



# *Hastings District Council*

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## OPEN MINUTES

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### COMMISSIONER HEARING

Meeting Date: **Friday, 28 June 2013**

**(Objection to refusal to issue a Certificate of Compliance  
for day care centre, Campbell Street, Havelock North –  
Sundance (HB) Limited)**



## HASTINGS DISTRICT COUNCIL

### MINUTES OF A COMMISSIONER HEARING HELD IN THE COUNCIL CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION BUILDING, LYNDON ROAD EAST, HASTINGS ON FRIDAY, 28 JUNE 2013 AT 10.00AM

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**PRESENT:** Commissioner Bill Wasley (Chair)  
Commissioners Margaret Twigg and Kevin Watkins

**IN ATTENDANCE:** Environmental Consents Manager - (Mrs K Brunton)  
Senior Environmental Planner (Consents) - Mr R Wiffin  
(Reporting Planner)  
Team Leader Environmental Consents/Subdivision – Mr  
M Arnold  
Committee Secretary (Mrs C Hilton)

**ALSO PRESENT:** “Objector”  
Ms S Bartley (Sundance HB Limited) – the Objector.  
Mr M Lawson – Legal Counsel for the Objector.  
Mr A Prosser – Traffic Engineer, Traffic Design Group,  
appearing for the Objector.

A small number of other people were present in the gallery as observers.

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#### 1. APOLOGIES

There were no apologies.

#### 2. HEARING OF OBJECTION TO REFUSAL TO ISSUE A CERTIFICATE OF COMPLIANCE FOR A DAY CARE CENTRE AT 12 CAMPBELL STREET, HAVELOCK NORTH – UNDER SECTION 357A OF THE RESOURCE MANAGEMENT ACT 1991 – SUNDANCE HB LIMITED (RMA 20120258)

(Planning report and background information circulated prior to the hearing)  
(Written evidence and other information circulated at hearing)

The Chair, Commissioner Wasley, introduced himself and the Hearings Panel. He was an independent Commissioner, who together with Commissioners Twigg and Watkins, had been appointed to hear and determine the Objection by Sundance HB Limited. He outlined the process to be followed at the hearing.

The Council Officers present introduced themselves.

The Chair advised that the Commissioners had been on a site visit prior to the hearing – accompanied by the Team Leader Environmental Consents/Subdivision, Mr M Arnold and the Committee Secretary and that no other parties had been present.

**Mr M Lawson** circulated his Synopsis of Submissions for the Objector and also the Statement by the Objector, **Ms Bartley** – who was the sole shareholder and Director of Sundance HB Limited. Mr Lawson advised that

**Mr Prosser** was not presenting evidence but was available to answer questions if required.

**Mr Lawson** read his Synopsis of Legal Submissions, on behalf of the Objector, interpolating as appropriate. The main points that were raised by Mr Lawson or that were addressed in response to questions from the Commissioners included:

- Paragraph 10 – Certificate of Compliance granted to a day care centre in Blyth Street (Attachment “A”) and this involved use of a minibus.
- Attachment “A” – Rule 8.8.6.
- Attachment “B” – it was stated only the access width did not comply.
- Paragraphs 16 and 20 – he understood that under the District Plan requirements, a day care centre could be of any size as long as associated vehicle movements did not exceed the maximum permitted number.
- Paragraph 30 – Rule 14.1.8.4(c)(iv) did not distinguish between boundaries fronting onto roads.
- Paragraph 34 – the Council was trying to apply a hard and fast mathematical formula to something that is not suitable to such an approach – as there were many variables and permutations. Every child will not necessarily generate “x” vehicle movements per day.
- Vehicle management plans considered a series of criteria and experience – it was a matter of management of the situation- (Paragraph 34).
- Paragraph 37 – a minibus could collect all the children.
- At this stage it was not known who would be attending the day care and so the route for the minibus can’t be advised.

