THE RESOURCE MANAGEMENT ACT 1991

APPLICANT:	**A L CASSELS (AMBASSADORS PARTNERSHIP)**
LOCAL AUTHORITY:	**MARLBOROUGH DISTRICT COUNCIL**
SUBJECT MATTER:	(i) Earthworks and work in watercourses, Rural Zone 1 (ii) Harvesting of a commercial forest
SITE DESCRIPTION:	Sec 30 Blk IX Arapawa SD, Pt Sec 87 Queen /Charlotte Sound SD and Sec 13 and 15 Blk X Arapawa SD
REFERENCE:	**U140068**
HEARING DATES:	**9 July; 17 November 2015; 25 October 2016**

Appearances:

- Paul Rogers and Kate Rogers for the applicant **Alasdair Lorne Cassels as trustee for Ambassadors Partnership**
- David Whyte for the **Clintondale Trust, Whyte Trustee Company Limited**
- Ken Roush for the **Port Underwood Association**

Guy Boddington to present s42A reports.

Summary: Consent is granted, subject to conditions

DECISION OF THE COMMISSIONER

Introduction[1]

[1] The present proceedings began in February 2014, with an application for consent for "Earthworks construction for making of logging roads and skid sites for exotic forest harvesting". That application was afforded limited notification, with the use description expanded to include reference to the installation of culverts "in up to four streams", thus acknowledging a rule in the operative Marlborough Sounds Resource Management Plan[2] (the Plan) relating to work in watercourses. Five submissions were received, one of which drew attention to what was said to be the lack of proper authorisation for the forest's establishment – now thought to have been in around 1975.

[2] The premiss underlying this application was that the activity to be facilitated by the works for which consent was sought – that of harvesting a commercial forest – was itself a permitted activity in terms of the operative plan. How the applicant reached this conclusion is not entirely clear. That was certainly the view of Mr Boddington, whose s42A report for the first hearing contained it as an explicit assertion.[3] It became apparent, however, that this was his interpretation of a passage in the Plan which included the use description "Vegetation Clearance" (itself the subject of conditions) within the list of activities permitted in the relevant zone – Rural Zone 1. That matter became the subject of discussion at the first hearing along with the question of whether the forest had been lawfully established. In the event I determined that:

- At the time of its establishment that activity required consent under s38A of the 1953 Act (or its equivalent in the 1977 legislation);
- To a high degree of probability such a consent had not been obtained;
- No subsequent planning instrument had legitimated 'forestry' activities on the subject land;
- In terms of the operative plan, what the applicant now proposed – the harvesting of a commercial forest on land in the Rural 1 Zone – was *not* comprehended under the use description 'Vegetation Clearance'; and accordingly that
- "a further resource consent will be required in respect of the proposal to which the … application relate[d]"; and, pursuant to s91(1);
- Hearing of the application in its then form would not proceed until a further application was made so as to enable the two to be considered together.

[1] In this section and those to follow, quoted passages are shown either within double quotation marks or as inset and in a font smaller from that of the main text.
[2] The Marlborough District Council is a Unitary Authority and its Plan fulfils both 'regional' and 'district' functions.
[3] His paragraph 35.

[3] These conclusions, and the reasons for them, are contained in a 'determination' of 30 November 2015. Subject to the correction of a typographical error,[4] that determination should be read with and forms part of this decision. Although the Resource Management Act 1991 (the Act) provides a means by which determinations of this kind may be referred to the Environment Court[5] the applicant did not take that step. Instead, and on 24 May 2016, the applicant sought further consent for "exotic forestry harvesting". That application – or, at least, the Assessment of Environmental Effects (AEE) attached to it – explicitly contemplated the use of public roads – in particular, Port Underwood Road – for the conveyance of harvested logs from the subject land to Picton. Public notification of that application[6] – which appears to have included reference to the earlier one – attracted 15 submissions, 14 of which were opposed to the increased use of the road by heavy traffic; principally that of logging trucks.

[4] By letter of 20 September 2016 Mr H Versteegh, Manager, Regulatory Department, Marlborough District Council, certified that I had "been appointed, pursuant to s34A(1) of the Act, as a Hearings Commissioner, with power to hear and determine …" all of the applications referred to above. This delegation supplements that of 16 June 2015.

