Limited
     C/- Gabites Limited
     54 Cass Street
     ASHBURTON 7700

   - Pinnacle Corporation Limited
     Level 3 Woburn House
     40 Bloomfield Terrace
     LOWER HUTT 5010

   - International Primary Products (NZ) Limited
     C/- Nexia New Zealand
     Level 1, 5 William Laurie Place
     AUCKLAND 0632

- Champion Materials Limited
  C/- E3 Business Accountants Limited
  94 Disraeli Street
  CHRISTCHURCH 8023

4. We attach all necessary further information required to be included in this application by the Resource Management Act 1991, or any regulations made under that Act.

Georgia Brown, Senior Planner **DATED:** 29 November 2023

(Signature of applicant or person authorised to sign on behalf)

Address for service:

Novo Group Limited
PO Box 365
CHRISTCHURCH 8140

Attention: Tim Walsh

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E: tim@novogroup.co.nz

Address for Council fees:

Braeburn Property Limited
C/- Moore Walker Davey Searells Limited
Level 2, Building One, 181 High Street,
CHRISTCHURCH 8144

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List of Figures and Tables

Appendices

Introduction

1. The applicant seeks a certificate of compliance pursuant to section 139 of the Resource Management Act 1991 ('the Act') to establish and operate a yard-based supplier activity on the subject site, in accordance with the information and plans provided below. Notably, the activity entails the outdoor storage of various items for display, sale and hire, including (among other things) dismantled/crushed car bodies and baled scrap metal. Certification is sought that such outdoor storage is not constrained in terms of its height, but it is expressly noted that the storage will exceed 11m in height above ground level.

The Site

2. The application site is a nominal site[1], located within the underlying property known as 320 & 320A Cumnor Terrace, Woolston, Christchurch which is legally described as Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298 and Lot 305 Deposited Plan 525615. Refer to the Record of Title in **Appendix 1**.

3. The subject site for the purposes of this application occupies a rectangular parcel of land approximately 25,000m^2 (2.5 hectares) in area, at the terminus of Kennaway Road in the northern part of the Portlink Industrial Park ('Portlink'). Portlink is bounded by the Heathcote River, Tunnel Road (State Highway 74), the Main Trunk Rail Line that terminates in Lyttleton, and Chapmans Road.

4. The site is generally flat and is formed with a compacted metal surface, established as part of the original subdivision and development of this stage of Portlink.

5. **Figure 1** over the page shows the underlying property (in red) which measures approximately 12 hectares in area. **Figure 2** shows the subject site in the context of the outline development plan (ODP) that is applicable to the Industrial General (Portlink Industrial Park) Zone.

6. Kennaway Road extends from its intersection with Chapmans Road and terminates at a turning circle adjacent the application site.

7. Beyond Portlink and on the other side of the Heathcote River, industrial activities are located to the southwest/west, and residential properties are located to the northwest/north. Open space occupies the land to the east of Tunnel Road.

[1] See definition of 'site' in the District Plan, which means *'an area of land or volume of space shown on a plan with defined boundaries, whether legally or otherwise defined boundaries…'.*

Figure 1: Approximate location of site (dashed) and underlying property (red) (Source: Canterbury Maps)

Figure 2: Approximate site location relative to Portlink ODP (CDP, Appendix 16.8.3)

The Proposal

8. As described above, the applicant seeks certification that the establishment and operation of a yard-based supplier activity on the site (as described here) is a permitted activity.

9. For the purposes of the application, the yard-based supplier will entail the use of land for selling or hiring products for construction or external use where more than 50% of the area devoted to sales or display is located within and uncovered external yard space[2]. The activity will entail the outdoor storage (for display, sale or hire) of various items including dismantled/crushed car bodies and/or baled scrap metal but excluding shipping containers.

10. The outdoor storage of the item described above may include items stacked/stored at any height (including heights exceeding 11m) within those areas identified on the plans in **Appendix 2**. Racking or other support structures are not proposed or necessary for storage, noting 'interlocking' of stacked items or other methodologies will be employed to ensure the safe and secure stacking of items at greater heights, where this is required. Notably, the dismantled/crushed car bodies and/or bales of scrap metal could be stacked to heights exceeding 20m.

11. A small office/administration building of approximately 100m^2 Gross Floor Area is proposed adjacent to the site entry and will include storage space for cycles.

12. A singular vehicle access is provided to/from the site and this provides access to a yard area that caters for loading requirements. Formal car parking, cycle parking and loading spaces are not required by the District Plan for the activity and are not proposed.

13. The activity will only operate during daytime hours (typically 8am-5pm), from Monday to Friday. The site will be secured by fencing and security gates.

14. The site will have minimal staff, with an estimated 1-2 full time equivalent staff required to manage deliveries and pickups and the sorting of items on the site. Similarly, vehicle movements to and from the site will be minimal. Whilst the sale, hire or display of items on site will be possible, the majority of customers will view content online meaning minimal customer visits to the site. Delivery activity will also be of a modest scale, noting consignments of materials to the site will be periodic and collection of materials sold or hired from the site will also be periodic. For the purposes of the application, certification is sought that up to 50 heavy vehicle trips and 100 other (non-heavy) vehicle trips per day is permitted. For the purposes of the application, certification is sought that up to 50 heavy vehicle trips and 100 other (non-heavy) vehicle trips per day is permitted. The CoC is sought explicitly on the basis of complying within the limits for High Traffic Generating (HTG) activities. This is consistent with the approach taken by the Council Officer in RMA/2023/2806 in determining the CoC could be sought explicit on the basis that it would comply with other District Plan standards including lighting, glare and noise standards.

15. A landscaping strip with trees is proposed along the site's eastern boundary with Tunnel Road, as required by the District Plan.

[2] This being consistent with the District Plan definition of a 'yard-based supplier'.

16. Given the site is generally flat and has an established, compacted metal surface that is suitable for the proposed activity, earthworks are not generally required. Some minor earthworks will be required for the purposes of forming the vehicle access and sealed apron at the entry to the site[3]. Given the small extent of works required, earthworks will not exceed a fill height >0.3m above ground level, or a cut of >0.6m below ground level, or a total volume of 20m^3.

17. Signage is not proposed as part of this application.

Statutory Framework

National Environmental Standard (NES) for Contaminants in Soil

18. The Environment Canterbury Listed Land Use Register identifies a Hazardous Activities and Industries List ('**HAIL**') activity within the site. The HAIL site (site 122022: Kennaway Farm) is indicated as having been partially investigated.

19. Resource consent RMA/2017/947 provides the following commentary relevant to NES considerations:

> *On the original site, the NES regulations do not apply as land contamination levels are below background levels. The site has been subject to extensive filling which currently still being completed and the consent includes provision to ensure that the fill is cleanfill. On this basis, consent is not required under the NES for the disturbance of earth or change of use.*

20. Consistent with this approach, the NES does not apply to the proposed activity.

Christchurch District Plan

Zoning & Planning Map Notations

21. The site is zoned *Industrial General (Portlink Industrial Park)* in the Christchurch District Plan ('District Plan' or 'Plan') and is subject to the following overlays and notations:

- Flood Management Area,
- Fixed Minimum Floor Level Overlay within Flood Management Area,
- Liquefaction Management Area,

22. As shown in Figure 2 above, the site is within the boundaries of the *Portlink Industrial Park Outline Development Plan* in Appendix 16.8.3 of the District Plan. Of relevance, the site is partly within the 11m building height limit area on that ODP (hatched area in **Figure 2**).

[3] The access will have a legal and formed width of 7m, with the sealed apron extending 10m back into the site. Earthworks to a maximum depth of 200mm are proposed for this area, to allow for the sealing of this area with asphalt or concrete.

Definitions

'Site' definition

23. As noted above, the subject site entails an area of land shown on a plan with defined boundaries and therefore accords with the District Plan definition of 'site', as follows:

> ***Site*** *means an area of land or volume of space shown on a plan with defined boundaries, whether legally or otherwise defined boundaries…*

Activity type (yard-based supplier)

24. The proposed activity as described above is a 'yard-based supplier', as defined below:

> ***Yard-based supplier*** *means the use of any land and/or building for selling or hiring products for construction or external use (which includes activities such as sale of vehicles and garden supplies), where more than 50% of the area devoted to sales or display is located within covered or uncovered external yard or forecourt space, as distinct from within a secured and weatherproof building. Drive-in or drive-through covered areas devoted to storage and display of construction materials (including covered vehicle lanes) will be deemed yard area for the purpose of this definition.*

Definition of 'outdoor storage

25. The definition of 'outdoor storage' and 'building' in the Plan is set out below. **Appendix 3** includes a legal opinion by Brookfields Lawyers (dated 16 November 2023) which provides advice to Council on the definition of 'building' as it relates to shipping containers. This opinion also discusses 'outdoor storage' and the relationship between the two definitions, confirming that they are not mutually exclusive.

26. The definition of 'outdoor storage area' below, includes *processed products*, of which baled scrap metal would be considered to fall within.

> ***Outdoor storage areas*** *means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.*

27. Based on the Brookfields opinion, land used for the storage of dismantled/crushed car bodies and/or baled scrap metal would be considered 'outdoor storage area'. However, the Brookfields opinion goes on to conclude that the dismantled/crushed car bodies and/or baled scrap metal would therefore also be considered to fall within the definition of 'building'.

28. At paragraph 57 the opinion considers this interpretation as it could relate to the storage of other matter, which is directly relevant to the application. Noting that Brookfields 'do not interpret the definition of building as necessarily excluding other forms of stacked equipment or devices'[4] At paragraph 60, Brooksfields consider that the circumstances in which stacked equipment is unlikely to fall within the meaning of a building is where:

[4] Paragraph 58 of the Brooksfields opinion dated 16 November 2023.

a) The stacks are relatively small in height and size;

b) Individual components are small/lightweight;

c) The stack is short-term;

d) The stack is unsupported.

29. The above interpretation of 'building' and 'outdoor storage area' is considered arbitrary, and not one which supports administrative efficiency. The user of the Plan should not have to measure the height/weight of said stacked items to determine whether it is a building, nor should the duration sought to stack such items determine whether it is a building or not. Moreover, it would be unclear to users of the Plan at which point the height, size or duration of a stored item would result in an item of outdoor storage then being defined and assessed as a building.

30. Given the above, the assessment of compliance has proceeded on the basis that dismantled/crushed car bodies and baled scrap metal are not buildings, as defined in the District Plan as follows:

> ***Building*** *means as the context requires:*
>
> *a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or*
>
> *b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and*
>
> *c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but*
>
> *excludes:*
>
> *d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;*
>
> *e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;*
>
> *f. retaining walls which are both less than 6m2 in area and less than 1.8 metres in height;*
>
> *g. structures which are both less than 6m2 in area and less than 1.8 metres in height;*
>
> *h. utility cabinets;*
>
> *i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;*
>
> *j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;*
>
> *k. artificial crop protection structures and crop support structures; and*
>
> *…*
>
> ***Advice note:*** *1. This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is*

different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

31. An assessment of the proposal's compliance with the applicable rules in the District Plan is set out in **Appendix 4**.

32. Notably, the area-specific rules for the Industrial General Zone (Portlink Industrial Park), permit those activities listed and permitted in the Industrial General Zone in Rule 16.4.1.1 P1-P21, subject to compliance with the area-specific built form standards in 16.4.4.2 and Industrial General Zone built form standards in 16.4.2. In this regard:

    a. Yard-based suppliers are a permitted activity under Rule 16.4.1.1 P11.

    b. Area specific built form standards in 16.4.4.2 are complied with.

    c. Industrial General Zone built form standards in 16.4.2 are complied with.

33. In regards the built form standards referenced above, it is noted that the only building proposed on the site is the small site office at the entry to the site which complies with applicable rules relating to 'buildings' (e.g. height controls, boundary setbacks, etc). The areas of outdoor storage (including dismantled/crushed car bodies and/or baled scrap metal and other items, of unspecified maximum heights but generally above 11m in height) otherwise comply with applicable built form standards. Notably, outdoor storage is not subject to any maximum height rules or controls.

34. Other (general) rules in the District Plan, including those relating to transport, earthworks and natural hazards are also complied with, as detailed in **Appendix 4**.

Activity status

35. Based on this assessment the proposal is a **permitted activity** and certification from Council pursuant to section 139 of the Act is sought, confirming that the proposal can lawfully proceed without a resource consent.

Appendix 1

Record of Title

RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD

Search Copy

R.W. Muir
Registrar-General
of Land

Identifier	**614676**
Land Registration District	**Canterbury**
Date Issued	11 July 2013

Prior References
578312

Estate	Fee Simple
Area	6319 square metres more or less
Legal Description	Lot 301 Deposited Plan 463785
Registered Owners	

Braeburn Property Limited

Interests

Appurtenant hereto is a right of way created by Transfer 811061 - 9.10.1970 at 2:00 pm

Subject to a right to drain water over part marked MB on DP 463785 created by Easement Instrument 9138592.7 - 13.8.2012 at 3:21 pm

Subject to a right to drain water over part marked H on DP 463785 created by Easement Instrument 9446208.9 - 11.7.2013 at 12:01 pm

The easements created by Easement Instrument 9446208.9 are subject to Section 243 (a) Resource Management Act 1991

9446208.13 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 11.7.2013 at 12:01 pm

9750370.7 Surrender of the right to drain water created by Easement Instrument 9446208.9 as appurtenant to Lots 502-3 DP 473298 - 9.6.2014 at 5:10 pm

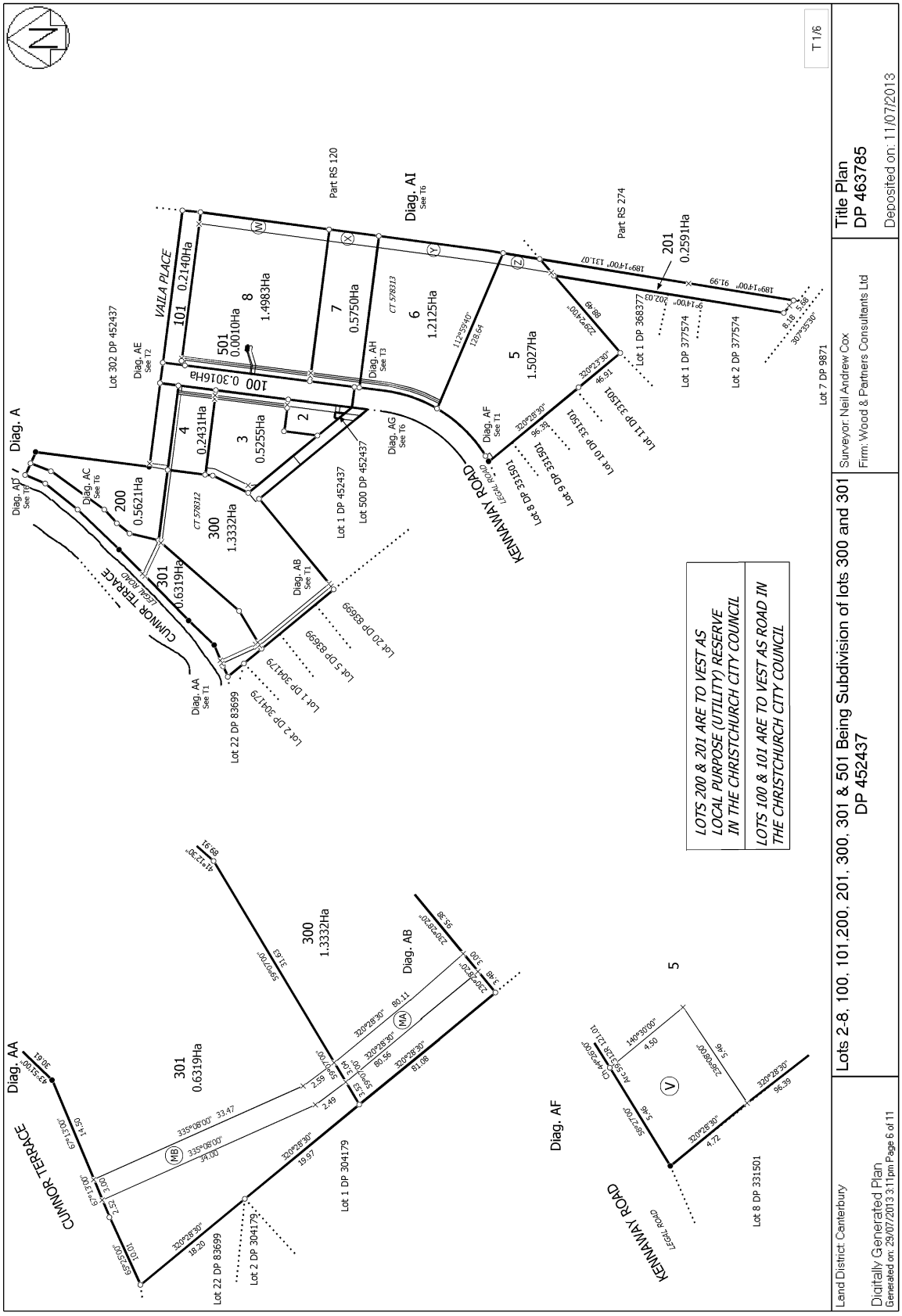
9750370.14 Encumbrance to Christchurch City Council - 9.6.2014 at 5:10 pm

10703567.1 Variation of Encumbrance 9750370.14 - 24.2.2017 at 2:10 pm

10838003.1 Variation of Encumbrance 9750370.14 - 8.8.2017 at 8:46 am

Fencing Covenant in Transfer 11545342.2 - 27.9.2019 at 4:36 pm

12209381.1 Variation of Encumbrance 9750370.14 - 22.12.2021 at 3:36 pm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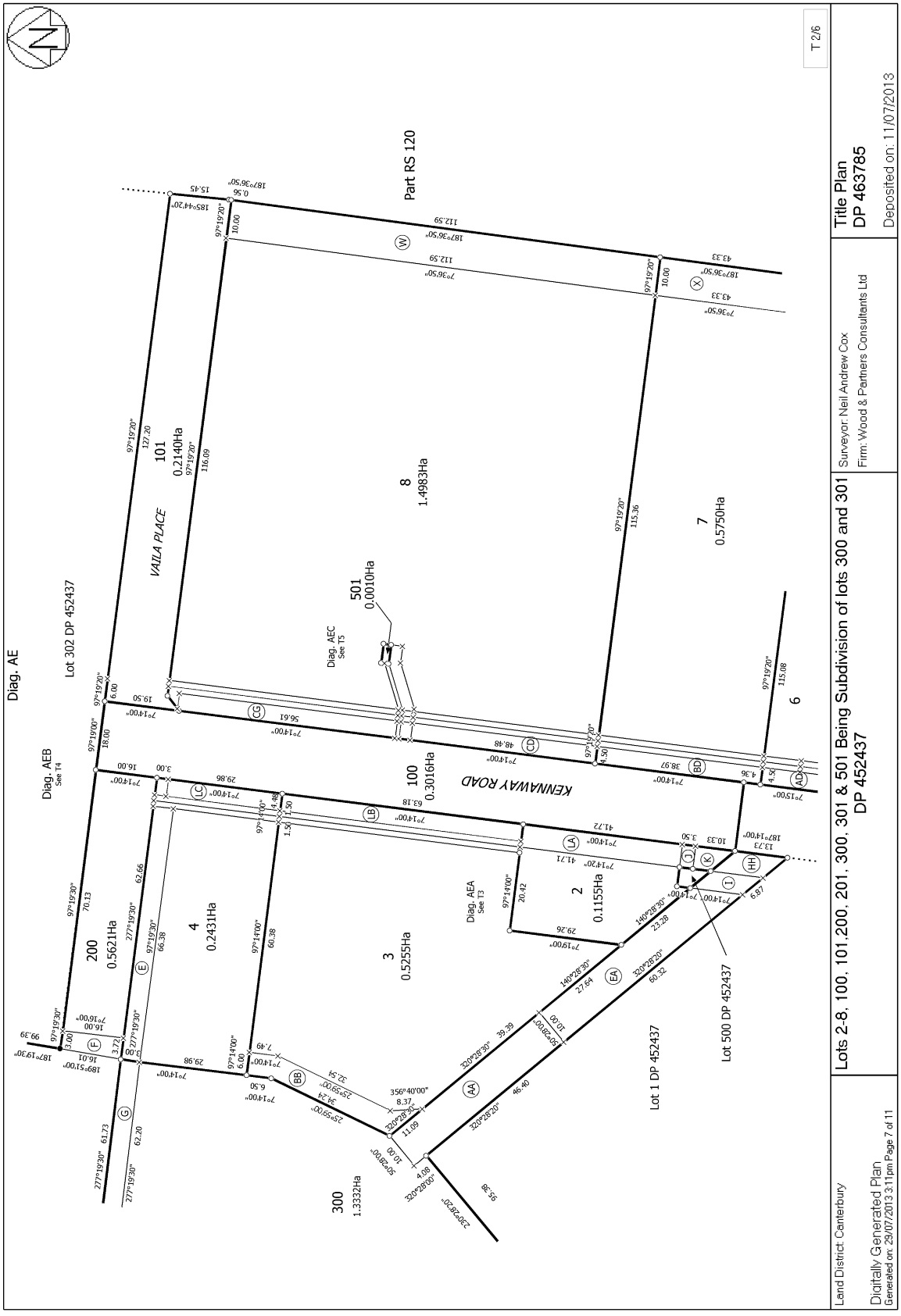
DP 463785
Deposited on: 11/07/2013
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
Lots 2-8, 100, 101,200, 201, 300, 301 & 501 Being Subdivision of lots 300 and 301 DP 452437
LOTS 200 & 201 ARE TO VEST AS LOCAL PURPOSE (UTILITY) RESERVE IN THE CHRISTCHURCH CITY COUNCIL
LOTS 100 & 101 ARE TO VEST AS ROAD IN THE CHRISTCHURCH CITY COUNCIL
Land District Canterbury
Digitally Generated Plan
Generated on: 29/07/2013 3:11pm Page 6 of 11
VAILA PLACE
KENNAWAY ROAD
CUMNOR TERRACE
Lot 302 DP 452437
Lot 1 DP 452437
Lot 500 DP 452437
Lot 22 DP 83699
Lot 2 DP 304179
Lot 1 DP 304179
Lot 1 DP 368377
Lot 1 DP 377574
Lot 2 DP 377574
Lot 7 DP 9871
Lot 8 DP 331501
Lot 9 DP 331501
Lot 10 DP 331501
Lot 11 DP 331501
Lot 20 DP 83699
Lot 5 DP 83699
Part RS 120
Part RS 274
CT 578312
CT 578313
Diag. A
Diag. AA
Diag. AB
Diag. AC
Diag. AD
Diag. AE
Diag. AF
Diag. AG
Diag. AH
Diag. AI
100 0.3016Ha
101 0.2140Ha
200 0.5621Ha
201 0.2591Ha
300 1.3332Ha
301 0.6319Ha
501 0.0010Ha
1 0.2431Ha
2
3 0.5255Ha
4 0.2431Ha
5 1.5027Ha
6 1.2125Ha
7 0.5750Ha
8 1.4983Ha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KENNAWAY ROAD
Lot 302 DP 452437
Lot 1 DP 452437
Lot 500 DP 452437
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Diag. AEB
See I4
Diag. AEC
See I5
Diag. AEA
See I3
101
0.2140Ha
8
1.4983Ha
7
0.5750Ha
6
501
0.0010Ha
100
0.3016Ha
200
0.5621Ha
4
0.2431Ha
3
0.5255Ha
2
0.1155Ha
300
1.3332Ha
T 2/6
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DP 463785
Deposited on: 11/07/2013
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
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DP 452437
Land District: Canterbury
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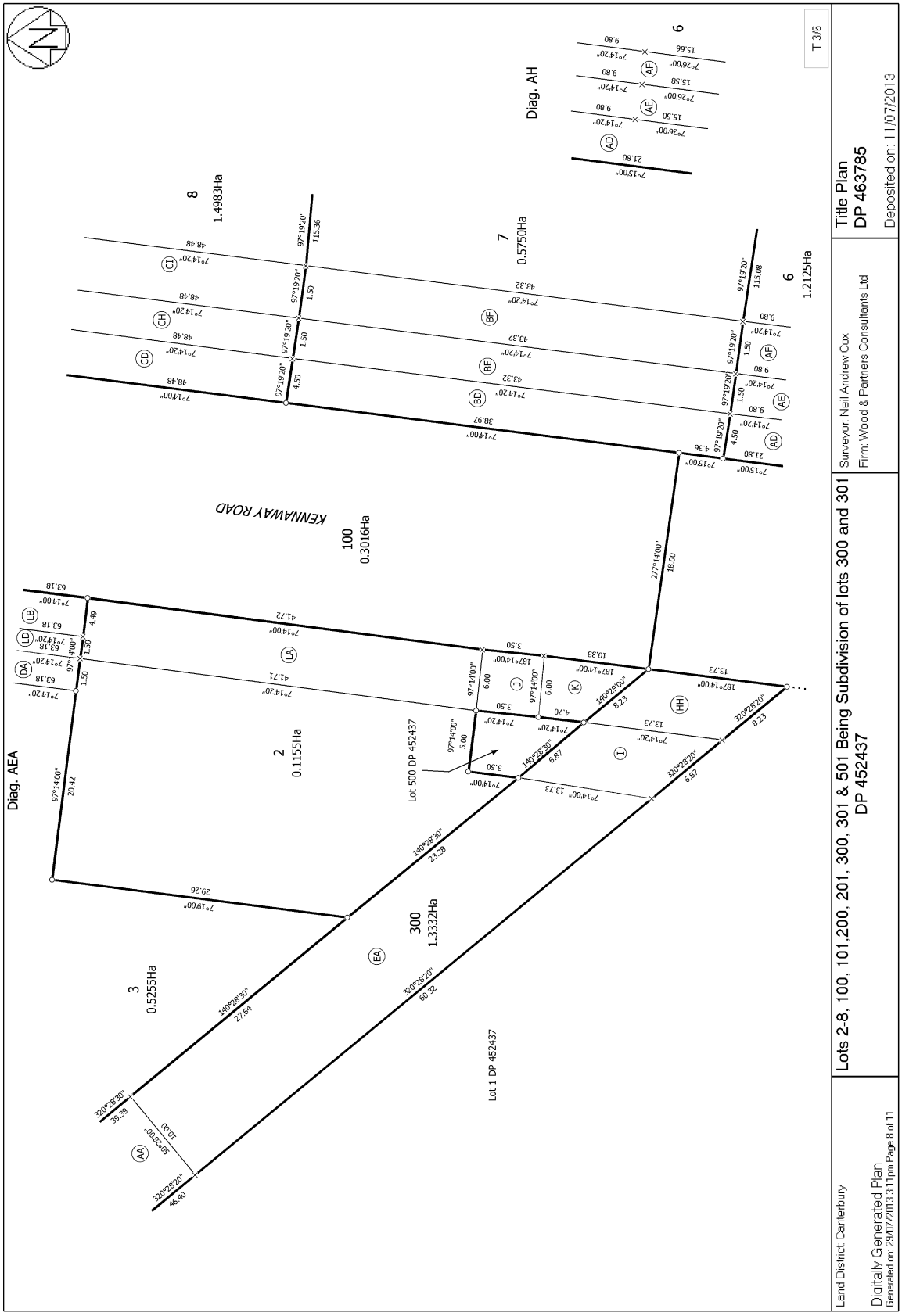
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Surveyor: Neil Andrew Cox
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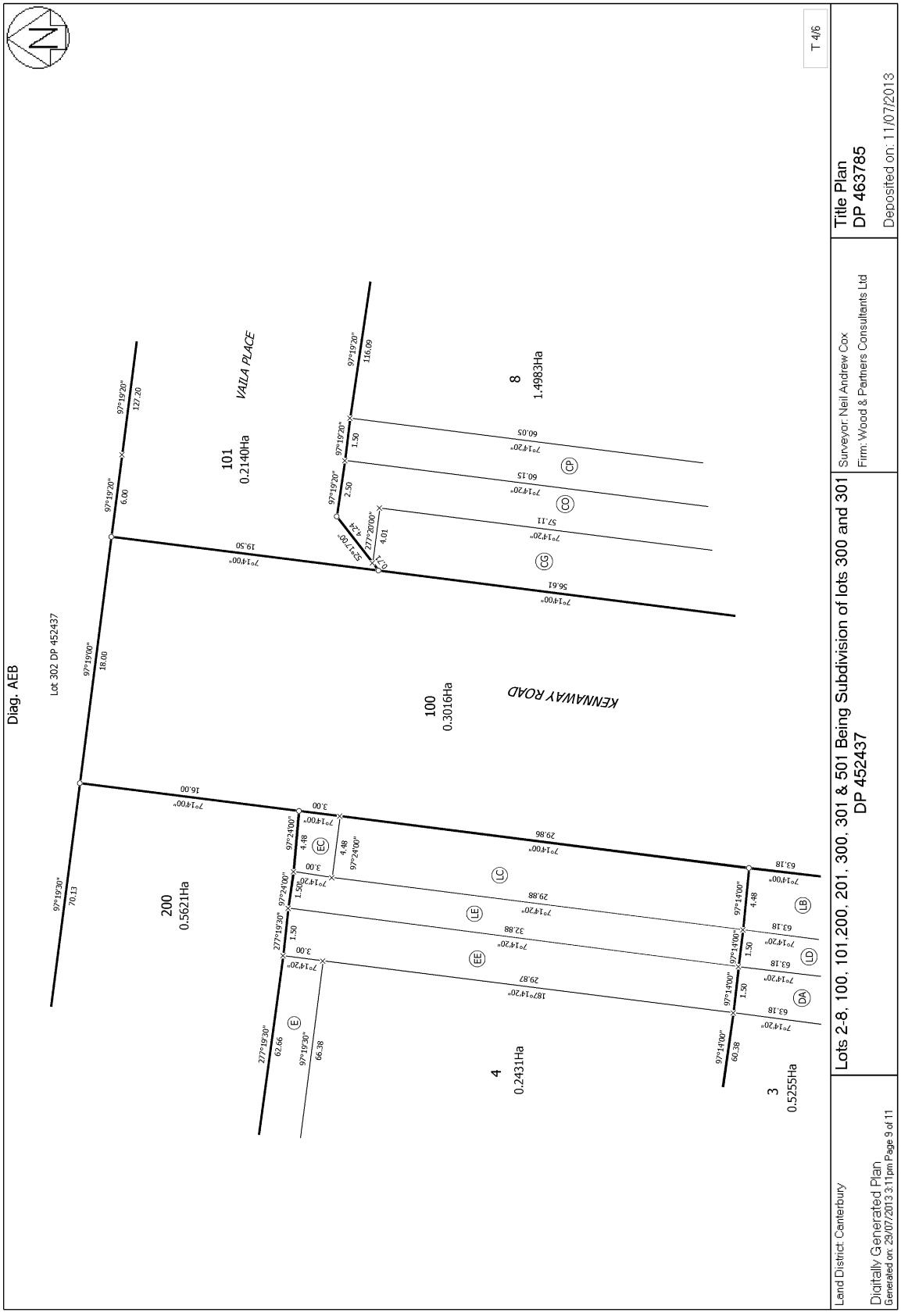
Land District: Canterbury
Digitally Generated Plan
Generated on: 29/07/2013 3:11pm Page 8 of 11
T 3/6
KENNAWAY ROAD
Diag. AEA
Diag. AH
Lot 500 DP 452437
Lot 1 DP 452437
100
0.3016Ha
2
0.1155Ha
3
0.5255Ha
300
1.3332Ha
6
1.2125Ha
7
0.5750Ha
8
1.4983Ha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Lot 302 DP 452437
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KENNAWAY ROAD
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100
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200
0.5621Ha
8
1.4983Ha
4
0.2431Ha
3
0.5255Ha
Title Plan
DP 463785
Deposited on: 11/07/2013
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
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DP 452437
Land District: Canterbury
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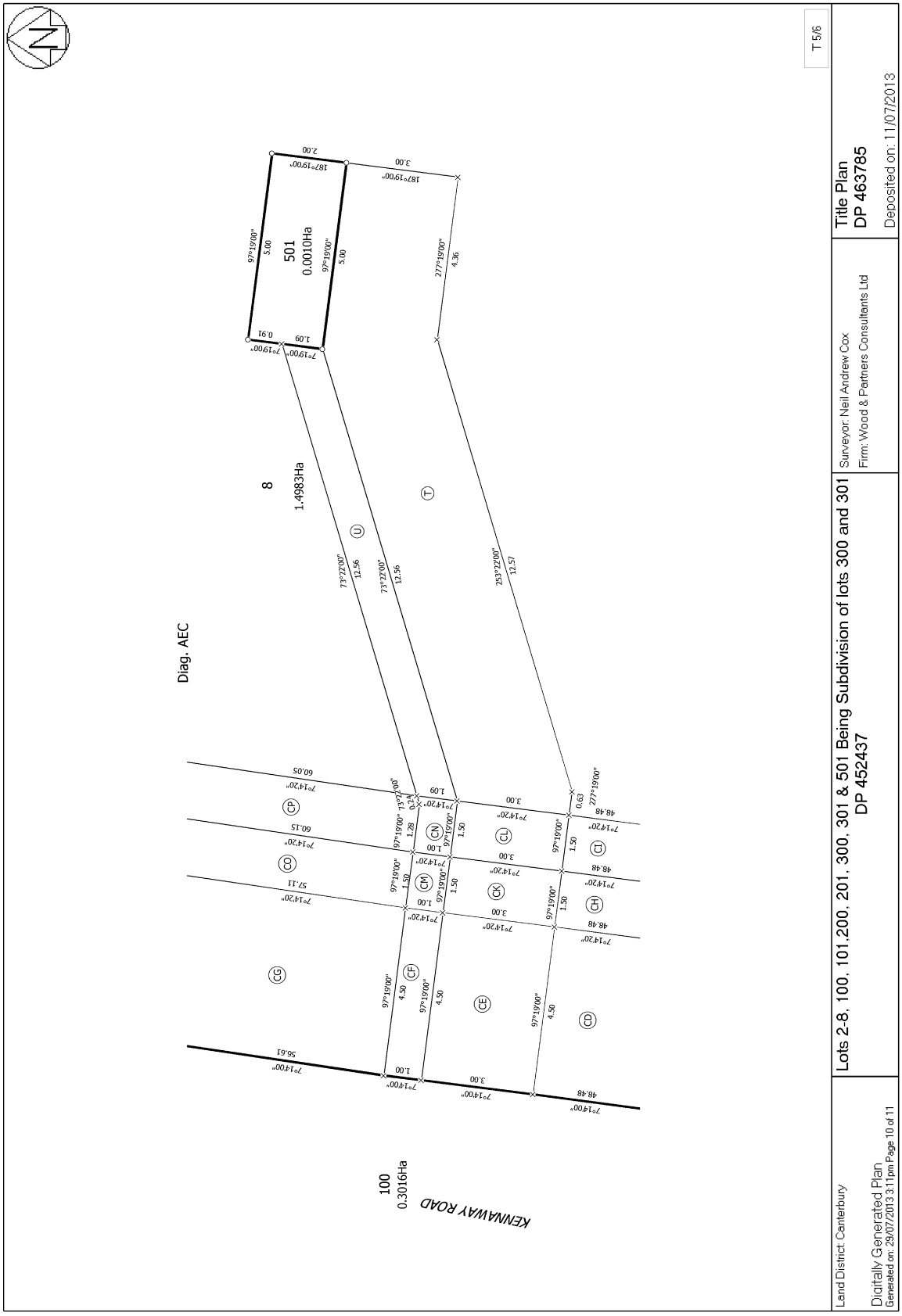
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Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
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DP 452437
Land District: Canterbury
Digitally Generated Plan
Generated on: 29/07/2013 3:11pm Page 10 of 11
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501
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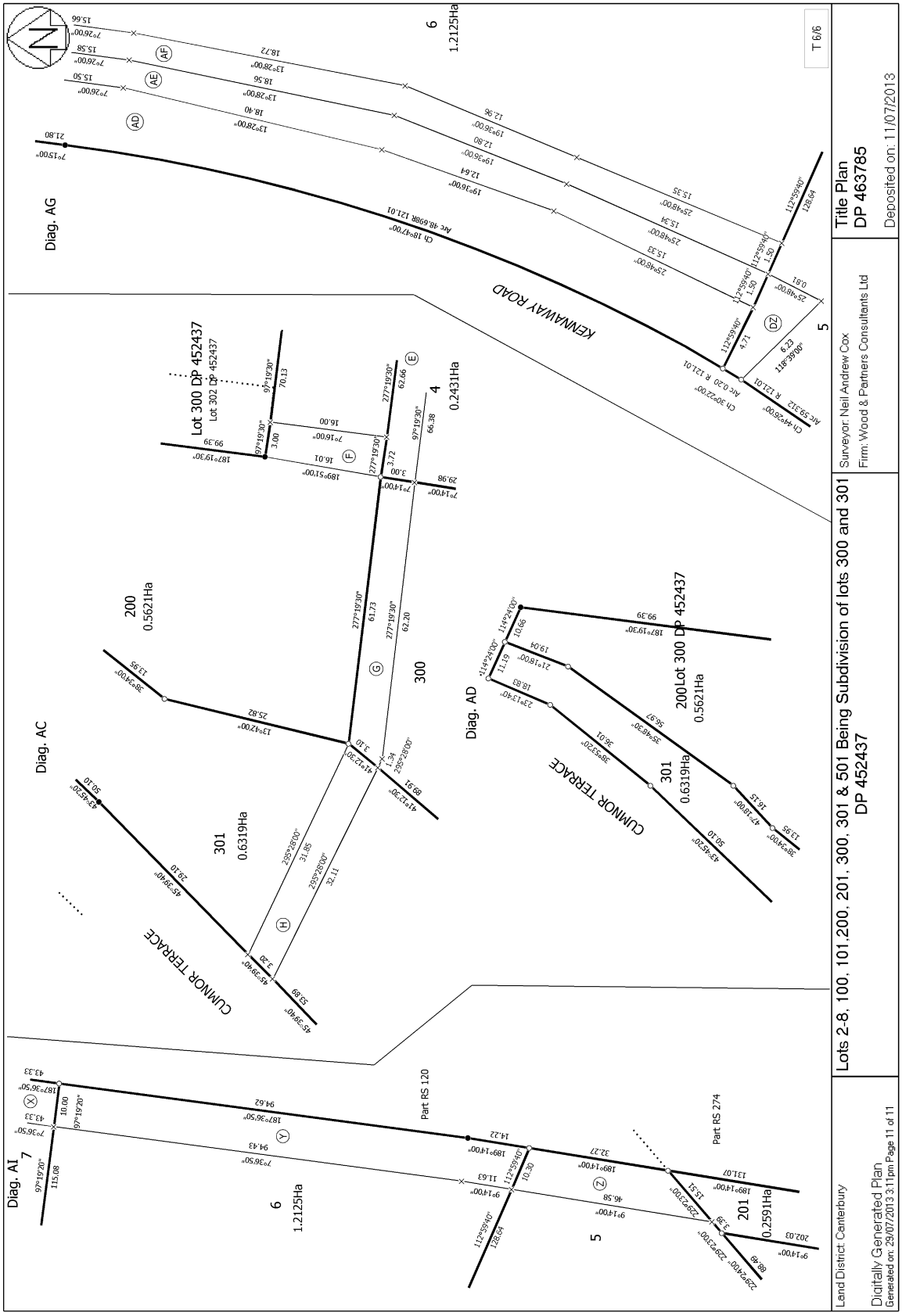
8
1.4983Ha
100
0.3016Ha
KENNAWAY ROAD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DP 463785
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Surveyor: Neil Andrew Cox
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Land District: Canterbury
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Generated on: 29/07/2013 3:11pm Page 11 of 11
KENNAWAY ROAD
CUMNOR TERRACE
Diag. AG
Diag. AC
Diag. AD
Diag. AI
Lot 300 DP 452437
Lot 302 DP 452437
200
0.5621Ha
300
301
0.6319Ha
4
0.2431Ha
5
6
1.2125Ha
7
201
0.2591Ha
Part RS 120
Part RS 274

