

ASHBURTON DISTRICT COUNCIL

5 Baring Square West, Ashburton, New Zealand.
e-mail info@adc.govt.nz Website www.ashburtondc.govt.nz

In reply, please quote:

If calling, please ask for:

Notice of Undertaking

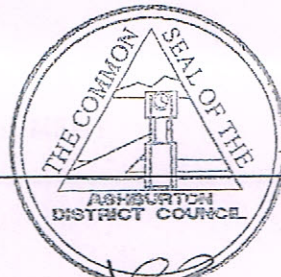
Take note that the Ashburton District Council:

1. Has executed the deed of agreement recording the parties' side agreement in respect of Environment Court appeal ENV-2010-CHC-131; and
2. Hereby **undertakes** to do everything within its control to implement the parties side agreement including the registration of the restrictive covenant referred to in the side agreement, and to take no action that would prevent the implementation of the side agreement including the registration of the said restrictive covenant.

Dated the 29th day of April 2011

SIGNED for and on behalf of
ASHBURTON DISTRICT COUNCIL
in the presence of:

)
)
)



Witness Signature:

A.R. McKay *V.G. Robinson*

Witness Name:

A.R. McKay V.G. Robinson

Witness Occupation:

Mayor Manager Democracy & Community Services

Witness Address:

ASHBURTON DISTRICT COUNCIL

BETWEEN

L & M COONEY, A & A ARGYLE, M KANE, M LEARY, and K & H SMITH

("Neighbours")

AND

ASHBURTON DISTRICT COUNCIL

(as applicant for resource consent LUC09/0025)

("ADC")

DEED OF AGREEMENT



cavell
leitch
law

Clarendon Tower
Ground Floor, 6 Hazeldean Road, Addington
P O Box 799, Christchurch, New Zealand
Tel +64 3 379 9940 Fax +64 3 379 2408
www.cavell.co.nz

THIS DEED is dated the

day of

2011

BETWEEN

L & M COONEY, A & A ARGYLE, M KANE, M LEARY, and K & H SMITH ("Neighbours")

AND

ASHBURTON DISTRICT COUNCIL as applicant for resource consent LUC09/0025 ("ADC")

BACKGROUND

- A. ADC applied for resource consent from the Ashburton District Council as consent authority ("the Council") to establish and operate an Art Gallery and Museum at 325-333 West Street, Ashburton ("application site"). The decision granting resource consent subject to conditions was made by a hearing commissioner under delegated authority.
- B. The Neighbours own or have interests in and / or reside at the following properties (collectively referred to as "neighbouring properties") in close proximity to the application site:
 1. L & M Cooney: 124 Wills Street, Ashburton
 2. A & A Argyle: 128 Wills Street, Ashburton
 3. M J Leary: 130 Wills Street, Ashburton
 4. M Kane: 123 Cameron Street, Ashburton
 5. K & H Smith: 121 Cameron Street, Ashburton.
- C. The Neighbours appealed the grant of consent to the Environment Court (ENV-2010-CHC-236).
- D. The appeal was the subject of mediation during which a number of issues were resolved subject to ratification. Ratification by the Neighbours was received on 17 February 2011. The agreement at mediation included that the matters contained in this document be formally recorded between the ADC and the Neighbours.
- E. Upon execution of this agreement and the documents referred to therein, the parties will execute the consent memorandum otherwise resolving appeal ENV-2010-CHC-236.