[5] A resumed hearing was scheduled for Tuesday 25 October 2016. On 6 October – after an update to the original s42A report had been prepared and circulated – the applicant's legal advisers wrote to the Council saying, amongst other things:

> 2. Following the s42A report released by the Council, and receiving independent advice as to the effect on the roading network of the applicant's logging trucks, in combination with other heavy goods vehicles already using that roading network, the applicant now amends the application so as to no longer make use of the public road network. Instead the applicant intends to have logs transported by truck to the Opua Bay barge site, using private roads, and from the Opua Bay barge site, barged to Picton.
>
> 3. Consequently there shall be no use of public roads such as Tumbledown Road, Port Underwood Road, Waikawa Road, Dublin Street and Queen Charlotte Drive as originally provided for in the application.

The letter then went on to address two questions: whether (i) such an 'amendment' could be made without adjournment or further notification, and (ii) given such an alteration it might be possible to avoid a formal hearing.

[4] The first line of the first bullet point in [26] (p9) should read: 'Vegetation Clearance' seems inapt to describe the apparent consequences of the …

[5] S91(3)

[6] A step from which one may infer a view, on the part of the person making the 'notification' decision, that the activity was then thought "likely to have adverse effects on the environment that are more than minor". – s95A (2)(a)

[6] I have no difficulty with the first of these. The conveyance of logs by road is not an activity requiring RMA authorisation – this because of both their 'dedication' and 'designation' – and thus need not be "provided for within [an] application." Various decisions of the Environment Court have, however, made it plain that, in appropriate circumstances, applicants may find their ordinary rights of road usage constrained by a condition of consent – as, e.g. that under challenge in *Aubade.*[7] Accordingly, the position now taken by the present applicant amounts simply to the acceptance of an appropriately framed condition, the kind of result to which various of the submissions in opposition were directed.

[7] The question of whether a hearing can be avoided is dealt with by s100(b) of the Act. As matters turned out, it proved impractical to obtain the assent of all submitters who had indicated a desire to be heard and one, who in general approved such a course, did so on a qualified basis – more of this later.

[8] In passing I should say that I think the applicant's present concession – that logs should be barged from Opua Bay rather than transported by road – is a proper and helpful one. I can think of several arguments that might be used to sustain the imposition of a condition to that effect, not all of which employ the notion of adverse environmental effect.

[9] Section 113(1) of the Act identifies matters that must be set out in a decision, amongst them being:

> (ac) the principal issues that were in contention; and
> (ad) a summary of the evidence heard; and
> (ae) the main findings on the principal issues that were in contention;

A summary of evidence will be found attached to this decision as **Appendix A**. Where greater detail is required it will be found within the body of this decision, as will the other matters required by s113.

My overall approach and the question of status

[10] The Act does not require an applicant to seek consent for each (identified) transgression of a plan. Instead it is concerned with *proposed activities*, requiring the assessment of whatever it is that an applicant intends to undertake against relevant planning documents, each considered as a whole.[8] Plans – and the Marlborough Sounds Resource Management Plan is an example of this – often contemplate activities under descriptions (e.g. 'Vegetation Clearance') so that the question becomes whether the 'bundle of activities' for which an applicant seeks consent falls within one or more of the activity descriptions provided for in the Plan. If it falls within more than one an applicant may take the benefit of the least restrictive.

[7] *Aubade v Marlborough DC* (2015) NZ EnvC 154
[8] See section 104(1) (b)(iv)

[11] Viewed in that light it seems to me that the second application – that for consent to "exotic forestry harvesting" – subsumes those proposed in the first; this because the construction of forestry roads (including the construction of culverts and work within the beds of streams) is an incident of the wider proposal. For that reason I will approach the whole thing 'in the round', noting that:

- At the time of the first hearing it appeared that most of the matters of concern to the then submitters had been resolved by way of agreed conditions;
- The only real issues remaining at the second hearing – at least from the point of view of the wider group of submitters – were road-related; and
- Submissions made in relation to that may well be met by a condition of the kind now accepted by the applicant.

[12] Considered individually, the 'land disturbance' component of the first application is a controlled activity under Rule 36.2 of the operative plan – this because it fails to comply with the conditions of excavation/filling as a permitted activity. The installation of culverts in a watercourse requires consent as a discretionary activity under Rule 26.1.4.5. In his second s42A report Mr Boddington says that:

> The proposed harvesting of exotic forestry is not provided for as either a permitted, controlled, limited discretionary or discretionary activity and is deemed to be a non-complying activity under Rule 36.5. (his paragraph 18)

Rule 36.5 reads:

> Any activity other than a Prohibited Activity which is neither a Permitted Activity, Controlled Activity, Limited Discretionary Activity, nor a Discretionary Activity shall be deemed to be a Non-Complying Activity.