RECORD OF TITLE
UNDER LAND TRANSFER ACT 2017
FREEHOLD

Search Copy

R.W. Muir
Registrar-General
of Land

Identifier **842854**
Land Registration District **Canterbury**
Date Issued 18 December 2018

Prior References
689371

Estate	Fee Simple
Area	12.0077 hectares more or less
Legal Description	Lot 305 Deposited Plan 525615 and Lot 302 Deposited Plan 473298

Registered Owners
Braeburn Property Limited

Interests

Appurtenant to Lot 302 DP 473298 herein and appurtenant to Lot 305 DP 525615 part formerly Lot 1 DP 53089 herein is a right of way created by Transfer 811061 - 9.10.1970 at 2:00 pm

9138592.2 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 13.8.2012 at 3:21 pm (affects Lot 302 DP 473298)

Appurtenant to Lot 302 DP 473298 herein is a right to drain water created by Easement Instrument 9446208.7 - 11.7.2013 at 12:01 pm

The easements created by Easement Instrument 9446208.7 are subject to Section 243 (a) Resource Management Act 1991

Appurtenant to Lot 302 DP 473298 herein is a right to drain water created by Easement Instrument 9446208.9 - 11.7.2013 at 12:01 pm

The easements created by Easement Instrument 9446208.9 are subject to Section 243 (a) Resource Management Act 1991

9750370.5 Variation of Consent Notice 9138592.2 pursuant to Section 221(5) Resource Management Act 1991 - 9.6.2014 at 5:10 pm

9750370.14 Encumbrance to Christchurch City Council - 9.6.2014 at 5:10 pm

10703567.1 Variation of Encumbrance 9750370.14 - 24.2.2017 at 2:10 pm

10838003.1 Variation of Encumbrance 9750370.14 - 8.8.2017 at 8:46 am

Subject to Section 241(2) Resource Management Act 1991 (affects DP 525615)

Subject to a right to drain water over part Lot 305 DP 525615 marked EE, H, J, DD, W, N & FF on DP 525615 created by Easement Instrument 11294647.5 - 18.12.2018 at 2:51 pm

The easements created by Easement Instrument 11294647.5 are subject to Section 243 (a) Resource Management Act 1991

Subject to a right (in gross) to drain water over part Lot 305 DP 525615 marked EE, DD, FF & H on DP 525615 in favour of Christchurch City Council created by Easement Instrument 11294647.7 - 18.12.2018 at 2:51 pm

The easements created by Easement Instrument 11294647.7 are subject to Section 243 (a) Resource Management Act 1991

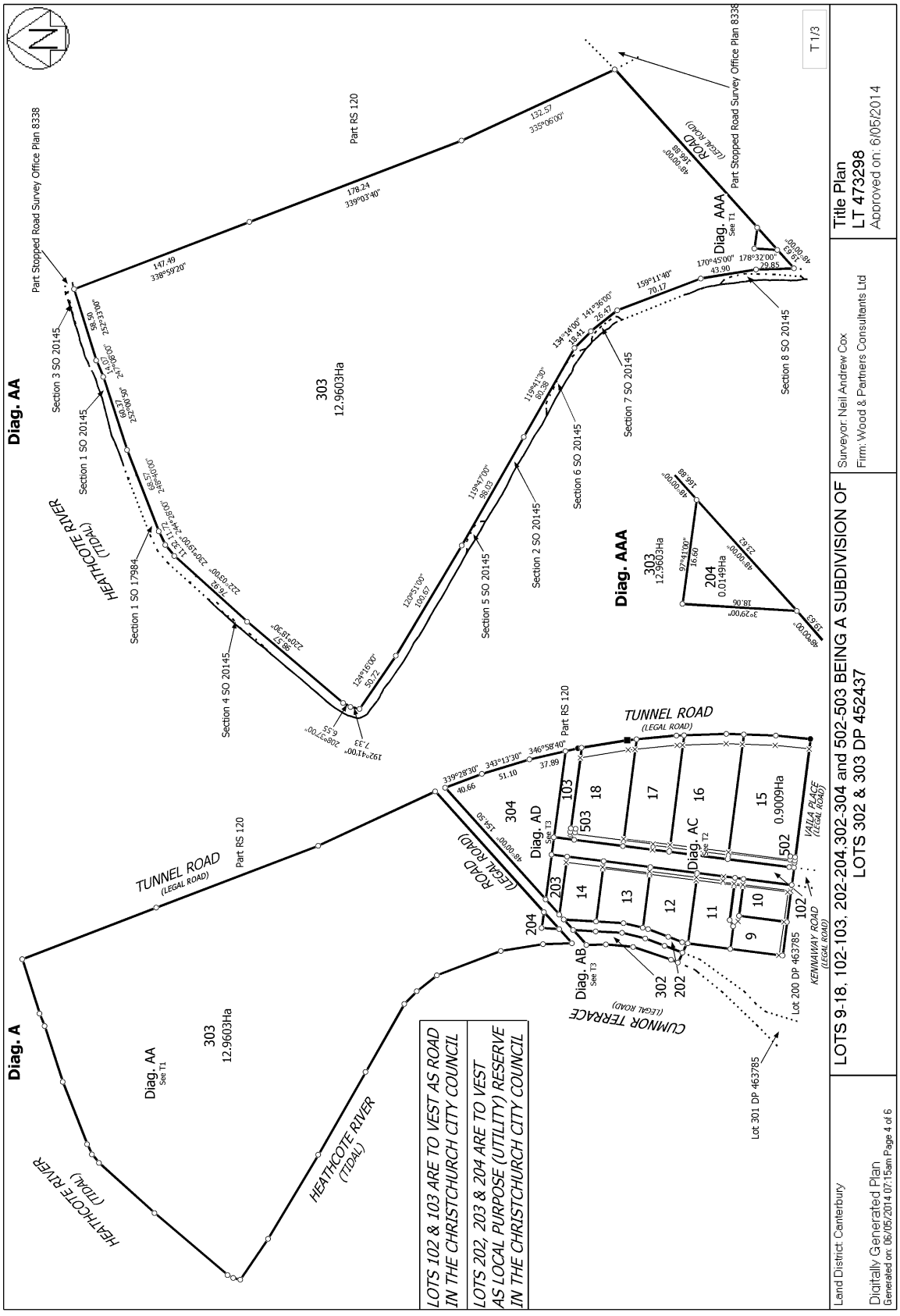
11294647.10 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 18.12.2018 at 2:51 pm (affects Lot 305 DP 525615)

11294647.23 Encumbrance to Christchurch City Council - 18.12.2018 at 2:51 pm (affects Lot 305 DP 525615)

Fencing Covenant in Transfer 11545342.2 - 27.9.2019 at 4:36 pm

12209381.1 Variation of Encumbrance 9750370.14 - 22.12.2021 at 3:36 pm

12397548.2 Mortgage to Bank of New Zealand - 18.3.2022 at 3:42 pm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Diag. A
Diag. AAA
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Part RS 120
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Section 1 SO 20145
Section 1 SO 17984
Section 4 SO 20145
Section 5 SO 20145
Section 2 SO 20145
Section 6 SO 20145
Section 7 SO 20145
Section 8 SO 20145
303
12.9603Ha
204
0.0149Ha
HEATHCOTE RIVER (TIDAL)
TUNNEL ROAD (LEGAL ROAD)
ROAD (LEGAL ROAD)
CUMNOR TERRACE (LEGAL ROAD)
KENWAY ROAD (LEGAL ROAD)
VALLI PLACE (LEGAL ROAD)
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Diag. AC
Diag. AD
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Lot 301 DP 463785
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LOTS 102 & 103 ARE TO VEST AS ROAD IN THE CHRISTCHURCH CITY COUNCIL
LOTS 202, 203 & 204 ARE TO VEST AS LOCAL PURPOSE (UTILITY) RESERVE IN THE CHRISTCHURCH CITY COUNCIL
LOTS 9-18, 102-103, 202-204,302-304 and 502-503 BEING A SUBDIVISION OF LOTS 302 & 303 DP 452437
Land District Canterbury
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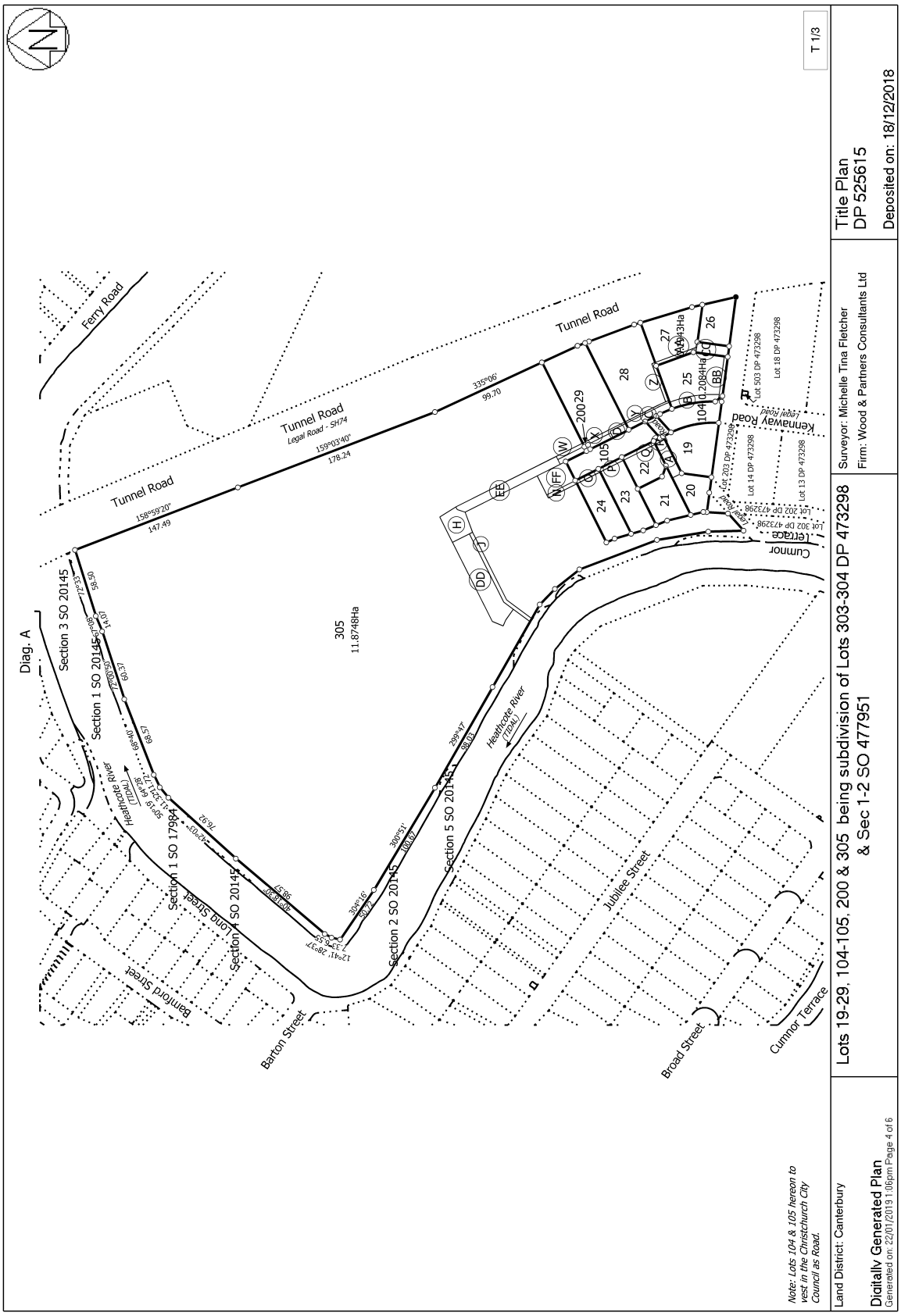
Generated on: 06/05/2014 07:15am Page 4 of 6
Surveyor Neil Andrew Cox
Firm: Wood & Partners Consultants Ltd
Title Plan
LT 473298
Approved on: 6/05/2014
T 1/3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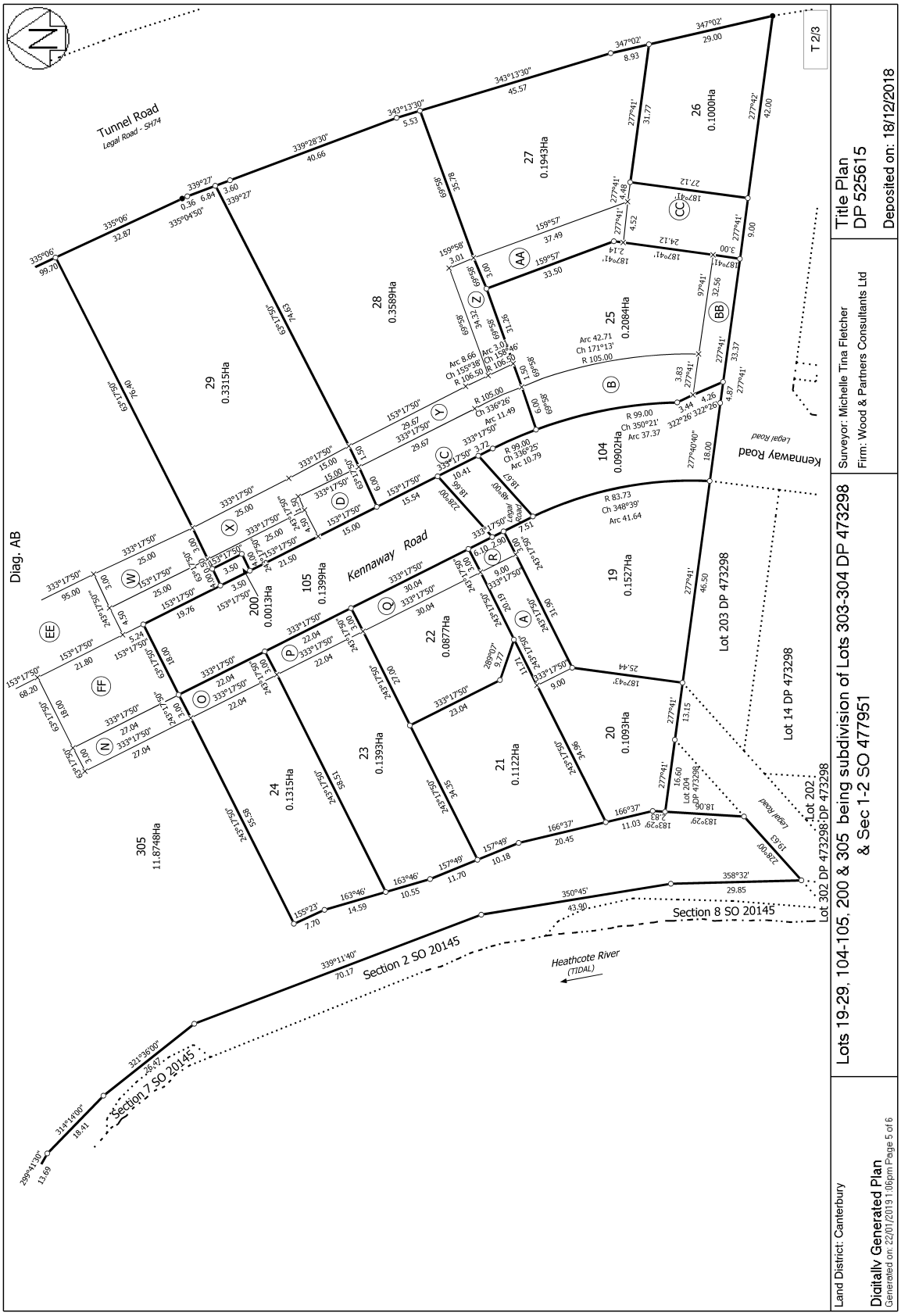
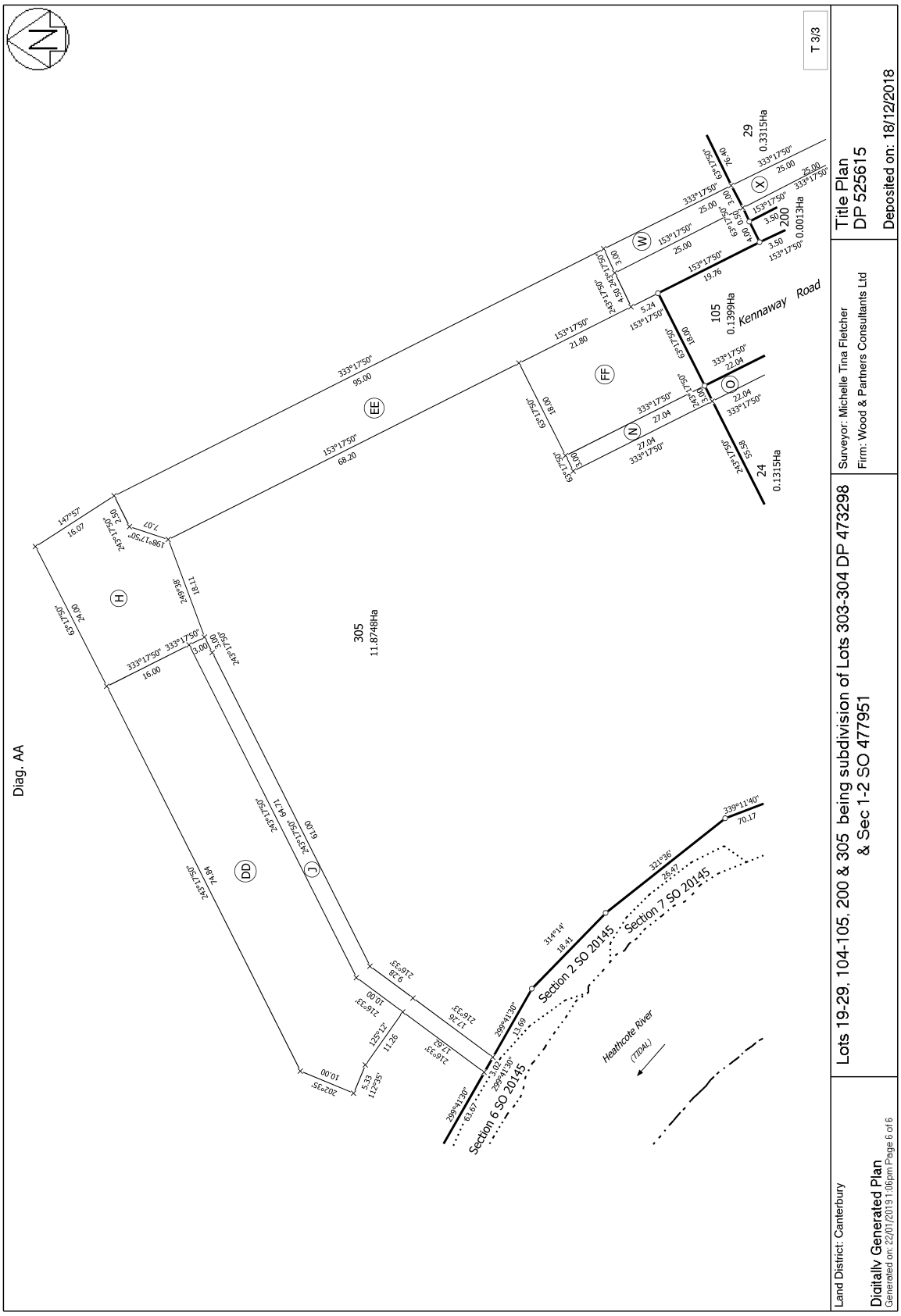
Title Plan
DP 525615
Deposited on: 18/12/2018
Surveyor: Michelle Tina Fletcher
Firm: Wood & Partners Consultants Ltd
Lots 19-29, 104-105, 200 & 305 being subdivision of Lots 303-304 DP 473298
& Sec 1-2 SO 477951
Land District: Canterbury
Digitally Generated Plan
Generated on: 22/01/2013 1:06pm Page 4 of 6
Note: Lots 104 & 105 hereon to vest in the Christchurch City Council as Road.
Diag. A
Section 3 SO 20145
Section 1 SO 20145
Section 1 SO 17984
Section 2 SO 20145
Section 5 SO 20145
Tunnel Road
Legal Road - SH74
Ferry Road
Kennaway Road
Legal Road
Cumnor Terrace
Jubilee Street
Broad Street
Barton Street
Bamford Street
Long Street
Heathcote River
(Tidal)
305
11.8748Ha
104
0.2084Ha
200
29
Lot 503 DP 473298
Lot 18 DP 473298
Lot 201 DP 473298
Lot 14 DP 473298
Lot 13 DP 473298
Lot 302 DP 473298

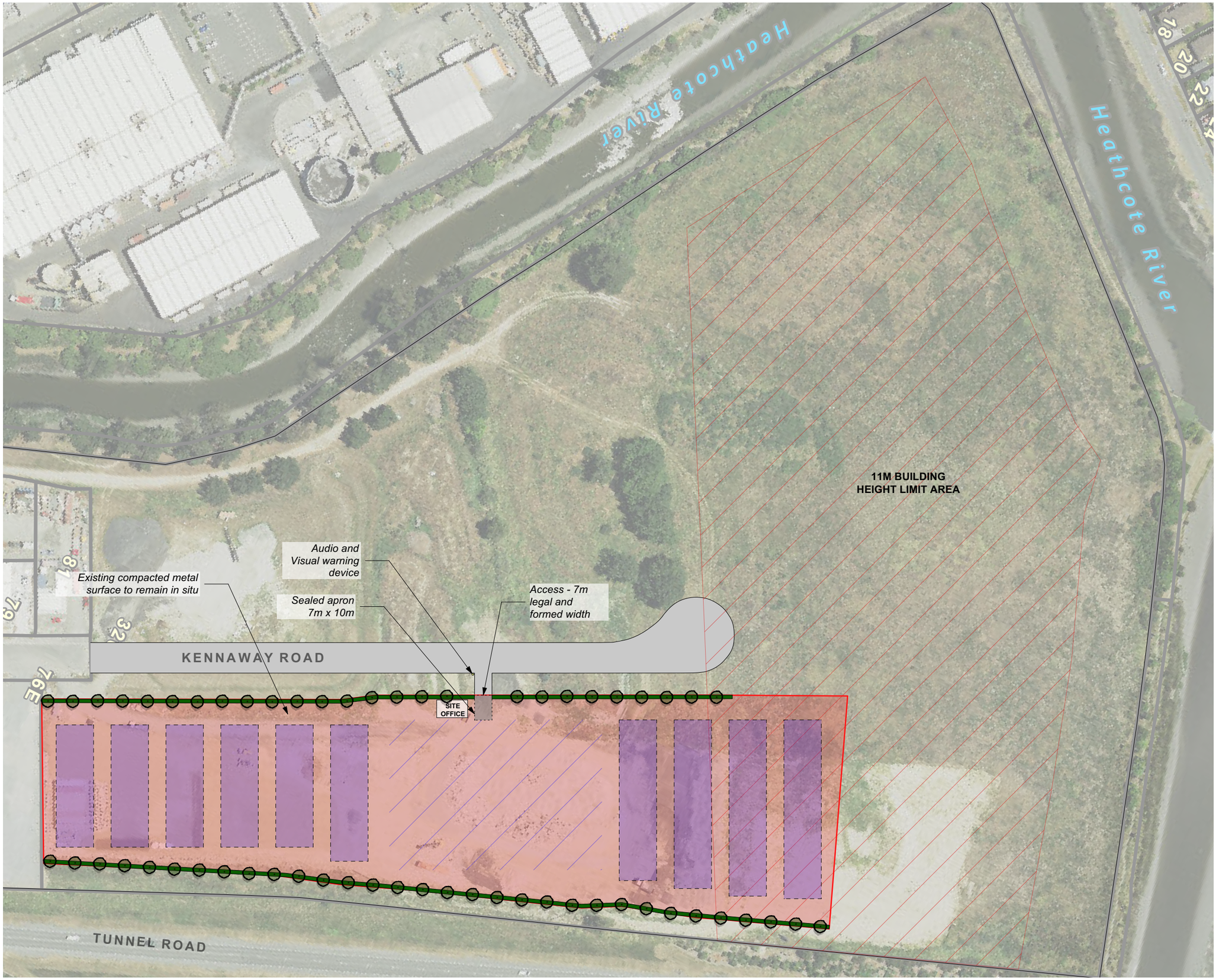

Tunnel Road
Legal Road - SH74
Kennaway Road
Legal Road
Diag. AB
Lots 19-29, 104-105, 200 & 305 being subdivision of Lots 303-304 DP 473298 & Sec 1-2 SO 477951
Title Plan DP 525615
Deposited on: 18/12/2018
Surveyor: Michelle Tina Fletcher
Firm: Wood & Partners Consultants Ltd
Land District: Canterbury
Digitally Generated Plan
Generated on: 22/01/2013 1:06pm Page 5 of 6
T 2/3
Lot 203 DP 473298
Lot 14 DP 473298
Lot 202 DP 473298
Lot 204 DP 473298
Section 8 SO 20145
Section 2 SO 20145
Section 7 SO 20145
Heathcote River (TIDAL)


T 3/3
Diag. AA
Kennaway Road
Heathcote River
(TIDAL)
Section 2 SO 20145
Section 7 SO 20145
Section 6 SO 20145
305
11.8748Ha
105
0.1399Ha
200
0.0013Ha
24
0.1315Ha
29
0.3315Ha
Land District: Canterbury
Digitally Generated Plan
Generated on: 22/01/2013 1:06pm Page 6 of 6
Lots 19-29, 104-105, 200 & 305 being subdivision of Lots 303-304 DP 473298 & Sec 1-2 SO 477951
Surveyor: Michelle Tina Fletcher
Firm: Wood & Partners Consultants Ltd
Title Plan
DP 525615
Deposited on: 18/12/2018

Appendix 2

Application Plan

Novo Group Limited
Level 1, 279 Montreal Street
PO Box 365, Christchurch 8140
O - 03 365 5570
info@novogroup.co.nz



KEY:

- SITE BOUNDARY - 25,111m^2 (APPROX)
- PROPOSED SITE OFFICE AND BIKE STORAGE (APPROX. 100M^2 GFA)
- YARD AREA
- OUTDOOR STORAGE STACKS
- 11M BUILDING HEIGHT LIMIT AREA
- PROPOSED 1.5M LANDSCAPE STRIP (1 TREE EVERY 10M OF ROAD FRONTAGE) WITH 1.8M FENCE

NOTE:

1. *Office building to have a minimum floor level that is a minimum of 12.3m above CCC datum'*

2. *Planting of trees and shrubs within the landscaping strip adjacent to Tunnel Road shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and shall meet the requirements specified in Part A of Appendix 6.11.6 of Chapter 6*

SITE PLAN

PORTLINK INDUSTRIAL PARK

REVISION

DRAWING N/Z	**DRAWN** NR
SCALE 1:1500	**DATE** 24/10/2023
JOB NO. 022074	**SHEET NO.** DWG - 1.00

Appendix 3

Legal Opinions

BROOKFIELDS
LAWYERS

NAVIGATING YOUR SUCCESS

26 July 2022

Christchurch City Council
53 Hereford Street
Christchurch 8013

By Email: Brent.Pizzey@ccc.govt.nz

LEX 24279 - CUMNOR TCE 320A - BUILDING DEFINITION

1. You have asked whether the stacking of containers within the Industrial General Zone and the Portlink Specific Zone falls within the definition of "Building" under the Christchurch District Plan. This letter of advice includes and expands upon our preliminary opinion provided on 22 July 2022.

2. In summary, we consider that shipping containers do fall within the definition. This interpretation is clearly supported by the text and the contextual indicators we have found in the time available are consistent with this.

INTERPRETIVE APPROACH

3. We have sought to ascertain the meaning of the relevant definition on the basis of its text and in light of its purpose.[1] Consistent with High Court authority, we have also sought to find an interpretation that:[2]

   (a) Avoids absurd or anomalous results;

   (b) Is consistent with the expectations of landowners; and

   (c) Promotes administrative efficiency (rather than requiring lengthy historical research to assess lawfulness).

TEXT OF THE DEFINITION

4. The relevant text of the definition states:

   means as the context requires:

---

1 Section 10 of the Legislation Act 2019, *Spackman v Queenstown Lakes District Council* [2007] NZRMA 327(HC).

2 *Mount Field Ltd v Queenstown-Lakes District Council* 31/10/08, Heath J, HC Invercargill CIV-2007-425-700.

Tower One, 205 Queen Street, Auckland, New Zealand. PO Box 240, Shortland Street, Auckland 1140
Tel: +64 9 379 9350 Fax: +64 9 379 3224 DX CP24134 www.brookfields.nz

a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or

b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and

c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;

e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;

f. retaining walls which are both less than 6m2 in area and less than 1.8 metres in height;

g. structures which are both less than 6m2 in area and less than 1.8 metres in height;

h. utility cabinets;

i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;

k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, excludes:

l. any dam that retains not more than 3 metres depth, and not more than 20,000 m3 volume of water, and any stopbank or culvert;

m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:

i. not exceeding 25,000 litres capacity and supported directly by the ground; or

ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and

n. stockyards up to 1.8 metres in height.

Advice note:

This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

5. Both clauses (a) and (b) apply to "any structure" that falls within those clauses. If it can be said to be a structure, clause a. is sufficiently broad to include a shipping container as

a 'moveable structure' and clause b. would include the placement and stacking of containers on land i.e. placement of a structure on or over land.

6. The District Plan does not contain a definition of a "structure", but this term is defined in section 2 of the RMA. Absent any contrary provision in the District Plan itself, the word "structure" must have the same meaning as in the RMA when interpreting the District Plan.[3] The RMA definition is "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*". While the definition is to some extent circular in that it defines a structure as being a building, a shipping container would fall within the ordinary meaning of a device, which is defined in the Oxford Dictionary as "*a thing made or adapted for a particular purpose, especially a piece of equipment mechanical or electronic*".

7. However, the RMA definition of a structure also requires a structure to be fixed to land. The Courts in considering this definition have previously held that in order to fall within the meaning of a structure, the device does not need to be fixed permanently to the land, nor does it require some form of connection to the land in order to be fixed. It may be fixed by the gravity of the device itself. For example, in *Ohawini Bay Ltd v Whangarei District Council*,[4] rocks placed on top of one another to form a seawall were held to be a structure despite only being fixed to the land by their own weight. Similarly, in *Antoun v Hutt City Council*,[5] a moveable tiny home sitting on top of a metal plate, but with no permanent foundations, was held to be sufficiently fixed to the land by gravity to fall within the meaning of a structure. We acknowledge that both types of structure in those cases had either a greater degree of permanence (in relation to the seawall) or potentially greater difficulty in being moved (in the case of the tiny home) than a shipping container. However, given the weight of a shipping container is such that it cannot be easily moved and would require a crane/forklift/straddle carrier to shift, it does bear some degree of similarity to the tiny home example. As such, we consider that there is a reasonably strong basis to conclude that a shipping container would fall within the meaning of a structure for the purposes of clauses a. and b. of the definition of a building.

8. Clause c. expressly refers to shipping containers as falling within the meaning of a "building", where it is *"used on-site as a residential unit or place of business or storage"*. On the facts it is unclear whether the containers themselves are being stored, or whether the containers are being used to store other items. If the latter, then that would be within the scope of clause c. If the former, then it is arguable that this would not be within the scope of clause c, although there is some basis to conclude that when a shipping container is in its original unconverted state, it is designed as a storage device and therefore would fall within this use regardless of whether at a specific point in time it is sitting empty.

9. We have also considered whether the express reference to shipping containers in clause c should be interpreted to mean that where a shipping container is not *"used on-site as a residential unit or place of business or storage"* then it cannot come within the other clauses of the definition of building. As a starting point, we note that shipping containers

[3] Section 20 of the Legislation Act 2019.
[4] Environment Court, Auckland, A068/06.
[5] (2020) 21 ELRNZ 595.

that are not *"used on-site as a residential unit or place of business or storage"* are not expressly excluded under clauses d.-n.

10. We consider that the definition is sufficiently broad on its face to include the placement and stacking of shipping containers within clauses (a) and (b) and also that it is arguable that stacked shipping containers that are either currently storing other goods or are placed on the site in preparation to be loaded with goods, are arguably being used for storage and therefore fall within clause (c).

11. We have also considered whether the activity of container storage could be considered an Outdoor storage area which is defined as:

> means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.

12. We have given greater thought to whether container storage nearly fits into this definition. The Oxford dictionary defines "equipment" broadly to mean "*items needed for a particular purpose*". A shipping container would potentially fall within this broad definition of equipment, as would almost anything. As something man-made, it could also potentially fall within the meaning of a "processed product". We note that the definition of an outdoor storage area only refers to equipment or products etc that are stored "outside of fully enclosed buildings". In the example you have given us, the containers are not themselves within a larger enclosed building, and therefore the land on which the containers are situated would appear to fall within the meaning of an outdoor storage area.