Via the doc-cam, Mr Lawson displayed an A4 black and white amended proposed site plan – (*i.e. an amended version of Page 18 of the Agenda*). This amended plan showed an 1800mm high fully enclosed screen along the western end of Car Park Number 5. He submitted this plan for consideration by the Commissioners in determining the objection. Mr Lawson said that while he did not actually feel it was needed, this screen was offered by the Objector (Paragraph 31).

**Ms Bartley** read her previously circulated Statement, without interpolation.

The Commissioners then asked extensive questions of Ms Bartley and Messrs Lawson and Prosser. The main points that were raised or addressed in response to questions from the Commissioners included:

- Mr Lawson believed a direct comparison could be made between the Campbell St site and the Blyth St example. The zoning was the same, as was its status within the Council’s roading hierarchy.
- It was likely for parents to drop off school age and pre-school children in the same family at the same time. Having the two schools in Campbell St close together would reduce the potential overall traffic movements.
- Matters arising from minibus use / having the two schools in close proximity:
  - There was no pedestrian crossing between the schools – how would the proposed walking school bus work in practical terms – including the timing and how would it operate in inclement weather.
  - Aiming to use minibus in rainy weather / parents bring children?
  - Key thing is the walking school bus did not involve a vehicle movement.
  - Were drivers likely to do “U-turns” to cross between the two sites?
  - The Objector currently only enrolls children into the childcare sites she operates if the parents consented to them using the minibus system.
  - The Objector wanted some flexibility to make adjustments as needed regarding how many children she accepted from the school or via the minibus – as long as within the overall permitted vehicle movements.
  - If children were sick or parents wanted to drop them off on a particular day they contacted the respective childcare centre run by the Objector.
  - Proposed to operate 7.30/7.45am to 5.15/5.30pm.

- If a second minibus was needed the Objector would purchase one to keep within the required number of vehicle movements.
- To what degree could Council ascertain the compliance that could be achieved when it involves reliance being placed on third parties (parents) regarding transporting their children via minibus. Ultimate management decisions are made by the Objector – e.g. not to enrol children if not using minibus.
- The use of the traffic management plan to minimise vehicle movements – use minibus or possibly a staff member could pick up child on way to work.
- Objector and staff have close relationship with the families of most children at her child care centres as they move through each stage of child care.
- If parents decide to walk children to school it's counted as one private vehicle movement for calculating total vehicle movements – as per the criteria – to prevent them parking nearby and then walking to the door.
- Car Park 5 and the proposed screening – drivers would need to manoeuvre to park in this space – likely to park on an angle but still able to park and manoeuvre safely and that the car park was in accordance with District Plan requirements.
- How are vehicle movements addressed in the District Plan when there are two facilities close by as in this case – are they counted as being self-contained with regard to each facility?
- Mr Prosser had taken a common approach to assessing this and addressing only adverse effects that would arise in excess of the current situation. Rule 8.8.6 in the Plan was read out.

**The reporting Planner, Mr Wiffin**, spoke to his previously circulated report and addressed points raised during the hearing. The main points that he raised related to:

- He clarified the timing of discussions with Ms Bartley regarding this site.
  - The first contact had been in early 2012 (not Jan 2013 as had been claimed) when he had been the duty planner.
  - He had advised that a resource consent was required due to the number of vehicle movements likely to be generated.
  - Due to the location involved he had recommended the Objector contact Council's traffic engineers to discuss this and the local traffic situation.
  - The application the Council started considering was dated 19/9/12.
  - He had had contact with the Objector during Jan 2013 regarding the revised application, once the latter had been told the initial application would not meet the required standards.
  - Ms Bartley had been given a copy of the Certificate of Compliance for Blyth Street, which had been addressed under delegated authority and reported on by another Council officer.
- It was necessary for Council to see evidence that the application would comply with the threshold requirements, not that it may comply.
- Car Park 5 – he reiterated that the application had been assessed in the form in which it had been submitted (as Page 18 of the Agenda), not including the amended plan which had been tabled at today's hearing. He did not comment on the amended plan.
- He noted the boundary fence height on the plan in the agenda had been shown as 1800mm high. The top boundary did not show any fence details. He accepted the point that there needed to be some breaks in the boundary fencing for vehicle access as required.
- He acknowledged the plan in the agenda showed a 2400mm high retaining wall on the rear boundary – but he was not sure how high it would be in the corner by Car Park 5.
- The building consent for the site was separate, but it showed a retaining wall below 1800mm high. On that basis, he did not feel the screening of Car Park 5 was satisfactory as submitted.
- In this case, there was a high level of reliance on self-imposed conditions and compliance of third parties.
- He felt the Council had to be certain that compliance would be satisfied.
- He was uncertain if the proposal would meet the standards in the District Plan – given the complexities involved and vagueness of the parameters.