The question is, therefore, not whether the activity of forest harvesting is *provided for* (by the inclusion of 'forest harvesting' or some such within an activity description) but whether it *is* one or other of the specified kinds: the first is a semantic issue, the second one of interpretation.

[13] Again, and on this point, the applicant adopted the same approach as did Mr Boddington. I beg to differ. First, there is ample authority for the view that consent to "commercial forestry" – the description of a limited discretionary activity in the Rural 1 Zone – implies consent to the harvest trees established in terms of that consent, there being "no point in endeavouring to separate the two activities."[9] Secondly, the acknowledged context of the present applications is the activity of 'commercial forestry', albeit one carried out thus far without the benefit of resource consent. It seems to me that the principle 'the greater includes the less' applies, particularly given the fact that a minor sematic tweak of the second application would have dealt with the problem – had the applicant expressly applied for consent to carry out forest harvesting *as the only remaining element of a commercial forestry activity* the point would have been unarguable.

[9] See *Aubade* (above) at paragraph 22

[14] As previously indicated, I consider the 'land disturbance' and 'culvert installation' elements of the present proposal as incidents of 'forest harvesting', itself encompassed by an activity description categorised as 'limited discretionary'. If the circumstances had remained as they were at the time that the applications were lodged I would have considered the whole as of that class, nevertheless paying proper regard to the fact that two incidents of the overall activity required somewhat wider consideration. That approach is, I think, open in terms of recent authority.

[15] Earlier this year the Marlborough District Council publicly notified its 'Marlborough Environment Plan' (Proposed Plan or MEP), the period for submissions to which has now ended (1 September 2016). The public notice advises that:

> In accordance with section 86B (3) of the RMA there are rules in the proposed Marlborough Environment Plan that will have legal effect from the date of this notification. These rules have been specifically identified in the Plan.

The subsection referred to is (relevantly) as follows:

> (3) A rule in a proposed plan has immediate legal effect if the rule –
> (a) protects or relates to water, air or soil (*for*[10] soil conservation); or
> (b) ….; or …

[16] Relying on this, Mr Boddington says, at paragraph 20 of his second s42A report:

> Commercial forestry harvesting is a discretionary activity in this zone in accordance with Rule 4.6.4. Under section 86B, this rule in the MEP has immediate legal effect since its purpose is the protection of water or soil conservation.

Following the most recent hearing, and at my request, Mr Boddington has provided me with a list of provisions in the Proposed Plan which, in his view, pertain to this issue. That list is as follows:

> Issue 15A: Relates to discharge of contaminants to water and adverse effects on the life supporting capacity and commercial use of coastal waters and rivers…..
>
> Objective 15.1.a: Maintain and improve water quality for reasons (a) to (f). Policies: 15.1.1, 15.1.25, 15.1.27, 15.1.29(a), 15.1.31 (egg. culverts) and 15.1.32.
>
> Issue 15F: Some land use activities could affect soil quality
> Objective 15.4: Maintain and enhance the quality of Marlborough's soil resource.
> Policies: 15.4.2, 15.4.3 and 15.4.4.

[10] I have checked two PDF versions of the legislation – the word is 'for'. Arguably, the words in brackets operate only on the preceding word 'soil', but I think not.

[17] So what, if anything, does s86B(3)(a) *require* in the present case? The following considerations seem pertinent:

- Even absent s86B the provisions of a proposed plan are a relevant consideration;[11]
- Viewed grammatically, the words within brackets appear to confine the operation of those which precede them; that is (arguably) a rule to which the passage might apply has "immediate legal effect"[12] if and only if it (i) "protects or relates to water air or soil" *and* (ii) is *for the purpose of* "soil conservation";
- I have read the provisions contained in Mr Boddington's list with some care. They come from statements of issues, objectives and policies contained in Volume 1. Each could be said to *relate* to water, air or soil and might thus form part of an argument going to the purpose of the relevant proposed rule. Apart from indications (in the 'methods' sections) that rules might be a means of implementing those objectives and policies such a link (between objectives and policies on the one hand and the rules in the other) is not apparent;
- Proposed Rules 4.6.3 and 4.6.4 are of present relevance. These propose separately to constitute, respectively, "Commercial forestry planting" and "Commercial forestry harvesting" as discretionary activities. On the assumption that these rules do in fact have "immediate legal effect" it would seem: (i) that the activities so described require consent in terms of s9 and s43AAB, and (ii) that consent is (in the case of the Proposed Plan) for a discretionary activity;
- An explanatory passage in Volume I of the MEP, after referring to s86B (3), goes on to say that "[t]hose rules that have immediate legal effect are identified in Volume 2 of the MEP. A schedule at the beginning of Chapter 5 purports to identify the rules in that chapter to which s86B (3) applies. Proposed rules 4.6.3 and 4.6.4 are to be found in the left hand column and as, so far as these rules are concerned, there are no 'standards' attached to those rules, 'n/a' appears in the right hand column;
- The question that this raises in my mind is whether s86B (3) may be invoked by such a passage. Arguably, whether a rule "protects or relates to water, air or soil (for soil conservation)" is a matter to be determined from an examination of the rule itself, together with objectives and policies of the Proposed Plan that it directly references or which are clearly part of its purposive antecedents. If the legislature had intended that a proposed rule should have immediate effect as the result of a statement to that effect in the Proposed Plan it could easily have said so (*c.f.* ss2);
- In addition, and assuming that Rule 4.6.4 *is* of "immediate legal effect", it is unclear as to whether it operates *in substitution for* those in the operative plan – as would be the case if the rule was *operative.*