13. We have given consideration to whether the land potentially being an outdoor storage area within the meaning of the District Plan definition would mean that the container cannot also be a "building". On balance, we do not think that it would. Given that the definition of a building anticipates that something moveable or temporary could fall within the meaning of a building, it follows that storage areas could exist where buildings themselves are stored, for example, sites where tiny homes are constructed and stored, or sites where other relocateable dwellings or other buildings are stored. Such land could potentially fall within the meaning of an outdoor storage area, unless the use falls within the meaning of a yard-based supplier. We are not aware of whether in practice you have treated land used for the storage of relocateable buildings as an outdoor storage area, but we consider that unless there are other specific District Plan provisions that relate to such activities, it would make sense that if such sites are outdoor storage areas, so then would a shipping container yard, regardless of whether the shipping containers are also buildings.

14. In support of this interpretation, we have considered the provisions in chapter 16 of the District Plan. We did not identify anything that would mean that the definition of a building and an outdoor storage area are necessarily mutually exclusive. In particular, we note that rule 16.4.4.1.1 P1 for the Industrial General Zone (Portlink Industrial Park) provides that any activity listed in rule 16.4.1.1 P1-P21 is a permitted activity provided it complies with the built form standards in rule 16.4.4.2 and rule 16.4.2 (unless specified otherwise in rule 16.4.4.2). Rule 16.4.1.1 P1 provides that any new building or addition to a building for an activity listed in P2 to P21 is a permitted activity, provided it complies with the built form standards in 16.4.2. Those activities include an industrial activity (P2) and

warehousing and distribution activities (P3), either or both of which could potentially apply to the storage of shipping containers. There are built form standards that apply specifically to outdoor storage areas. We could not see any obvious reason as to why those standards could not apply in conjunction with other specific standards that apply to buildings.

15. We now consider this reading of the text in light of its purpose as expressed by the objectives and policies and other context of the Christchurch District Plan.

PURPOSE

Objectives and policies

16. We have reviewed the objectives and policies of Chapter 16 Industrial in the Christchurch District Plan. We note the following amenity focused objectives and policies which are relevant to a purposive interpretation of "building" in the context of the relevant zone:

> 16.2.3 Objective - Effects of industrial activities
>
> a. Adverse effects of industrial activities and development on the environment are managed to support the anticipated outcome for the zone while recognising that sites adjoining an industrial zone will not have the same level of amenity anticipated by the Plan as other areas with the same zoning.
>
> 16.2.3.1 Policy - Development in greenfield areas
>
> a. Manage effects at the interface between greenfield areas and arterial roads, rural and residential areas with setbacks and landscaping.
>
> 16.2.3.2 Policy - Managing effects on the environment
>
> a. The effects of development and activities in industrial zones, including reverse sensitivity effects on existing industrial activities as well as, visual, traffic, noise, glare and other effects, are managed through the location of uses, controls on bulk and form, landscaping and screening, particularly at the interface with arterial roads fulfilling a gateway function, and rural and residential areas, while recognising the functional needs of the activity.
>
> b. Effects of industrial activities are managed in a way that the level of residential amenity (including health, safety, and privacy of residents) adjoining an industrial zone is not adversely affected while recognising that it may be of a lower level than other residential areas.

17. Plainly these objectives and policies contemplate the management of adverse effects of industrial activities and development having regard to the amenity values of adjoining areas. Techniques include:

(a) setbacks and landscaping.

(b) controls on bulk and form.

18. The Industrial General Zone (Portlink Industrial Park) contains bespoke rules in respect of maximum building height and building setbacks. These techniques would be ineffective in respect of shipping containers if these structures were not covered by the relevant rules. The purpose as expressed by the objectives and policies of the zone therefore supports the textual interpretation identified above.

Zone rules

19. It is relevant to consider the implications of containers being classed as "buildings" on the relevant zone rules as a check to avoid anomalous outcomes. The starting point is that buildings for industrial activities are permitted within the zone (Rule 16.4.1.1.P1.). As such, any container storage that conforms to building height and setback standards can occur without the need for a consent which is consistent with enabling industrial activity to occur within the zone. We do not consider that anomalous outcomes arise from the application of height and setback rules to containers. These outcomes are consistent with the direction of the objectives and policies. However, the application of rule 16.6.2.2 Maximum building coverage, of a site could be considered anomalous because it would limit the placement of containers to 50% of a site and a resource consent would be required to exceed this threshold. We are uncertain as to whether there is a proper resource management reason for this threshold to apply to container storage e.g. impervious surfaces. On balance, we don't consider that the application of this standard could be sufficiently anomalous to supplant the textual and purposive interpretation outlined above.

Yours faithfully
BROOKFIELDS

Andrew Green
Partner

Direct dial: +64 9 979 2172
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6 October 2022

From: Jo Appleyard / Lucy Forrester
Direct: +64 3 353 0022 / +64 3 353 0939
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Ref: 100552396/1873109.3

Brent Pizzey
Counsel for Christchurch City Council

Craig Jorgensen
Compliance Officer – Resource Consents

by email: brent.pizzey@ccc.govt.nz / craig.jorgensen@ccc.govt.nz

Dear Brent and Craig

RE: PORTLINK INDUSTRIAL PARK

1 We act for Braeburn Property Limited (*Braeburn*).

2 We have been asked to respond to the legal advice Council obtained from Brookfields Lawyers dated 26 July 2022 (the *Opinion*) regarding the stacking of containers in the Industrial General Zone (*IGZ*) of the Christchurch District Plan (*District Plan*).

3 As you are aware, Braeburn own and lease the site at the end of Cumnor Terrace, Woolston (Certificate of title 842854) for the temporary storage of transiting shipping containers.

4 As is apparent from **Annexure 1**, we disagree with the Council's position on the interpretation of "*building*" under the District Plan.

5 We are also concerned at the correspondence from the Council (including that from Craig Jorgensen dated 30 September 2022) whereby the Council has:

5.1 given notice to Braeburn to reduce the height of its shipping container stacks on site; and

5.2 advised that an abatement notice will be issued should Braeburn not complete the above.

6 While the interpretation issue is clearly in dispute, we consider it would not be appropriate for the Council to proceed to compliance action or the issue of an abatement notice (and we reserve our position fully around that). Similarly, even if the interpretation issue was not live, we do not consider that 7 days is in any circumstance a reasonable timeframe within which to require the removal of some 2,000 containers.

7 Having noted the above we also emphasise Braeburn's desire to work constructively with the Council to resolve the matter as soon as possible.

8 In this regard, Braeburn suggests meeting as soon as possible to talk through:

8.1 our more detailed view on the interpretation issue set out in **Annexure 1**; and

8.2 if it is not resolved:

(a) whether the Council would be supportive of jointly seeking urgent declaratory relief from the Court; and/or

(b) how the Council might process a resource consent application (on the basis that Braeburn would apply without prejudice to the position set out that no consent is required).

9 We think this is a much more constructive use of everyone's time. In the alternative, were an abatement notice to be issued, Braeburn would appeal the notice and request a stay on enforcement so that the activity can continue while the interpretation issue can be determined before the Court. Again, we think given Braeburn's commitment above there is nothing to be gained from that and we want to approach this constructively on the basis of the approach set out above.

10 Can the Council please urgently confirm it will not take further compliance action at this time, and send through some times for a possible meeting?

11 We look forward to hearing from you.

Yours sincerely

Jo Appleyard / Lucy Forrester
Partner / Senior Solicitor

ANNEXURE 1: IS A CONTAINER A BUILDING?

1 We agree with the first part of the Brookfield's Lawyers' advice (*the Opinion*) that it is helpful to consider at the forefront of this exercise, principles of interpretation that might assist in the proper understanding of the rules in the District Plan.

2 When interpreting rules in planning documents, *Powell v Dunedin City Council* established that (in summary):[1]

2.1 the words of the document are to be given their ordinary meaning unless it is clearly contrary to the statutory purpose or social policy behind the plan or otherwise creates an injustice or anomaly;

2.2 what is meant by plain and ordinary meaning should be determined with reference to "*what would an ordinary reasonable member of the public examining the plan, have taken from*" the planning document;

2.3 the interpretation should not prevent the plan from achieving its purpose; and

2.4 if there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

3 Reading the words of a planning document with reference to its plain and ordinary meaning is therefore the starting point to any interpretation exercise.

The definition

4 The definition of 'building' in the Christchurch District Plan is as follows:

Building

means as the context requires:

a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or

b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and

c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;

e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;

f. retaining walls which are both less than 6m2 in area and less than 1.8 metres in height;

g. structures which are both less than 6m2 in area and less than 1.8 metres in height;

h. utility cabinets;

i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;

k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, excludes:

l. any dam that retains not more than 3 metres depth, and not more than 20,000 m3 volume of water, and any stopbank or culvert;

m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:

   i. not exceeding 25,000 litres capacity and supported directly by the ground; or

   ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and

n. stockyards up to 1.8 metres in height.

[1] *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

5 'Structure' is not defined in the Christchurch District Plan but is defined in the RMA as meaning:

> "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*"

6 As noted, the definition of 'building' is divided between what it "*means*" (subclauses (a) to (c)) that is then supplemented by a list in subclauses (d) to (n) of activities that are then excluded from that meaning.

7 We also consider the relationship between each of (a) to (c) is important:

7.1 subclauses (a) and (b) are separated by an "*and/or*" which means to meet the definition of a 'building' you must meet either of (a) and/or (b):

7.2 whereas, subclause (c) is separate solely by an "*and*", which we read to mean that:

(a) if (c) is met, then it will be considered a building irrespective of whether (a) and/or (b) have been met; and

(b) conversely, if the matters listed in subclause (c) do not meet the further criteria in that subclause (i.e. used on-site as a residential unit or place of business or storage), then they should not fall within the definition of 'building'.

8 As we set out below, we consider that the specific reference to shipping containers in subclause (c) means it is the clause that should be the focus of the interpretation exercise. In light of the approach taken in the Opinion we nevertheless consider whether sub-clauses (a) and (b) apply.

Subclause (c) and the interpretative canon that the specific overrides the general

9 Subclause (c) lists specific activities that, despite not necessarily being structures (as we discuss later in this advice), will nevertheless in some circumstances fall within the definition of 'building' under the District Plan:

> "*any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage.*"

10 To understand how subclause (c) interacts with the rest of the definition (and with the principles of interpretation in mind), the starting point is that specific provisions must override general ones.

11 Here, (c) is the specific clause of the definition applying specifically to vehicles, trailers, tents, marquees, shipping containers, caravans, and boats, when certain circumstances apply. This means that for any of these activities to be considered a 'building' under this definition, it must also be:

11.1 used on-site either as:

(a) a residential unit; or

(b) a place of business; or

(c) a place of storage.

12 Accordingly, subclause (c) will prevail over the more general subclauses (a) and (b).

13 Similarly, if the activities listed in subclause (c) are not being used on-site for those purposes, then they do not fall within the definition of 'building'.

14 We consider the best example of this in practice is the reference to "*marquee*" which most likely would be a structure under the RMA definition (and therefore fall squarely within subclauses (a) and (b)):

14.1 there would be no point in including (c) if it was always going to fall within (a) and (b) anyway;

14.2 we consider the same argument can be made in relation to the other matters listed in (c).

15 The approach set out in the Opinion would result in potentially absurd outcomes, including at the more extreme, the potential for vehicles, trailers and tents within camping grounds, rental car/campervan depots and even car sales yards to be considered 'buildings' under the District Plan (i.e. on the basis that those matters might also be 'structures' under the broad definition provided by the RMA).

16 In fact, the Opinion[2] itself identifies a further possible absurdity as a result of its own interpretation of the definition – relating to the application of rules regarding maximum building coverage in the Industrial Park Zone. The Opinion does not go on to consider any other planning anomalies as a result of its interpretation – whereas we consider this raises further questions as to how the floor area of containers (or any other activity listed in subclause (c), should they be deemed 'buildings') could properly be used to inform requirements in the District Plan for the likes of cycle parking facilities, loading areas, and high trip generator requirements which are all assessed with reference to gross floor area in chapter 7 of the District Plan.

17 For completeness we note our acknowledgement that the definition of 'building' includes a list of specific exclusions to that definition, which do not include shipping containers. However, we consider this is because subclause (c) contemplates there might be situations (i.e. where it is being used on-site as a residential unit or place of business or storage) where a shipping container should be considered a 'building' and therefore there is no express exclusion of shipping containers, but rather, an express inclusion into the definition when certain circumstances arise.

---

[2] At paragraph [19].

Subclause (c) and the further requirements that need to be met

18 With regards to the words '*used on-site as a residential unit or place of business or storage*', quite clearly, the containers are not being used as a residential unit or a place of business.

19 The Opinion, however, considers that on the facts it is unclear whether the containers:

19.1 are being used to store other items, in which case they would be within the scope of subclause (c); or

19.2 themselves are being stored on-site, which the Opinion considers there is an argument to say that a shipping container is designed as a storage device and therefore would fall within the scope of subclause (c) whether or not it was siting empty at the site.

20 We disagree, particularly with the latter, and consider the Opinion does not consider the plain and ordinary meaning of the wider subclause.

21 We read subclause (c) as saying that, for it to apply, the shipping containers must be used on-site as a place of storage. That is the plain and simple reading and meaning of those words – it is being used for on-site storage.

22 We agree that if the containers are being used on-site as a place of storage (i.e. are remaining on-site as a place where things are periodically stored and moved), which in and of itself implies some permanency, then yes the container would fall within the scope of subclause (c). However, this is not the case in this situation. The containers (irrespective of whether they contain any items) are not there for the purposes of being used for on-site storage. The containers are in transit and are themselves being stored on site until they are moved to their next destination.

23 We do not consider the fact that the containers themselves are being stored on site as constituting being 'used on-site as a place of storage.' And we also do not agree with the proposition that given shipping containers are designed as a storage device they would fall within subclause (c) regardless. The Opinion does not elaborate on how it has come to this stretched interpretation of the words in subclause (c). It is certainly not from a plain and ordinary reading of the words of the definition.

24 Without repeating the discussion set out in paragraphs [15] and [16], the same absurdities are also potentially engaged here – for example, a car dealership is effectively a place where cars are stored prior to sale. Again, the activity is the relevant matter being used on-site as a place of storage – rather than the storage of the matters themselves.

25 A similar question would also need to be asked regarding a container sitting on a truck that was being stored in a transport yard. Again, it is the use of the container for storage that is relevant, not the storage of the container itself.

Alternative argument: Subclauses (a) and (b) and the meaning of 'structure'

26 Subclauses (a) and (b) both refer to any 'structure', and the Opinion asserts that if a container is a 'structure' it will also be a 'building' under the District Plan definition.

27 The Opinion goes on to consider what a 'structure' is with reference to the Resource Management Act 1991 (*RMA*) definition and case law. As noted above, the RMA defines a 'structure' as meaning:

> "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*"

28 To inform this definition, the Opinion considers two cases and considers that these provide a reasonably strong basis to conclude that a shipping container is a 'structure' under the RMA definition.

29 We note that the cases referred to, while helpful, do not deal with 'structures' analogous to a shipping container. We therefore do not consider these provide any directly comparable analogy for the assertion that a shipping container is a 'structure':

***Ohawini Bay Ltd v Whangarei District Council*[3]**

29.1 In this case all parties accepted that the sea wall was not a 'building' as defined in the District Plan (as retaining walls were expressly excluded from the definition, and it was not disputed that a sea wall was a retaining wall). Rather, the case was concerned with whether this sea wall was a 'structure' and in particular the words 'fixed to land' within the RMA definition.

29.2 The Court looked to the dictionary definition of the word 'fixed' which read "*[d]efinitely and permanently placed or assigned; stationary or unchanging in relative position; definite, permanent, lasting*".[4]

29.3 The Court ultimately found that the sea wall/retaining wall was fixed to the land and therefore was a structure under the definition in the RMA:

(a) it did not consider the definition excluded things being held permanently in place by gravity.

(b) the sea wall was placed with the intention that it would remain permanently in place and that it was fixed to land (noting evidence that the wall was embedded into the sand using an excavator).[5]

---

[3] EnvC Auckland A68/06, 31 May 2006.

[4] At [24].

[5] At [24].

Antoun v Hutt City Council[6]

29.4 This case concerned whether a tiny house was a 'structure' and therefore a 'building' requiring resource consent. Again, the Court considered the dictionary definition of 'fixed' as meaning "*placed or attached in a way that does not move easily*."[7]

29.5 The Court considered that the tiny house was fixed to the property in such a way to be a 'structure' as defined in the RMA, and therefore a 'building' under the District Plan, based on a number of factors specific to the facts of that case, including in particular:[8]

(a) the appearance of the tiny house as a dwelling house capable of being used for permanent occupation;

(b) the obvious design and capacity for the tiny house to be used as a dwelling house capable of permanent occupation;

(c) the intention displayed on the resource consent application papers to connect the tiny house to services such as electricity, water, and drainage;

(d) the evident legal and practical difficulties in moving the tiny house.

29.6 The Court in this case outright rejected the notion that this tiny house was for the purpose of temporary occupation;[9] and for completeness, we note the tiny house in this case was not a 'container house' as we sometimes see from time to time with tiny houses, but a more substantial two storey dwelling constructed in situ:

6 [2020] EnvC 6.

7 At [46].

8 At [58].

9 At [56].

30 We consider the shipping containers on the Braeburn site are quite clearly distinguishable from the specific facts of those two cases:

30.1 the sea wall was clearly a permanent form, embedded into the ground and not easily moved; and

30.2 the tiny house was a substantial form, which by virtue of the facts clearly intended to have some permanency and could not easily be moved from the site.

31 By contrast, the shipping containers in question:

31.1 are not fixed; they are quite clearly transitory in nature (given the activity occurring on site is the temporary storage of transiting shipping containers) and are not intended in any way to be permanently on site; and

31.2 are capable of being moved easily. Containers, by their nature, are intended to be moved from place to place. In terms of what is 'easily moved', we do not consider the Court to have required that this could be done by a single person. In the context of a container in an industrial zone, within a yard designed for the specific purpose of storing and transiting containers with all of the required equipment, the containers are capable of being easily moved, and in practice are regularly moved to, from and around the site as required.

32 On this basis, we do not consider the shipping containers on this site fall within the definition of 'structures' under the RMA.

Further matters relevant to interpretation

33 In addition to the primary and secondary positions set out above, we note:

Relevance of the definition of 'outdoor storage area'

33.1 We do not see the relevance of paragraphs 12 and 13 of the Opinion regarding consideration of an 'outdoor storage area'. The issue at hand is whether or not the containers are 'buildings' and therefore subject to the height limits in the District Plan. Regardless of what other activity a shipping container might constitute.

Purpose of the provisions

33.2 With respect to the purpose of the provisions in the zone, we agree that the objectives and policies in the District Plan provide for the management of adverse effects from industrial activities on amenity values of adjoining areas. But equally, we note that these recognise that sites adjoining an industrial zone will not have the same level of amenity anticipated by the District Plan as other areas with the same zoning.

33.3 The Opinion appears to reverse engineer the purpose of the zone provisions into its own interpretation of the definition of a 'building'. We do not agree that the objectives and policies of the District Plan require such an interpretation.

33.4 We accept that some of the methods provided in the plan to manage such effects include setbacks, landscaping, and bulk and form controls. However, we note that these controls on bulk and form apply to specific activities (which the Council when it prepared its District Plan must have deemed necessary to manage). Height, as a control on bulk, applies only to 'buildings'. It is our view that is because the District Plan contemplates the greatest effects of bulk on amenity is from buildings, and these need to be managed through the Plan.

Other statutory regimes

33.5 We recognise that care needs to be taken when approaching any definition of '*building'* under any other statutory regime,[10] but we note that section 9 of the Building Act 2004 (*Building Act*) excludes from the definition of building:

> 9 Building: what it does not include
>
> In this Act, building does not include—
>
> (g) containers as defined in regulations made under the Health and Safety at Work Act 2015; or

33.6 The Health and Safety at Work (Hazardous Substances) Regulations 2017 has a very broad definition of containers used for hazardous substance storage which would extend to shipping containers where they are used for hazardous substances storage.

33.7 Again, in the Building Act context, this position is consistent with Determination 2011/104[11] where the Ministry of Business Innovation and Employment determined that the use of containers for the storage of hazardous substances was not a building for the purposes of the Building Act. Other determinations have confirmed that the mere placement of containers will not generally be regarded as building work.[12]

34 For the additional above reasons (which are by no means exhaustive), we consider that the shipping containers on this particular site do not fall within the definition of a 'building' under the District Plan.

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[10] Particularly given the definition of 'building' in the District Plan expressly notes that it is different to the definition of 'building' contained in the Building Act.

[11] https://building.govt.nz/assets/Uploads/resolving-problems/determinations/2011/2011-104.pdf

[12] For example https://www.building.govt.nz/assets/Uploads/resolving-problems/determinations/2014/2014-030.pdf

MinterEllisonRuddWatts.

7 October 2022

By Email: brent.pizzey@ccc.govt.nz
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Attention: Brent Pizzey, Counsel
Craig Jorgensen, Compliance Officer – Resource Consents
Adrian Lambert, Compliance Officer – Regulatory Compliance Unit

Christchurch City Council
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Portlink Industrial Park shipping container depot

1. We act for Specialised Container Services (Christchurch) Limited (**SCS**) who sub-lease the site at 320A Cumnor Terrace, Woolston (**Site**), which is owned by Braeburn Property Limited (**Braeburn**). SCS operates a shipping container depot on the Site.

2. We understand Christchurch City Council (**Council**) currently holds the view that the shipping containers stacked on the Site constitute a 'building' for the purposes of the Christchurch District Plan (**Plan**), and that the shipping containers do not comply with the height and setback requirements applicable to buildings within the Portlink Industrial Park in the Industrial General Zone. We have been provided with a legal opinion prepared by Brookfields Lawyers dated 26 July 2022 that supports this view.

3. We have also been provided with a letter issued by Chapman Tripp to the Council on 6 October 2022 on behalf of Braeburn, which provides a contrary opinion and concludes that shipping containers do not fall within the definition of 'building' under the Plan. Chapman Tripp's letter proposes a way forward to address the differences in opinion.

4. This issue has potentially significant implications for SCS as the operator of the Site. Any requirement to reduce the height and footprint of the shipping containers would be a significant logistical exercise and could have a material impact on SCS' business and its ability to meet its customers' requirements. SCS is also committed to ensure that it complies with all relevant regulatory requirements and is concerned by the Council's suggestion that it will take enforcement action in respect of the issue. We have therefore been asked to provide our opinion on the interpretation issue and assist SCS to work constructively with Braeburn and the Council to resolve the matter.

5. To summarise:

   (a) We agree with Chapman Tripp's interpretation of the definition of 'building' in the Plan and its view that:

      (i) the shipping containers stacked on the Site do not fall within the definition; and

      (ii) therefore, the stacking of the shipping containers on the Site does not breach the height and setback requirements applicable to buildings under the Plan.

   (b) We agree with Chapman Tripp's proposal to meet with the Council to discuss the differences in opinion and a constructive way forward to resolving the matter; and

   (c) We suggest that the meeting proposed with SCS on Tuesday 11 October includes Braeburn and focusses on the matters for discussion set out in Chapman Tripp's letter.

6. We expand on these points below.

We agree with Chapman Tripp's interpretation of the definition of 'building' and its view that the shipping containers do not fall within the definition in this case

7. We agree with all aspects of the opinion set out in Annexure 1 of Chapman Tripp's letter, including Chapman Tripp's approach to interpreting the definition of 'building' and its conclusion that the stacking of shipping containers on the Site does not constitute a 'building'.

8. In particular, we agree with the following key points made by Chapman Tripp:

   (a) The specific overrides the general: The reference to shipping containers in subclause (c) of the definition means that this is the clause that should be the focus in interpreting the definition of 'building', on the basis that this is the more specific provision and should prevail over the more general subclauses (a) and (b). We agree that subclause (c) provides for express inclusion of shipping containers within the definition of "building" when certain circumstances arise, and that those circumstances do not arise in this case.

   (b) The shipping containers are not being used as a "place of business or storage", as required by subclause (c) of the definition. They are not being used to store any items (they are empty) and are not being used as a place of business (e.g., by being converted into a business premises or similar). Rather the containers themselves are being stored on Site on a temporary basis in transit between client shipping requirements.

   (c) A shipping container is not a 'structure': Even if subclause (c) were found not to prevail over the more general subclauses (a) and (b), a shipping container is not a 'structure' (as defined in the Resource Management Act 1991) and therefore does not meet the requirements of subclauses (a) and (b). We agree with Chapman Tripp's assessment of the two cases relied on in the Council's legal opinion (*Ohawini Bay Ltd v Whangarei District Council*[1] and *Autoun v Hutt City Council*[2]) and that these cases are distinguishable on the basis that the two structures in those cases (a sea wall and 'tiny home') were clearly intended to have permanence and are not easily moved. Conversely, the shipping containers in this case are clearly transitory in nature and are capable of being easily moved in the context of a depot designed for storing and transiting shipping containers for the use of transporting goods. For example, over the five days ending on 5 October 2022, SCS moved an average of 83 twenty foot equivalent unit containers (TEU) per day in and out of the Site. Further, just because gravity is holding them to the land does not mean that they are 'fixed'.

9. In addition, we consider that the following points further support the opinion offered by Chapman Tripp:

   (a) The interpretative canon that the 'specific overrides the general' is a fundamental principle of interpretation, including in the planning context, and is supported by the following authorities:

      (i) In *Environmental Defence Society Inc v New Zealand King Salmon* the Supreme Court found that "a requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction".[3] This was endorsed by the High Court in *Transpower New Zealand Limited v Auckland Council* in the context of directives in policy instruments.[4]

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1 *Ohawini Bay Ltd v Whangarei District Council* EnvC Auckland A68/06, 31 May 2006.

2 *Antoun v Hutt City Council* [2020] EnvC 6.

3 *Environmental Defence Society Incorporated v New Zealand King Salmon Co Ltd [2014] 1 NZLR 593, [2014] NZSC 38 at [80].*

4 *Transpower New Zealand Ltd v Auckland Council* [2017 NZHC 281 at [78], citing *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593 at [80].

(ii) In *Urban Auckland v Auckland Council*, the High Court accepted a submission that an activity status in the precinct takes precedence over the activity status in the zone, as consistent with the principle of interpretation that "the specific overrides the general."[5]

(b) The definition of 'Container' in the International Convention for Safe Containers (CSC) 1972 and supports the position that a shipping container is not a 'structure':

(i) The term 'Container' is defined in the International Convention for Safe Containers 1972 (**CSC**). This convention was convened by the International Maritime Organisation, a specialised agency of the United Nations responsible for measures to improve the safety and security of international shipping. New Zealand has acceded to this Convention. A copy of this is **attached**.

(ii) The term 'Container' is defined in this Convention as follows:

A Container is defined as an article of transport which is:

1. of a permanent character and accordingly strong enough to be suitable for repeated use;

2. specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading;

3. designed to be secured or readily handled, having corner fittings for these purposes;

4. and, of a size such that the area enclosed by the four outer bottom corners is either

a. at least 14m2 (150 sq ft) or

b. at least 7m2 (75 sq ft) if it is fitted with top corner fittings.

(iii) The CSC definition describes a container as an article of transport (not a building or structure) that is robust and strong enough for repeated use and ready handling, indicating that the nature of a container is transitory and intended to be repeatedly moved and relocated. This negates any concept of permanence. While capable of being "secured" this is for the purpose of stabilising a container while it is being moved, not for securing the container to land.

10. We do not agree with the approach to interpretation, or the conclusion advanced by Brookfields Lawyers. We agree with Chapman Tripp (particularly paragraphs 15 and 16 of Annexure 1) that the approach set out by Brookfields Lawyers could result in absurd planning outcomes. This conflicts with the High Court authority cited in Brookfields Lawyers' opinion (paragraph 3) that an interpretation should avoid absurd or anomalous results.

11. For the above reasons it is clear that the stacking of shipping containers on the Site does not require compliance with the setback and height area-specific rules for 'buildings' applicable to the Portlink Industrial Park (as set out in 16.4.4.2), and we refute any suggestion that SCS is breaching these rules.

We agree with Chapman Tripp's proposal to meet with the Council to discuss the difference in opinion on interpretation issue and a constructive way forward to resolving the matter

12. We agree with Chapman Tripp, that given the interpretation issue is clearly in dispute, it would not be appropriate for the Council to proceed to any compliance or enforcement action, including issuing an abatement notice.

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[5] *Urban Auckland v Auckland Council* [2015] NZHC 1382 at [175].

13. As noted, SCS wishes to work co-operatively with Braeburn and the Council to resolve this matter as soon as possible and agrees with the way forward suggested by Chapman Tripp. That is, to meet with the Council to discuss:

    (a) The legal opinions that have been provided on the interpretation issue; and

    (b) If the issue remains unresolved, the option of seeking urgent declaratory relief from the Environment Court; and / or

    (c) How the Council might approach any resource consent application filed by Braeburn (on a without prejudice basis to the position advanced by Braeburn (and SCS) that a resource consent is not required).

14. We note that if any abatement notice were issued to SCS that it would appeal the notice and seek a stay on enforcement. We agree with Chapman Tripp that there is nothing to be gained from such an approach, and Chapman Tripp's proposed approach to resolve the matter (summarised above) is more constructive.

We suggest that the meeting proposed with SCS on Tuesday 11 October includes Braeburn and focusses on the matters for discussion summarised above

15. On 6 October 2022 the Council confirmed that it was willing to meet SCS at 12pm on Tuesday 11 October to discuss this matter.

16. In light of the opinion that has been filed by Chapman Tripp, and our consideration of the issue, we suggest that the meeting includes Braeburn and focusses on the matters for discussion summarised above.

17. The Council has requested information from SCS ahead of the meeting proposed on Tuesday 11 October on how it will address the "non-compliance" at the Site and standards and safety measures that SCS implements in relation to the stacking of shipping containers. Respectfully, SCS's position is that the issue of compliance remains in dispute and needs to be discussed and resolved between the parties.

18. However, without prejudice to SCS' position expressed in this letter, we note in response to the Council's information request that any requirement to reduce the footprint and height of the shipping containers stacked on the Site:

    (a) Would require a reduction in the number of shipping containers stored at the Site by approximately 30 percent. This is because there is not enough space within the yard to re-place the shipping containers and they would need to be stored off-site.

    (b) Would give rise to a significant logistical exercise. SCS does not have another local facility available to store them and expects that finding another site within the region will be difficult. The current facility was established because of a lack of container yard capacity in the Canterbury region. SCS cannot estimate how long it could take for SCS to find an alternative location in the area where they could be stored. In reality, because of a lack of alternative storage, it may be that SCS has to require shipping lines (container owners and SCS' customers) to repatriate containers via their own services (ships) from Canterbury to other locations.

    (c) Could have a material impact on SCS' business and its ability to meet its customers' requirements. Re-locating the shipping containers or requiring them to be repatriated will potentially constrain supply to the region's exporters. Whatever the response is, this will add cost to international supply chains, which will ultimately be borne by importers/exporters and final consumers.

19. SCS is happy to provide details of the workplace standard used for stacking containers, the safety measures implemented during adverse weather conditions and current operating hours. SCS will endeavour to provide this information to the Council as soon as possible and by the morning of Monday 10 October 2022, as requested.

20. We look forward to hearing from you.

Yours faithfully
MinterEllisonRuddWatts

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3 GUIDELINES

3.1 OBJECTIVES

3.1.1 The objectives of the Convention for Safe Containers are:

.1 to maintain a high level of safety of human life in the transport and handling of containers by providing generally acceptable test procedures and related strength requirements which have proved to be adequate over the years, and,

.2 to facilitate the international transport of containers by providing uniform international safety Regulations, which are equally applicable to all modes of surface transport. This will avoid the proliferation of divergent national safety Regulations.

3.1.2 The first of these objectives is achieved by setting out requirements to be implemented by the Contracting States to the Convention for the safety approval and maintenance of containers and for the relevant data to be included on a Safety Approval Plate on the container. The second is achieved by the reciprocal acceptance of safety-approved containers by other Contracting States to enable the containers to move in international transport with minimum safety control formalities.

3.2 SCOPE

3.2.1 The Convention applies to all new and existing containers as defined (see 3.2.2), which are used in **international transport**[1] other than those which are specially designed for transport by air. Although the Convention does not apply to containers used solely on internal movements within a State, there is no reason why a State cannot apply the Convention to such containers and a number of states have done so. Therefore, unless specifically included by the countries' legislation, **domestic containers**[2] are not included within the convention.

3.2.2 A Container is defined as an article of transport equipment which is:

.1 of a permanent character and accordingly strong enough to be suitable for repeated use;

.2 specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading;

.3 designed to be secured and/or readily handled, having corner fittings for these purposes;

.4 and, of a size such that the area enclosed by the four outer bottom corners is either

.1 at least 14 m^2 (150 sq ft) or

.2 at least 7 m^2 (75 sq ft) if it is fitted with top corner fittings,

Note: There are smaller containers manufactured which are designed to form into a 20 ft module either three or four per unit and are then transported internationally as a 20 ft unit. The area enclosed by the four bottom corner fittings is 4.5 m^2 and 3.5 m^2 respectively.

---

1 ***International Transport*** means transport between points of departure and destination that are situated in the territories of two countries to which at least one of which the present Convention applies. The present Convention shall also apply when part of a transport operation between two countries takes place in a territory of a country to which the present Convention applies.

2 ***Domestic container*** means a container that is used only within the national boundaries of a country. This can however include off shore islands that are considered part of the mainland. For example the Canaries are considered as part of the mainland of Spain.

Annex 4 ISO STANDARDS RELATING TO CONTAINERS

ISO 668	Series 1 freight containers - Classification, dimensions and ratings.
ISO 830	Freight containers - Terminology. Trilingual edition.
ISO 1161	Series 1 freight containers - Corner fittings - Specification.
ISO 1496	Series 1 freight containers - Specification and testing
Part 1:	General cargo containers for general purposes.
Part 2:	Thermal containers.
Part 3:	Tank containers for liquids, gasses and pressurised dry bulk.
Part 4:	Non-pressurised containers for dry bulk.
Part 5:	Platform and Platform - based containers.
ISO 3874	Series 1 freight containers - handling and securing.
ISO 6346	Freight containers - Coding, identification and marking.
ISO 8323	Freight containers - Air/surface (intermodal) general purpose containers Specification and tests.
ISO 9669	Series 1 freight containers - Interface connections for tank containers
ISO 9711	Freight containers - Information related to containers on board vessels.
Part 1:	Bay plan system.
Part 2:	Telex data transmission.
ISO 9897	Freight containers - Container equipment data exchange (CEDEX).
Part 1:	General communication codes.
Part 3:	Message types for electronic data interchange.
ISO 10368	Freight thermal containers - remote condition monitoring.
ISO 10374	Freight containers - Automatic identification.
ISO/TR 15070	Series 1 freight containers - Rationale for structural test criteria.

BROOKFIELDS
LAWYERS

NAVIGATING YOUR SUCCESS

16 November 2023

Christchurch City Council
53 Hereford Street
Christchurch 8013

By Email: Brent.Pizzey@ccc.govt.nz

LEX 24279 - CUMNOR TCE 320A - BUILDING DEFINITION

INTRODUCTION

1. You have asked whether the stacking of shipping containers within the Industrial General Zone (Portlink Industrial Park) falls within the definition of "Building" under the Christchurch District Plan (**District Plan**).

2. This letter of advice consolidates various pieces of advice that have been given in relation to this issue since July 2022. In summary, we consider that the stacking of shipping containers does fall within the definition of building (**Opinion**).

3. We have included in our Opinion our response to the letters from Chapman Tripp (**CT**) and Minter Ellison Rudd Watts (**ME**), dated 6 October and 7 October respectively, (together referred to as "**Alternative Interpretation**") in relation to the interpretation of "Building" under the District Plan.

4. In terms of the background facts, we understand that:

   (a) Thousands of shipping containers are stored on the Portlink Site.[1]

   (b) In a given week an average of 83 twenty foot equivalent containers moved in and out of the site per day, as cited by the operator.[2]

   (c) Large stacks of shipping containers (at least 6 containers/20m high) are in place long term, with the individual container components of the stacks changing from time to time.

   (d) In the Portlink Industrial Park the maximum height of any building within the '11m Building Height Limit Area' defined on the development plan in Appendix 16.8.3 is 11 metres.

1 CT Letter of 6 October 2022 paragraph 6
2 ME letter of 7 October paragraph 8(c).

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(e) Concerns have been raised by surrounding residential land uses as to adverse visual amenity effects.

5. We understand that this letter will be used to inform assessment of a certificate of compliance application lodged by Braeburn Property Limited for a notional activity which includes the stacking of containers in excess of 11m on a portion of the Portlink Industrial Park. The application also includes the stacking of various other matter (e.g. crushed car bodies) in excess of 11m. No temporal element is specified in the certificate of compliance application i.e. the containers and other matter may be stacked for an indefinite period.