THIS DEED RECORDS

1. The ADC and the Neighbours have agreed to the following arrangement in respect of parking in the vicinity of the new Art Gallery and Museum. The agreement requires that:
 - 1.1. When public events pursuant to conditions 8 – 12 of the resource consent are held, ADC will ensure that "residents only parking" restrictions are imposed:
 - 1.1.1. After 6 pm on the north side of Cameron Street (adjoining numbers 119, 121, 123 and 127 Cameron Street) and the south side of Wills Street (adjoining numbers 122, 124, 128 and 130 Wills Street); and

- 1.1.2. After 8 pm on the north side of Wills Street (opposite numbers 122, 124, 128 and 130 Wills Street).
- 1.2. A plan of the area that will be designated "residents only parking" is **attached** to this agreement marked "A".
- 1.3. The signage indicating the "residents only parking" areas will be permanently fixed as street signs, with flaps or similar which are opened up prior to each public event. Such signs will be made visible for sufficient time to ensure that full effect is given to clause 1.1 above. The details in relation to timing will be specified in the Visitor Parking Management Plan to be prepared in accordance with condition 20 of LUC 09/0025, taking into account the requirements of this Deed;
- 1.4. On Cameron and Wills Streets (between West and Park Streets), the areas between driveways in which parking may occur shall be marked with white markings: "┐┌" ("white markings"); and
- 1.5. Yellow lines shall be marked between the driveways of 123 and 127 Cameron Street and between the white markings where the spaces between driveways is less than 6 metres.

Amended or fresh consent

2. The ADC also agrees that:

- 2.1. The consent holder shall not apply to amend the conditions of the consent or apply for a new resource consent (or similar approval) without the prior written approval of the then registered proprietors and occupiers ("the neighbouring parties") of the properties at:

124, 128 and 130 Wills Street; and

121, 123 and 127 Cameron Street.

This provision applies until the expiry of a 10 year period after the new Art Gallery and Museum opens to the public.

- 2.2. If the consent holder wishes to apply:

(i) to amend the conditions of consent or

(ii) for a new resource consent or similar approval;

in the 5 year period following the expiry of the 10 year period in clause 2.1 above, it shall follow good resource management practice and undertake consultation with the abovenamed neighbouring parties.

3. The ADC and the Neighbours agree that the obligations recorded in clause 2 above shall be registered on the Certificate of Title of the Art Gallery and Museum site as a restrictive covenant at ADC's cost. Such documentation shall be executed together with this Deed and the consent documentation. ADC undertakes to register that restrictive covenant immediately, and no later than three working days, after execution.

Handwritten signatures and initials are present at the bottom of the page, including a large signature on the left and several smaller ones on the right. A reference number is visible at the bottom right.

Miscellaneous

4. This Agreement shall bind a party's successors, personal representatives and permitted assigns.
5. This Agreement may only be varied in writing by agreement between ADC and the registered proprietors of the neighbouring properties referred to in clause B above.
6. The provisions of this Agreement constitute the entire agreement between the parties and supersede all previous agreements and communications, whether verbal or written, between the parties with respect to the subject matter of this agreement.
7. In the event of any illegality in this Agreement, such illegality shall be severable and not affect the remainder of the Agreement.
8. No delay, neglect or interference by either party in enforcing against the other any provision of this Agreement will be a waiver, or in any way prejudice any right, of that party.
9. Each party must, at its cost (except as otherwise provided for in this document), execute and deliver all documents and do all other things reasonably necessary for the proper and complete performance of its obligations under this document.

IN WITNESS whereof the parties have executed these presents on the day and year first hereinbefore written.

SIGNED for and on behalf of
L & M COONEY by *L. M. Cooney*
 in the presence of:

)
)
)

[Signature]
Anthony Dignat

Witness Signature:

[Signature]

Witness Name:

Witness Occupation:

Witness Address:

SIGNED for and on behalf of
A & A ARGYLE
 in the presence of:

)
)
)

[Signature]
A. Argyle

Witness Signature:

[Signature]

Witness Name:

Emily Molloy

Witness Occupation:

Office Clerk

Witness Address:

Ashburton

[Signature]
AX

[Signature]

SIGNED for and on behalf of
M LEARY
 in the presence of:

)
)
)

[Signature]

Witness Signature: [Signature]

Witness Name: Kylie Stephen

Witness Occupation: Office Clerk

Witness Address: Ashburton

SIGNED for and on behalf of
M KANE
 in the presence of:

)
)
)

[Signature]

Witness Signature: _____

Witness Name: _____

Witness Occupation: _____

Witness Address: _____

SIGNED for and on behalf of
K & H J SMITH
 in the presence of:

)
)
)

[Signature] [Signature]

Witness Signature: [Signature]

Witness Name: Kylie Stephen

Witness Occupation: Office Clerk

Witness Address: Ashburton

SIGNED for and on behalf of
ASHBURTON DISTRICT COUNCIL
 in the presence of:

)
)
)

Witness Signature: [Signature]

Witness Name: AR McKay

Witness Occupation: MAYOR

Witness Address: ASHBURTON DISTRICT COUNCIL

[Signature]
JG ROBINSON
 MANAGER
 Democracy & Community Services

"A"

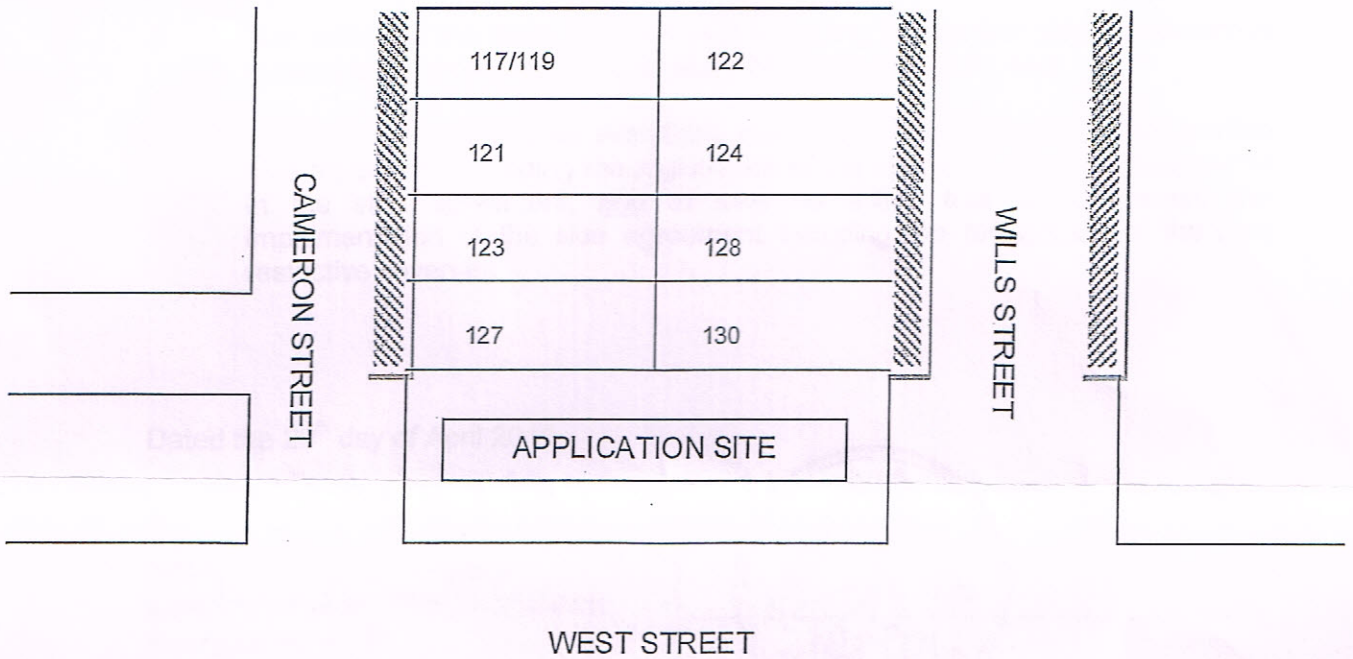
(note: not to scale)

Key:

Residents only parking after 6 pm on day of public events at Art Gallery/Museum



Residents only parking after 8 pm on day of public events at Art Gallery/Museum



am
JSP