[11] Section 104(1)(b)(vi).
[12] In subsection 5 **immediate legal effect** is said to mean "legal effect on and from the date upon which the proposed plan containing the rule is publicly notified …"

[18] While attempting an overview of the Proposed Plan, I came across other provisions which may be of relevance. Chapter 2 contains a number of 'General Rules' applicable to all activities, amongst them Rules 2.7 and 2.10. The first constitutes "Culvert installation in … the bed of a river" a permitted activity, subject to compliance with 'standards (Rule 2.7.7); the second says that "Any activity in … the bed of a river not provided for as a Permitted Activity …" requires discretionary activity consent (Rule 2.10.2). Mr Boddington's first s42A report describes the then proposal as for the construction of "culverts in up to four streams"; what is unclear to me is whether the projected activities might in some cases involve work in the bed of streams that do *not* require culvert installation. If so, that activity is proposed to be constituted 'discretionary' by a rule that, according to a schedule at the beginning of Chapter 2, is of "immediate legal effect".

[19] Until the courts have had an opportunity to consider these issues decision-makers in my position will just have to do the best that they can. I intend:

(a) To consider the present applications, viewed as a whole and in terms of the operative plan, as a limited discretionary activity;
(b) So far as the land disturbance and river bed elements of the proposal are concerned, to include within the ambit of consideration matters which that plan constitutes as relevant;
(c) So far as the Proposed Plan is concerned, to regard the activity of 'commercial forestry harvesting' for which consent is sought as on requiring consent as a discretionary activity – an approach which involves a consideration of relevant objectives and policies in that document; and
(d) Within that consideration, to address the possibility referred to in [18] above;
(e) Additionally, and in case I may be wrong in some of the views expressed at [13] above to consider whether consent can and should be granted *on the assumption* that forestry harvesting is a non-complying activity in terms of the operative plan,

Matters in contention

[20] Perhaps as a consequence of the fact that it was accorded limited notification the issues raised by the then submitters were somewhat limited in scope. Most were addressed (in one form or another) by conditions attached to the first s42A report. None of the then submitters appeared at the first hearing.

[21] The applicant's approach at that time was to regard likely increased traffic on public roads as an indirect effect of its proposal; that is, as a consequence of an activity, then understood as 'permitted' by the Plan, that the activities for which consent was sought were intended to facilitate. Its proposal to deal with *that* issue was to say that it would adhere to a 'voluntary protocol', said to have been agreed between forestry operators and the Marlborough District Council. How that might have been framed as a condition of consent remains something of a mystery.

[22] Leaving aside both that issue and the matters particularly addressed in my 'Determination' of 30 November 2015 there then seemed no reason to refuse consent to the activities for which consent was then sought – this, of course, subject to the imposition of appropriate conditions. As to that, a 'neutral' submission by Marlborough Lines Limited expressed a wish for "consultation" prior to the commencement of works on the subject land. The submission drew attention to relevant provisions of the Electrical Code of Practice 34. In my view this issue can be dealt with by attaching an 'advisory note' to any consent.

[23] One of the 15 submissions made in relation to the second application – that by Heritage New Zealand Pouhere Taonga – expressed concern about the "impact of the proposed development on archaeological sites and the potential for adverse effects on historical and cultural values". Five such sites are known to exist on the subject land, these being identified on plans attached to the first application. The submission did not seek to add to these; instead, it sought appropriate action on the part of the applicant in the event that the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 were triggered. Conditions accepted by the applicant include a 'discovery protocol' which seems adequately to deal with that issue, albeit in a way somewhat different from that suggested by the submitter.