INTERPRETIVE APPROACH

6. As required by the Legislation Act 2019, we have sought to ascertain the meaning of the relevant definition from its text and in the light of its purpose and its context.[3]

7. We agree with the CT Letter that *Powell v Dunedin City Council*[4] sets out the interpretive approach to planning documents, being in summary:

(a) The words of the document are to be given their ordinary meaning unless this is clearly contrary to the statutory purpose or social policy behind the plan in the rules or otherwise produces some injustice, absurdity, anomaly or contradiction;

(b) The planning document should affect common law rights only where there is express provision to this end or it follows as a matter of necessary implication;

(c) There is a need for certainty in the description of permitted activities and the operative parts of the plan. But the language used in the plan must be given its plain ordinary meaning, the test being "what would an ordinary reasonable member of the public examining the plan, have taken from" the planning document;

(d) The interpretation should not prevent the plan from achieving its purpose;

(e) If there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

8. Consistent with High Court authority in *Mount Field Ltd v Queenstown-Lakes District Council*, we have also sought to find an interpretation that:[5]

(a) Avoids absurd or anomalous results;

(b) Is consistent with the expectations of landowners; and

---

3 Section 10 of the Legislation Act 2019, *Spackman v Queenstown Lakes District Council* [2007] NZRMA 327(HC).

4 *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

5 *Mount Field Ltd v Queenstown-Lakes District Council* 31/10/08, Heath J, HC Invercargill CIV-2007-425-700.

(c) Promotes administrative efficiency (rather than requiring lengthy historical research to assess lawfulness).

TEXT OF THE DEFINITION

9. The relevant text of the definition states:

> **Building**
>
> means as the context requires:
>
> a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or
>
> b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and
>
> c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but
>
> excludes:
>
> d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;
>
> e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;
>
> f. retaining walls which are both less than $6m^2$ in area and less than 1.8 metres in height;
>
> g. structures which are both less than $6m^2$ in area and less than 1.8 metres in height;
>
> h. utility cabinets;
>
> i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;
>
> j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;
>
> k. artificial crop protection structures and crop support structures; and
>
> in the case of Banks Peninsula only, excludes:
>
> l. any dam that retains not more than 3 metres depth, and not more than 20,000 m^3 volume of water, and any stopbank or culvert;
>
> m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:
>
> i. not exceeding 25,000 litres capacity and supported directly by the ground; or
>
> ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and
>
> n. stockyards up to 1.8 metres in height.
>
> Advice note:

> This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

Subclauses (a) and (b)

10. Both clauses (a) and (b) apply to "any structure" that falls within those clauses. If stacked shipping containers can be said to be a structure, clause (a) is sufficiently broad to include them as a 'moveable structure' and clause (b) would include the placement and stacking of containers on land i.e. placement of a structure on or over land.

11. The District Plan does not contain a definition of a "structure", but this term is defined in section 2 of the RMA. Absent any contrary provision in the District Plan itself, the word "structure" must have the same meaning as in the RMA when interpreting the District Plan.[6] The RMA definition is "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*". While the definition is to some extent circular in that it defines a structure as being a building, a shipping container would fall within the ordinary meaning of a device, which is defined in the Oxford Dictionary as "*a thing made or adapted for a particular purpose, especially a piece of equipment mechanical or electronic"*.

12. The RMA definition of a structure also requires a structure to be fixed to land. The Courts in considering this definition have previously held that in order to fall within the meaning of a structure, the device does not need to be fixed permanently to the land, nor does it require some form of connection to the land in order to be fixed. It may be fixed by the gravity of the device itself. For example, in *Ohawini Bay Ltd v Whangarei District Council*,[7] rocks placed on top of one another to form a seawall were held to be a structure despite only being fixed to the land by their own weight. Similarly, in *Antoun v Hutt City Council*,[8] a moveable tiny home sitting on top of a metal plate, but with no permanent foundations, was held to be sufficiently fixed to the land by gravity to fall within the meaning of a structure. We acknowledge that both types of structure in those cases had either a greater degree of permanence (in relation to the seawall) or, potentially, greater difficulty in being moved (in the case of the tiny home) than a shipping container. However, given the weight of a shipping container is such that it cannot be easily moved and would require a crane/forklift/straddle carrier to shift, it does bear some degree of similarity to the tiny home example.

13. The CT letter distinguishes the facts of *Ohawini Bay* and *Antoun* in order to argue that the shipping containers are not structures. We readily acknowledge that the degree of permanency was greater in *Ohawini Bay* and, potentially, the difficulty of movement greater in *Antoun*. These cases are simply examples to illustrate that gravity may be sufficient to "fix" a structure to land and permanency is not a requirement. This

[6] Section 20 of the Legislation Act 2019.
[7] Environment Court, Auckland, A068/06.
[8] (2020) 21 ELRNZ 595.

interpretation is entirely consistent with the text of the definition itself in the District Plan including "moveable" structures, and the "placement" of structures on land.

14. In addition, while some of the containers stored at the site may be there on a transitory basis, there is no guarantee that will invariably be the case and equally there would be nothing to prevent containers being stored on a longer-term basis.

Subclause (c)

15. Clause (c) expressly refers to shipping containers as falling within the meaning of a "building", where it is *"used on-site as a residential unit or place of business or storage"*. On the facts, it is unclear whether the containers themselves are being stored, or whether the containers are being used to store other items. If the latter, then that would be within the scope of clause c. If the former, then it is arguable that this would not be within the scope of clause c, although there is some basis to conclude that when a shipping container is in its original unconverted state, it is designed as a storage device and therefore would fall within this use regardless of whether at a specific point in time it is sitting empty.

16. We note the argument in the Alternative Interpretation that an empty shipping container being stored is not itself being used "on site as a place of storage". Our Opinion remains that, arguably, a shipping container is designed as a storage device and therefore, in its unaltered form, would fall within this category, regardless of whether at a specific point in time it is empty. This is consistent with the way in which the Courts have interpreted "use" in a district plan to mean the use for which it is designed, rather than any subjective intentions of an individual as to how it will be used.[9]

17. We have also considered whether the express reference to shipping containers in clause (c) should be interpreted to mean that where a shipping container is not *"used on-site as a residential unit or place of business or storage"* then it cannot come within the other clauses of the definition of building. As a starting point, we note that shipping containers that are not *"used on-site as a residential unit or place of business or storage"* are not expressly excluded under clauses d.-n. This drafting approach would have been available if it were the intent.

18. The Alternative Interpretation argues that this specific clause (c) should override and exclude the general clauses (a) and (b).[10] In our view this seeks to elevate the interpretive principle/canon that the specific overrides the general into an inflexible rule. We note the authorities cited in the ME letter that support the application of the principle in the context of policy interpretation and addressing the interrelationship between zone and precinct rules. However, as the Court of Appeal held in *Pora v R* [2001] 2 NZLR 37, context is important, and care should be taken in the application of the principle s*pecialia generalibus derogant*.[11]

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9 *Landeman v Cavanagh* [1998] 4 ELRNZ 1 (CA).

10 CT letter, Annexure 1, paragraph 7.2; ME Letter, paragraph 8(a).

11 *[43] The obverse proposition that special provisions override general ones (specialia generalibus derogant) is less well-supported on the authorities and is inherently less useful even as a rule of thumb because so sensitive to particular context. If applied generally, some of the most important overarching principles expressed in legislation would be unacceptably insecure, confounding clear legislative purpose.*

19. Plainly the specific exemptions to the definition of building override the general inclusions. However, the Alternative Interpretation seeks to elevate an express inclusion of shipping containers as buildings in certain circumstances into an implicit exclusion of shipping containers as buildings in other circumstances. This does not necessarily follow. Clause (c) of the definition expressly includes as a "building" shipping containers used on site as:

    (a) a residential unit; or

    (b) a place of business; or

    (c) a place of storage.

20. The Alternative Interpretation would mean that the use of shipping containers on a site for any other purpose could never constitute a building and would be exempt from all standards applying to buildings. This would be an absurd outcome as other activities such a Community Activities or Spiritual Activities taking place in structures comprised of shipping containers would be exempt from building standards.

21. In *Vortac New Zealand Ltd v Western Bay of Plenty District Council* [2022] NZEnvC 176 the Environment Court considered whether the specific inclusion in the definition of building/structure of a fence or wall exceeding 2m in height precluded a lower wall or fence also constituting a building or structure. The Court held:

> [40] The definition of building/structure specifically includes a fence or wall exceeding 2m in height. On the principle of interpretation that the expression of one thing excludes its alternative, by implication that inclusion in the definition might exclude a fence or wall below that height from being a building. The specific inclusion is, however, expressed to be in addition to the ordinary and usual meaning of building/structure. Those two words have very broad ordinary and usual meanings and, like other words of broad meaning in common usage, normally take their particular sense from the purpose for which and the context in which they are used. In this case that sense must be considered in terms of the objectives and policies of Section 8 of the District Plan.

22. Similarly, limb (c) of the District Plan definition of Building is in addition to limbs (a) and (b) ("and"). We therefore consider that the same principle from *Vortac* should apply to limb (c) i.e. the specific inclusion of containers in the circumstances in (c) does not exclude containers being a building under the limbs (a) and (b) in other circumstances.

Summary in relation to text

23. In summary, we consider that the definition is sufficiently broad on its face to include the placement and stacking of shipping containers. The primary basis for our Opinion remains that the placement and stacking of shipping containers falls within limbs (a) and (b) of the definition as:

    (a) A moveable structure; and

    (b) The placement of a structure on land.

24. We also consider that it is arguable that stacked shipping containers that are either currently storing other goods or are placed on the site in preparation to be loaded with goods, are being used for storage and therefore fall within clause (c).

25. We now consider this reading of the text in light of its:

    (a) purpose as expressed by the objectives and policies and other context of the Christchurch District Plan;

    (b) context within the scheme of rules in the Christchurch District Plan.

PURPOSE

26. We have reviewed the objectives and policies of Chapter 16 Industrial in the District Plan which set out the relevant purpose against which to interpret related rules. We note the following amenity focused objectives and policies which are relevant to a purposive interpretation of "building":

> 16.2.3 Objective - Effects of industrial activities
>
> a. Adverse effects of industrial activities and development on the environment are managed to support the anticipated outcome for the zone while recognising that sites adjoining an industrial zone will not have the same level of amenity anticipated by the Plan as other areas with the same zoning.
>
> 16.2.3.1 Policy - Development in greenfield areas
>
> a. Manage effects at the interface between greenfield areas and arterial roads, rural and residential areas with setbacks and landscaping.
>
> 16.2.3.2 Policy - Managing effects on the environment
>
> a. The effects of development and activities in industrial zones, including reverse sensitivity effects on existing industrial activities as well as, visual, traffic, noise, glare and other effects, are managed through the location of uses, controls on bulk and form, landscaping and screening, particularly at the interface with arterial roads fulfilling a gateway function, and rural and residential areas, while recognising the functional needs of the activity.
>
> b. Effects of industrial activities are managed in a way that the level of residential amenity (including health, safety, and privacy of residents) adjoining an industrial zone is not adversely affected while recognising that it may be of a lower level than other residential areas.

27. These objectives and policies contemplate the management of adverse effects of industrial activities and development having regard to the amenity values of adjoining areas. Techniques to achieve these outcomes include:

    (a) setbacks and landscaping.

    (b) controls on bulk and form.

28. The Industrial General Zone (Portlink Industrial Park) contains bespoke rules in respect of maximum building height and building setbacks. These techniques would be completely ineffective in respect of shipping containers, and not achieve their purpose, if these structures were not covered by the rules and shipping containers could be stacked to any height, including in relation to boundaries. The purpose as expressed by the objectives and policies of the zone therefore supports the textual interpretation we identify above.

29. As to purpose, the CT letter states that:[12]

> We accept that some of the methods provided in the plan to manage such effects include setbacks, landscaping, and bulk and form controls. However, we note that these controls on bulk and form apply to specific activities (which the Council whine it prepared its District Plan must have deemed necessary to manage). Height, as a control on bulk, applies only to 'buildings'. It is our view that is because the District Plan contemplates the greatest effects of bulk on amenity is from buildings, and these need to be managed through he plan.

30. Implicit in this statement is the view that stacked shipping containers are not buildings. However, no evidence or logical justification is provided for the assertion that over height stacks of shipping containers will have a lesser effect on amenity as compared to other structures.

CONTEXT

31. We have considered our interpretation in light of the context of the remainder of the District Plan, including to check whether any anomalous consequences would arise. We have checked:

(a) The definition of Outdoor storage area;

(b) Other Industrial General Zone rules;

(c) Application to other stacked matter such as car bodies

(d) Other district plan references to "containers"

(e) District-wide Rules

Outdoor storage area

32. The activity of container storage could also be considered an Outdoor storage area which is defined as:

> means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.

[12] CT letter paragraph 33.4

33. It is therefore relevant to consider whether "outdoor storage area" and "building" are mutually exclusive. For the reasons that follow we have concluded that they are not.

34. The Oxford dictionary defines "equipment" broadly to mean "*items needed for a particular purpose*". A shipping container would potentially fall within this broad definition of equipment, as would almost anything. As something man-made, it could also potentially fall within the meaning of a "processed product".

35. We have given consideration to whether the land potentially being an outdoor storage area within the meaning of the District Plan definition would mean that the container cannot also be a "building". We do not think that it would. Given that the definition of a building anticipates that something moveable or temporary could fall within the meaning of a building, it follows that storage areas could exist where buildings themselves are stored, for example, sites where tiny homes are constructed and stored, or sites where other relocateable dwellings or other buildings are stored. Such land could potentially fall within the meaning of an outdoor storage area, unless the use falls within the meaning of a yard-based supplier. We are not aware of whether in practice you have treated land used for the storage of relocateable buildings as an outdoor storage area, but we consider that unless there are other specific District Plan provisions that relate to such activities, it would make sense that if such sites are considered to be outdoor storage areas, so then would a shipping container yard, regardless of whether the shipping containers are also buildings.

36. We have considered the provisions in Chapter 16 of the District Plan. We did not identify anything that would mean that the definition of a building and an outdoor storage area are necessarily mutually exclusive. In particular, we note that rule 16.4.4.1.1 P1 for the Industrial General Zone (Portlink Industrial Park) provides that any activity listed in rule 16.4.1.1 P1-P21 is a permitted activity provided it complies with the built form standards in rule 16.4.4.2 and rule 16.4.2 (unless specified otherwise in rule 16.4.4.2). Rule 16.4.1.1 P1 provides that any new building or addition to a building for an activity listed in P2 to P21 is a permitted activity, provided it complies with the built form standards in 16.4.2. Those activities include an industrial activity (P2) and warehousing and distribution activities (P3), either or both of which could potentially apply to the storage of shipping containers. There are built form standards that apply specifically to outdoor storage areas. We could not see any obvious reason as to why those standards would not apply in conjunction with other specific standards that apply to buildings.

Other Industrial zone rules

37. It is relevant to consider the implications of stacks of containers being classed as "buildings" for the relevant zone rules as a check to avoid anomalous outcomes. The starting point is that buildings for industrial activities are permitted within the zone (Rule 16.4.1.1.P1.). As such, any container storage that conforms to building height and setback standards can occur without the need for a consent, which is consistent with enabling industrial activity to occur within the zone. We do not consider that anomalous outcomes arise from the application of height and setback rules to containers. These outcomes are consistent with the direction of the objectives and policies. Consent can of course be sought to stack containers to a greater height in appropriate locations.

38. However, the application of rule 16.6.2.2 Maximum building coverage of a site in the Industrial Park Zone could be considered anomalous because it would limit the placement of containers to 50% of a site and a resource consent would be required to exceed this threshold. We are uncertain as to whether there is a proper resource management reason for this threshold to apply to container storage. There may very well be e.g. impervious surfaces or amenity considerations. Even if the application of this rule to the activity in question may not be apt, we do not consider that the potential requirement to obtain consent for a rule breach of itself would amount to an absurd consequence. It is not unusual for an activity to need to obtain consent under various rules, some of which may be technical consent requirements in the particular case and some of which address environmental effects which require careful management. The same point applies to rules relating to flood management areas, which we discuss below.

39. Rule 16.4.1.1 Permitted activities states "The activities listed below are permitted activities in the Industrial General Zone if they meet the activity specific standards set out in this table and the built form standards in Rule 16.4.2. *Note, the built form standards do not apply to an activity that does not involve any development*." If the activity of stacking containers does not amount to "development" then even if this is a "building" the built form standards do not apply.

40. The Christchurch District Plan and the RMA do not define "Development". The Spiller's NZ law dictionary also does not define "Development". The following dictionary definitions are of some assistance:

Collins English Law Dictionary New Zealand Edition

- an area or tract of land that has been developed.
- Develop: to improve the value or change the use of land, as by building.

Cambridge Dictionary

- an area on which new buildings are built in order to make a profit
- The process of growing and changing and becoming more advanced.

Merriam Webster dictionary

- the state of being developed
- a tract of land that has been made available or usable: a developed tract of land *especially*: one with houses built on it.

Black's Law Dictionary Ninth Edition Bryan A. Garner

- (1885) 1. A substantial human-created change to improved or unimproved real estate, including the construction of buildings or other structures.
- 2. An activity, action, or alteration that changes underdeveloped property into developed property.

Lexis Advance Fourth Edition Words and Phrases Legally Defined Volume 1 A-K

Development of property

- "…development means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land." – (Town Country Planning Act 1990).

41. There is a circularity to this issue as the construction of "buildings" would generally be considered to amount to "development". As such, if the stacking of shipping containers amounts to the placement of a "building" then the activity is "development". Given the circularity of the issues, we don't consider that Rule 16.4.1.1 advances much the issue of whether or not stacked shipping containers are buildings.

Other district plan references to "containers"

42. Other relevant provisions of the District Plan also form context which supports the interpretation that shipping containers are within the definition of "buildings".

43. Rule 13.8.4.2.1 of the Specific Purpose (Lyttelton Port) Zone relates to Maximum Building Height. Clause a. of this rule applies to:

> Quayside and container cranes, lighting towers and container storage (except containers located within Height Area C as shown in Appendix 13.8.6.4)

44. Clause a. specifies no height limit. The express reference to shipping containers in the context of a rule applying to buildings is strong contextual support for the view that containers are a type of building under the District Plan.

45. Clause g. of the rule applies to:

> Buildings not otherwise provided for under (a) with frontage to Norwich Quay and containers located within Height Area C as shown in Appendix 13.8.6.4. This standard shall not apply to temporary structures erected for noise mitigation, construction activities or transiting containers that remain on site for less than 72 hours.

46. A permitted limit of 15m applies with restricted discretionary consent required beyond this height. Again, the express reference to shipping containers in the context of a rule applying to buildings is strong contextual support for the view that containers are a type of building. The exclusion from the standard of "transiting containers that remain on site for less than 72 hours" also implies that, but for this exclusion, these containers would be regulated by the building height rule. No similar exclusion for transiting shipping containers is found in the plan provisions applying to Portlink Industrial Park.

47. We note that the standard in Rule 13.8.4.2.1(a) applies to "container storage" which would encompass the storage of both full and empty containers. This is logical as the contents of a container do not have any impact on the amenity effects caused by the heights of container stacks.

District-wide Rules

48. We have considered how treating shipping containers as buildings would interact with the use of containers across the District, including in terms of the district-wide rules in the District Plan. This is particularly to understand whether any anomalous consequence would arise e.g. requiring consent for the temporary use of shipping containers in circumstances where one would expect that to be a permitted activity.

49. First, we do not consider that shipping containers in transit would be classed as a Building for the purposes of the District Plan as they would no longer have the requisite degree of affixation to land.

50. Secondly, Chapter 6 of the District Plan provides an enabling regime for temporary buildings which provides for the temporary ancillary use of shipping containers throughout the District. Rule 6.2.3 sets out how to interpret and apply the rules for temporary activities and buildings. In summary:

    (a) The rules that apply to temporary activities and buildings in all zones are contained in the activity status tables (including activity specific standards) in Rule 6.2.4.

    (b) Temporary activities and buildings are exempt from the rules in the relevant zone chapters and other District Plan rules, except as specified in activity specific standards in Rule 6.2.4; and

    (c) The activity status tables and standards in the following chapters and sub-chapters apply to temporary activities and buildings (where relevant):

        4. Hazardous Substances and Contaminated Land.

        5. Natural Hazards

           Rule 5.6 Slope Instability;

        6. General Rules and Procedures

           6.3 Outdoor Lighting (except as otherwise specified in Rule 6.2.4);

           6.1 Noise (except as otherwise specified in Rule 6.2.4);

           6.8 Signage (as specified in that sub-chapter and as specified in Rule 6.2.4);

        7. Transport (as specified in Rule 6.2.4);

        8. Subdivision, Development and Earthworks;

        9. Natural and Cultural Heritage; and

        11. Utilities and Energy.

51. Rule 6.2.4.1.1 P1 provides as a permitted activity for temporary buildings ancillary to an approved building, construction, land subdivision or demolition project. The following activity specific standards apply:

    (a) No single building shall exceed 50m² of GFA; except that, in the Commercial Central City Business, Industrial General, Industrial Heavy, Rural Quarry, Specific Purpose (Tertiary Education) or Specific Purpose (Airport) Zones, the GFA of a temporary construction building is not restricted provided that buildings are not placed in any setbacks required by the relevant zone.

    (b) Temporary buildings shall be removed from the site within one month of completion of the project or, in the case of land subdivision sales offices, within one month of the sale of the last allotment in the subdivision.

    (c) Temporary land subdivision sales offices shall meet the signage rules for the Commercial Local Zone in Sub-chapter 6.8 Signs.

52. Rule 6.2.4.1.1 P4 provides as a permitted activity for temporary buildings or other structures ancillary to an event listed in Rule 6.2.4.1.1 P2.[13] The following activity specific standards apply:

    (a) Temporary buildings or other structures shall not be erected on or remain on the site for more than two weeks before or after the event opens or closes to participants.

    (b) Where events occur on non-consecutive days, on days between instances of the event opening to participants, public access to parts of the site that are normally accessible shall not be impeded.

53. In our opinion, these rules for temporary buildings provide for the range of situations where one would expect shipping containers to be able to be used as a permitted activity, in conjunction with other activities, and subject to a limited set of performance standards. This enables temporary use of shipping containers across the district generally to be exempt from other rules which apply generally to buildings e.g. bicycle parking requirements and minimum floor levels.

54. We note however that these temporary activity rules would not apply in the industrial zones or the Portlink site. This is because Chapter 6 interpretation rule 6.2.3 d. states:

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[13] Community gatherings, celebrations, non-motorised sporting events and performances including:
a. carnivals and fairs;
b. festivals;
c. holiday observances;
d. races;
e. parades;
f. concerts; and
g. exhibitions.

> Rule 6.2.4 does not apply to activities and buildings anticipated by the rules in the relevant zone chapters or within the expected scope of operations for permanent facilities

55. This rule is consistent with the purpose of the objective and policies in Chapter 6 – 6.6.2. that the temporary activity provisions are for buildings and activities that are not anticipated in the zone but are only there for a short time. In our view, shipping containers are activities and buildings anticipated in the Industrial Zone and therefore cannot be authorised under the temporary activities regardless of how long they are there.

56. We have also considered the application of our interpretation to flood hazard rules which apply to buildings (noting that these rules do not apply to temporary buildings). The key policy driver for these rules is the protection of buildings from material damage. We note that the likelihood of containers being materially damaged by flood waters would appear low, although equally the prospect of storing containers within a floodplain does not appear to be a sensible resource management outcome if the land is subject to serious flood hazard. As noted above, even if the application of flood hazard rules to the activity in question may not be apt, we do not consider that the potential requirement to obtain consent for a rule breach of itself would amount to an absurd consequence. It is not unusual for an activity to need to obtain consent under various rules, some of which may be technical consent requirements in the particular case and some of which address environmental effects which require careful management.

Application to other stacked matter such as car bodies

57. It is also relevant to consider the application of the principles which underpin our Opinion, to the storage of other matter (vehicles, pallets, containers/boxes, equipment, machinery, products, etc).

58. Subject to the important qualification that the definition of a building in the District Plan supersedes the ordinary meaning of a building, we note that a shipping container also shares common characteristics ordinarily associated with a building, such as having walls and a roof. However, we do not interpret the definition of building as necessarily excluding other forms of stacked equipment or devices.

59. Having regard to the way in which “building” is defined in the District Plan, the question of whether stacked equipment or devices is or is not a building would turn on the particular circumstances. We consider that the following factors will be relevant:

    (a) The size and bulk of individual components within a stack, as well as the overall height of the stack (these factors will be relevant to whether it can be said that the stacked equipment is fixed to the land by its own weight).

    (b) The degree of permanence of the stacked equipment or devices. While permanence is not necessarily a requisite characteristic to fall within subclause (a) of the building definition, where something is placed on the land on a longer-term basis, this may support a finding that it is a structure.

    (c) Where stacked equipment and devices rely upon other works to stabilise them and fix them in place, those works themselves could fall within the meaning of a building. We note for example, that scaffolding or falsework is only excluded from

the meaning of a building if it is used temporarily for maintenance and construction purposes.[14] Similarly, a fence or a wall that has a structural function of supporting stacks of equipment would not fall within the fencing exception.[15] Where stacks of equipment are secured to other devices that are themselves affixed to the land and would fall within the meaning of a building, it could be arguable that the structure in its entirety, including both the supporting structure and the stacked equipment, could fall within the meaning of a building.

60. Applying these general matters, we consider that the circumstances in which stacked equipment or devices are unlikely to fall within the meaning of a building are where:

(a) The stacks are relatively small in height and size (particularly if they are both less than 6m^2 in area and less than 1.8 metres in height);[16]

(b) Where the individual component parts are small and/or lightweight;

(c) Where the stack is short-term;

(d) Where the stack is not supported by or affixed to any structure to stabilise it or fix it in place, this may be indicative that it does not form part of a structure. However, this is something that would need to be considered in conjunction with the other factors described above, and on its own would not necessarily be determinative of whether the stacked equipment or device is or is not a building.

MATTERS WHICH ARE NOT RELEVANT

61. The certificate of compliance application refers to:[17]

(a) An excerpt of the IMO (International Maritime Organisation) International Convention of Safe Containers (CSC) 1972, setting out in its Interpretations and Guidelines a definition of 'container' as an article of transport equipment (this is also referenced in the ME Letter).

(b) The industry definition of "Inland Container Depot", which is that it is a "public facility that offers services for handling and temporary storage of import/export laden containers or empty containers"

62. These documents do not form part of the District Plan definition and are not incorporated by reference. We do not consider that these extraneous definitions can have any relevance to the interpretation of the Christchurch District Plan which exists for a fundamentally different purpose (i.e. sustainable management).

63. The CT letter cites the definition of "building" in the Building Act 2004 which expressly excludes containers as defined in regulations made under the Health and Safety at Work

14 Clause (d) of the definition of a building.
15 Clause (e) of the definition of a building.
16 See the clause (g) exception to the meaning of a building.
17 Paragraph 25 of the application

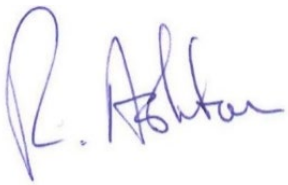
Act 2015. We do not consider that this is relevant given that the definition in the District Plan includes the following advice note:

> This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

CONCLUSION

64. We trust that this letter assists with the question you have asked. Please do not hesitate to make contact should you have any further questions arising.

Yours faithfully
BROOKFIELDS



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Appendix 4

Compliance Assessment

DISTRICT PLAN

RULE	COMPLIANCE ASSESSMENT	STATUS
Chapter 5 Natural Hazards (Flood Hazards)		
5.4.1 Activities and earthworks in the Flood Management Area		
5.4.1.1 P1	New buildings located within the Fixed Minimum Floor Level Overlay, unless specified in P5, P6, P7, P8 or P9 in Rule 5.4.1.1. a. Minimum floor levels shall be the highest of the following: i. flooding predicted to occur in a 0.5% AEP (1 in 200--year) rainfall event concurrent with a 5% AEP (1 in 20--year) tidal event, including 1 metre sea level rise plus 400mm freeboard, as predicted by the relevant Council model and version identified in Table 5.4.1.1a; or ii. flooding predicted to occur in a 0.5% AEP (1 in 200-year) tidal event concurrent with a 5% (1 in 20-year) rainfall event, including 1m sea level rise plus 400mm freeboard, as predicted by the relevant Council model and version identified in Table 5.4.1.1a; or iii. 12.3 metres above Christchurch City Council Datum. **Comment:** *The office building will have a minimum floor level that is a minimum of 12.3m above CCC datum.*	Complies
5.4.1.1 P14	Filling or excavation in commercial and industrial zones that is not provided for under Rule 5.4.1.1 P10-P12 or P17. b. A maximum height of 0.3m of filling above ground level and 0.6m depth of excavation below ground level; and c. A maximum volume of filling above ground level of $20m^3$ per site, and a maximum cumulative volume of filling and excavation of $50m^3$ per site, in each case within any continuous period of 10 years. Or d. The excavation and filling is associated with the maintenance and/or replacement of underground petroleum storage systems and where, following reinstatement of the underground petroleum storage systems, the site will have a finished contour that is equivalent to the ground level at the commencement of the works. **Comment:** *Earthworks are not generally required for the activity. To the extent that formation of the vehicle crossing and site entry/apron may entail some earthworks this will not exceed a fill height >0.3m above ground level, or a cut of >0.6m below ground level, or a volume of $20m^3$.*	Complies
Chapter 6 General Rules and Procedures		
6.1.5 Noise		
6.1.5.1 Activity status tables		
6.1.5.1.1 P1	Outside the Central City, any activity that generates noise and which is not exempt by Rule 6.1.4.2 or specified in Rule 6.1.5.1.1 P2 below. Any activity that generates noise shall meet the Zone noise limits outside the Central City in Rule 6.1.5.2.1.	**Permitted**
6.1.5.2 Noise Standards		

6.1.5.2.1 Zone noise limits outside the Central City	Outside the Central City, any activity that generates noise shall meet the Zone noise limits in Table 1 below at any site receiving noise from that activity, as relevant to the zone of the site receiving the noise. l. Industrial General Zone – all hours- 70dB LAeq Except that noise levels shall not exceed 50 dB LAeq/75dB LAmax at any residential unit lawfully established prior to 6 March 2017 during the hours of 22:00 to 07:00. **Comment:** *The activities will be operated during daytime hours only and are therefore only subject to the daytime noise standard of 70db LAeq. Accounting for this the activity can readily comply with the applicable noise standards.*	Complies
6.3 Outdoor lighting		
6.3.4.1 Glare P1	Any activity involving artificial outdoor lighting, other than activities specified in Rule 6.3.4.3 NC1 or NC2. a. All fixed exterior lighting shall, as far as practicable, be aimed, adjusted and/or screened to direct lighting away from the windows of habitable spaces of sensitive activities, other than residential units located in industrial zones, so that the obtrusive effects of glare on occupants are minimised. b. Artificial outdoor lighting shall not result in a greater than 2.5 lux spill (horizontal or vertical) into any part of a major or minor arterial road or arterial route identified in Appendix 7.12 where this would cause driver distraction. **Comment:** *The proposed lighting will be designed to comply (and it is otherwise noted that minimal lighting is required given the activity will operate during daytime hours only).*	Complies
6.3.5.1 Light Spill P1	Any activity involving outdoor artificial lighting. a. Any outdoor artificial lighting shall comply: i. with the light spill standards in Rule 6.3.6 as relevant to the zone in which it is located, and; ii. where the light from an activity spills onto another site in a zone with a more restrictive standard, the more restrictive standard shall apply to any light spill received at that site. **Comment:** *The proposed lighting will be designed to comply (and it is otherwise noted that minimal lighting is required given the activity will operate during daytime hours only).*	Complies
6.8 Signs		
6.8.4.1 Activity Status Tables		
Signage P1	Any sign not specifically provided for as a permitted, controlled, restricted discretionary, discretionary or non-complying activity. Activity specific standards – a. relevant built form standards in Rule 6.8.4.2. **Comment:** *Any future signage will comply with the relevant built form standards, or a separate resource consent will be obtained.*	Complies

Chapter 7 Transport		
7.4.3 Standards		
7.4.3.1 Minimum and maximum number and dimensions of car parking spaces required	**Comment:** *No car parking spaces are proposed on the site*	Not applicable
7.4.3.2 Minimum number of cycle parking facilities required	At least the minimum amount of cycle parking facilities in accordance with Appendix 7.5.2 shall be provided on the same site as the activity. **Comment:** *For yard-based suppliers 1 visitor space is required per 1000m^2 GLFA and 1 staff space is required per 750 m2 GLFA. Given the small size of the building (100m^2) less than 0.5 cycle visitor and 0.5 staff cycle spaces are required, meaning both requirements are disregarded and there is a nil requirement.*	Complies
7.4.3.3 Minimum number of loading spaces required	At least the minimum amount of loading spaces in accordance with Appendix 7.5.3 shall be provided on the same site as the activity. **Comment:** *For yard-based suppliers 1 loading bay is required per 1600m^2 GLFA. Given the small size of the building (100m^2) less than 0.5 of a loading bay is required, meaning the requirements are disregarded and there is a nil requirement.*	Complies
7.4.3.4 Manoeuvring for parking and loading areas	a. Any activity with a vehicle access: On-site manoeuvring area shall be provided in accordance with Appendix 7.5.6. b. Any activity with a vehicle access to… **Comment:** *a. A large on-site manoeuvring area is provided in the yard area adjacent to the access in accordance with Appendix 7.5.6.* *b. Not applicable*	Complies
7.4.3.5 Gradient of parking and loading areas	For all non-residential activities with vehicle access: - Gradient of surfaces at 90 degrees to the angle of parking (i.e. parking stall width) - Gradient shall be ≤ 1:16 (6.25%) - Gradient of surfaces parallel to the angle of parking (i.e. parking stall length) - Gradient shall be ≤ 1:20 (5%) - Gradient of mobility car park spaces. - Gradient shall be ≤ 1:50 (2%) **Comment:** *The gradient of surfaces complies with the applicable standards.*	Complies
7.4.3.6 Design of parking and loading areas	a. All non-residential activities with parking and/or loading areas used during hours of darkness: the lighting of parking and loading areas shall be maintained at a minimum level of two lux, with high uniformity, during the hours of operation. b. Any urban activity: the surface of all car parking, loading, and associated access areas shall be formed, sealed and drained and car parking spaces permanently marked.	Complies

	Comment: *a. Does not apply, as these areas will not be used during hours of darkness.* *b. Parking and loading areas are not required. However, to the extent that access, loading and associated manoeuvring areas are provided these will be formed, sealed and drained as required.*	
7.4.3.7 Access design	a. Any activity with vehicle access: the access shall be provided in accordance with Appendix 7.5.7. b. Not applicable. c. Outside the Central City, any vehicle access: (i) to an urban road serving more than 15 car parking spaces or more than 10 heavy vehicle movements per day; and/or (ii) on a key pedestrian frontage. - Either an audio and visual method of warning pedestrians of the presence of vehicles or a visibility splay in accordance with Appendix 7.5.9 shall be provided. If any part of the access lies within 20m of a Residential Zone any audio method should not operate between 20:00 and 08:00 hours. d. Not applicable e. Not applicable **Comment:** *a. The access complies with the applicable standards in Appendix 7.5.7 (noting the 7m legal and formed width of the access complies with table 7.5.7.1 row e).* *b. An audio and visual warning device will be provided at the site entry.*	Complies
7.4.3.8 Vehicle crossings	Any activity with a vehicle access to any road or service lane: a vehicle crossing shall be provided constructed from the property boundary to the edge of the carriageway / service lane. b.-g. Not applicable **Comment:** *Complies*	Complies
7.4.3.9 Location of buildings and access in relation to road/rail level crossings	Any new road or access that crosses a railway line: no new road or access shall cross a railway line. All new road intersections located less than 30 metres from a rail level crossing limit line: the road intersection shall be designed to give priority to rail movements at the level crossing through road traffic signals. All new vehicle crossings located less than 30 metres from a rail level crossing limit line: no new vehicle crossing shall be located less than 30 metres from a rail level crossing limit line unless the boundaries of a site do not enable the vehicle crossing to be more than 30 metres from a rail level crossing limit line. Any building located close to a level crossing not controlled by automated warning devices (such as alarms and/or barrier arms): buildings shall be located outside of the sight triangles in Appendix 7.5.13. **Comment:** *No rail level crossings are located near the site.*	N/A
7.4.3.10 High trip generators	This rule applies to activities located outside the Central City, and activities within the Central City that are not exempt from this rule under b. below, that exceed the following thresholds.	Complies

Comment:

Yard based suppliers are an 'other activity' for the purposes of this rule. However, given the nature of the activity it will not generate more than 50 vehicle movements in the peak hour or 250 heavy vehicle trips per day. The activity is explicitly sought on the basis of complying with this limit and accordingly the activity complies with this standard.