- The last sentence in the first paragraph on Page 16 of Agenda – the Traffic Management Plan was submitted as an indicative plan.
- He was unsure if use of a minibus was an acceptable means of achieving compliance, even if a resource consent had been applied for.
- He advised that Council had received complaints about other sites operated by the Objector and is currently following up and monitoring them.
- The District Plan did not refer to the street environment it refers to the activity on the site that is being assessed. There is no discretion to allow for activity on adjacent or nearby sites – in regard to traffic movements.
- The difference in the environment on this site and the Blyth Street site.
- He still stood by his recommendation set out in the planning report.

The Commissioners asked questions of Mr Wiffin and the Environmental Consents Manager, Mrs Brunton. The main points that were raised or addressed in response to questions from the Commissioners included:

- The issue of jurisdiction – an objection was being considered and a suggestion had been put forward to deal with Car Park 5 matters to try and ensure compliance with the relevant rule. Could Commissioners consider the suggestion as an amendment?
- This was the first opportunity for Mr Wiffin to learn of the proposed screening and he had not been able to look into this in any detail. He had reservations regarding manoeuvring and parking in that Car Park 5. He did not believe this hearing was obliged to hear or review the suggestion.
- Mrs Brunton was unsure if the Commissioners had the ability to consider amendments to an application in this type of hearing – she suggested they could seek legal advice.
- The Commissioners noted the Blyth Street Certificate of Compliance and the earlier comments by Mr Wiffin regarding that site, including that this was a marae-based facility, compared to the situation being assessed at this hearing – seeking clarification of the matters that were/were not specified in the District Plan for consideration in terms of assessing the proposal before it today.
- Attachment “A” in Mr Lawson’s Synopsis of Submissions – the Certificate of Compliance had been unsigned, but it had been issued and was considered to have complied with Rule 8.8.6 (it included various modes of transport) whereas Council had refused to grant the Objector’s Certificate.
- Mr Wiffin was not convinced regarding the use of a minibus in terms of consistency of administration.
- Mrs Brunton believed the two circumstances are different based on matters not in the District Plan - based on experience. She relooked at the background to the Blyth Street application prior to the hearing and would not necessarily make that decision now. She did not believe the current application complies with the District Plan.
- The Commissioners noted that assessment table in the District Plan did not draw attention to whether or not Council thinks use of a minibus would work.
- Mr Wiffin noted the interpretation of the indicative traffic management plan and the Objector’s enrolment policy – in both instances, accepting the minibus movements, the calculations of traffic movements exceed 42 vmpd. There were other vehicle movements to consider such as staff and cleaners which had not been included in the calculations.
- The hearing had been told by the Objector that they would ensure they would use the minibus to the extent that would ensure compliance.
- What weight can be put on the current level of activity on that street – none.
- Officers had based the decision to refuse the Certificate of Compliance on the activity and associated traffic movements.
- When the initial assessment had been undertaken, before meeting with Ms Bartley, it appeared to Officers the traffic generation requirements would not be met. Plus other issues - manoeuvring on the site and parking.
- Officers had concerns about how to ensure parents would use the minivan.
- Regarding complaints on other sites operated by the Objector – Mrs Brunton advised the way private vehicles had been manoeuvring, parking, dropping off and picking up children had been causing complaints

regarding the other Campbell Street site. She could not elaborate due to the anonymity of the complaints process.