[24] The remaining submissions on the second application were concerned (almost wholly) with the conveyance of harvested logs from the subject land to Picton by way of public roads, many suggesting barge transport from Opua Bay as an appropriate alternative. The applicant's late change of stance largely deals with these concerns. Mr Whyte, who made a lengthy and detailed formal submission of which he appeared at the hearing in support, sought to develop a somewhat wider point; one based on a 'clarificatory' email sent by the applicant's legal advisers on 14 October 2016 (*after* its change of position had been advised to the Council and submitters). Mr Whyte read that email as an unequivocal assertion that heavy vehicles *other* than those actually in use for the transport of harvested logs would traverse public roads in limited numbers and at limited times. He sought a condition to that effect. Ms Rogers, on the other hand, saw that email only as an expression of *expectation*, rather than as something upon which a binding condition could be constructed.

[25] Fortunately I do not have to resolve that difference as in the course of discussion Mr Whyte resiled from his point. I made the following note:

> … is prepared to leave issues relating to non-log-haulage traffic to the ordinary rules relating to the use of roads.

I read this back to him and he agreed.

[26] For these reasons, so it seems to me, only one issue remains for consideration: consent (subject to appropriate conditions) or not.

My overall consideration

[27] Approaching the matter in the way foreshadowed in [19](a) to (e) and in the light of s104, I conclude that:

- The existing forest contains a 'resource' of the kind which it is the purpose of the Act sustainably to manage; this regardless of the fact that it was (probably) unlawfully established. So viewed, the alternative to harvesting – that the trees, already over-mature, should remain on the land until they fall over and decay – seems contrary to part of s5. Additionally, such a step would fail to recognise the need to have particular regard to the efficient use of the resource.
- The actual and potential effects on the environment of allowing the activity – essentially that of clear-felling – are moderately adverse, having as their primary elements visual detriment, the potential for erosion and the pollution of streams (and perhaps coastal water) through sediment transport.
- While these effects are contemplated by the two relevant plans the status of the activity (and the various elements of it) is not such as to enable recourse to s104(2);
- Nevertheless the overall tenor of those plans justifies some discounting – the effects in question are the likely consequence of an activity which, to a considerable extent, the plans are structured to enable. In addition, some of these effects can be mitigated by appropriate conditions and are likely to become less severe over time. Absent re-planting for forestry – something that will itself require consent – the most likely long-term result is re-vegetation by a mixture of native and exotic species, the latter including seedling pines;
- The general tenor of relevant objectives and policies in the two plans is largely supportive of the present proposal. By way of example, part of the explanation of Policy 14.1.1 – Enable the efficient use and development of rural environments for primary production – is as follows:

  > Currently, a wide range of primary productive land uses are undertaken in Marlborough's rural environments, from viticulture to *extensive forestry*, pastoral farming, dairy farming and cropping. This policy provides for those uses to continue. (my emphasis)

  I have already referred to applicable rules.
- Given the stances taken by Te Ātiawa and Heritage New Zealand, the issues raised by s6(e) and (f), s7(a) and s8 can adequately be dealt with by conditions of a kind already referred to (the 'discovery protocol'). If it is the case – as Te Ātiawa says – that access to the site will require the use of land vested (or to be vested) in that iwi, then this is an issue which can only be resolved by negotiation between applicant and iwi representatives.

[28] It has long been thought that what applications of this sort require at the end of the day is a broad overall judgment as to whether the single purpose of the Act would be better served by a grant of consent or by its refusal. Recent high authority requires amendment to this view, by making it subject to explicit directions contained in the Act. In the present case these include the requirements of s6, the 'weighting' requirements of s7 and the

requirements of s8. This is not a case of the kind in which the Act's more mandatory directions (e.g. s75(3)) are applicable.

[29] The directions found in s6(a), s7(c) and s7(f), so it seems to me, have been adequately discussed in earlier parts of this decision. I am not aware of any other Part 2 or s104 matter relevant to the present applications. On the basis of my conclusions as to the status of the principal activity I conclude that consent may be granted, subject to conditions.

[30] On the alternative basis – that 'forest harvesting' is a non-complying activity in terms of the operative plan – I think that the same result may properly be achieved, largely by a re-ordering of elements. At paragraph 56 of his second report Mr Boddington says:

> The effects of harvesting at the forest site will be no more than minor provided the applicant adheres the best practice guidelines contained in the two principal documents/manuals which guide the harvesting of commercial forest in New Zealand.