Chapter 8 Earthworks

8.9.2 Activity status tables

8.9.2.1 P1	a. Earthworks shall not exceed the volumes in Table 9 over any 12 month time period. b. Earthworks in zones listed in Table 9 shall not exceed a maximum depth of 0.6m, other than in relation to farming activities, quarrying activities or permitted education activities. c. Earthworks shall not occur on land which has a gradient that is steeper than 1 in 6. d. Earthworks involving soil compaction methods which create vibration shall comply with DIN 4150 1999-02 and compliance shall be certified through a statement of professional opinion provided to the Council from a suitably qualified and experienced chartered or registered engineer. e. Earthworks involving mechanical or illuminating equipment shall not be undertaken outside the hours of 0700 – 1900 in a Residential Zone. Advice note 1. between 0700 and 1900 hours, the noise standards in Chapter 6 Rule 6.1.5.2 and the light spill standards at Chapter 6 Rule 6.3.6 both apply. f. Earthworks involving mechanical equipment, other than in residential zones, shall not occur outside the hours of 0700 and 2200 except where compliant with NZS6803:1999. Advice note 1. between 0700 and 2200 hours, the noise standards in Chapter 6 Rule 6.1.5.2 apply except where NZS6803.1999 is complied with, and the light spill standards in Chapter 6 Rule 6.3.6 apply. g. Fill shall consist of clean fill. h. The activity standards listed in Rule 8.9.2.1 P3, P4 and P5. i. Earthworks shall not occur within 5 metres of a heritage item or within a heritage setting listed in Appendix 9.3.7.2. **Comment:** *Earthworks are not generally required for the activity. To the extent that formation of the vehicle crossing and site entry may entail some earthworks this will not exceed a depth of 0.6m or a volume of 1000m^3/hectare.*	Complies

Chapter 16 Industrial (Industrial General Zone)

16.4.1 Activity status tables

P10	Yard-based supplier **Comment:** *The activity is a yard-based supplier and no activity standards apply.*	Permitted

17.5.2 Built form standards

16.4.2.1 Maximum height for buildings	The maximum height of any building within 20 metres of a residential zone shall be 15 metres **Comment:** *No buildings are proposed within 20m of a residential zone.*	Not applicable

16.4.2.2 Minimum building setback from road boundaries/ railway corridor	The minimum building setback from a road boundary and a rail corridor boundary shall be as follows: i. Any activity unless specified below: 1.5 metres ii. Any activity fronting on to an arterial road or opposite a residential zone unless specified in (iii): 3 metres iii. Buildings, balconies and decks on sites adjacent to or abutting railway lines: 4 metres from the rail corridor boundary **Comment:** *No buildings are located within the applicable setbacks. In particular, the office building will be located >1.5m from the road boundary.*	Complies
16.4.2.3 Minimum building setback from the boundary with a residential zone	The minimum building setback from the boundary with a residential zone shall be as follows: All buildings within sites which share a boundary with a residential zone: 3 metres **Comment:** *The site does not share a boundary with a residential zone.*	Not applicable
16.4.2.4 Sunlight and outlook at boundary with a residential zone and road	Where an internal site boundary adjoins a residential zone, no part of any building shall project beyond a building envelope contained by a recession plane measured at any point 2.3 metres above the internal boundary in accordance with the relevant diagram in Appendix 16.8.11. **Comment:** *The site does not share a boundary with a residential zone.*	Not applicable
16.4.2.5 Outdoor storage of materials	Any outdoor storage areas shall: i. not be located within the minimum setbacks specified in Rule 16.4.2.2. ii. be screened by landscaping, fencing or other screening to a minimum of 1.8 metres in height from any adjoining residential zone. **Comment:** *The outdoor storage areas proposed are not located within the setbacks specified in Rule 16.4.2.2 (noting the site does not adjoin a residential zone).*	Complies
16.4.2.6 Landscaped areas	Landscaping and trees shall be provided as follows: i. The road frontage of all sites opposite a residential zone or listed below shall have a landscaping strip with a minimum width of 1.5 metres, and minimum of 1 tree for every 10 metres of road frontage or part thereof. A. Sites adjoining Main North Road (SH1) between Dickeys Road and Factory Road; B. Sites adjoining Main South Road, between Barters Road and Halswell Junction Road; and C. Sites adjoining Tunnel Road. D. This standard shall not apply to an emergency service facility or vehicle access to any site. ii. On sites adjoining a residential zone, trees shall be planted adjacent to the shared boundary at a ratio of at least 1 tree for every 10 metres of the boundary or part thereof.	Complies

	iii. All landscaping / trees required by these rules shall be in accordance with the provisions in Appendix 6.11.6 of Chapter 6. **Comment:** *The site adjoins Tunnel Road and provides the required landscaping.*	
16.4.2.7 Visual amenity and screening	Where a site adjoins an Open Space, Specific Purpose (School), Specific Purpose (Cemetery) or Specific Purpose (Tertiary Education) Zone, provision shall be made for landscaping, fence(s), wall(s) or a combination to at least 1.8 metres in height along the length of the zone boundary, excluding any road frontages. Where landscaping is provided, it shall be continuous and for a minimum depth of 1.5 metres along the zone boundary. **Comment:** *The site adjoins an Open Space Zone to the east. Landscaping will be provided in accordance with this standard.*	Complies
16.4.2.8 Access to Industrial General Zone (Deans Avenue)	Any activity in the Industrial General zone bound by Deans Avenue, Lester Lane and the railway line shall only have access from Lester Lane. In the event that Lester Lane is realigned, site access shall be solely from the realigned Lester Lane. **Comment:** *Not applicable.*	Not applicable
16.4.2.9 Water supply for fire fighting	Provision for sufficient water supply and access to water supplies for firefighting shall be made available to all buildings via Council's urban reticulated system (where available) in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS: 4509:2008). **Comment:** *The proposed office building will be connected to the reticulated water supply which is understood to comply.*	Complies
16.4.4.1 Area-specific activities - Industrial General Zone (Portlink Industrial Park)		
16.4.4.1.1 P1	Activities listed in Rule 16.4.1.1 P1-P21. Activity specific standards: a. Development shall comply with: i. The key structuring element on the Portlink Industrial Park Development Plan (Appendix 16.8.3), being: A. Road access ii. Built form standards in Rule 16.4.4.2, and Rule 16.4.2 unless specified otherwise in Rule 16.4.4.2. **Comment:** *The proposal complies with the key structuring element (Road access) on the ODP and otherwise complies with the relevant built form standards in 16.4.4.2 and 16.4.2.*	Complies
16.4.4.2 Area-specific built form standards - Industrial General Zone (Portlink Industrial Park)		
16.4.4.2.1 Maximum height of buildings	The maximum height of any building within the '11m Building Height Limit Area' defined on the development plan in Appendix 16.8.3 shall be 11 metres. **Comment:** *Not applicable, buildings are not proposed within the 11m building height limit area.*	Not applicable.

	To the extent that outdoor storage is proposed within this area and will exceed 11m height, the items proposed to be stored are not 'buildings' as defined in the District Plan.	
16.4.4.2.2 Minimum building setback from road boundaries	The minimum building setback from the road boundary with Tunnel Road shall be 3 metres. **Comment:** *No buildings are proposed to be located within 3 metres of Tunnel Road.*	Complies
16.4.4.2.3 Landscaped areas	Landscaping and trees shall be provided as follows: i. Tunnel Road frontage only A. Any site that adjoins Tunnel Road shall have a landscaping strip with a minimum width of 1.5 metres along the site boundary with Tunnel Road with the exception of that part defined on the development plan in Appendix 16.8.3 as 'Landscape and stormwater area (Green Space)'; and B. Planting of trees and shrubs within the landscaping strip adjacent to Tunnel Road shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and shall meet the requirements specified in Part A of Appendix 6.11.6 of Chapter 6; and C. The landscaping required under Rule 16.4.4.2.3 i. shall be completed as a condition of subdivision consent, or if there is no subdivision required, in conjunction with development in the locations that clause (a) relates to as a permitted activity standard. ii. Landscaping adjacent to the Heathcote River and within the zone A. Planting of trees and shrubs within the 'Landscape and stormwater area (Green Space)' defined on the development plan in Appendix 16.8.3 adjacent to the Heathcote River shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and the requirements specified in Part A of Appendix 6.11.6 of Chapter 6; and B. Legal public access ways within the landscaping strip adjoining the Heathcote River shall be provided as indicated by 'Pedestrian access' on the development plan in Appendix 16.8.3; and C. There shall be no erection of buildings, fences, the display of outdoor advertisements, parking of vehicles or use for any purpose other than landscaping, passive recreation or ecological enhancement within the 'Landscape and Stormwater Area (Green Space)' defined on the development plan in Appendix 16.8.3, and D. Existing vegetation as marked on the development plan in Appendix 16.8.3 as 'Existing vegetation to be retained' shall be maintained. **Comment:** *Compliant landscaping is proposed in respect of the Tunnel Road frontage.* *Clause ii does not apply.*	Complies

4. RMA/2023/2806 Officer Report dated 11 January 2024

Resource Management Act 1991

Christchurch City Council

Amended Application for Certificate of Compliance

(Section 139)

Application Number:	**RMA/2023/2806**
Applicant:	Braeburn Property Limited and Specialised Container Services
Site address:	320 and 320A Cumnor Terrace, Woolston
Legal description:	Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298 and Lot 305 Deposited Plan 525615.
Zone:	
District Plan:	Industrial General
Proposed Plan Change 14:	Industrial General
Overlays and map notations:	
District Plan:	Flood Management Area Fixed Minimum Floor Level Overlay in Flood Management Area Liquefaction Management Area Down Stream Waterway 11m Building Height Limit Portlink Industrial Park Outline Development Plan
Proposed Plan Change 14:	Tsunami Management Area
Road classification:	Local

Description of Application: Certificate of compliance for the operation of a yard based supplier activity, industrial activity (for shipping containers), and warehousing and distribution activity (for shipping containers).

Introduction

The applicant proposes operating a yard-based supplier activity, industrial activity (related to shipping containers), and warehousing and distribution activity (also related to shipping containers) on the subject site.

The activity is described in the original application document as follows:

To establish a yard-based supplier activity on the site, comprising the use of land for selling or hiring products for construction or external use where more than 50% of the area devoted to sales or display is located within an uncovered external yard space.

The activity will include the outdoor storage (for display, sale or hire) of items including: shipping containers; cargo/freight including palletized goods; scrap metal including dismantled/crushed car bodies; metal, timber, concrete and other raw materials or manufactured products used in construction and civil works; and bundled waste or recycled materials. Such items will be stored to an unspecified maximum height, but will expressly exceed 11m height. Ancillary vehicle access to/from the site and on-site vehicle circulation and loading space is also proposed for the activity.

The specific components of the proposed activity are described in the application document as:

The activity may include the outdoor storage (for display, sale or hire) of various items, including:

a. shipping containers;
b. cargo/freight including palletized goods;
c. scrap metal including dismantled/crushed car bodies;

d. metal, timber, concrete and other raw materials or manufactured products used in construction and civil works; and/or,
e. bundled waste or recycled materials.

And

The outdoor storage of the items described above may include items stacked/stored at any height (including heights exceeding 11m)

Following a meeting between the applicant and the Commissioners appointed to decide whether a certificate of compliance can be issued the Council received an email with the following request on 21 December 2023:

For completeness, SCS and Braeburn seek to update the COC application in respect of shipping containers only, to correct the activity category for shipping containers from "yard based supplier" activity (P11) to both an "industrial activity" (P2) and "warehousing and distribution" activity (P3), as provided for under Table 16.4.1.1 of the Christchurch District Plan.

The nominal layout of the proposed activities is shown in Appendix 2 to the original application and as follows:

KEY:

- SITE BOUNDARY - 25,111m² (APPROX)
- PROPOSED SITE OFFICE AND BIKE STORAGE (APPROX. 100M² GFA)
- YARD AREA
- OUTDOOR STORAGE STACKS
- 11M BUILDING HEIGHT LIMIT AREA
- PROPOSED 1.5M LANDSCAPE STRIP (1 TREE EVERY 10M OF ROAD FRONTAGE) WITH 1.8M FENCE

NOTE:

1. *Office building to have a minimum floor level that is a minimum of 12.3m above CCC datum'*

2. *Planting of trees and shrubs within the landscaping strip adjacent to Tunnel Road shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and shall meet the requirements specified in Part A of Appendix 6.11.6 of Chapter 6*

Section 139

The relevant sections of section 139 of the Act state:

139 Consent authorities and Environmental Protection Authority to issue certificates of compliance

(1) This section applies if an activity could be done lawfully in a particular location without a resource consent.

(2) A person may request the consent authority to issue a certificate of compliance.

(3) A certificate states that the activity can be done lawfully in a particular location without a resource consent.

(4) The authority may require the person to provide further information if the authority considers that the information is necessary for the purpose of applying subsection (5).

(5) The authority must issue the certificate if—

(a) the activity can be done lawfully in the particular location without a resource consent; and

(b) the person pays the appropriate administrative charge.

(6) The authority must issue the certificate within 20 working days of the later of the following:

(a) the date on which it received the request:

(b) the date on which it received the further information under subsection (4).

(7) The certificate issued to the person must—

(a) describe the activity and the location; and

(b) state that the activity can be done lawfully in the particular location without a resource consent as at the date on which the authority received the request.

(8) The authority must not issue a certificate if—

(a)the request for a certificate is made after a proposed plan is notified; and

(b)the activity could not be done lawfully in the particular location without a resource consent under the proposed plan.

Definitions in the Christchurch District Plan

Definition of building

The applicant's assessment relies, to a large degree, upon shipping containers not being buildings that are subject to certain standards in the District Plan. The definition of a building in the District Plan is:

Building

*means **as the context requires**:*

a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or

b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and

c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;

e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;

f. retaining walls which are both less than 6m^2 in area and less than 1.8 metres in height;

g. structures which are both less than 6m^2 in area and less than 1.8 metres in height;

h. utility cabinets;

i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;

j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;

k. artificial crop protection structures and crop support structures; and
in the case of Banks Peninsula only, …

Advicenote:

1. This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

(Proposed Plan Change 14)
(bold emphasis added)

Definition of yard based supplier

Yard-based supplier

means the use of any land and/or building for selling or hiring products for construction or external use (which includes activities such as sale of vehicles and garden supplies), where more than 50% of the area devoted to sales or display is located within covered or uncovered external yard or forecourt space, as distinct from within a secured and weatherproof building. Drive-in or drive-through covered areas devoted to storage and display of construction materials (including covered vehicle lanes) will be deemed yard area for the purpose of this definition.

Definition of Industrial activity

Industrial activity

means the use of land and/or buildings for manufacturing, fabricating, processing, repairing, assembly, packaging, wholesaling or storage of products. It excludes high technology industrial activity, mining exploration, quarrying activity, aggregates-processing activity and heavy industrial activity.

Definition of warehousing and distribution activities

Warehousing and distribution activities

means the storage and sorting of materials, goods or products pending distribution.

Definition of gross leasable floor area

Gross leasable floor area

means the sum of the total area of all floors (within the external walls for buildings or within the boundary for outdoor areas) ***designed or used for tenant occupancy****, but excluding:*

a. common lift wells and stairwells (including landing areas);
b. common corridors and halls (other than food court areas);
c. common toilets and bathrooms;
d. any parking areas and/or loading areas; and
for the purposes of calculating loading, car and cycle parking requirements and the high trip generator thresholds, it also excludes:
e. common seating areas (including food court seating areas); and
f. lobby areas within cinemas.

(**bold emphasis added**)

Definition of gross floor area

Gross floor area

means the sum of the total area of all floors of all ***buildings,*** *measured from the exterior faces of the exterior walls or from the centre line of walls separating two buildings. For the purposes of calculating loading spaces, mobility and cycle parking spaces and the high trip generator thresholds only, it excludes off-street parking areas and/or loading areas contained within the building.*

(**bold emphasis added**)

Assessment

The applicant provides an analysis of the relevant standards of the District Plan at Appendix 4 of the original application document, and also provides the following assessment in the email received 21 December 2023 that changes the application:

SCS and Braeburn consider that [16.4.1.1] *P2 and P3 more accurately capture the activity. This is because the shipping containers may not be sold, displayed or hired by the operator of the site (as required by P11). Rather, they are owned by third parties, and as described at the meeting are stored at the site for a short duration.*

This update does not affect the application or the assessment of the application by in any substantive way, nor does it affect anything discussed during the meeting last week. This is because all three activity categories are permitted and subject to the same standards and provisions of the Christchurch City Plan.

I do not agree with the following parts of that assessment:

- 16.4.4.2.1 Maximum height of buildings;
- 7.4.3.10 High trip generator;
- 16.4.2.9 Water supply for firefighting.

There are also parts of the assessment, whilst I agree on the whole with the analysis on those parts, need further comment as set out below.

The specific reasons I disagree that the proposal complies with all aspects of the District Plan are:

16.4.4.2.1 Maximum height of buildings;

Shipping containers, individually or stacked, are *structures* that fall within the definition of a building in the District Plan. The applicant has stacked and is proposing stacking shipping containers one upon the other to a height exceeding 11m within the 11m building height limit area referred to in 16.4.4.21. The Council has obtained a legal opinion from Brookfields Lawyers dated 16 November 2023[1], The opinion advises that the shipping containers are structures that fall within the definition building in District Plan for the purposes of determining compliance with the standards of the District Plan. I also understand that, following the applicant amending the application with regard to shipping containers on 21 December 2023, Brookfields have advised that there is no change to their advice regarding whether containers are buildings.

5.4.1.1 P1

Because the shipping containers (item a. in the proposal description) are buildings the minimum required floor level specified in rule 5.4.1.1.P1 could apply. I note that the rule refers to *new buildings,* but as containers are moved into the site they will become *new buildings.*

However, I also note that Appendix 4 did not list as relevant, Rule 5.4.1.1 P16 Table 5.4.1.1b:

Activity		**Activity specific standard**
P16	Outdoor storage of transiting shipping containers in commercial and industrial zones.	Nil

[1] It accompanies this report and supersedes the Brookfield Lawer's opinion in Appendix 3 of the applicant's application document. It also analyses the "**Alternative Interpretation**" of Chapman Trip and Minter Rudd Watts, also set out in Appendix 3.

This means that in the Flood Management Area placement of *transiting* shipping containers are a permitted activity. The CoC application now describes the proposal as being *stored at the site for a short duration.* The shipping containers are therefore 'transiting'.

I conclude that Rule 5.4.1.1 P16 is a relevant permitted activity in regard to the shipping containers in flood management areas; however, there is no change to my assessment that the container storage activity - as industrial activity and/or warehousing and distribution activity (rule 16.4.1.1 P2 and P3) in the Industrial General zone must comply with the built form standards, and that as the containers are buildings the built form standard for buildings is breached.

Rule 5.4.1.1 is also applies to the items b. – e. in the description of the proposal. It is likely that some of these items will either have a floor (e.g. *b. cargo/freight including palletized goods;)* or be stored on a floor of some sort. I do not know if the floors have a floor level that is a minimum of 12.3m, above CCC datum[2].

Statements in Attachment 4 that the proposal 'will comply'

7.4.3.10 High trip generator.

The statement in Attachment 4 is an *assertion* not supported by survey data. There is also a statement at paragraph 14 of the application document that on its face is logical – but it too is not supported by survey data.

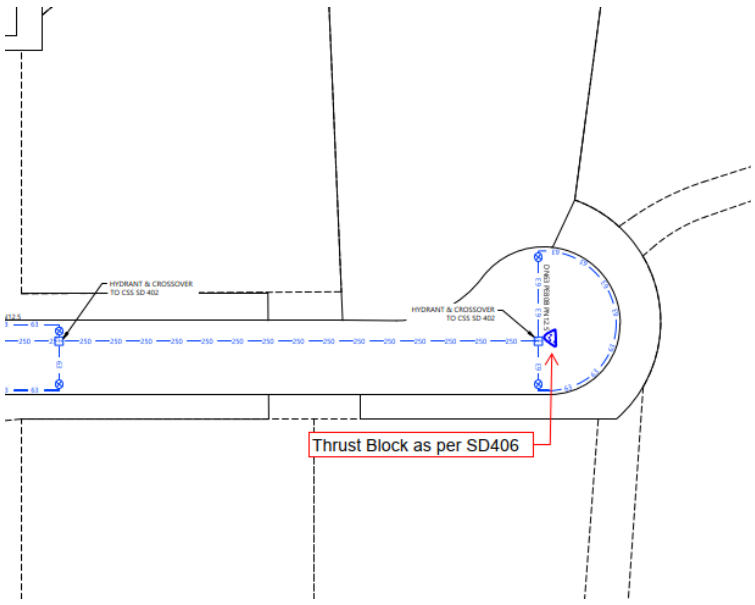
Further, and noting the request to amend the activity status of shipping containers (which are buildings) to an industrial activity, the threshold for an industrial activity before it is considered to be subject to the high trip generator rule is more than 5000m^2 of gross floor area.

I also note that the amended activity description states that the shipping containers are a warehousing and distribution activity. Warehousing and distribution activities are subject to the high trip generator rule when the gross floor area is more than 10,000m^2.

It is unclear what the gross floor area of the shipping containers is.

16.4.29 Water supply for firefighting

The shipping containers are buildings and are subject to this standard. A hydrant has been installed in the turning head of an existing right of way, known as Kenaway Road, created as part of an ongoing subdivision consent. However, there are limits on the distance a building can be from a hydrant and for Commercial and Industrial Zone developments only Fire and Emergency New Zealand (FENZ) can provide determination on compliance with the rule, the onus being on the applicant to contact FENZ and provide information on compliance.



[2] Although I understand they are unlikely to.

There are a number of other statements in Appendix 4 where the applicant states that the proposal *will* comply – but the applicant has not provided detail or data as to how compliance will be achieved. These are:

- 6.1.5.2 Zone noise limits outside the Central City;
- 6.3.4.1 Glare P1;
- 6.3.5.1 Light Spill P1;
- 6.8.4.1 Signage P1;
- 7.4.3.7 Access design
- 16.4.2.7 Visual amenity and screening

However, given the location and nature of the site I agree these standards can be complied with. Any future monitoring can determine compliance with the standards.

Standards referring to Gross Leasable Floor Area

Standards:

- 7.4.3.2 Minimum number of cycle parking facilities required; and
- 7.4.3.3 Minimum number loading spaces required

rely upon gross leasable floor area for calculation of requirements.

The shipping containers are buildings, but I understand that they are not tenanted (refer definition of gross leasable floor area as set out above) – therefore these standards do not apply.

Section 139 Recommendation

That, for the above reasons, a certificate of compliance **not be issued** pursuant to Section 139(8)(b) of the Act.

Reported and recommended by: Scott Blair, Senior Planner **Date:** 11 January 2024

Decision

That the above recommendation be accepted for the reasons outlined in the report.

☑ I have viewed the application and plans.

☑ I have read the report and accept the conclusions and recommendation.

Decision maker notes *Delete this box if not used*

+

Commissioner: ***(Conflict of Interest Form P-426 also needs to be signed by commissioner)***

Name: _____

Signature: _____

Date: _____

Commissioner: ***(Conflict of Interest Form P-426 also needs to be signed by commissioner)***

Name: _____

Signature: _____

Date: _____

5. RMA/2023/3100 Officer Report dated 11 December 2023

Resource Management Act 1991

Christchurch City Council

Application for Certificate of Compliance

(Section 139)

Application Number:	**RMA/2023/3100**
Applicant:	Braeburn Property Limited
Site address:	320 and 320A Cumnor Terrace, Woolston
Legal description:	Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298 and Lot 305 Deposited Plan 525615.
Zone:	
District Plan:	Industrial General
Proposed Plan Change 14:	Industrial General
Overlays and map notations:	
District Plan:	Flood Management Area (Fixed Minimum Floor Level Overlay) Liquefaction Management Area Site of Ecological Significance (Ōpāwaho/Heathcote River) Water Body Setback (Downstream waterway - Ōpāwaho/Heathcote River) 11m Building Height Limit (Appendix 16.8.3i)
Proposed Plan Change 14:	Tsunami Management Area
Road classification:	Local/Right of Way (Kennaway Road), Major Arterial (Tunnel Road – SH74)

Description of Application: Certificate of compliance for the operation of a yard-based supplier activity

Introduction

The applicant proposes operating a yard-based supplier activity within a nominated site, having an area of 25,000m^2, within the property at 320 and 320A Cumnor Terrace, as shown in Figure 1 below.

Figure 1 – Nominated site area.

The activity is described in paragraphs 8-17 the application document, in brief being:

- The establishment and operation of a yard-based supplier;
- Outdoor storage of garden supplies, including haybales, at heights exceeding 11m;
- A building of approximately 100m^2 in area for use as an office and bicycle storage.

A number of elements relating to the proposed activity are unclear, including:

- The form and structure of the office building, including foundations.
- How deliveries will be made, in the absence of any loading areas.
- The machinery used for the loading, unloading and stacking of materials.
- The quantity of material anticipated to be stored on site, the turnover of that material, and the method by which it will be stored/stacked.

I note that these matters are relevant to District Plan standards relating to natural hazards and earthworks, noise, transport, and industrial activity, as assessed below.

The layout of the proposed yard-based supplier is as shown in Appendix 2 of the application, and in Figures 2-4 below:

Figure 2 – Overall site plan

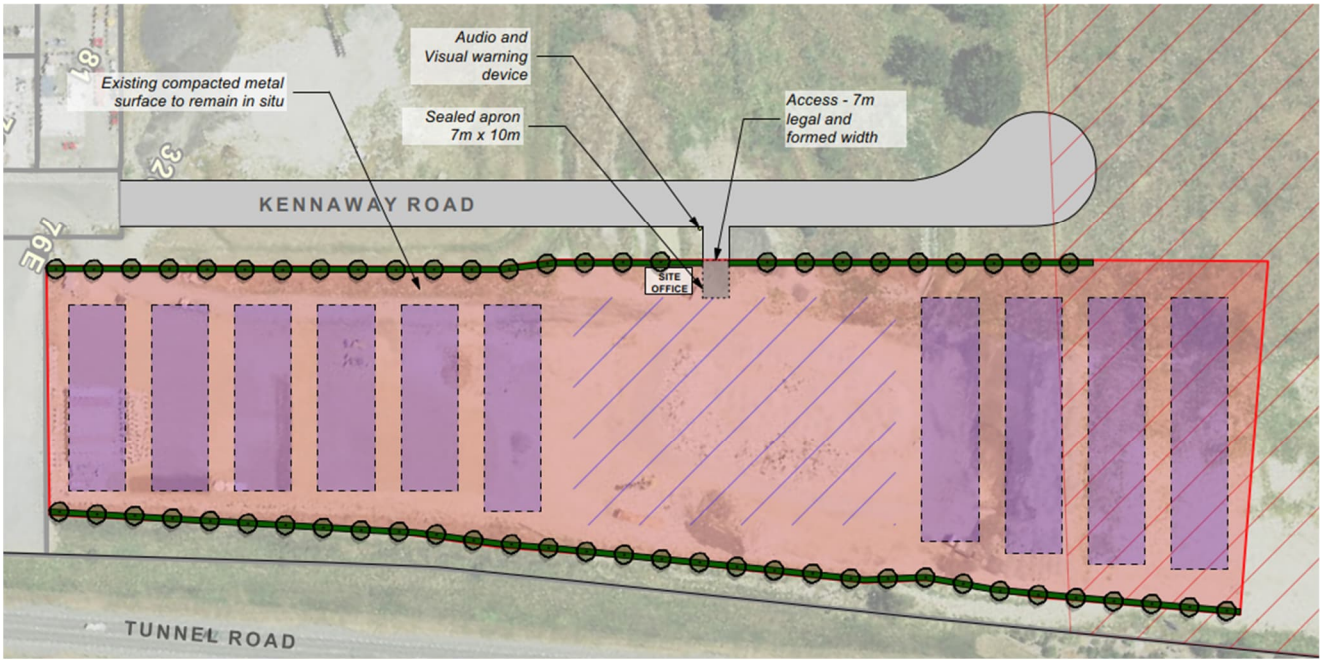


Figure 3 – Yard-based supplier area

KEY:

SITE BOUNDARY - 25,111m² (APPROX)

PROPOSED SITE OFFICE AND BIKE STORAGE (APPROX. 100M² GFA)

YARD AREA

OUTDOOR STORAGE STACKS

11M BUILDING HEIGHT LIMIT AREA

PROPOSED 1.5M LANDSCAPE STRIP (1 TREE EVERY 10M OF ROAD FRONTAGE) WITH 1.8M FENCE

NOTE:

1. *Office building to have a minimum floor level that is a minimum of 12.3m above CCC datum'*

2. *Planting of trees and shrubs within the landscaping strip adjacent to Tunnel Road shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and shall meet the requirements specified in Part A of Appendix 6.11.6 of Chapter 6*

Figure 4 – Key associated with Figure 3

Description of site and existing environment

The application site and surrounding environment are described in paragraphs 2-7 of the application. I adopt the applicant's description and note that the underlying property is separated from the Ōpāwaho/Heathcote River

(being a downstream waterway, site of ecological significance, and significant natural feature) by a number of esplanade reserves. While portions of the underlying site are likely to be within the waterbody setback extending from this waterway, the nominated site area is not.

Section 139

The relevant sections of section 139 of the Act state:

139 Consent authorities and Environmental Protection Authority to issue certificates of compliance

(1) This section applies if an activity could be done lawfully in a particular location without a resource consent.
(2) A person may request the consent authority to issue a certificate of compliance.
(3) A certificate states that the activity can be done lawfully in a particular location without a resource consent.
(4) The authority may require the person to provide further information if the authority considers that the information is necessary for the purpose of applying subsection (5).
(5) The authority must issue the certificate if—
(a) the activity can be done lawfully in the particular location without a resource consent; and
(b) the person pays the appropriate administrative charge.
(6) The authority must issue the certificate within 20 working days of the later of the following:
(a) the date on which it received the request:
(b) the date on which it received the further information under subsection (4).
(7) The certificate issued to the person must—
(a) describe the activity and the location; and
(b) state that the activity can be done lawfully in the particular location without a resource consent as at the date on which the authority received the request.
(8) The authority must not issue a certificate if—
(a) the request for a certificate is made after a proposed plan is notified; and
(b) the activity could not be done lawfully in the particular location without a resource consent under the proposed plan.

Christchurch District Plan

Definition of building

The applicant's assessment relies upon a legal opinion that the stacks of materials are not buildings that are subject to certain standards in the District Plan. The definition of a building in the District Plan is:

Building

*means **as the context requires**:*

a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or
b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and
c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;
e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;
f. retaining walls which are both less than 6m^2 in area and less than 1.8 metres in height;
g. structures which are both less than 6m^2 in area and less than 1.8 metres in height;
h. utility cabinets;
i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;
j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;
k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, …

Advice note:

1. *This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.*

   (Proposed Plan Change 14)

   (bold emphasis added)

The Council has obtained a legal opinion from Brookfields Lawyers dated 16 November 2023, supplemented by an additional legal opinion dated 7 December 2023[1]. These opinions are that the stacks of haybales are likely to be structures that fall within the definition building in District Plan for the purposes of determining compliance with the standards of the District Plan. I note that this advice is based on a number of assumptions stated in paragraphs 17-20, drawing on the information provided by the applicant, with the conclusion reached set out in paragraph 21:

> *21. Taken together, we consider that the height, width, weight, interlocked structural nature, and indefinite duration of the haybale stacks means that they would be fixed to the land by their own weight and would therefore constitute a structure. For completeness, we consider that this conclusion is supported by a purposive interpretation in light of the relevant objectives and policies as discussed at paragraphs 26-28 of our 16 November 2023 advice.*

Assessment

The applicant provides an analysis of the relevant standards of the District Plan at Appendix 4 of the application document. I do not agree with the following parts of that assessment:

- 16.4.2.9 Water supply for firefighting;
- 16.4.4.2.1 Maximum height of buildings.

There are also parts of the assessment, whilst I agree on the whole with the analysis on those parts, need further comment as set out below. The specific reasons I disagree that the proposal complies with all aspects of the District Plan are:

16.4.2.9 Water supply for firefighting

All buildings are subject to this standard, including both the office and material stacks. A hydrant has been installed (refer Figure 5) in the turning head of an existing right of way, known as Kennaway Road, created as part of an ongoing subdivision consent. Within Industrial Zones, confirmation is required from Fire and Emergency New Zealand (FENZ) that sufficient water supply and access is provided in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS: 4509:2008). The applicant has stated that the proposal is 'understood to comply', however no confirmation from FENZ has been provided to demonstrate compliance.

[1] Both opinions accompany this report, with that provided 16 November reproduced in in Appendix 3 of the application document.

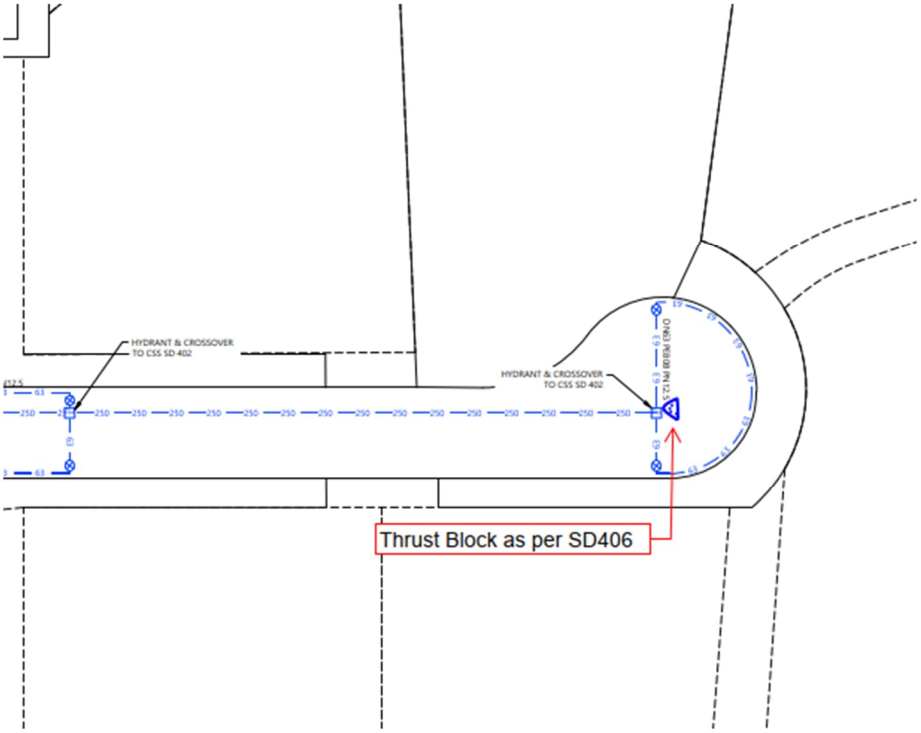


Figure 5 – Location of hydrant within Kennaway Road

16.4.4.2.1 Maximum height of buildings;

In reliance on the Brookfields legal opinion, stacks of materials, including haybales, are *structures* that fall within the definition of a building in the District Plan. The applicant is proposing stacking haybales to a height exceeding 11m within the 11m building height limit area referred to in 16.4.4.2.1, with resource consent required under rule 16.4.4.1 RD1.

For clarity, I note that within the Portlink Industrial Park in the Industrial General Zone, the only restrictions on the height of buildings are within 20m of a residential zone, being 15m as set out in rule 16.4.2.1, and the 11m Building Height Limit Area of the Portlink Industrial Park identified in Appendix 16.8.3i, as above.

Statements in Attachment 4 that the proposal 'will comply'

There are a number of other statements in Appendix 4 where the applicant states that the proposal *will* comply – but the applicant has not provided detail or data as to how compliance will be achieved. These are:

- 5.4.1.1 P14 – relating to earthworks in the Flood Management Area, within commercial and industrial zones;
- 6.1.5.1.1 P1 – relating to noise outside the Central City;
- 6.3.4.1 P1 – relating to control of glare;
- 6.3.5.1 P1 – relating to light spill;
- 6.8.4.1 P1 – relating to signage, noting that the assessment states that no signage is proposed, however within Appendix 4 it is stated that 'Any future signage will comply with the relevant built form standards';
- 7.4.2.1 P6 (Standard 7.4.3.6) – relating to the design of parking and loading areas, noting that there is no requirement to provide parking or loading areas, however if such areas are provided they are required to be formed, sealed, and drained. The applicant has stated that no such areas will be provided, however has not identified how the activity will operate in the absence of these areas;
- 7.4.2.1 P10 (Standard 7.4.3.10) – relating to high-trip generating activities;
- 8.9.2.1 P1 – relating to earthworks;
- Standard 16.4.2.7 – relating to visual amenity and screening, noting that the nominated site area does not share a boundary with an Open Space zone, as identified in Appendix 4.