- Mr Wiffin reconfirmed that he did not wish to amend his recommendation.

The Chair advised that the Panel would discuss the issue of its jurisdiction to consider the suggested screen and seek Mr Lawson's view as part of the Right-of-Reply. The Chair also noted that the compliance or other-wise in regard to other sites is not a matter that the Panel can have regard to in terms of this particular Certificate of Compliance matter.

Mr Lawson then exercised the Right-of-Reply on behalf of the Objector. The main points that he raised or that were addressed in response to questions from the Commissioners included:

- If the District Plan requirements relating to vehicle movements can be met, then this proposal would be a permitted activity (whether a Certificate of Compliance or a resource consent was sought) – regardless of whether Council Officers believed the requirements could be achieved. Officers were not making the distinction between a Certificate or resource consent.
- Section 92 requirements did not apply to a Certificate of Compliance.
- Concerns of Officers that compliance depends to large extent on third parties (parents) agreeing to use the minibus system. He reiterated that if parents did not comply, the ultimate control was with the Objector who could choose not to enrol those children.
- The issue of compliance on other sites operated by the Objector. The complaints noted earlier by Officers had not been raised with the Objector and can't be considered by the Panel.
- Socio-economic factors that had been noted as differences between the two sites were not relevant.
- Using the minibus worked on the Objector's other childcare sites and there was nothing to suggest it would not work on this Campbell Street site.
- Agenda Page 16 – traffic management plan was a living document.
- Agenda Page 31 – enrolment policy. The Objector controls the management of this policy and can decide whether or not to enrol a child.
- He believed there was jurisdiction to consider the amended plan – as this was treated "for all intents and purposes" as a resource consent, but Section 92 not apply. The scope of the proposal is not being extended.
- The screening of Car Park 5 did not make this a different application.
- A 2400mm high retaining wall proposed for corner by Car Park 5. It will be slightly lower at that top corner but will screen Park 5 up to 1800mm high and this will achieve compliance with the District Plan provisions.
- Granting a Certificate of Compliance will not make this activity permitted if the allowed vmpd figures can't be met.
- The Objector had not been told of any complaints/concerns in regard to any of the other sites she operated.
- While precedent was not taken into account, as such, natural justice and consistent application of the District Plan meant there was an expectation "like" applications will be treated in a "like" manner.
- He confirmed this proposal was only for the buildings marked as "Proposed Buildings No1 and No 3". "Future Buildings 2 and 4" were possible future expansions on the site that will require resource consents.

Mr Wiffin confirmed that the Certificate of Compliance assessment had only been undertaken in respect of Proposed Buildings 1 and 3.

The Chair highlighted the fact that whatever decision was made in regard to this objection, it would not predetermine any later decision that may be made in regard to possible future development on this site.

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On behalf of the Panel, the Chair, Commissioner Wasley, thanked the Objector, their Counsel and the Council Officers involved, for their respective input into the

proceedings. He advised that the Commissioners would review all the material submitted and a Decision would be available as soon as possible.

At this stage the hearing was adjourned. Under the Resource Management Act the Chair was required to close the Hearing within ten working days of the Right-of-Reply unless the Commissioners required further information to be provided to assist in their deliberations.

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The Hearing adjourned at 12.00 noon and was later formally closed by the Chair on 11 July 2013, as no further information was required by the Commissioners to assist in their deliberations.

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Confirmed: \_\_\_\_\_  
(Commissioner Bill Wasley (Chair))

Date:

Note: *(The Signed Commissioners' decision forms a separate document in the Council's system [TRIM reference 102715#0132] and will be attached to these minutes when they are copied and circulated).*