This is, of course, a view put forward in the context of the consideration required by s104D. As previously indicated I would have some difficulty in coming to the same conclusion. I am, nevertheless, clearly of the view that the applicant's proposal meets the second of the disjunctive limitations of that section, this because of the express inclusion in the Plan of 'commercial forestry' as a limited discretionary activity, together with the objectives and policies underlying that inclusion.

[31] Matters already discussed and going to the 'overall assessment' are relevant here. I have, however, long been of the view that something more than an 'on balance' decision is required in the case of non-complying activity consents. I take the hierarchy of activities provided for in the Act as implying the general *im*permissibility of non-complying activities, a presumption that can be overcome only by positive Part 2based reasons. These are provided in the present case through the consideration discussed in the first bullet point of [27] above. Within the framework of the operative plan and on the assumption that I am dealing with a non-complying activity, I conclude that consent may be granted, subject to conditions.

Conditions

[32] In opening, Ms Rogers proffered a set of conditions based largely on those agreed to following the first hearing but modified to exclude conditions relating to the use of roads by logging trucks. Rather strangely (and leaving aside the concerns of Mr Whyte) the only opposition to these came from the witness called by the applicant at the final hearing. This had to do with a condition requiring certification by a "suitably experienced person, which person meets the approval of the Compliance Manager, Marlborough District Council," that the requirement of specified documents had been complied with. Mr Harvey's point was that what was meant by a "suitably experienced person" was unclear and that (depending on the meaning adopted) such a person may be difficult to find.

[33] I have some sympathy with him in this. 'Certifier clauses provide a means by which a decision-maker may leave a subordinate issue for later decision without transgressing the rule against sub-delegation of the judicial function. The recent tendency of court decisions on this issue has been to relax what had been fairly stringent limits on the use of techniques of his kind. I quite agree that what constitutes a 'suitable person' and what criteria might properly be employed by a Council Compliance Manager in granting or with-holding 'approval' are alike uncertain. It may well be that conditions of the present sort go beyond what the courts would, even now, consider lawful. The more important point is, however, that in the present circumstances this issue is only likely to be raised (in the future) by the applicant or its successor, and it is the applicant that puts the condition forward. I am reasonably confident that an attack from such a quarter would not succeed.

[34] That aside, I have made some minor alterations to the suggested conditions. I have also included a positive condition implementing the applicant's altered intentions regarding the use of roads. In doing this I have endeavoured to avoid some of the problems discussed in *Aubade*. Additionally, I have modified some suggested conditions that contemplated replanting for commercial forestry purposes. That is an activity requiring further consent.

Formal Decision

For the foregoing reasons *consent is granted* to 'commercial forestry harvesting' on the subject land *subject to conditions* set out below:
[Note: Although the activity description set out above follows that in the proposed Marlborough Environment Plan, this consent is to the activities for which consent was sought in the applications of 4 February 2014 and 24 May 2016, and is in respect of the relevant rules (or proposed rules) contained in the operative Marlborough Sounds Resource Management Plan and the proposed Marlborough Environment Plan. For the avoidance of doubt, this consent authorises the installation of one culvert in each of not more than four streams on the subject land.]

Conditions:

<u>Land Use and Land Disturbance</u>

1. **The activities shall be undertaken in accordance with resource consent application U140068 date stamped as received by the Marlborough District Council (MDC) on 4 February 2014, additional information received on 19 February 2014, 4 March 2014, 6 May 2014, 7 May 2014, 7 July 2014, 25 March 2015, 30 March 2015 and 11 June 2015; resource consent application for exotic forestry harvesting date stamped as received by MDC on 2 June 2016, amendments to that application dated 6 October 2016 and the further information provided on 14 October 2016; all as held on MDC file U140068, unless required otherwise by the following conditions of consent.**

2. **A copy of this consent shall be kept on site in a place accessible to site workers and contractors at all times, and be readily available to the site supervisor/manager. Before any activities commence the identity and telephone, and email contacts of the site supervisor/manager will be provided to the Compliance Manager at MDC. All workers and contractors on the site shall be made familiar by the site supervisor/manager with both the conditions of this consent as it affects their particular area of operation and also the relevant standards and rules of the Marlborough Sounds Resource Management Plan and the proposed Marlborough Environment Plan.**

3. **The activity shall be undertaken in accordance with the New Zealand Forest Owners Association (NZFOA) Environmental Code of Practice and the NZFOA Forest Road Engineering Manual. Within one month and again within twelve months of the commencement of this consent a suitably experienced person, which person meets the approval of the Compliance Manager, MDC, shall inspect and confirm in writing to the Compliance Manager, MDC, that the works have been undertaken in accordance with the above documents.**