I note that a certificate of compliance is not intended to re-state that activities conforming to District Plan standards are permitted, but rather to assess the entirety of a proposed activity with regard to the relevant rules. Given the location and nature of the site it is my view that it is likely these standards can be complied with, however sufficient information has not provided with the application to determine whether the activity as a whole is permitted.

For clarity, I note that the above list differs from that identified by the reporting officer in RMA/2023/2806, incorporating earthworks under Chapters 5 and 8, and identifying standard 7.4.3.6 (Design of parking and loading areas) rather than 7.4.3.7 (Access design). While the applicant has identified that earthworks will be undertaken and be below the relevant District Plan standards set out in Chapters 5 & 8, the specific volume and depth of earthworks required has not been stated.

I do not consider there to be a non-compliance with 7.4.3.7 (Access design), noting that the vehicle access proposed does not access legal road at the current time. I have identified that more information may be required in relation to 7.4.3.6 (Design of parking and loading areas), for the reasons set out above being the difference between what is stated in the application and the likelihood of the activity being undertaken without on-site vehicle parking and loading.

Information outlining the specifics of the activity proposed and demonstrating that the standards are met will be required.

Standards referring to Gross Leasable Floor Area

A number of standards within Chapter 7 *Transport* of the District Plan rely upon gross leasable floor area (GLFA) for calculation of requirements, including:

- 7.4.3.2 Minimum number of cycle parking facilities required; and
- 7.4.3.3 Minimum number loading spaces required.

The definition of GLFA within the District Plan is:

> ***Gross leasable floor area***
>
> *means the sum of the total area of all floors (within the external walls for buildings or within the boundary for outdoor areas) designed or used for tenant occupancy, but excluding:*
>
> *a. common lift wells and stairwells (including landing areas);*
> *b. common corridors and halls (other than food court areas);*
> *c. common toilets and bathrooms;*
> *d. any parking areas and/or loading areas; and*
> *for the purposes of calculating loading, car and cycle parking requirements and the high trip generator thresholds, it also excludes:*
> *e. common seating areas (including food court seating areas); and*
> *f. lobby areas within cinemas.*

While, applying the Brookfields legal opinion, the storage stacks fit within the definition of a building, I do not consider that they have a floor area or are designed or used for tenant occupancy. Likewise, while this definition does refer to outdoor areas this is limited to the area of 'all floors', with the outdoor area identified for the yard-based supplier activity being usable for tenant occupancy, but not being contained within a floor area. As such, it is my view that these standards do not apply.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)

The NES-CS controls soil disturbance on land where an activity on the Hazardous Activities and Industries List (HAIL) is being carried out, has been carried out, or is more likely than not to have been carried out. Previous resource consent applications (RMA92023479, RMA/2017/947, RMA/2017/1844) have identified that the site is not HAIL, with contamination being below background levels, and the NES-CS does not apply.

Section 139 Recommendation

That, for the above reasons, a certificate of compliance **not be issued** pursuant to Section 139(8)(b) of the Act.

Reported and recommended by: Francis White, Planner **Date:** 11 December 2023
Reviewed by: Paul Lowe, Manager Resource Consents **Date:** 11 December 2023

Section 139 Decision

That the above recommendation be accepted for the reasons outlined in the report.

☑ I have viewed the application and plans.

☑ I have read the report and accept the conclusions and recommendation.

Decision maker notes

Commissioner:

Conflict of Interest Form P-426 also needs to be signed by commissioner

Name: _____

Signature: _____

Date: _____

Commissioner:

Conflict of Interest Form P-426 also needs to be signed by commissioner

Name: _____

Signature: _____

Date: _____

BROOKFIELDS
LAWYERS

NAVIGATING YOUR SUCCESS

16 November 2023

Christchurch City Council
53 Hereford Street
Christchurch 8013

By Email: Brent.Pizzey@ccc.govt.nz

LEX 24279 - CUMNOR TCE 320A - BUILDING DEFINITION

INTRODUCTION

1. You have asked whether the stacking of shipping containers within the Industrial General Zone (Portlink Industrial Park) falls within the definition of "Building" under the Christchurch District Plan (**District Plan**).

2. This letter of advice consolidates various pieces of advice that have been given in relation to this issue since July 2022. In summary, we consider that the stacking of shipping containers does fall within the definition of building (**Opinion**).

3. We have included in our Opinion our response to the letters from Chapman Tripp (**CT**) and Minter Ellison Rudd Watts (**ME**), dated 6 October and 7 October respectively, (together referred to as "**Alternative Interpretation**") in relation to the interpretation of "Building" under the District Plan.

4. In terms of the background facts, we understand that:

   (a) Thousands of shipping containers are stored on the Portlink Site.[1]

   (b) In a given week an average of 83 twenty foot equivalent containers moved in and out of the site per day, as cited by the operator.[2]

   (c) Large stacks of shipping containers (at least 6 containers/20m high) are in place long term, with the individual container components of the stacks changing from time to time.

   (d) In the Portlink Industrial Park the maximum height of any building within the '11m Building Height Limit Area' defined on the development plan in Appendix 16.8.3 is 11 metres.

1 CT Letter of 6 October 2022 paragraph 6
2 ME letter of 7 October paragraph 8(c).

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Tel: +64 9 379 9350 Fax: +64 9 379 3224 DX CP24134 www.brookfields.nz

(e) Concerns have been raised by surrounding residential land uses as to adverse visual amenity effects.

5. We understand that this letter will be used to inform assessment of a certificate of compliance application lodged by Braeburn Property Limited for a notional activity which includes the stacking of containers in excess of 11m on a portion of the Portlink Industrial Park. The application also includes the stacking of various other matter (e.g. crushed car bodies) in excess of 11m. No temporal element is specified in the certificate of compliance application i.e. the containers and other matter may be stacked for an indefinite period.

INTERPRETIVE APPROACH

6. As required by the Legislation Act 2019, we have sought to ascertain the meaning of the relevant definition from its text and in the light of its purpose and its context.[3]

7. We agree with the CT Letter that *Powell v Dunedin City Council*[4] sets out the interpretive approach to planning documents, being in summary:

(a) The words of the document are to be given their ordinary meaning unless this is clearly contrary to the statutory purpose or social policy behind the plan in the rules or otherwise produces some injustice, absurdity, anomaly or contradiction;

(b) The planning document should affect common law rights only where there is express provision to this end or it follows as a matter of necessary implication;

(c) There is a need for certainty in the description of permitted activities and the operative parts of the plan. But the language used in the plan must be given its plain ordinary meaning, the test being "what would an ordinary reasonable member of the public examining the plan, have taken from" the planning document;

(d) The interpretation should not prevent the plan from achieving its purpose;

(e) If there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

8. Consistent with High Court authority in *Mount Field Ltd v Queenstown-Lakes District Council*, we have also sought to find an interpretation that:[5]

(a) Avoids absurd or anomalous results;

(b) Is consistent with the expectations of landowners; and

---

3 Section 10 of the Legislation Act 2019, *Spackman v Queenstown Lakes District Council* [2007] NZRMA 327(HC).

4 *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

5 *Mount Field Ltd v Queenstown-Lakes District Council* 31/10/08, Heath J, HC Invercargill CIV-2007-425-700.

(c) Promotes administrative efficiency (rather than requiring lengthy historical research to assess lawfulness).

TEXT OF THE DEFINITION

9. The relevant text of the definition states:

> **Building**
>
> means as the context requires:
>
> a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or
>
> b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and
>
> c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but
>
> excludes:
>
> d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;
>
> e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;
>
> f. retaining walls which are both less than $6m^2$ in area and less than 1.8 metres in height;
>
> g. structures which are both less than $6m^2$ in area and less than 1.8 metres in height;
>
> h. utility cabinets;
>
> i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;
>
> j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;
>
> k. artificial crop protection structures and crop support structures; and
>
> in the case of Banks Peninsula only, excludes:
>
> l. any dam that retains not more than 3 metres depth, and not more than 20,000 m^3 volume of water, and any stopbank or culvert;
>
> m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:
>
> i. not exceeding 25,000 litres capacity and supported directly by the ground; or
>
> ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and
>
> n. stockyards up to 1.8 metres in height.
>
> Advice note:

> This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

Subclauses (a) and (b)

10. Both clauses (a) and (b) apply to "any structure" that falls within those clauses. If stacked shipping containers can be said to be a structure, clause (a) is sufficiently broad to include them as a 'moveable structure' and clause (b) would include the placement and stacking of containers on land i.e. placement of a structure on or over land.

11. The District Plan does not contain a definition of a "structure", but this term is defined in section 2 of the RMA. Absent any contrary provision in the District Plan itself, the word "structure" must have the same meaning as in the RMA when interpreting the District Plan.[6] The RMA definition is "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*". While the definition is to some extent circular in that it defines a structure as being a building, a shipping container would fall within the ordinary meaning of a device, which is defined in the Oxford Dictionary as "*a thing made or adapted for a particular purpose, especially a piece of equipment mechanical or electronic"*.

12. The RMA definition of a structure also requires a structure to be fixed to land. The Courts in considering this definition have previously held that in order to fall within the meaning of a structure, the device does not need to be fixed permanently to the land, nor does it require some form of connection to the land in order to be fixed. It may be fixed by the gravity of the device itself. For example, in *Ohawini Bay Ltd v Whangarei District Council*,[7] rocks placed on top of one another to form a seawall were held to be a structure despite only being fixed to the land by their own weight. Similarly, in *Antoun v Hutt City Council*,[8] a moveable tiny home sitting on top of a metal plate, but with no permanent foundations, was held to be sufficiently fixed to the land by gravity to fall within the meaning of a structure. We acknowledge that both types of structure in those cases had either a greater degree of permanence (in relation to the seawall) or, potentially, greater difficulty in being moved (in the case of the tiny home) than a shipping container. However, given the weight of a shipping container is such that it cannot be easily moved and would require a crane/forklift/straddle carrier to shift, it does bear some degree of similarity to the tiny home example.

13. The CT letter distinguishes the facts of *Ohawini Bay* and *Antoun* in order to argue that the shipping containers are not structures. We readily acknowledge that the degree of permanency was greater in *Ohawini Bay* and, potentially, the difficulty of movement greater in *Antoun*. These cases are simply examples to illustrate that gravity may be sufficient to "fix" a structure to land and permanency is not a requirement. This

[6] Section 20 of the Legislation Act 2019.
[7] Environment Court, Auckland, A068/06.
[8] (2020) 21 ELRNZ 595.

interpretation is entirely consistent with the text of the definition itself in the District Plan including "moveable" structures, and the "placement" of structures on land.

14. In addition, while some of the containers stored at the site may be there on a transitory basis, there is no guarantee that will invariably be the case and equally there would be nothing to prevent containers being stored on a longer-term basis.

Subclause (c)

15. Clause (c) expressly refers to shipping containers as falling within the meaning of a "building", where it is *"used on-site as a residential unit or place of business or storage"*. On the facts, it is unclear whether the containers themselves are being stored, or whether the containers are being used to store other items. If the latter, then that would be within the scope of clause c. If the former, then it is arguable that this would not be within the scope of clause c, although there is some basis to conclude that when a shipping container is in its original unconverted state, it is designed as a storage device and therefore would fall within this use regardless of whether at a specific point in time it is sitting empty.

16. We note the argument in the Alternative Interpretation that an empty shipping container being stored is not itself being used "on site as a place of storage". Our Opinion remains that, arguably, a shipping container is designed as a storage device and therefore, in its unaltered form, would fall within this category, regardless of whether at a specific point in time it is empty. This is consistent with the way in which the Courts have interpreted "use" in a district plan to mean the use for which it is designed, rather than any subjective intentions of an individual as to how it will be used.[9]

17. We have also considered whether the express reference to shipping containers in clause (c) should be interpreted to mean that where a shipping container is not *"used on-site as a residential unit or place of business or storage"* then it cannot come within the other clauses of the definition of building. As a starting point, we note that shipping containers that are not *"used on-site as a residential unit or place of business or storage"* are not expressly excluded under clauses d.-n. This drafting approach would have been available if it were the intent.

18. The Alternative Interpretation argues that this specific clause (c) should override and exclude the general clauses (a) and (b).[10] In our view this seeks to elevate the interpretive principle/canon that the specific overrides the general into an inflexible rule. We note the authorities cited in the ME letter that support the application of the principle in the context of policy interpretation and addressing the interrelationship between zone and precinct rules. However, as the Court of Appeal held in *Pora v R* [2001] 2 NZLR 37, context is important, and care should be taken in the application of the principle s*pecialia generalibus derogant*.[11]

---

9 *Landeman v Cavanagh* [1998] 4 ELRNZ 1 (CA).

10 CT letter, Annexure 1, paragraph 7.2; ME Letter, paragraph 8(a).

11 *[43] The obverse proposition that special provisions override general ones (specialia generalibus derogant) is less well-supported on the authorities and is inherently less useful even as a rule of thumb because so sensitive to particular context. If applied generally, some of the most important overarching principles expressed in legislation would be unacceptably insecure, confounding clear legislative purpose.*

19. Plainly the specific exemptions to the definition of building override the general inclusions. However, the Alternative Interpretation seeks to elevate an express inclusion of shipping containers as buildings in certain circumstances into an implicit exclusion of shipping containers as buildings in other circumstances. This does not necessarily follow. Clause (c) of the definition expressly includes as a "building" shipping containers used on site as:

    (a) a residential unit; or

    (b) a place of business; or

    (c) a place of storage.

20. The Alternative Interpretation would mean that the use of shipping containers on a site for any other purpose could never constitute a building and would be exempt from all standards applying to buildings. This would be an absurd outcome as other activities such a Community Activities or Spiritual Activities taking place in structures comprised of shipping containers would be exempt from building standards.

21. In *Vortac New Zealand Ltd v Western Bay of Plenty District Council* [2022] NZEnvC 176 the Environment Court considered whether the specific inclusion in the definition of building/structure of a fence or wall exceeding 2m in height precluded a lower wall or fence also constituting a building or structure. The Court held:

> [40] The definition of building/structure specifically includes a fence or wall exceeding 2m in height. On the principle of interpretation that the expression of one thing excludes its alternative, by implication that inclusion in the definition might exclude a fence or wall below that height from being a building. The specific inclusion is, however, expressed to be in addition to the ordinary and usual meaning of building/structure. Those two words have very broad ordinary and usual meanings and, like other words of broad meaning in common usage, normally take their particular sense from the purpose for which and the context in which they are used. In this case that sense must be considered in terms of the objectives and policies of Section 8 of the District Plan.

22. Similarly, limb (c) of the District Plan definition of Building is in addition to limbs (a) and (b) ("and"). We therefore consider that the same principle from *Vortac* should apply to limb (c) i.e. the specific inclusion of containers in the circumstances in (c) does not exclude containers being a building under the limbs (a) and (b) in other circumstances.

Summary in relation to text

23. In summary, we consider that the definition is sufficiently broad on its face to include the placement and stacking of shipping containers. The primary basis for our Opinion remains that the placement and stacking of shipping containers falls within limbs (a) and (b) of the definition as:

    (a) A moveable structure; and

    (b) The placement of a structure on land.

24. We also consider that it is arguable that stacked shipping containers that are either currently storing other goods or are placed on the site in preparation to be loaded with goods, are being used for storage and therefore fall within clause (c).

25. We now consider this reading of the text in light of its:

    (a) purpose as expressed by the objectives and policies and other context of the Christchurch District Plan;

    (b) context within the scheme of rules in the Christchurch District Plan.

PURPOSE

26. We have reviewed the objectives and policies of Chapter 16 Industrial in the District Plan which set out the relevant purpose against which to interpret related rules. We note the following amenity focused objectives and policies which are relevant to a purposive interpretation of "building":

> 16.2.3 Objective - Effects of industrial activities
>
> a. Adverse effects of industrial activities and development on the environment are managed to support the anticipated outcome for the zone while recognising that sites adjoining an industrial zone will not have the same level of amenity anticipated by the Plan as other areas with the same zoning.
>
> 16.2.3.1 Policy - Development in greenfield areas
>
> a. Manage effects at the interface between greenfield areas and arterial roads, rural and residential areas with setbacks and landscaping.
>
> 16.2.3.2 Policy - Managing effects on the environment
>
> a. The effects of development and activities in industrial zones, including reverse sensitivity effects on existing industrial activities as well as, visual, traffic, noise, glare and other effects, are managed through the location of uses, controls on bulk and form, landscaping and screening, particularly at the interface with arterial roads fulfilling a gateway function, and rural and residential areas, while recognising the functional needs of the activity.
>
> b. Effects of industrial activities are managed in a way that the level of residential amenity (including health, safety, and privacy of residents) adjoining an industrial zone is not adversely affected while recognising that it may be of a lower level than other residential areas.

27. These objectives and policies contemplate the management of adverse effects of industrial activities and development having regard to the amenity values of adjoining areas. Techniques to achieve these outcomes include:

    (a) setbacks and landscaping.

    (b) controls on bulk and form.

28. The Industrial General Zone (Portlink Industrial Park) contains bespoke rules in respect of maximum building height and building setbacks. These techniques would be completely ineffective in respect of shipping containers, and not achieve their purpose, if these structures were not covered by the rules and shipping containers could be stacked to any height, including in relation to boundaries. The purpose as expressed by the objectives and policies of the zone therefore supports the textual interpretation we identify above.

29. As to purpose, the CT letter states that:[12]

> We accept that some of the methods provided in the plan to manage such effects include setbacks, landscaping, and bulk and form controls. However, we note that these controls on bulk and form apply to specific activities (which the Council whine it prepared its District Plan must have deemed necessary to manage). Height, as a control on bulk, applies only to 'buildings'. It is our view that is because the District Plan contemplates the greatest effects of bulk on amenity is from buildings, and these need to be managed through he plan.

30. Implicit in this statement is the view that stacked shipping containers are not buildings. However, no evidence or logical justification is provided for the assertion that over height stacks of shipping containers will have a lesser effect on amenity as compared to other structures.

CONTEXT

31. We have considered our interpretation in light of the context of the remainder of the District Plan, including to check whether any anomalous consequences would arise. We have checked:

(a) The definition of Outdoor storage area;

(b) Other Industrial General Zone rules;

(c) Application to other stacked matter such as car bodies

(d) Other district plan references to "containers"

(e) District-wide Rules

Outdoor storage area

32. The activity of container storage could also be considered an Outdoor storage area which is defined as:

> means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.

[12] CT letter paragraph 33.4

33. It is therefore relevant to consider whether "outdoor storage area" and "building" are mutually exclusive. For the reasons that follow we have concluded that they are not.

34. The Oxford dictionary defines "equipment" broadly to mean "*items needed for a particular purpose*". A shipping container would potentially fall within this broad definition of equipment, as would almost anything. As something man-made, it could also potentially fall within the meaning of a "processed product".

35. We have given consideration to whether the land potentially being an outdoor storage area within the meaning of the District Plan definition would mean that the container cannot also be a "building". We do not think that it would. Given that the definition of a building anticipates that something moveable or temporary could fall within the meaning of a building, it follows that storage areas could exist where buildings themselves are stored, for example, sites where tiny homes are constructed and stored, or sites where other relocateable dwellings or other buildings are stored. Such land could potentially fall within the meaning of an outdoor storage area, unless the use falls within the meaning of a yard-based supplier. We are not aware of whether in practice you have treated land used for the storage of relocateable buildings as an outdoor storage area, but we consider that unless there are other specific District Plan provisions that relate to such activities, it would make sense that if such sites are considered to be outdoor storage areas, so then would a shipping container yard, regardless of whether the shipping containers are also buildings.

36. We have considered the provisions in Chapter 16 of the District Plan. We did not identify anything that would mean that the definition of a building and an outdoor storage area are necessarily mutually exclusive. In particular, we note that rule 16.4.4.1.1 P1 for the Industrial General Zone (Portlink Industrial Park) provides that any activity listed in rule 16.4.1.1 P1-P21 is a permitted activity provided it complies with the built form standards in rule 16.4.4.2 and rule 16.4.2 (unless specified otherwise in rule 16.4.4.2). Rule 16.4.1.1 P1 provides that any new building or addition to a building for an activity listed in P2 to P21 is a permitted activity, provided it complies with the built form standards in 16.4.2. Those activities include an industrial activity (P2) and warehousing and distribution activities (P3), either or both of which could potentially apply to the storage of shipping containers. There are built form standards that apply specifically to outdoor storage areas. We could not see any obvious reason as to why those standards would not apply in conjunction with other specific standards that apply to buildings.

Other Industrial zone rules

37. It is relevant to consider the implications of stacks of containers being classed as "buildings" for the relevant zone rules as a check to avoid anomalous outcomes. The starting point is that buildings for industrial activities are permitted within the zone (Rule 16.4.1.1.P1.). As such, any container storage that conforms to building height and setback standards can occur without the need for a consent, which is consistent with enabling industrial activity to occur within the zone. We do not consider that anomalous outcomes arise from the application of height and setback rules to containers. These outcomes are consistent with the direction of the objectives and policies. Consent can of course be sought to stack containers to a greater height in appropriate locations.

38. However, the application of rule 16.6.2.2 Maximum building coverage of a site in the Industrial Park Zone could be considered anomalous because it would limit the placement of containers to 50% of a site and a resource consent would be required to exceed this threshold. We are uncertain as to whether there is a proper resource management reason for this threshold to apply to container storage. There may very well be e.g. impervious surfaces or amenity considerations. Even if the application of this rule to the activity in question may not be apt, we do not consider that the potential requirement to obtain consent for a rule breach of itself would amount to an absurd consequence. It is not unusual for an activity to need to obtain consent under various rules, some of which may be technical consent requirements in the particular case and some of which address environmental effects which require careful management. The same point applies to rules relating to flood management areas, which we discuss below.

39. Rule 16.4.1.1 Permitted activities states "The activities listed below are permitted activities in the Industrial General Zone if they meet the activity specific standards set out in this table and the built form standards in Rule 16.4.2. *Note, the built form standards do not apply to an activity that does not involve any development*." If the activity of stacking containers does not amount to "development" then even if this is a "building" the built form standards do not apply.

40. The Christchurch District Plan and the RMA do not define "Development". The Spiller's NZ law dictionary also does not define "Development". The following dictionary definitions are of some assistance:

Collins English Law Dictionary New Zealand Edition

- an area or tract of land that has been developed.
- Develop: to improve the value or change the use of land, as by building.

Cambridge Dictionary

- an area on which new buildings are built in order to make a profit
- The process of growing and changing and becoming more advanced.

Merriam Webster dictionary

- the state of being developed
- a tract of land that has been made available or usable: a developed tract of land *especially*: one with houses built on it.

Black's Law Dictionary Ninth Edition Bryan A. Garner

- (1885) 1. A substantial human-created change to improved or unimproved real estate, including the construction of buildings or other structures.
- 2. An activity, action, or alteration that changes underdeveloped property into developed property.

Lexis Advance Fourth Edition Words and Phrases Legally Defined Volume 1 A-K

Development of property

- "…development means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land." – (Town Country Planning Act 1990).

41. There is a circularity to this issue as the construction of "buildings" would generally be considered to amount to "development". As such, if the stacking of shipping containers amounts to the placement of a "building" then the activity is "development". Given the circularity of the issues, we don't consider that Rule 16.4.1.1 advances much the issue of whether or not stacked shipping containers are buildings.

Other district plan references to "containers"

42. Other relevant provisions of the District Plan also form context which supports the interpretation that shipping containers are within the definition of "buildings".

43. Rule 13.8.4.2.1 of the Specific Purpose (Lyttelton Port) Zone relates to Maximum Building Height. Clause a. of this rule applies to:

> Quayside and container cranes, lighting towers and container storage (except containers located within Height Area C as shown in Appendix 13.8.6.4)

44. Clause a. specifies no height limit. The express reference to shipping containers in the context of a rule applying to buildings is strong contextual support for the view that containers are a type of building under the District Plan.

45. Clause g. of the rule applies to:

> Buildings not otherwise provided for under (a) with frontage to Norwich Quay and containers located within Height Area C as shown in Appendix 13.8.6.4. This standard shall not apply to temporary structures erected for noise mitigation, construction activities or transiting containers that remain on site for less than 72 hours.

46. A permitted limit of 15m applies with restricted discretionary consent required beyond this height. Again, the express reference to shipping containers in the context of a rule applying to buildings is strong contextual support for the view that containers are a type of building. The exclusion from the standard of "transiting containers that remain on site for less than 72 hours" also implies that, but for this exclusion, these containers would be regulated by the building height rule. No similar exclusion for transiting shipping containers is found in the plan provisions applying to Portlink Industrial Park.

47. We note that the standard in Rule 13.8.4.2.1(a) applies to "container storage" which would encompass the storage of both full and empty containers. This is logical as the contents of a container do not have any impact on the amenity effects caused by the heights of container stacks.

District-wide Rules

48. We have considered how treating shipping containers as buildings would interact with the use of containers across the District, including in terms of the district-wide rules in the District Plan. This is particularly to understand whether any anomalous consequence would arise e.g. requiring consent for the temporary use of shipping containers in circumstances where one would expect that to be a permitted activity.

49. First, we do not consider that shipping containers in transit would be classed as a Building for the purposes of the District Plan as they would no longer have the requisite degree of affixation to land.

50. Secondly, Chapter 6 of the District Plan provides an enabling regime for temporary buildings which provides for the temporary ancillary use of shipping containers throughout the District. Rule 6.2.3 sets out how to interpret and apply the rules for temporary activities and buildings. In summary:

    (a) The rules that apply to temporary activities and buildings in all zones are contained in the activity status tables (including activity specific standards) in Rule 6.2.4.

    (b) Temporary activities and buildings are exempt from the rules in the relevant zone chapters and other District Plan rules, except as specified in activity specific standards in Rule 6.2.4; and

    (c) The activity status tables and standards in the following chapters and sub-chapters apply to temporary activities and buildings (where relevant):

        4. Hazardous Substances and Contaminated Land.

        5. Natural Hazards

           Rule 5.6 Slope Instability;

        6. General Rules and Procedures

           6.3 Outdoor Lighting (except as otherwise specified in Rule 6.2.4);

           6.1 Noise (except as otherwise specified in Rule 6.2.4);

           6.8 Signage (as specified in that sub-chapter and as specified in Rule 6.2.4);

        7. Transport (as specified in Rule 6.2.4);

        8. Subdivision, Development and Earthworks;

        9. Natural and Cultural Heritage; and

        11. Utilities and Energy.

51. Rule 6.2.4.1.1 P1 provides as a permitted activity for temporary buildings ancillary to an approved building, construction, land subdivision or demolition project. The following activity specific standards apply:

    (a) No single building shall exceed 50m² of GFA; except that, in the Commercial Central City Business, Industrial General, Industrial Heavy, Rural Quarry, Specific Purpose (Tertiary Education) or Specific Purpose (Airport) Zones, the GFA of a temporary construction building is not restricted provided that buildings are not placed in any setbacks required by the relevant zone.

    (b) Temporary buildings shall be removed from the site within one month of completion of the project or, in the case of land subdivision sales offices, within one month of the sale of the last allotment in the subdivision.

    (c) Temporary land subdivision sales offices shall meet the signage rules for the Commercial Local Zone in Sub-chapter 6.8 Signs.

52. Rule 6.2.4.1.1 P4 provides as a permitted activity for temporary buildings or other structures ancillary to an event listed in Rule 6.2.4.1.1 P2.[13] The following activity specific standards apply:

    (a) Temporary buildings or other structures shall not be erected on or remain on the site for more than two weeks before or after the event opens or closes to participants.

    (b) Where events occur on non-consecutive days, on days between instances of the event opening to participants, public access to parts of the site that are normally accessible shall not be impeded.

53. In our opinion, these rules for temporary buildings provide for the range of situations where one would expect shipping containers to be able to be used as a permitted activity, in conjunction with other activities, and subject to a limited set of performance standards. This enables temporary use of shipping containers across the district generally to be exempt from other rules which apply generally to buildings e.g. bicycle parking requirements and minimum floor levels.

54. We note however that these temporary activity rules would not apply in the industrial zones or the Portlink site. This is because Chapter 6 interpretation rule 6.2.3 d. states:

---

[13] Community gatherings, celebrations, non-motorised sporting events and performances including:
a. carnivals and fairs;
b. festivals;
c. holiday observances;
d. races;
e. parades;
f. concerts; and
g. exhibitions.

> Rule 6.2.4 does not apply to activities and buildings anticipated by the rules in the relevant zone chapters or within the expected scope of operations for permanent facilities

55. This rule is consistent with the purpose of the objective and policies in Chapter 6 – 6.6.2. that the temporary activity provisions are for buildings and activities that are not anticipated in the zone but are only there for a short time. In our view, shipping containers are activities and buildings anticipated in the Industrial Zone and therefore cannot be authorised under the temporary activities regardless of how long they are there.

56. We have also considered the application of our interpretation to flood hazard rules which apply to buildings (noting that these rules do not apply to temporary buildings). The key policy driver for these rules is the protection of buildings from material damage. We note that the likelihood of containers being materially damaged by flood waters would appear low, although equally the prospect of storing containers within a floodplain does not appear to be a sensible resource management outcome if the land is subject to serious flood hazard. As noted above, even if the application of flood hazard rules to the activity in question may not be apt, we do not consider that the potential requirement to obtain consent for a rule breach of itself would amount to an absurd consequence. It is not unusual for an activity to need to obtain consent under various rules, some of which may be technical consent requirements in the particular case and some of which address environmental effects which require careful management.

Application to other stacked matter such as car bodies

57. It is also relevant to consider the application of the principles which underpin our Opinion, to the storage of other matter (vehicles, pallets, containers/boxes, equipment, machinery, products, etc).

58. Subject to the important qualification that the definition of a building in the District Plan supersedes the ordinary meaning of a building, we note that a shipping container also shares common characteristics ordinarily associated with a building, such as having walls and a roof. However, we do not interpret the definition of building as necessarily excluding other forms of stacked equipment or devices.

59. Having regard to the way in which “building” is defined in the District Plan, the question of whether stacked equipment or devices is or is not a building would turn on the particular circumstances. We consider that the following factors will be relevant:

    (a) The size and bulk of individual components within a stack, as well as the overall height of the stack (these factors will be relevant to whether it can be said that the stacked equipment is fixed to the land by its own weight).

    (b) The degree of permanence of the stacked equipment or devices. While permanence is not necessarily a requisite characteristic to fall within subclause (a) of the building definition, where something is placed on the land on a longer-term basis, this may support a finding that it is a structure.

    (c) Where stacked equipment and devices rely upon other works to stabilise them and fix them in place, those works themselves could fall within the meaning of a building. We note for example, that scaffolding or falsework is only excluded from

the meaning of a building if it is used temporarily for maintenance and construction purposes.[14] Similarly, a fence or a wall that has a structural function of supporting stacks of equipment would not fall within the fencing exception.[15] Where stacks of equipment are secured to other devices that are themselves affixed to the land and would fall within the meaning of a building, it could be arguable that the structure in its entirety, including both the supporting structure and the stacked equipment, could fall within the meaning of a building.

60. Applying these general matters, we consider that the circumstances in which stacked equipment or devices are unlikely to fall within the meaning of a building are where:

(a) The stacks are relatively small in height and size (particularly if they are both less than 6m^2 in area and less than 1.8 metres in height);[16]

(b) Where the individual component parts are small and/or lightweight;

(c) Where the stack is short-term;

(d) Where the stack is not supported by or affixed to any structure to stabilise it or fix it in place, this may be indicative that it does not form part of a structure. However, this is something that would need to be considered in conjunction with the other factors described above, and on its own would not necessarily be determinative of whether the stacked equipment or device is or is not a building.

MATTERS WHICH ARE NOT RELEVANT

61. The certificate of compliance application refers to:[17]

(a) An excerpt of the IMO (International Maritime Organisation) International Convention of Safe Containers (CSC) 1972, setting out in its Interpretations and Guidelines a definition of 'container' as an article of transport equipment (this is also referenced in the ME Letter).

(b) The industry definition of "Inland Container Depot", which is that it is a "public facility that offers services for handling and temporary storage of import/export laden containers or empty containers"

62. These documents do not form part of the District Plan definition and are not incorporated by reference. We do not consider that these extraneous definitions can have any relevance to the interpretation of the Christchurch District Plan which exists for a fundamentally different purpose (i.e. sustainable management).

63. The CT letter cites the definition of "building" in the Building Act 2004 which expressly excludes containers as defined in regulations made under the Health and Safety at Work

14 Clause (d) of the definition of a building.
15 Clause (e) of the definition of a building.
16 See the clause (g) exception to the meaning of a building.
17 Paragraph 25 of the application

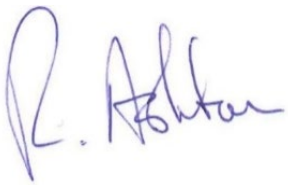
Act 2015. We do not consider that this is relevant given that the definition in the District Plan includes the following advice note:

> This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

CONCLUSION

64. We trust that this letter assists with the question you have asked. Please do not hesitate to make contact should you have any further questions arising.

Yours faithfully
BROOKFIELDS



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BROOKFIELDS
LAWYERS

NAVIGATING YOUR SUCCESS

7 December 2023

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LEX 24279 - CUMNOR TCE 320A - BUILDING DEFINITION

INTRODUCTION

1. The Council has received two applications for certificates of compliance, by Braeburn Property Limited dated 29 November 2023 relating to 320 & 320A Cumnor Terrace, Christchurch (**CoC Applications**).

2. You have asked whether the activities described in the certificates of compliance fall within the definition of "Building" under the Christchurch District Plan (**District Plan**).

3. This letter should be read in conjunction with our letter of advice dated 16 November 2023, which concerned whether the stacking of shipping containers within the Industrial General Zone (Portlink Industrial Park) falls within the definition of "Building" under the District Plan. We do not unnecessarily repeat the analysis in that letter. However, for ease of reference, we set out the section of our previous advice that considered the application of our interpretation of "Building" to other stacked matter:

> **Application to other stacked matter such as car bodies**
>
> 57. It is also relevant to consider the application of the principles which underpin our Opinion, to the storage of other matter (vehicles, pallets, containers/boxes, equipment, machinery, products, etc).
>
> 58. Subject to the important qualification that the definition of a building in the District Plan supersedes the ordinary meaning of a building, we note that a shipping container also shares common characteristics ordinarily associated with a building, such as having walls and a roof. However, we do not interpret the definition of building as necessarily excluding other forms of stacked equipment or devices.
>
> 59. Having regard to the way in which "building" is defined in the District Plan, the question of whether stacked equipment or devices is or is not a building would turn on the particular circumstances. We consider that the following factors will be relevant:

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(a) The size and bulk of individual components within a stack, as well as the overall height of the stack (these factors will be relevant to whether it can be said that the stacked equipment is fixed to the land by its own weight).

(b) The degree of permanence of the stacked equipment or devices. While permanence is not necessarily a requisite characteristic to fall within subclause (a) of the building definition, where something is placed on the land on a longer-term basis, this may support a finding that it is a structure.

(c) Where stacked equipment and devices rely upon other works to stabilise them and fix them in place, those works themselves could fall within the meaning of a building. We note for example, that scaffolding or falsework is only excluded from the meaning of a building if it is used temporarily for maintenance and construction purposes. Similarly, a fence or a wall that has a structural function of supporting stacks of equipment would not fall within the fencing exception. Where stacks of equipment are secured to other devices that are themselves affixed to the land and would fall within the meaning of a building, it could be arguable that the structure in its entirety, including both the supporting structure and the stacked equipment, could fall within the meaning of a building.

60. Applying these general matters, we consider that the circumstances in which stacked equipment or devices are unlikely to fall within the meaning of a building are where:

(a) The stacks are relatively small in height and size (particularly if they are both less than $6m^2$ in area and less than 1.8 metres in height);

(b) Where the individual component parts are small and/or lightweight;

(c) Where the stack is short-term;

(d) Where the stack is not supported by or affixed to any structure to stabilise it or fix it in place, this may be indicative that it does not form part of a structure. However, this is something that would need to be considered in conjunction with the other factors described above, and on its own would not necessarily be determinative of whether the stacked equipment or device is or is not a building.

[footnotes omitted]

THE COC APPLICATIONS

4. The CoC Applications are closely modelled on the prior application by Braeburn Property Limited which seeks a certificate in relation to the stacking of shipping containers.

5. In each case, the CoC Applications are to establish a yard-based supplier activity on the site, which is defined under the District Plan as:

Yard-based supplier

means the use of any land and/or building for selling or hiring products for construction or external use (which includes activities such as sale of vehicles and

> garden supplies), where more than 50% of the area devoted to sales or display is located within covered or uncovered external yard or forecourt space, as distinct from within a secured and weatherproof building. Drive-in or drive-through covered areas devoted to storage and display of construction materials (including covered vehicle lanes) will be deemed yard area for the purpose of this definition.

6. We doubt that what is proposed amounts to a Yard-Based Supplier activity and consider that the CoC Applications actually relate to Outdoor Storage Areas (which are mutually exclusive to yard based suppliers). We address this issue further below.

7. The CoC Applications differ in the products that they propose to store outdoors. We adopted the applicant's characterisation of the applications:

   (a) The "**Scrap Metal Application**" proposes the stacking of dismantled/crushed car bodies and/or baled scrap metal (but excluding shipping containers) to heights exceeding 11m and potentially as high as 20m. The Scrap Metal Application states: *"…the assessment of compliance has proceeded on the basis that dismantled/crushed car bodies and baled scrap metal are not buildings, as defined in the District Plan…."*. [1]

   (b) The "**Haybales Application**" proposes the outdoor storage of various garden supplies and items, including haybales. The outdoor storage of items may include items stacked/stored at any height (including heights exceeding 11m). The Haybales Application states: *"…the assessment of compliance has proceeded on the basis that haybales are not buildings, as defined in the District Plan…".*[2] The Haybales application does not describe any items other than haybales which are proposed to be stacked to heights exceeding 11m, and we have approached it on the basis that it relates to haybales. Clarification could be sought from the applicant on this point.

8. The CoC Applications both state that racking or other support structures are not proposed or necessary for storage, noting 'interlocking' or other methodologies will be employed to ensure the safe and secure stacking of items at greater heights, where this is required. No details or diagrams are provided to illustrate this methodology.

9. The CoC Applications refer to our advice concerning the application of our interpretation of "building" to other stacked matter and state:

> The above interpretation of 'building' and 'outdoor storage area' is considered arbitrary and not one which supports administrative efficiency. An applicant should not have to measure the height/weight of said stacked equipment to determine whether it is a building, nor should the duration sought to stack such equipment determine whether it is a building or not. Moreover, it would be unclear to users of the Plan at what point the height, size, weight or duration of a stored item would result in an item of outdoor storage then being defined and assessed as a building.

10. It is less than ideal that the definition of "building" in the District Plan does not provide express temporal and dimension standards specifying when stacked matter will come within its terms. We note in passing that the Auckland Unitary Plan's definition of building

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1 Scrap Metal Application at Paragraph 30.
2 Haybale Application at Paragraph 30.

expressly includes "Stacks or heaps of materials" as structures where they are over 2m in height and in existence for more than one month.[3] We also note that the definition of "Outdoor Storage Area" in the District Plan only applies to "periods in excess of 12 weeks in any year" i.e. storage for less than this time period is not captured by the activity.

11. Given that scale and time parameters are not specified for stacks or heaps of material in the District Plan definition of building, consideration is required of whether the stacked matter is a structure, which in turn requires an assessment of affixation to land. The case law referenced in our earlier advice confirms that this assessment is one of degree, including in relation to the time for which a thing is in place.[4] We do not agree with the CoC applications' author that this is arbitrary in nature, provided that a purposive approach is brought to bear to resolve the matter at issue. We also note that the interpretation advanced by the applicant's legal advisors places some weight on the contention that the transiting of shipping containers means that they cannot be considered structures i.e. the temporal element is relevant.

12. We now consider the Scrap Metal Application and the Haybales Application in turn.

Scrap Metal Application

13. The Scrap Metal Application seeks certification as a permitted activity for stacks of scrap metal reaching as high as 20m. Although no diagram is provided, the applicant has stated that interlocking' of stacked items or other methodologies will be employed to ensure the safe and secure stacking of items at greater heights. The Application Plan at Appendix 2 depicts outdoor storage stacks, which appear to be approximately 15-20m wide and 60-60m long. Scrap metal (either as crushed car bodies or as baled scrap metal) is very dense/heavy and cannot be moved without specialised equipment. We therefore consider that the stacks will be made of very heavy objects and will be large in height and size. Based on the analysis in our earlier advice, these characteristics support a conclusion that the stacks are a structure.

14. The Scrap Metal Application does not expressly state whether the activity relates to stacks that will be in place for extended periods of time. As noted, the application takes the position that the temporal dimension of the stacks is irrelevant to whether they amount to a structure. We do not agree with this approach, given the case law regarding structures and affixation, and further information could be sought from the applicant as to the duration of the stacks. For present purposes, we are approaching the issue assuming that the certification for the stacks is sought in the long term as:

    (a) Certification is sought for an ongoing activity i.e., no time limitation is proposed; and

    (b) The only rational purpose that we can glean for the storing of stacked car bodies on the site would be prior to them being recycled. The applicant has not demonstrated a retail demand for car bodies that would support the operation of a yard-based supplier as described. Given this, the Scrap Metal Application does not fit within the definition of "yard based supplier" i.e., because the "products" are not

3 Auckland Unitary Plan, Chapter J Definitions

4 See *Antoun v Hutt City Council* (2020) 21 ELRNZ 595.

"for construction or external use". The activity may be more properly categorised as an outdoor storage area relating to an industrial activity:

> **Outdoor storage area**
>
> means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.
>
> **Industrial activity**
>
> means the use of land and/or buildings for manufacturing, fabricating, processing, repairing, assembly, packaging, wholesaling or storage of products. It excludes high technology industrial activity, mining exploration, quarrying activity, aggregates-processing activity, and heavy industrial activity.

15. In any event, the long-term (indefinite) nature of the pile of scrap metal supports a conclusion that it would be fixed to the land by its own weight and would therefore constitute a structure.

16. We consider that the height, width, weight and indefinite duration of the piles of scrap metal mean that they would amount to a structure. For completeness, we consider that this conclusion is supported by a purposive interpretation in light of the relevant objectives and policies as discussed at paragraphs 26-28 of our 16 November 2023 advice.

Haybales Application

17. The Haybales Application seeks certification for stacking haybales (and, notionally, other similar items) to a height in excess of 11m. The same Application Plan is included at Appendix 2 which depicts outdoor storage stacks, which appear to be approximately 15-20m wide and 60-60m long. No diagrams or methodology is provided of the approach to the stacking of haybales. The Application states that 'interlocking' of the bales or other methodologies will be employed to ensure the safe and secure stacking of items at greater heights. We have assumed that the images below are indicative of the type of stack activity of which the application seeks certification:

18. We acknowledge that these photographs are hypothetical examples of haybales and there is no way of knowing from the application whether or not the proposed activity reflects the above type of stack. This is indicative of a broader issue with the application – it lacks sufficient detail to properly assess the nature and extent of the activity and whether it complies with the district plan.

19. If the proposed stacks are intended to be similar in size and scale to the stacks above, they are not relatively small in height and size; they are relatively large in both dimensions. While a haybale is less dense and heavy than a bale of scrap metal, haybales are still heavy objects which require specialised equipment to transport them. We therefore consider that the stacks are made of heavy objects, are large in height and size, and are interlocked to achieve structural stability. These factors support a conclusion that the stacks are a structure.

20. The Haybales Application does not specify the time period for which stacks will be in place (taking the position that this an irrelevant consideration). For present purposes, we are approaching the issue assuming that the certification for the stacks is sought in the relatively long term as:

    (a) Certification is sought for an ongoing activity i.e., no time limitation is proposed; and

    (b) While there are a variety of uses for haybales (and therefore some potential for retail trade), the predominant use of haybales is as winter feed for animals. This is a seasonal activity, with hay being made during the summer months, and then fed out during the winter months. We therefore assume that stacks may be in place for longer periods. We consider that the activity therefore appears to be an outdoor storage area for an industrial activity, rather than a yard based supplier.

21. Taken together, we consider that the height, width, weight, interlocked structural nature, and indefinite duration of the haybale stacks means that they would be fixed to the land by their own weight and would therefore constitute a structure. For completeness, we consider that this conclusion is supported by a purposive interpretation in light of the relevant objectives and policies as discussed at paragraphs 26-28 of our 16 November 2023 advice.

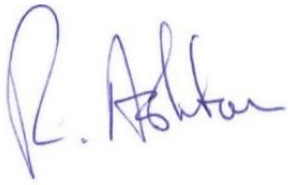
CONCLUSION

22. The lack of detail in the application relating to the proposed duration of the stacks and the method of stacking them means that it is difficult to fully assess the compliance of the proposed activity. However, we have concluded that the Scrap Metal Application and the Haybale Application are more than likely structures and therefore constitute buildings which exceed the applicable building height requirements in the District Plan.

23. We acknowledge that there is a degree of uncertainty in relation to this due to the framing of the District Plan definition which requires an appraisal of whether stacked material is a structure in a given case. A plan change to adopt the approach taken by the Auckland Unitary Plan of specifying the scale and duration of material stacks that constitute a structure would resolve this uncertainty.

24. Unless such a change is adopted, the existing definition must be applied on its terms and taking a purposive approach.

Yours faithfully
BROOKFIELDS



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6. RMA/2023/3102 Officer Report dated 11 December 2023

Resource Management Act 1991

Christchurch City Council

Application for Certificate of Compliance

(Section 139)

Application Number:	**RMA/2023/3102**
Applicant:	Braeburn Property Limited
Site address:	320 and 320A Cumnor Terrace, Woolston
Legal description:	Lot 301 Deposited Plan 463785, Lot 302 Deposited Plan 473298 and Lot 305 Deposited Plan 525615.
Zone:	
District Plan:	Industrial General
Proposed Plan Change 14:	Industrial General
Overlays and map notations:	
District Plan:	Flood Management Area (Fixed Minimum Floor Level Overlay) Liquefaction Management Area Site of Ecological Significance (Ōpāwaho/Heathcote River) Water Body Setback (Downstream waterway - Ōpāwaho/Heathcote River) 11m Building Height Limit (Appendix 16.8.3i)
Proposed Plan Change 14:	Tsunami Management Area
Road classification:	Local/Right of Way (Kennaway Road), Major Arterial (Tunnel Road – SH74)

Description of Application: Certificate of compliance for the operation of a yard-based supplier activity

Introduction

The applicant proposes operating a yard-based supplier activity within a nominated site, having an area of 25,000m^2, within the property at 320 and 320A Cumnor Terrace, as shown in Figure 1 below.

Figure 1 – Nominated site area.

The activity is described in paragraphs 8-17 the application document, in brief being:

- The establishment and operation of a yard-based supplier;
- Outdoor storage of dismantled/crushed car bodies and baled scrap metal, to a height of more than 11m, and potentially exceeding 20m;
- A building of approximately 100m^2 in area for use as an office and bicycle storage.

A number of elements relating to the proposed activity are unclear, including:

- The form and structure of the office building, including foundations.
- How deliveries will be made, in the absence of any loading areas.
- The machinery used for the loading, unloading and stacking of materials.
- The quantity of material anticipated to be stored on site, the turnover of that material, and the method by which it will be stored/stacked.

I note that these matters are relevant to District Plan standards relating to natural hazards and earthworks, noise, transport, and industrial activity, as assessed below.

The layout of the proposed yard-based supplier is as shown in Appendix 2 of the application, and in Figures 2-4 below:

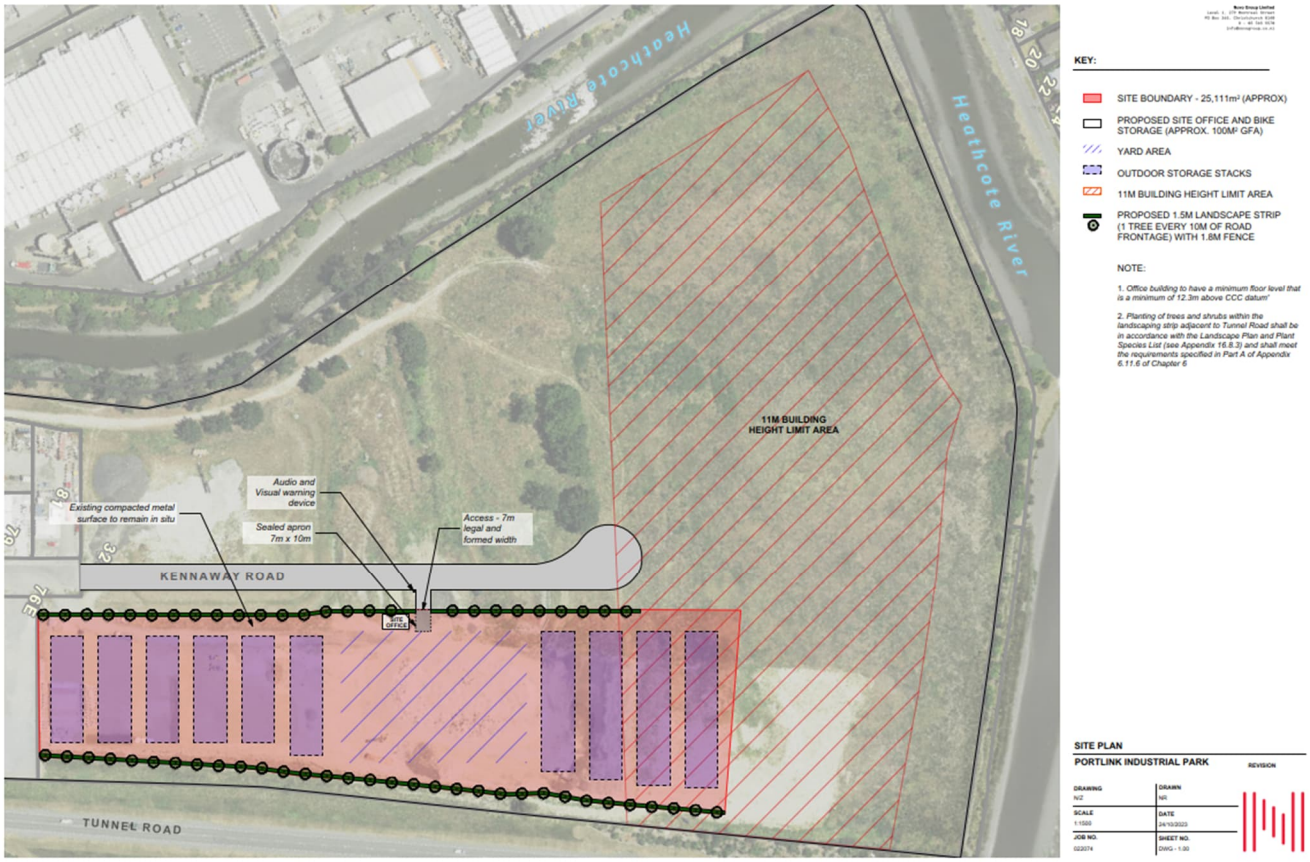

Figure 2 – Overall site plan

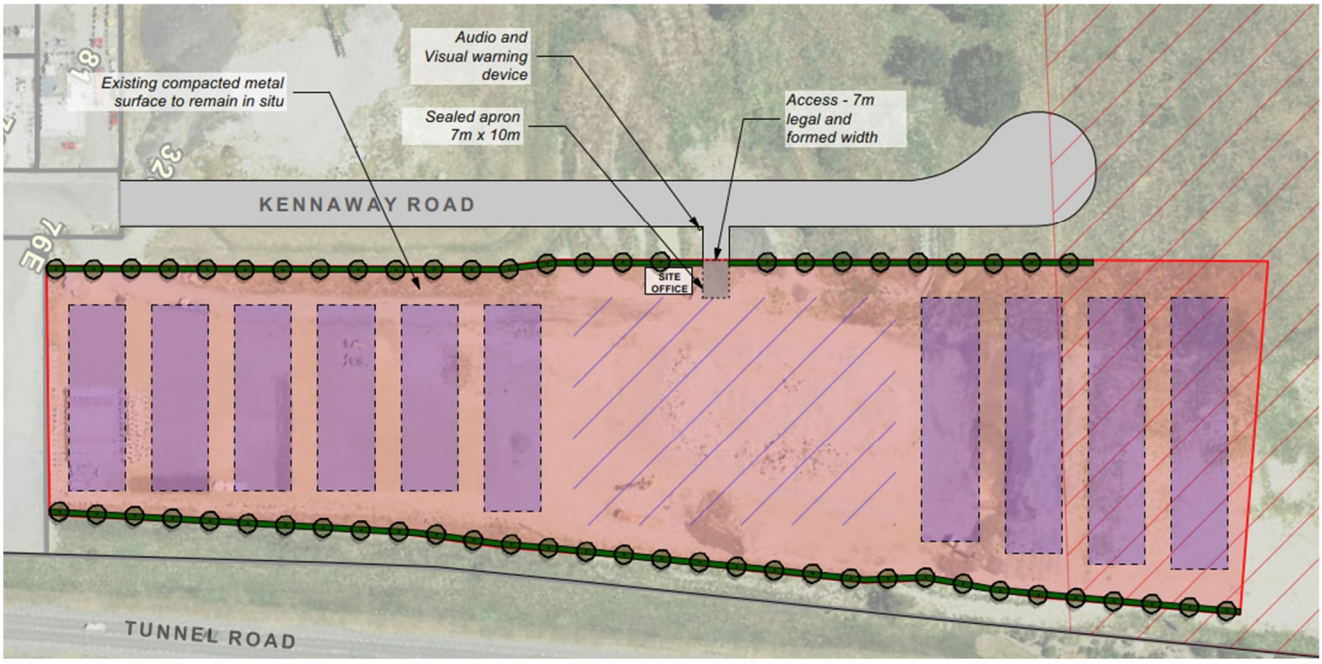

Figure 3 – Yard-based supplier area

KEY:

SITE BOUNDARY - 25,111m² (APPROX)

PROPOSED SITE OFFICE AND BIKE STORAGE (APPROX. 100M² GFA)

YARD AREA

OUTDOOR STORAGE STACKS

11M BUILDING HEIGHT LIMIT AREA

PROPOSED 1.5M LANDSCAPE STRIP (1 TREE EVERY 10M OF ROAD FRONTAGE) WITH 1.8M FENCE

NOTE:

1. *Office building to have a minimum floor level that is a minimum of 12.3m above CCC datum'*

2. *Planting of trees and shrubs within the landscaping strip adjacent to Tunnel Road shall be in accordance with the Landscape Plan and Plant Species List (see Appendix 16.8.3) and shall meet the requirements specified in Part A of Appendix 6.11.6 of Chapter 6*

Figure 4 – Key associated with Figure 3

Description of site and existing environment

The application site and surrounding environment are described in paragraphs 2-7 of the application. I adopt the applicant's description and note that the underlying property is separated from the Ōpāwaho/Heathcote River

(being a downstream waterway, site of ecological significance, and significant natural feature) by a number of esplanade reserves. While portions of the underlying site are likely to be within the waterbody setback extending from this waterway, the nominated site area is not.

Section 139

The relevant sections of section 139 of the Act state:

139 Consent authorities and Environmental Protection Authority to issue certificates of compliance

(1) This section applies if an activity could be done lawfully in a particular location without a resource consent.
(2) A person may request the consent authority to issue a certificate of compliance.
(3) A certificate states that the activity can be done lawfully in a particular location without a resource consent.
(4) The authority may require the person to provide further information if the authority considers that the information is necessary for the purpose of applying subsection (5).
(5) The authority must issue the certificate if—
(a) the activity can be done lawfully in the particular location without a resource consent; and
(b) the person pays the appropriate administrative charge.
(6) The authority must issue the certificate within 20 working days of the later of the following:
(a) the date on which it received the request:
(b) the date on which it received the further information under subsection (4).
(7) The certificate issued to the person must—
(a) describe the activity and the location; and
(b) state that the activity can be done lawfully in the particular location without a resource consent as at the date on which the authority received the request.
(8) The authority must not issue a certificate if—
(a) the request for a certificate is made after a proposed plan is notified; and
(b) the activity could not be done lawfully in the particular location without a resource consent under the proposed plan.

Christchurch District Plan

Definition of building

The applicant's assessment relies upon a legal opinion that the stacks of materials are not buildings that are subject to certain standards in the District Plan. The definition of a building in the District Plan is:

Building

*means **as the context requires**:*

a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or
b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and
c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but

excludes:

d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;
e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;
f. retaining walls which are both less than 6m^2 in area and less than 1.8 metres in height;
g. structures which are both less than 6m^2 in area and less than 1.8 metres in height;
h. utility cabinets;
i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;
j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;
k. artificial crop protection structures and crop support structures; and

in the case of Banks Peninsula only, …

Advice note:

1. *This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.*

   (Proposed Plan Change 14)

   (bold emphasis added)

The Council has obtained a legal opinion from Brookfields Lawyers dated 16 November 2023, supplemented by an additional legal opinion dated 7 December 2023[1]. These opinions are that the stacks of scrap metal are likely to be structures that fall within the definition building in District Plan for the purposes of determining compliance with the standards of the District Plan. I note that this advice is based on a number of assumptions stated in paragraphs 13-15, drawing on the information provided by the applicant, with the conclusion reached set out in paragraph 16:

> *16. We consider that the height, width, weight and indefinite duration of the piles of scrap metal mean that they would amount to a structure. For completeness, we consider that this conclusion is supported by a purposive interpretation in light of the relevant objectives and policies as discussed at paragraphs 26-28 of our 16 November 2023 advice.*

Assessment

The applicant provides an analysis of the relevant standards of the District Plan at Appendix 4 of the application document. I do not agree with the following parts of that assessment:

- 16.4.2.9 Water supply for firefighting;
- 16.4.4.2.1 Maximum height of buildings.

There are also parts of the assessment, whilst I agree on the whole with the analysis on those parts, need further comment as set out below. The specific reasons I disagree that the proposal complies with all aspects of the District Plan are:

16.4.2.9 Water supply for firefighting

All buildings are subject to this standard, including both the office and material stacks. A hydrant has been installed (refer Figure 5) in the turning head of an existing right of way, known as Kennaway Road, created as part of an ongoing subdivision consent. Within Industrial Zones, confirmation is required from Fire and Emergency New Zealand (FENZ) that sufficient water supply and access is provided in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice (SNZ PAS: 4509:2008). The applicant has stated that the proposal is 'understood to comply', however no confirmation from FENZ has been provided to demonstrate compliance.

[1] Both opinions accompany this report, with that provided 16 November reproduced in in Appendix 3 of the application document.

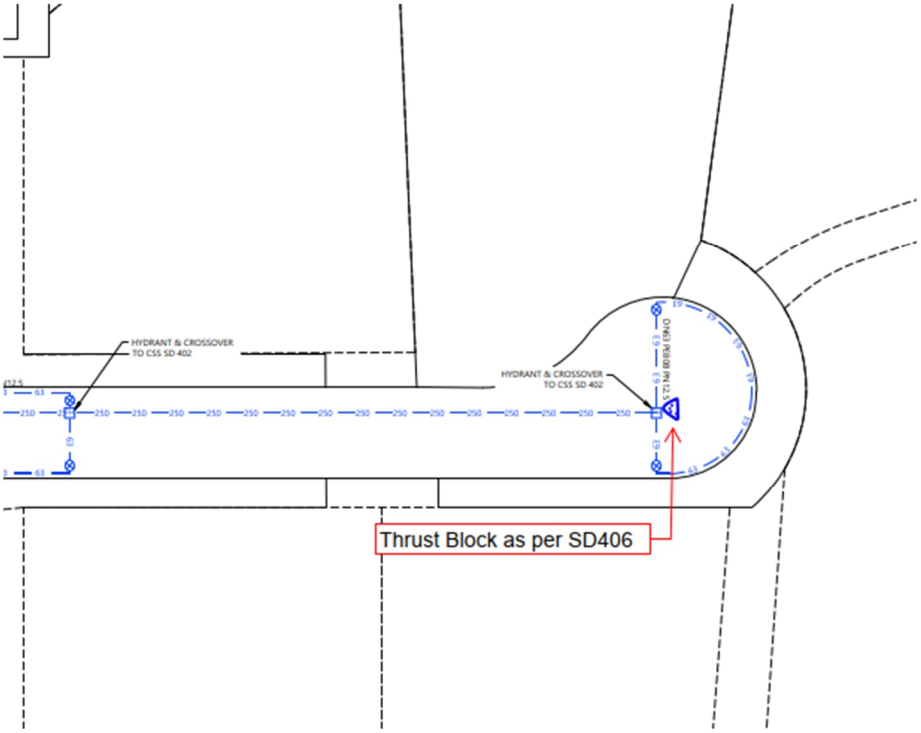

Figure 5 – Location of hydrant within Kennaway Road

16.4.4.2.1 Maximum height of buildings;

In reliance on the Brookfields legal opinion, stacks of materials, including scrap metal, are *structures* that fall within the definition of a building in the District Plan. The applicant is proposing stacking scrap metal to a height exceeding 11m, and potentially exceeding 20m, within the 11m building height limit area referred to in 16.4.4.2.1, with resource consent required under rule 16.4.4.1 RD1.

For clarity, I note that within the Portlink Industrial Park in the Industrial General Zone, the only restrictions on the height of buildings are within 20m of a residential zone, being 15m as set out in rule 16.4.2.1, and the 11m Building Height Limit Area of the Portlink Industrial Park identified in Appendix 16.8.3i, as above.

Statements in Attachment 4 that the proposal 'will comply'

There are a number of other statements in Appendix 4 where the applicant states that the proposal *will* comply – but the applicant has not provided detail or data as to how compliance will be achieved. These are:

- 5.4.1.1 P14 – relating to earthworks in the Flood Management Area, within commercial and industrial zones;
- 6.1.5.1.1 P1 – relating to noise outside the Central City;
- 6.3.4.1 P1 – relating to control of glare;
- 6.3.5.1 P1 – relating to light spill;
- 6.8.4.1 P1 – relating to signage, noting that the assessment states that no signage is proposed, however within Appendix 4 it is stated that 'Any future signage will comply with the relevant built form standards';
- 7.4.2.1 P6 (Standard 7.4.3.6) – relating to the design of parking and loading areas, noting that there is no requirement to provide parking or loading areas, however if such areas are provided they are required to be formed, sealed, and drained. The applicant has stated that no such areas will be provided, however has not identified how the activity will operate in the absence of these areas;
- 7.4.2.1 P10 (Standard 7.4.3.10) – relating to high-trip generating activities;
- 8.9.2.1 P1 – relating to earthworks;
- Standard 16.4.2.7 – relating to visual amenity and screening, noting that the nominated site area does not share a boundary with an Open Space zone, as identified in Appendix 4.

I note that a certificate of compliance is not intended to re-state that activities conforming to District Plan standards are permitted, but rather to assess the entirety of a proposed activity with regard to the relevant rules. Given the location and nature of the site it is my view that it is likely these standards can be complied with, however sufficient information has not provided with the application to determine whether the activity as a whole is permitted.

For clarity, I note that the above list differs from that identified by the reporting officer in RMA/2023/2806, incorporating earthworks under Chapters 5 and 8, and identifying standard 7.4.3.6 (Design of parking and loading areas) rather than 7.4.3.7 (Access design). While the applicant has identified that earthworks will be undertaken and be below the relevant District Plan standards set out in Chapters 5 & 8, the specific volume and depth of earthworks required has not been stated.

I do not consider there to be a non-compliance with 7.4.3.7 (Access design), noting that the vehicle access proposed does not access legal road at the current time. I have identified that more information may be required in relation to 7.4.3.6 (Design of parking and loading areas), for the reasons set out above being the difference between what is stated in the application and the likelihood of the activity being undertaken without on-site vehicle parking and loading.

Information outlining the specifics of the activity proposed and demonstrating that the standards are met will be required.

Standards referring to Gross Leasable Floor Area

A number of standards within Chapter 7 *Transport* of the District Plan rely upon gross leasable floor area (GLFA) for calculation of requirements, including:

- 7.4.3.2 Minimum number of cycle parking facilities required; and
- 7.4.3.3 Minimum number loading spaces required.

The definition of GLFA within the District Plan is:

> ***Gross leasable floor area***
>
> *means the sum of the total area of all floors (within the external walls for buildings or within the boundary for outdoor areas) designed or used for tenant occupancy, but excluding:*
>
> *a. common lift wells and stairwells (including landing areas);*
> *b. common corridors and halls (other than food court areas);*
> *c. common toilets and bathrooms;*
> *d. any parking areas and/or loading areas; and*
> *for the purposes of calculating loading, car and cycle parking requirements and the high trip generator thresholds, it also excludes:*
> *e. common seating areas (including food court seating areas); and*
> *f. lobby areas within cinemas.*

While, applying the Brookfields legal opinion, the storage stacks fit within the definition of a building, I do not consider that they have a floor area or are designed or used for tenant occupancy. Likewise, while this definition does refer to outdoor areas this is limited to the area of 'all floors', with the outdoor area identified for the yard-based supplier activity being usable for tenant occupancy, but not being contained within a floor area. As such, it is my view that these standards do not apply.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)

The NES-CS controls soil disturbance on land where an activity on the Hazardous Activities and Industries List (HAIL) is being carried out, has been carried out, or is more likely than not to have been carried out. Previous resource consent applications (RMA92023479, RMA/2017/947, RMA/2017/1844) have identified that the site is not HAIL, with contamination being below background levels, and the NES-CS does not apply.

Section 139 Recommendation

That, for the above reasons, a certificate of compliance **not be issued** pursuant to Section 139(8)(b) of the Act.

Reported and recommended by: Francis White, Planner **Date:** 11 December 2023
Reviewed by: Paul Lowe, Manager Resource Consents **Date:** 11 December 2023

Section 139 Decision

That the above recommendation be accepted for the reasons outlined in the report.

☑ I have viewed the application and plans.

☑ I have read the report and accept the conclusions and recommendation.

Decision maker notes

Commissioner:

Conflict of Interest Form P-426 also needs to be signed by commissioner

Name: _____

Signature: _____

Date: _____

Commissioner:

Conflict of Interest Form P-426 also needs to be signed by commissioner

Name: _____

Signature: _____

Date: _____

BROOKFIELDS
LAWYERS

NAVIGATING YOUR SUCCESS

16 November 2023

Christchurch City Council
53 Hereford Street
Christchurch 8013

By Email: Brent.Pizzey@ccc.govt.nz

LEX 24279 - CUMNOR TCE 320A - BUILDING DEFINITION

INTRODUCTION

1. You have asked whether the stacking of shipping containers within the Industrial General Zone (Portlink Industrial Park) falls within the definition of "Building" under the Christchurch District Plan (**District Plan**).

2. This letter of advice consolidates various pieces of advice that have been given in relation to this issue since July 2022. In summary, we consider that the stacking of shipping containers does fall within the definition of building (**Opinion**).

3. We have included in our Opinion our response to the letters from Chapman Tripp (**CT**) and Minter Ellison Rudd Watts (**ME**), dated 6 October and 7 October respectively, (together referred to as "**Alternative Interpretation**") in relation to the interpretation of "Building" under the District Plan.

4. In terms of the background facts, we understand that:

   (a) Thousands of shipping containers are stored on the Portlink Site.[1]

   (b) In a given week an average of 83 twenty foot equivalent containers moved in and out of the site per day, as cited by the operator.[2]

   (c) Large stacks of shipping containers (at least 6 containers/20m high) are in place long term, with the individual container components of the stacks changing from time to time.

   (d) In the Portlink Industrial Park the maximum height of any building within the '11m Building Height Limit Area' defined on the development plan in Appendix 16.8.3 is 11 metres.

1 CT Letter of 6 October 2022 paragraph 6
2 ME letter of 7 October paragraph 8(c).

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(e) Concerns have been raised by surrounding residential land uses as to adverse visual amenity effects.

5. We understand that this letter will be used to inform assessment of a certificate of compliance application lodged by Braeburn Property Limited for a notional activity which includes the stacking of containers in excess of 11m on a portion of the Portlink Industrial Park. The application also includes the stacking of various other matter (e.g. crushed car bodies) in excess of 11m. No temporal element is specified in the certificate of compliance application i.e. the containers and other matter may be stacked for an indefinite period.

INTERPRETIVE APPROACH

6. As required by the Legislation Act 2019, we have sought to ascertain the meaning of the relevant definition from its text and in the light of its purpose and its context.[3]

7. We agree with the CT Letter that *Powell v Dunedin City Council*[4] sets out the interpretive approach to planning documents, being in summary:

(a) The words of the document are to be given their ordinary meaning unless this is clearly contrary to the statutory purpose or social policy behind the plan in the rules or otherwise produces some injustice, absurdity, anomaly or contradiction;

(b) The planning document should affect common law rights only where there is express provision to this end or it follows as a matter of necessary implication;

(c) There is a need for certainty in the description of permitted activities and the operative parts of the plan. But the language used in the plan must be given its plain ordinary meaning, the test being "what would an ordinary reasonable member of the public examining the plan, have taken from" the planning document;

(d) The interpretation should not prevent the plan from achieving its purpose;

(e) If there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.

8. Consistent with High Court authority in *Mount Field Ltd v Queenstown-Lakes District Council*, we have also sought to find an interpretation that:[5]

(a) Avoids absurd or anomalous results;

(b) Is consistent with the expectations of landowners; and

---

3 Section 10 of the Legislation Act 2019, *Spackman v Queenstown Lakes District Council* [2007] NZRMA 327(HC).

4 *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

5 *Mount Field Ltd v Queenstown-Lakes District Council* 31/10/08, Heath J, HC Invercargill CIV-2007-425-700.

(c) Promotes administrative efficiency (rather than requiring lengthy historical research to assess lawfulness).

TEXT OF THE DEFINITION

9. The relevant text of the definition states:

> **Building**
>
> means as the context requires:
>
> a. any structure or part of a structure, whether permanent, moveable or immoveable; and/or
>
> b. any erection, reconstruction, placement, alteration or demolition of any structure or part of any structure within, on, under or over the land; and
>
> c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage; but
>
> excludes:
>
> d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;
>
> e. fences or walls that have no structural function other than as a fence or wall for boundary demarcation, privacy or windbreak purposes, of up to 2 metres in height;
>
> f. retaining walls which are both less than $6m^2$ in area and less than 1.8 metres in height;
>
> g. structures which are both less than $6m^2$ in area and less than 1.8 metres in height;
>
> h. utility cabinets;
>
> i. masts, poles, radio and telephone aerials less than 6 metres above mean ground level;
>
> j. any public artwork located in that part of the city contained within Bealey, Fitzgerald, Moorhouse, Deans and Harper Avenues;
>
> k. artificial crop protection structures and crop support structures; and
>
> in the case of Banks Peninsula only, excludes:
>
> l. any dam that retains not more than 3 metres depth, and not more than 20,000 m^3 volume of water, and any stopbank or culvert;
>
> m. any tank or pool (excluding a swimming pool as defined in Section 2 of the Fencing of Swimming Pools Act 1987) and any structural support thereof, including any tank or pool that is part of any other building for which building consent is required:
>
> i. not exceeding 25,000 litres capacity and supported directly by the ground; or
>
> ii. not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; and
>
> n. stockyards up to 1.8 metres in height.
>
> Advice note:

> This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

Subclauses (a) and (b)

10. Both clauses (a) and (b) apply to "any structure" that falls within those clauses. If stacked shipping containers can be said to be a structure, clause (a) is sufficiently broad to include them as a 'moveable structure' and clause (b) would include the placement and stacking of containers on land i.e. placement of a structure on or over land.

11. The District Plan does not contain a definition of a "structure", but this term is defined in section 2 of the RMA. Absent any contrary provision in the District Plan itself, the word "structure" must have the same meaning as in the RMA when interpreting the District Plan.[6] The RMA definition is "*any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft*". While the definition is to some extent circular in that it defines a structure as being a building, a shipping container would fall within the ordinary meaning of a device, which is defined in the Oxford Dictionary as "*a thing made or adapted for a particular purpose, especially a piece of equipment mechanical or electronic"*.