4. **Skid sites shall be graded and maintained so that stormwater drainage is directed away from earth fill and timber debris to the rear of the sites.**

5. **All timber debris shall be stored on processing skid sites in a stable manner, on constructed benches and, in particular, be stored to ensure that any unexpected failure of this material will not enter drainage systems or cause damage to the property of persons other than the consent holder.**

6. **On completion of harvesting and use of the processing landing sites, as much timber debris as is practicable shall be pulled back on to the platforms to ensure ongoing stability of this material.**

7. **All practicable measures shall be taken to minimise the amount of mud and earth from entering bird nests (timber debris on landing edges).**

8. **The harvested area shall be sown down with a suitable grass or legume seed mix within 18 months of completion of harvest operations or allowed naturally to regenerate with exotic or native species.**

9. **No woody vegetation measuring greater than 100 millimetres in diameter shall be left in any permanently flowing watercourse as a result of any land disturbance activity on the site.**

10. **Water control measures shall be installed and maintained on any temporary haul tracks (ground based machinery tracks) constructed for harvesting. These tracks shall be recovered/pulled back so that the contour of the land is restored as closely as is practicable no more than 60 days after they are no longer required for harvesting the part of the block in which they have been installed, except where identified as access for future management of the forest.**

11. **Any side-cast or excavated material that may enter a water body shall be end hauled and disposed of on a stable site where there is no risk of the material or sediment entering a water body.**

12. **When weather or soil conditions are such that sediment is generated during operations and is able to move into water bodies, the operations shall cease until the risk of sediment moving into any water bodies has dissipated.**

13. **The butts of trees shall not be dragged through any water body.**

14. **The consent holder shall advise the Compliance Manager, MDC, in writing at least five working days prior to the intended date of exercising the works authorised by this consent.**

15. **The consent holder shall advise the Compliance Manager, MDC, in writing at least five working days prior to the intended date of removal of heavy machinery from the forest block.**

16. **Forest road water tables shall discharge at regular intervals to stable locations, particularly along the section marked "New Road" between proposed new skids 13, 12, 11 and 10 as depicted on the plan called "CASSELS - ERIE BAY, Harvest Plan, Post-Harvest Works" at a scale of 1:2,500 received from Bruce Thompson on 30 March 2015. The purpose of this requirement is to minimise water acceleration and the volumes of discharge into the slip and powerline gullies.**

17. **At the completion of harvesting, the consent holder shall check and reinstate as required the water controls described in condition 16.**

18. **The consent holder shall excavate a drain of dimensions 1 metre by 1 metre at the north eastern (toe) end of the feature marked "SLIP" on the plan referred to in condition 16. The purpose of the drain is to allow ongoing water discharge to be directed to the water table on the upslope side of the track at the toe of the slip. The drain shall be filled with large clean rock to prevent its collapse and blockage with sediment.**

19. **The consent holder shall ensure that the water table on the upslope side of the track at the toe of the slip and referred to in condition 18 is of appropriate dimensions and capable of directing discharge to a stable location away from Lots 1 and 2 DP 3866, as far as is practicable.**

20. **Except as required by condition 21 the catchment areas of the features marked "SLIP" and the gully marked "Powerline" and shown cross-hatched on the plan referred to in condition 16, shall not be re-planted. The purpose of this condition is to permit the natural regeneration of native hardwood shrubs in these two areas.**

21. **The area between the north eastern (toe) end of the feature marked "SLIP" and the north east boundary of the forest and shaded pink on the plan referred to in condition 16, shall be planted with Poplar poles of a species recommended for erosion control. The planting programme shall be completed by 31 August in the year following completion of harvesting. The newly planted Poplars are to be release sprayed during the first September or October following planting in order to provide optimal conditions for their establishment.**

22. **If any artefact and/or any historical, cultural or archaeological material of Māori origin or likely to have significance to Māori is found or uncovered whilst undertaking work authorised by this consent, the following must be complied with:**

    a. **Work must cease immediately, the area must be secured and any uncovered material must remain untouched.**

    b. **Advice of the discovery must be given, within 48 hours of the discovery, to the resource management officer of relevant local iwi, to the MDC and to Heritage New Zealand Pouhere Taonga.**

    c. **Work may not recommence until the approval of the relevant local iwi, Heritage New Zealand Pouhere Taonga and the MDC, are all obtained.**