12. The RMA definition of a structure also requires a structure to be fixed to land. The Courts in considering this definition have previously held that in order to fall within the meaning of a structure, the device does not need to be fixed permanently to the land, nor does it require some form of connection to the land in order to be fixed. It may be fixed by the gravity of the device itself. For example, in *Ohawini Bay Ltd v Whangarei District Council*,[7] rocks placed on top of one another to form a seawall were held to be a structure despite only being fixed to the land by their own weight. Similarly, in *Antoun v Hutt City Council*,[8] a moveable tiny home sitting on top of a metal plate, but with no permanent foundations, was held to be sufficiently fixed to the land by gravity to fall within the meaning of a structure. We acknowledge that both types of structure in those cases had either a greater degree of permanence (in relation to the seawall) or, potentially, greater difficulty in being moved (in the case of the tiny home) than a shipping container. However, given the weight of a shipping container is such that it cannot be easily moved and would require a crane/forklift/straddle carrier to shift, it does bear some degree of similarity to the tiny home example.

13. The CT letter distinguishes the facts of *Ohawini Bay* and *Antoun* in order to argue that the shipping containers are not structures. We readily acknowledge that the degree of permanency was greater in *Ohawini Bay* and, potentially, the difficulty of movement greater in *Antoun*. These cases are simply examples to illustrate that gravity may be sufficient to "fix" a structure to land and permanency is not a requirement. This

[6] Section 20 of the Legislation Act 2019.
[7] Environment Court, Auckland, A068/06.
[8] (2020) 21 ELRNZ 595.

interpretation is entirely consistent with the text of the definition itself in the District Plan including "moveable" structures, and the "placement" of structures on land.

14. In addition, while some of the containers stored at the site may be there on a transitory basis, there is no guarantee that will invariably be the case and equally there would be nothing to prevent containers being stored on a longer-term basis.

Subclause (c)

15. Clause (c) expressly refers to shipping containers as falling within the meaning of a "building", where it is *"used on-site as a residential unit or place of business or storage"*. On the facts, it is unclear whether the containers themselves are being stored, or whether the containers are being used to store other items. If the latter, then that would be within the scope of clause c. If the former, then it is arguable that this would not be within the scope of clause c, although there is some basis to conclude that when a shipping container is in its original unconverted state, it is designed as a storage device and therefore would fall within this use regardless of whether at a specific point in time it is sitting empty.

16. We note the argument in the Alternative Interpretation that an empty shipping container being stored is not itself being used "on site as a place of storage". Our Opinion remains that, arguably, a shipping container is designed as a storage device and therefore, in its unaltered form, would fall within this category, regardless of whether at a specific point in time it is empty. This is consistent with the way in which the Courts have interpreted "use" in a district plan to mean the use for which it is designed, rather than any subjective intentions of an individual as to how it will be used.[9]

17. We have also considered whether the express reference to shipping containers in clause (c) should be interpreted to mean that where a shipping container is not *"used on-site as a residential unit or place of business or storage"* then it cannot come within the other clauses of the definition of building. As a starting point, we note that shipping containers that are not *"used on-site as a residential unit or place of business or storage"* are not expressly excluded under clauses d.-n. This drafting approach would have been available if it were the intent.

18. The Alternative Interpretation argues that this specific clause (c) should override and exclude the general clauses (a) and (b).[10] In our view this seeks to elevate the interpretive principle/canon that the specific overrides the general into an inflexible rule. We note the authorities cited in the ME letter that support the application of the principle in the context of policy interpretation and addressing the interrelationship between zone and precinct rules. However, as the Court of Appeal held in *Pora v R* [2001] 2 NZLR 37, context is important, and care should be taken in the application of the principle s*pecialia generalibus derogant*.[11]

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9 *Landeman v Cavanagh* [1998] 4 ELRNZ 1 (CA).

10 CT letter, Annexure 1, paragraph 7.2; ME Letter, paragraph 8(a).

11 *[43] The obverse proposition that special provisions override general ones (specialia generalibus derogant) is less well-supported on the authorities and is inherently less useful even as a rule of thumb because so sensitive to particular context. If applied generally, some of the most important overarching principles expressed in legislation would be unacceptably insecure, confounding clear legislative purpose.*

19. Plainly the specific exemptions to the definition of building override the general inclusions. However, the Alternative Interpretation seeks to elevate an express inclusion of shipping containers as buildings in certain circumstances into an implicit exclusion of shipping containers as buildings in other circumstances. This does not necessarily follow. Clause (c) of the definition expressly includes as a "building" shipping containers used on site as:

    (a) a residential unit; or

    (b) a place of business; or

    (c) a place of storage.

20. The Alternative Interpretation would mean that the use of shipping containers on a site for any other purpose could never constitute a building and would be exempt from all standards applying to buildings. This would be an absurd outcome as other activities such a Community Activities or Spiritual Activities taking place in structures comprised of shipping containers would be exempt from building standards.

21. In *Vortac New Zealand Ltd v Western Bay of Plenty District Council* [2022] NZEnvC 176 the Environment Court considered whether the specific inclusion in the definition of building/structure of a fence or wall exceeding 2m in height precluded a lower wall or fence also constituting a building or structure. The Court held:

> [40] The definition of building/structure specifically includes a fence or wall exceeding 2m in height. On the principle of interpretation that the expression of one thing excludes its alternative, by implication that inclusion in the definition might exclude a fence or wall below that height from being a building. The specific inclusion is, however, expressed to be in addition to the ordinary and usual meaning of building/structure. Those two words have very broad ordinary and usual meanings and, like other words of broad meaning in common usage, normally take their particular sense from the purpose for which and the context in which they are used. In this case that sense must be considered in terms of the objectives and policies of Section 8 of the District Plan.

22. Similarly, limb (c) of the District Plan definition of Building is in addition to limbs (a) and (b) ("and"). We therefore consider that the same principle from *Vortac* should apply to limb (c) i.e. the specific inclusion of containers in the circumstances in (c) does not exclude containers being a building under the limbs (a) and (b) in other circumstances.

Summary in relation to text

23. In summary, we consider that the definition is sufficiently broad on its face to include the placement and stacking of shipping containers. The primary basis for our Opinion remains that the placement and stacking of shipping containers falls within limbs (a) and (b) of the definition as:

    (a) A moveable structure; and

    (b) The placement of a structure on land.

24. We also consider that it is arguable that stacked shipping containers that are either currently storing other goods or are placed on the site in preparation to be loaded with goods, are being used for storage and therefore fall within clause (c).

25. We now consider this reading of the text in light of its:

    (a) purpose as expressed by the objectives and policies and other context of the Christchurch District Plan;

    (b) context within the scheme of rules in the Christchurch District Plan.

PURPOSE

26. We have reviewed the objectives and policies of Chapter 16 Industrial in the District Plan which set out the relevant purpose against which to interpret related rules. We note the following amenity focused objectives and policies which are relevant to a purposive interpretation of "building":

> 16.2.3 Objective - Effects of industrial activities
>
> a. Adverse effects of industrial activities and development on the environment are managed to support the anticipated outcome for the zone while recognising that sites adjoining an industrial zone will not have the same level of amenity anticipated by the Plan as other areas with the same zoning.
>
> 16.2.3.1 Policy - Development in greenfield areas
>
> a. Manage effects at the interface between greenfield areas and arterial roads, rural and residential areas with setbacks and landscaping.
>
> 16.2.3.2 Policy - Managing effects on the environment
>
> a. The effects of development and activities in industrial zones, including reverse sensitivity effects on existing industrial activities as well as, visual, traffic, noise, glare and other effects, are managed through the location of uses, controls on bulk and form, landscaping and screening, particularly at the interface with arterial roads fulfilling a gateway function, and rural and residential areas, while recognising the functional needs of the activity.
>
> b. Effects of industrial activities are managed in a way that the level of residential amenity (including health, safety, and privacy of residents) adjoining an industrial zone is not adversely affected while recognising that it may be of a lower level than other residential areas.

27. These objectives and policies contemplate the management of adverse effects of industrial activities and development having regard to the amenity values of adjoining areas. Techniques to achieve these outcomes include:

    (a) setbacks and landscaping.

    (b) controls on bulk and form.

28. The Industrial General Zone (Portlink Industrial Park) contains bespoke rules in respect of maximum building height and building setbacks. These techniques would be completely ineffective in respect of shipping containers, and not achieve their purpose, if these structures were not covered by the rules and shipping containers could be stacked to any height, including in relation to boundaries. The purpose as expressed by the objectives and policies of the zone therefore supports the textual interpretation we identify above.

29. As to purpose, the CT letter states that:[12]

> We accept that some of the methods provided in the plan to manage such effects include setbacks, landscaping, and bulk and form controls. However, we note that these controls on bulk and form apply to specific activities (which the Council whine it prepared its District Plan must have deemed necessary to manage). Height, as a control on bulk, applies only to 'buildings'. It is our view that is because the District Plan contemplates the greatest effects of bulk on amenity is from buildings, and these need to be managed through he plan.

30. Implicit in this statement is the view that stacked shipping containers are not buildings. However, no evidence or logical justification is provided for the assertion that over height stacks of shipping containers will have a lesser effect on amenity as compared to other structures.

CONTEXT

31. We have considered our interpretation in light of the context of the remainder of the District Plan, including to check whether any anomalous consequences would arise. We have checked:

(a) The definition of Outdoor storage area;

(b) Other Industrial General Zone rules;

(c) Application to other stacked matter such as car bodies

(d) Other district plan references to "containers"

(e) District-wide Rules

Outdoor storage area

32. The activity of container storage could also be considered an Outdoor storage area which is defined as:

> means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.

[12] CT letter paragraph 33.4

33. It is therefore relevant to consider whether "outdoor storage area" and "building" are mutually exclusive. For the reasons that follow we have concluded that they are not.

34. The Oxford dictionary defines "equipment" broadly to mean "*items needed for a particular purpose*". A shipping container would potentially fall within this broad definition of equipment, as would almost anything. As something man-made, it could also potentially fall within the meaning of a "processed product".

35. We have given consideration to whether the land potentially being an outdoor storage area within the meaning of the District Plan definition would mean that the container cannot also be a "building". We do not think that it would. Given that the definition of a building anticipates that something moveable or temporary could fall within the meaning of a building, it follows that storage areas could exist where buildings themselves are stored, for example, sites where tiny homes are constructed and stored, or sites where other relocateable dwellings or other buildings are stored. Such land could potentially fall within the meaning of an outdoor storage area, unless the use falls within the meaning of a yard-based supplier. We are not aware of whether in practice you have treated land used for the storage of relocateable buildings as an outdoor storage area, but we consider that unless there are other specific District Plan provisions that relate to such activities, it would make sense that if such sites are considered to be outdoor storage areas, so then would a shipping container yard, regardless of whether the shipping containers are also buildings.

36. We have considered the provisions in Chapter 16 of the District Plan. We did not identify anything that would mean that the definition of a building and an outdoor storage area are necessarily mutually exclusive. In particular, we note that rule 16.4.4.1.1 P1 for the Industrial General Zone (Portlink Industrial Park) provides that any activity listed in rule 16.4.1.1 P1-P21 is a permitted activity provided it complies with the built form standards in rule 16.4.4.2 and rule 16.4.2 (unless specified otherwise in rule 16.4.4.2). Rule 16.4.1.1 P1 provides that any new building or addition to a building for an activity listed in P2 to P21 is a permitted activity, provided it complies with the built form standards in 16.4.2. Those activities include an industrial activity (P2) and warehousing and distribution activities (P3), either or both of which could potentially apply to the storage of shipping containers. There are built form standards that apply specifically to outdoor storage areas. We could not see any obvious reason as to why those standards would not apply in conjunction with other specific standards that apply to buildings.

Other Industrial zone rules

37. It is relevant to consider the implications of stacks of containers being classed as "buildings" for the relevant zone rules as a check to avoid anomalous outcomes. The starting point is that buildings for industrial activities are permitted within the zone (Rule 16.4.1.1.P1.). As such, any container storage that conforms to building height and setback standards can occur without the need for a consent, which is consistent with enabling industrial activity to occur within the zone. We do not consider that anomalous outcomes arise from the application of height and setback rules to containers. These outcomes are consistent with the direction of the objectives and policies. Consent can of course be sought to stack containers to a greater height in appropriate locations.

38. However, the application of rule 16.6.2.2 Maximum building coverage of a site in the Industrial Park Zone could be considered anomalous because it would limit the placement of containers to 50% of a site and a resource consent would be required to exceed this threshold. We are uncertain as to whether there is a proper resource management reason for this threshold to apply to container storage. There may very well be e.g. impervious surfaces or amenity considerations. Even if the application of this rule to the activity in question may not be apt, we do not consider that the potential requirement to obtain consent for a rule breach of itself would amount to an absurd consequence. It is not unusual for an activity to need to obtain consent under various rules, some of which may be technical consent requirements in the particular case and some of which address environmental effects which require careful management. The same point applies to rules relating to flood management areas, which we discuss below.

39. Rule 16.4.1.1 Permitted activities states "The activities listed below are permitted activities in the Industrial General Zone if they meet the activity specific standards set out in this table and the built form standards in Rule 16.4.2. *Note, the built form standards do not apply to an activity that does not involve any development*." If the activity of stacking containers does not amount to "development" then even if this is a "building" the built form standards do not apply.

40. The Christchurch District Plan and the RMA do not define "Development". The Spiller's NZ law dictionary also does not define "Development". The following dictionary definitions are of some assistance:

Collins English Law Dictionary New Zealand Edition

- an area or tract of land that has been developed.
- Develop: to improve the value or change the use of land, as by building.

Cambridge Dictionary

- an area on which new buildings are built in order to make a profit
- The process of growing and changing and becoming more advanced.

Merriam Webster dictionary

- the state of being developed
- a tract of land that has been made available or usable: a developed tract of land *especially*: one with houses built on it.

Black's Law Dictionary Ninth Edition Bryan A. Garner

- (1885) 1. A substantial human-created change to improved or unimproved real estate, including the construction of buildings or other structures.
- 2. An activity, action, or alteration that changes underdeveloped property into developed property.

Lexis Advance Fourth Edition Words and Phrases Legally Defined Volume 1 A-K

Development of property

- "…development means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of buildings or other land." – (Town Country Planning Act 1990).

41. There is a circularity to this issue as the construction of "buildings" would generally be considered to amount to "development". As such, if the stacking of shipping containers amounts to the placement of a "building" then the activity is "development". Given the circularity of the issues, we don't consider that Rule 16.4.1.1 advances much the issue of whether or not stacked shipping containers are buildings.

Other district plan references to "containers"

42. Other relevant provisions of the District Plan also form context which supports the interpretation that shipping containers are within the definition of "buildings".

43. Rule 13.8.4.2.1 of the Specific Purpose (Lyttelton Port) Zone relates to Maximum Building Height. Clause a. of this rule applies to:

> Quayside and container cranes, lighting towers and container storage (except containers located within Height Area C as shown in Appendix 13.8.6.4)

44. Clause a. specifies no height limit. The express reference to shipping containers in the context of a rule applying to buildings is strong contextual support for the view that containers are a type of building under the District Plan.

45. Clause g. of the rule applies to:

> Buildings not otherwise provided for under (a) with frontage to Norwich Quay and containers located within Height Area C as shown in Appendix 13.8.6.4. This standard shall not apply to temporary structures erected for noise mitigation, construction activities or transiting containers that remain on site for less than 72 hours.

46. A permitted limit of 15m applies with restricted discretionary consent required beyond this height. Again, the express reference to shipping containers in the context of a rule applying to buildings is strong contextual support for the view that containers are a type of building. The exclusion from the standard of "transiting containers that remain on site for less than 72 hours" also implies that, but for this exclusion, these containers would be regulated by the building height rule. No similar exclusion for transiting shipping containers is found in the plan provisions applying to Portlink Industrial Park.

47. We note that the standard in Rule 13.8.4.2.1(a) applies to "container storage" which would encompass the storage of both full and empty containers. This is logical as the contents of a container do not have any impact on the amenity effects caused by the heights of container stacks.

District-wide Rules

48. We have considered how treating shipping containers as buildings would interact with the use of containers across the District, including in terms of the district-wide rules in the District Plan. This is particularly to understand whether any anomalous consequence would arise e.g. requiring consent for the temporary use of shipping containers in circumstances where one would expect that to be a permitted activity.

49. First, we do not consider that shipping containers in transit would be classed as a Building for the purposes of the District Plan as they would no longer have the requisite degree of affixation to land.

50. Secondly, Chapter 6 of the District Plan provides an enabling regime for temporary buildings which provides for the temporary ancillary use of shipping containers throughout the District. Rule 6.2.3 sets out how to interpret and apply the rules for temporary activities and buildings. In summary:

    (a) The rules that apply to temporary activities and buildings in all zones are contained in the activity status tables (including activity specific standards) in Rule 6.2.4.

    (b) Temporary activities and buildings are exempt from the rules in the relevant zone chapters and other District Plan rules, except as specified in activity specific standards in Rule 6.2.4; and

    (c) The activity status tables and standards in the following chapters and sub-chapters apply to temporary activities and buildings (where relevant):

        4. Hazardous Substances and Contaminated Land.

        5. Natural Hazards

           Rule 5.6 Slope Instability;

        6. General Rules and Procedures

           6.3 Outdoor Lighting (except as otherwise specified in Rule 6.2.4);

           6.1 Noise (except as otherwise specified in Rule 6.2.4);

           6.8 Signage (as specified in that sub-chapter and as specified in Rule 6.2.4);

        7. Transport (as specified in Rule 6.2.4);

        8. Subdivision, Development and Earthworks;

        9. Natural and Cultural Heritage; and

        11. Utilities and Energy.

51. Rule 6.2.4.1.1 P1 provides as a permitted activity for temporary buildings ancillary to an approved building, construction, land subdivision or demolition project. The following activity specific standards apply:

    (a) No single building shall exceed 50m² of GFA; except that, in the Commercial Central City Business, Industrial General, Industrial Heavy, Rural Quarry, Specific Purpose (Tertiary Education) or Specific Purpose (Airport) Zones, the GFA of a temporary construction building is not restricted provided that buildings are not placed in any setbacks required by the relevant zone.

    (b) Temporary buildings shall be removed from the site within one month of completion of the project or, in the case of land subdivision sales offices, within one month of the sale of the last allotment in the subdivision.

    (c) Temporary land subdivision sales offices shall meet the signage rules for the Commercial Local Zone in Sub-chapter 6.8 Signs.

52. Rule 6.2.4.1.1 P4 provides as a permitted activity for temporary buildings or other structures ancillary to an event listed in Rule 6.2.4.1.1 P2.[13] The following activity specific standards apply:

    (a) Temporary buildings or other structures shall not be erected on or remain on the site for more than two weeks before or after the event opens or closes to participants.

    (b) Where events occur on non-consecutive days, on days between instances of the event opening to participants, public access to parts of the site that are normally accessible shall not be impeded.

53. In our opinion, these rules for temporary buildings provide for the range of situations where one would expect shipping containers to be able to be used as a permitted activity, in conjunction with other activities, and subject to a limited set of performance standards. This enables temporary use of shipping containers across the district generally to be exempt from other rules which apply generally to buildings e.g. bicycle parking requirements and minimum floor levels.

54. We note however that these temporary activity rules would not apply in the industrial zones or the Portlink site. This is because Chapter 6 interpretation rule 6.2.3 d. states:

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[13] Community gatherings, celebrations, non-motorised sporting events and performances including:
a. carnivals and fairs;
b. festivals;
c. holiday observances;
d. races;
e. parades;
f. concerts; and
g. exhibitions.

> Rule 6.2.4 does not apply to activities and buildings anticipated by the rules in the relevant zone chapters or within the expected scope of operations for permanent facilities

55. This rule is consistent with the purpose of the objective and policies in Chapter 6 – 6.6.2. that the temporary activity provisions are for buildings and activities that are not anticipated in the zone but are only there for a short time. In our view, shipping containers are activities and buildings anticipated in the Industrial Zone and therefore cannot be authorised under the temporary activities regardless of how long they are there.

56. We have also considered the application of our interpretation to flood hazard rules which apply to buildings (noting that these rules do not apply to temporary buildings). The key policy driver for these rules is the protection of buildings from material damage. We note that the likelihood of containers being materially damaged by flood waters would appear low, although equally the prospect of storing containers within a floodplain does not appear to be a sensible resource management outcome if the land is subject to serious flood hazard. As noted above, even if the application of flood hazard rules to the activity in question may not be apt, we do not consider that the potential requirement to obtain consent for a rule breach of itself would amount to an absurd consequence. It is not unusual for an activity to need to obtain consent under various rules, some of which may be technical consent requirements in the particular case and some of which address environmental effects which require careful management.

Application to other stacked matter such as car bodies

57. It is also relevant to consider the application of the principles which underpin our Opinion, to the storage of other matter (vehicles, pallets, containers/boxes, equipment, machinery, products, etc).

58. Subject to the important qualification that the definition of a building in the District Plan supersedes the ordinary meaning of a building, we note that a shipping container also shares common characteristics ordinarily associated with a building, such as having walls and a roof. However, we do not interpret the definition of building as necessarily excluding other forms of stacked equipment or devices.

59. Having regard to the way in which “building” is defined in the District Plan, the question of whether stacked equipment or devices is or is not a building would turn on the particular circumstances. We consider that the following factors will be relevant:

    (a) The size and bulk of individual components within a stack, as well as the overall height of the stack (these factors will be relevant to whether it can be said that the stacked equipment is fixed to the land by its own weight).

    (b) The degree of permanence of the stacked equipment or devices. While permanence is not necessarily a requisite characteristic to fall within subclause (a) of the building definition, where something is placed on the land on a longer-term basis, this may support a finding that it is a structure.

    (c) Where stacked equipment and devices rely upon other works to stabilise them and fix them in place, those works themselves could fall within the meaning of a building. We note for example, that scaffolding or falsework is only excluded from

the meaning of a building if it is used temporarily for maintenance and construction purposes.[14] Similarly, a fence or a wall that has a structural function of supporting stacks of equipment would not fall within the fencing exception.[15] Where stacks of equipment are secured to other devices that are themselves affixed to the land and would fall within the meaning of a building, it could be arguable that the structure in its entirety, including both the supporting structure and the stacked equipment, could fall within the meaning of a building.

60. Applying these general matters, we consider that the circumstances in which stacked equipment or devices are unlikely to fall within the meaning of a building are where:

(a) The stacks are relatively small in height and size (particularly if they are both less than 6m^2 in area and less than 1.8 metres in height);[16]

(b) Where the individual component parts are small and/or lightweight;

(c) Where the stack is short-term;

(d) Where the stack is not supported by or affixed to any structure to stabilise it or fix it in place, this may be indicative that it does not form part of a structure. However, this is something that would need to be considered in conjunction with the other factors described above, and on its own would not necessarily be determinative of whether the stacked equipment or device is or is not a building.

MATTERS WHICH ARE NOT RELEVANT

61. The certificate of compliance application refers to:[17]

(a) An excerpt of the IMO (International Maritime Organisation) International Convention of Safe Containers (CSC) 1972, setting out in its Interpretations and Guidelines a definition of 'container' as an article of transport equipment (this is also referenced in the ME Letter).

(b) The industry definition of "Inland Container Depot", which is that it is a "public facility that offers services for handling and temporary storage of import/export laden containers or empty containers"

62. These documents do not form part of the District Plan definition and are not incorporated by reference. We do not consider that these extraneous definitions can have any relevance to the interpretation of the Christchurch District Plan which exists for a fundamentally different purpose (i.e. sustainable management).

63. The CT letter cites the definition of "building" in the Building Act 2004 which expressly excludes containers as defined in regulations made under the Health and Safety at Work

14 Clause (d) of the definition of a building.
15 Clause (e) of the definition of a building.
16 See the clause (g) exception to the meaning of a building.
17 Paragraph 25 of the application

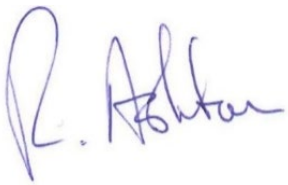
Act 2015. We do not consider that this is relevant given that the definition in the District Plan includes the following advice note:

> This definition of building is different from the definition of building provided in Sections 8 and 9 of the Building Act 2004, and the effect of this definition is different from the effect of Schedule 1 of the Building Act 2004 in that some structures that do not require a building consent under the Building Act 2004 may still be required to comply with the provisions of the District Plan.

CONCLUSION

64. We trust that this letter assists with the question you have asked. Please do not hesitate to make contact should you have any further questions arising.

Yours faithfully
BROOKFIELDS



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NAVIGATING YOUR SUCCESS

7 December 2023

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LEX 24279 - CUMNOR TCE 320A - BUILDING DEFINITION

INTRODUCTION

1. The Council has received two applications for certificates of compliance, by Braeburn Property Limited dated 29 November 2023 relating to 320 & 320A Cumnor Terrace, Christchurch (**CoC Applications**).

2. You have asked whether the activities described in the certificates of compliance fall within the definition of "Building" under the Christchurch District Plan (**District Plan**).

3. This letter should be read in conjunction with our letter of advice dated 16 November 2023, which concerned whether the stacking of shipping containers within the Industrial General Zone (Portlink Industrial Park) falls within the definition of "Building" under the District Plan. We do not unnecessarily repeat the analysis in that letter. However, for ease of reference, we set out the section of our previous advice that considered the application of our interpretation of "Building" to other stacked matter:

> **Application to other stacked matter such as car bodies**
>
> 57. It is also relevant to consider the application of the principles which underpin our Opinion, to the storage of other matter (vehicles, pallets, containers/boxes, equipment, machinery, products, etc).
>
> 58. Subject to the important qualification that the definition of a building in the District Plan supersedes the ordinary meaning of a building, we note that a shipping container also shares common characteristics ordinarily associated with a building, such as having walls and a roof. However, we do not interpret the definition of building as necessarily excluding other forms of stacked equipment or devices.
>
> 59. Having regard to the way in which "building" is defined in the District Plan, the question of whether stacked equipment or devices is or is not a building would turn on the particular circumstances. We consider that the following factors will be relevant:

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(a) The size and bulk of individual components within a stack, as well as the overall height of the stack (these factors will be relevant to whether it can be said that the stacked equipment is fixed to the land by its own weight).

(b) The degree of permanence of the stacked equipment or devices. While permanence is not necessarily a requisite characteristic to fall within subclause (a) of the building definition, where something is placed on the land on a longer-term basis, this may support a finding that it is a structure.

(c) Where stacked equipment and devices rely upon other works to stabilise them and fix them in place, those works themselves could fall within the meaning of a building. We note for example, that scaffolding or falsework is only excluded from the meaning of a building if it is used temporarily for maintenance and construction purposes. Similarly, a fence or a wall that has a structural function of supporting stacks of equipment would not fall within the fencing exception. Where stacks of equipment are secured to other devices that are themselves affixed to the land and would fall within the meaning of a building, it could be arguable that the structure in its entirety, including both the supporting structure and the stacked equipment, could fall within the meaning of a building.

60. Applying these general matters, we consider that the circumstances in which stacked equipment or devices are unlikely to fall within the meaning of a building are where:

(a) The stacks are relatively small in height and size (particularly if they are both less than $6m^2$ in area and less than 1.8 metres in height);

(b) Where the individual component parts are small and/or lightweight;

(c) Where the stack is short-term;

(d) Where the stack is not supported by or affixed to any structure to stabilise it or fix it in place, this may be indicative that it does not form part of a structure. However, this is something that would need to be considered in conjunction with the other factors described above, and on its own would not necessarily be determinative of whether the stacked equipment or device is or is not a building.

[footnotes omitted]

THE COC APPLICATIONS

4. The CoC Applications are closely modelled on the prior application by Braeburn Property Limited which seeks a certificate in relation to the stacking of shipping containers.

5. In each case, the CoC Applications are to establish a yard-based supplier activity on the site, which is defined under the District Plan as:

Yard-based supplier

means the use of any land and/or building for selling or hiring products for construction or external use (which includes activities such as sale of vehicles and

> garden supplies), where more than 50% of the area devoted to sales or display is located within covered or uncovered external yard or forecourt space, as distinct from within a secured and weatherproof building. Drive-in or drive-through covered areas devoted to storage and display of construction materials (including covered vehicle lanes) will be deemed yard area for the purpose of this definition.

6. We doubt that what is proposed amounts to a Yard-Based Supplier activity and consider that the CoC Applications actually relate to Outdoor Storage Areas (which are mutually exclusive to yard based suppliers). We address this issue further below.

7. The CoC Applications differ in the products that they propose to store outdoors. We adopted the applicant's characterisation of the applications:

   (a) The "**Scrap Metal Application**" proposes the stacking of dismantled/crushed car bodies and/or baled scrap metal (but excluding shipping containers) to heights exceeding 11m and potentially as high as 20m. The Scrap Metal Application states: *"…the assessment of compliance has proceeded on the basis that dismantled/crushed car bodies and baled scrap metal are not buildings, as defined in the District Plan…."*. [1]

   (b) The "**Haybales Application**" proposes the outdoor storage of various garden supplies and items, including haybales. The outdoor storage of items may include items stacked/stored at any height (including heights exceeding 11m). The Haybales Application states: *"…the assessment of compliance has proceeded on the basis that haybales are not buildings, as defined in the District Plan…".*[2] The Haybales application does not describe any items other than haybales which are proposed to be stacked to heights exceeding 11m, and we have approached it on the basis that it relates to haybales. Clarification could be sought from the applicant on this point.

8. The CoC Applications both state that racking or other support structures are not proposed or necessary for storage, noting 'interlocking' or other methodologies will be employed to ensure the safe and secure stacking of items at greater heights, where this is required. No details or diagrams are provided to illustrate this methodology.

9. The CoC Applications refer to our advice concerning the application of our interpretation of "building" to other stacked matter and state:

> The above interpretation of 'building' and 'outdoor storage area' is considered arbitrary and not one which supports administrative efficiency. An applicant should not have to measure the height/weight of said stacked equipment to determine whether it is a building, nor should the duration sought to stack such equipment determine whether it is a building or not. Moreover, it would be unclear to users of the Plan at what point the height, size, weight or duration of a stored item would result in an item of outdoor storage then being defined and assessed as a building.

10. It is less than ideal that the definition of "building" in the District Plan does not provide express temporal and dimension standards specifying when stacked matter will come within its terms. We note in passing that the Auckland Unitary Plan's definition of building

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1 Scrap Metal Application at Paragraph 30.
2 Haybale Application at Paragraph 30.

expressly includes "Stacks or heaps of materials" as structures where they are over 2m in height and in existence for more than one month.[3] We also note that the definition of "Outdoor Storage Area" in the District Plan only applies to "periods in excess of 12 weeks in any year" i.e. storage for less than this time period is not captured by the activity.

11. Given that scale and time parameters are not specified for stacks or heaps of material in the District Plan definition of building, consideration is required of whether the stacked matter is a structure, which in turn requires an assessment of affixation to land. The case law referenced in our earlier advice confirms that this assessment is one of degree, including in relation to the time for which a thing is in place.[4] We do not agree with the CoC applications' author that this is arbitrary in nature, provided that a purposive approach is brought to bear to resolve the matter at issue. We also note that the interpretation advanced by the applicant's legal advisors places some weight on the contention that the transiting of shipping containers means that they cannot be considered structures i.e. the temporal element is relevant.

12. We now consider the Scrap Metal Application and the Haybales Application in turn.

Scrap Metal Application

13. The Scrap Metal Application seeks certification as a permitted activity for stacks of scrap metal reaching as high as 20m. Although no diagram is provided, the applicant has stated that interlocking' of stacked items or other methodologies will be employed to ensure the safe and secure stacking of items at greater heights. The Application Plan at Appendix 2 depicts outdoor storage stacks, which appear to be approximately 15-20m wide and 60-60m long. Scrap metal (either as crushed car bodies or as baled scrap metal) is very dense/heavy and cannot be moved without specialised equipment. We therefore consider that the stacks will be made of very heavy objects and will be large in height and size. Based on the analysis in our earlier advice, these characteristics support a conclusion that the stacks are a structure.

14. The Scrap Metal Application does not expressly state whether the activity relates to stacks that will be in place for extended periods of time. As noted, the application takes the position that the temporal dimension of the stacks is irrelevant to whether they amount to a structure. We do not agree with this approach, given the case law regarding structures and affixation, and further information could be sought from the applicant as to the duration of the stacks. For present purposes, we are approaching the issue assuming that the certification for the stacks is sought in the long term as:

    (a) Certification is sought for an ongoing activity i.e., no time limitation is proposed; and

    (b) The only rational purpose that we can glean for the storing of stacked car bodies on the site would be prior to them being recycled. The applicant has not demonstrated a retail demand for car bodies that would support the operation of a yard-based supplier as described. Given this, the Scrap Metal Application does not fit within the definition of "yard based supplier" i.e., because the "products" are not

3 Auckland Unitary Plan, Chapter J Definitions

4 See *Antoun v Hutt City Council* (2020) 21 ELRNZ 595.

"for construction or external use". The activity may be more properly categorised as an outdoor storage area relating to an industrial activity:

> **Outdoor storage area**
>
> means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of 12 weeks in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.
>
> **Industrial activity**
>
> means the use of land and/or buildings for manufacturing, fabricating, processing, repairing, assembly, packaging, wholesaling or storage of products. It excludes high technology industrial activity, mining exploration, quarrying activity, aggregates-processing activity, and heavy industrial activity.

15. In any event, the long-term (indefinite) nature of the pile of scrap metal supports a conclusion that it would be fixed to the land by its own weight and would therefore constitute a structure.

16. We consider that the height, width, weight and indefinite duration of the piles of scrap metal mean that they would amount to a structure. For completeness, we consider that this conclusion is supported by a purposive interpretation in light of the relevant objectives and policies as discussed at paragraphs 26-28 of our 16 November 2023 advice.

Haybales Application

17. The Haybales Application seeks certification for stacking haybales (and, notionally, other similar items) to a height in excess of 11m. The same Application Plan is included at Appendix 2 which depicts outdoor storage stacks, which appear to be approximately 15-20m wide and 60-60m long. No diagrams or methodology is provided of the approach to the stacking of haybales. The Application states that 'interlocking' of the bales or other methodologies will be employed to ensure the safe and secure stacking of items at greater heights. We have assumed that the images below are indicative of the type of stack activity of which the application seeks certification:

18. We acknowledge that these photographs are hypothetical examples of haybales and there is no way of knowing from the application whether or not the proposed activity reflects the above type of stack. This is indicative of a broader issue with the application – it lacks sufficient detail to properly assess the nature and extent of the activity and whether it complies with the district plan.

19. If the proposed stacks are intended to be similar in size and scale to the stacks above, they are not relatively small in height and size; they are relatively large in both dimensions. While a haybale is less dense and heavy than a bale of scrap metal, haybales are still heavy objects which require specialised equipment to transport them. We therefore consider that the stacks are made of heavy objects, are large in height and size, and are interlocked to achieve structural stability. These factors support a conclusion that the stacks are a structure.

20. The Haybales Application does not specify the time period for which stacks will be in place (taking the position that this an irrelevant consideration). For present purposes, we are approaching the issue assuming that the certification for the stacks is sought in the relatively long term as:

    (a) Certification is sought for an ongoing activity i.e., no time limitation is proposed; and

    (b) While there are a variety of uses for haybales (and therefore some potential for retail trade), the predominant use of haybales is as winter feed for animals. This is a seasonal activity, with hay being made during the summer months, and then fed out during the winter months. We therefore assume that stacks may be in place for longer periods. We consider that the activity therefore appears to be an outdoor storage area for an industrial activity, rather than a yard based supplier.

21. Taken together, we consider that the height, width, weight, interlocked structural nature, and indefinite duration of the haybale stacks means that they would be fixed to the land by their own weight and would therefore constitute a structure. For completeness, we consider that this conclusion is supported by a purposive interpretation in light of the relevant objectives and policies as discussed at paragraphs 26-28 of our 16 November 2023 advice.

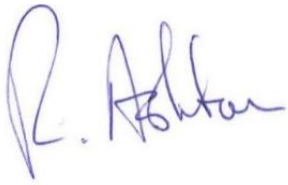
CONCLUSION

22. The lack of detail in the application relating to the proposed duration of the stacks and the method of stacking them means that it is difficult to fully assess the compliance of the proposed activity. However, we have concluded that the Scrap Metal Application and the Haybale Application are more than likely structures and therefore constitute buildings which exceed the applicable building height requirements in the District Plan.

23. We acknowledge that there is a degree of uncertainty in relation to this due to the framing of the District Plan definition which requires an appraisal of whether stacked material is a structure in a given case. A plan change to adopt the approach taken by the Auckland Unitary Plan of specifying the scale and duration of material stacks that constitute a structure would resolve this uncertainty.

24. Unless such a change is adopted, the existing definition must be applied on its terms and taking a purposive approach.

Yours faithfully
BROOKFIELDS



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