23. **The consent holder shall apply to Heritage New Zealand Pouhere Taonga for authority to modify the recorded sites and any further sites that may be discovered during the exercise of this consent.**

24. **Logs shall not be transported from the subject land by way of any road vested in the MDC except to the extent necessary to enable the transport of logs to an existing barge loading site in Opua Bay. For the avoidance of doubt (but without limitation) this condition applies to all of the existing formed carriageways known as Tumbledown Bay Road, Port Underwood Road, Waikawa Road, Dublin Street and Queen Charlotte Drive.**

25. **In accordance with section 128 of the Resource Management Act 1991, the MDC may during October and/or April of any year for five years following the grant of consent, review the conditions of this resource consent for the following purpose(s):**

    a. **To impose further conditions or change existing conditions to address any unforeseen actual or potential adverse effect on the environment arising out of the activity or activities.**

    b. **To require that the best practicable option be taken to minimise actual or potential effects on the environment.**

    c. **The consent holder shall be responsible for any actual and reasonable cost associated with this review.**

River Surface or Bed Activity

1. **The activities shall be undertaken in accordance with resource consent application U140068 date stamped as received by the Marlborough District Council (MDC) on 4 February 2014, additional information received on 19 February 2014, 4 March 2014, 6 May 2014, 7 May 2014, 7 July 2014, 25 March 2015, 30 March 2015 and 11 June 2015 and held on MDC file U140068 unless required otherwise by the following conditions of consent.**

2. **A copy of this consent shall be kept on site at all times, and be readily available to the site supervisor/manager. All workers and contractors on the site shall be made familiar with both the conditions of this consent as it affects their particular area of operation and also the relevant standards and rules of the Marlborough Sounds Resource Management Plan.**

3. **When weather or soil conditions are such that sediment is generated during operations and is able to move into a watercourse, the operation shall cease until the risk of sediment moving into such areas has dissipated.**

4. **The consent holder shall take all practicable measures at each culvert installation site to minimise the generation of waste material which could be carried downstream as sediment.**

5. **Within 60 days of the completion of harvesting, the consent holder shall remove all culverts installed under this consent and restore the beds of the watercourses, as closely as is reasonably practicable, to their former condition.**

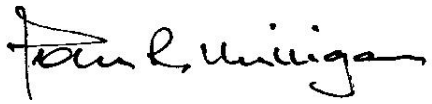
Advice Notes (applicable to both consents)

1. **Pursuant to section 36 of the Resource Management Act 1991 and MDC's schedule of fees, the consent holder shall be responsible for all costs associated with the monitoring of this consent in accordance with the schedule.**

2. **All archaeological sites are protected under the Pouhere Taonga Act 2014. It is an offence under that Act to modify damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to Heritage New Zealand for an authority to modify damage or destroy an archaeological site. This may include the planting of trees within an archaeological site.**

3. **The attention of the consent holder is drawn to the requirements of the Electrical Code of Practice 34. The consent holder is advised to consult with Marlborough Lines Ltd as to its obligations in this regard.**

John Milligan



Commissioner
November 9, 2016

APPENDIX A: Summary of evidence heard

[Note: evidence related to the consequences to infrastructure, in particular to the Council's road network and road environment, has been omitted]

Hearing 1; 9 July 2015

Mark Wybourne (oral evidence, brief in writing)

- Manager PF Olsen Ltd; agent for the applicant in the management of this forest;
- Describes location; site zoned Rural 1;
- Describes harvesting process – summary in text of decision;
- Discusses 'adverse effects' under heads 'recreational use of area', 'aesthetic consequences (temporary and capable of mitigation), 'water clarity' (susceptible to control measures), ''excavations and removal of vegetative cover' (earthworks should be carried out in accordance with industry best practice), 'protections of historic and cultural sites';
- Benefits include employment, provision of raw materials, 'downstream' economic consequences and preventing the effects of senescence;
- Refers to suggested conditions – concern with (then) condition 7,

Resumed hearing: 16 October 2015

Mark Wybourne (written evidence): Wholly concerned with truck movements and its effect on the road network

Hearing 2: 25 October 2016

Campbell Harvey

- Harvest Planner PF Olsen Ltd
- Adopts Wybourne's evidence as to site description;
- Refers to promulgation of proposed Marlborough Environment Plan;
- Forest well past economic rotation age – wind-throw a present and potential problem;
- Describes logging and earthworks processes;
- Notes the changed intentions of the applicant – barging from Opua Bay; says that this will involve the use of private roads and will require negotiation