



Hastings District Council

Civic Administration Building
Lyndon Road East, Hastings

Phone: (06) 871 5000

Fax: (06) 871 5100

WWW.hastingsdc.govt.nz

OPEN AGENDA

COMMISSIONER HEARING

May Holdings 2019 Ltd s357 Objection hearing

Meeting Date: **Thursday, 21 May 2020**

Time: **9.30am**

Venue: **Virtual Meeting via Remote
Access during the Period of
the Covid-19 Pandemic Alert
Level 2, 3 and 4 Lockdown**

**(S357 OBJECTION - APPEAL OF DECISION MADE UNDER
DELEGATED AUTHORITY TO DECLINE CONSENT FOR THE
ESTABLISHMENT OF A STANDALONE OFFICE ACTIVITY AT 502
KARAMU ROAD, NORTH, HASTINGS (LOT 3 DP 15279 CONTAINED
IN RT HBH1/962) (MAY HOLDINGS 2019 LTD) – (RMA20190570))**

Hearing Commissioner	Commissioner Bill Wasley
Officer Responsible	Group Manager: Planning & Regulatory Services
Reporting Planner	Environmental Planner (Consents) – Mr Liam Wang
Democracy & Governance Advisor	Mrs Christine Hilton (Extn 5633)

HASTINGS DISTRICT COUNCIL

A COMMISSIONER HEARING WILL BE HELD
ON THURSDAY, 21 MAY 2020 AT 9.30AM
VIA REMOTE ACCESS DURING THE PERIOD OF THE COVID-19
PANDEMIC ALERT LEVEL 2, 3 AND 4 LOCKDOWN

S357OBJECTION – APPEAL BY MAY HOLDINGS 2019 LTD.

1. APOLOGIES
2. S357 OBJECTION - APPEAL OF DECISION MADE UNDER DELEGATED AUTHORITY TO DECLINE CONSENT FOR THE ESTABLISHMENT OF A STANDALONE OFFICE ACTIVITY AT 502 KARAMU ROAD, NORTH, HASTINGS (LOT 3 DP 15279 CONTAINED IN RT HBH1/962) (MAY HOLDINGS 2019 LTD) – (RMA20190570)

DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS THREE SEPARATE DOCUMENTS

<u>Document 1</u>	The covering administrative report	Pg 1
	Attachment A - Planner's report on the Notice of Appeal	Pg 3

REPORT TO: COMMISSIONER HEARING

MEETING DATE: THURSDAY 21 MAY 2020

FROM: DEMOCRACY AND GOVERNANCE ADVISOR
CHRISTINE HILTON

SUBJECT: S357 OBJECTION - APPEAL OF DECISION MADE UNDER DELEGATED AUTHORITY TO DECLINE CONSENT FOR THE ESTABLISHMENT OF A STANDALONE OFFICE ACTIVITY AT 502 KARAMU ROAD, NORTH, HASTINGS (LOT 3 DP 15279 CONTAINED IN RT HBH1/962) (MAY HOLDINGS 2019 LTD) – (RMA20190570)

1.0 PURPOSE AND SUMMARY - TE KAUPAPA ME TE WHAKARĀPOPOTANGA

- 1.1 This is a covering report relating to a S357 Objection by May Holdings 2019 Ltd to appeal a decision made under delegated authority to decline consent for the establishment of a standalone office activity at 502 Karamu Road, North, Hastings (RMA20190570).
- 1.2 The reporting planner's report is attached to this covering report and contains the details regarding this application and the planner's recommendations.
- 1.3 The other attachments included as part of the agenda documentation for this hearing are contained in separate attachment document/s and are listed below.

2.0 RECOMMENDATIONS - NGĀ TŪTOHUNGA

The recommendations relating to this hearing are contained in the agenda report.

Attachments:

A	Planner's report on the Notice of Appeal	11531#0183	
B	Description of Proposal and Assessment of Environmental Effects	11531#0157	Document 2
C	S92 Further Information Required Letter	11531#0166	Document 2
D	Report for standalone Offices in LFR	11531#0174	Document 2
E	Land Use Consent decision Standalone Offices in LFR	11531#0177	Document 2
F	Supporting Documents	11531#0159	Document 2
G	First Economic Impact Assessment	11531#0186	Document 3
H	Peer review report on the UE report	11531#0191	Document 3
I	Second Economic impact assessment	11531#0188	Document 3
J	Development Plans	11531#0156	Document 3
K	Land Use Consent decision page only	11531#0128	Document 3
L	357 Appeal Letter	11531#0189	Document 3

REPORT ON APPEAL TO A NON-NOTIFIED DECISION - SECTION 357A OF THE RESOURCE MANAGEMENT ACT 1991 (RMA)

Item 2

REPORT TO: BILL WASLEY - INDEPENDENT COMMISSIONER
HEARING DATE: 21 MAY 2020
FROM: LIAM WANG
 ENVIORNMENTAL PLANNER – CONSENTS

SUBJECT: SECTION 357A (1)(G) AND (2) RESOURCE
MANAGEMENT ACT 1991 – OBJECTION TO DECISION
ON RESOURCE CONSENT RMA20190570, 502
KARAMU ROAD NORTH, HASTINGS (MAY HOLDINGS
2009 LIMITED)

1.0 APPLICATION
Attachments

1.1 The following table identifies the various attachments to this report.

Attachment B	Applicant's assessment of environmental effects
Attachment C	Section 92 Further information request
Attachment D	Planning report (Notification and substantive assessment)
Attachment E	Decision on the resource consent application
Attachment F	Letter of Support from the Hastings City Businesses Association
Attachment G	First Economic impact assessment (prepared by Urban Economics)
Attachment H	Peer review report on the UE report (prepared by M.E Consulting)
Attachment I	Second Economic impact assessment (prepared by Property Economics)
Attachment J	Building plans
Attachment K	Decision on the underlying consent RMA20190261
Attachment L	The applicant's Notice of objection

Attachment A

1.2 The Application

- 1.2.1 The Council received the application to establish a standalone office activity at 502 Karamu Road North, Hastings on 20 December 2019. The applicant's Assessment of Environmental Effect is included as **Attachment B** of this report.
- 1.2.2 The proposed activity relies on the underlying consent RMA20190261, included as **Attachment K** of this report. That consent approved an extension to the then-existing building on site. It extended the overall gross floor area (GFA) of the building to 467 m² for commercial service activities.
- 1.2.3 The application was essentially seeking to use the entire building for a standalone office activity (land development consultancy). The application included an offered condition that the consent was to be limited to the occupier being Development Nous Limited only, as a means of differentiation. The consultancy provides services in planning, engineering, surveying and land valuing.
- 1.2.4 No additional physical works (other than those consented under RMA20190261) were required for proposal.
- 1.2.5 Accompanying the application was a letter of support from the Hastings City Business Association (the HBA), and an Economic Impact Assessment prepared by Urban Economics (the **UE report**). They are included as **Attachment F and G** of this report.
- 1.2.6 The Council commissioned a peer review report on the UE report. The report was prepared by M.E Consulting and included as **Attachment H** of this report. (the **ME report**)
- 1.2.7 After the ME report, and responding to the peer reviewers questions, the applicant submitted another independent economic assessment prepared by Property Economics (the **PE report**). This is included as **Attachment I** of this report.

1.3 Reasons for consent

- 1.3.1 The proposed activity required a resource consent for a standalone office activity in the "Large Format Retail" (**LFR**) zone under the Hastings District Plan (Operative in part). The activity was assessed as a **Non-Complying activity** pursuant to **Rule LFRR14** of the Plan.
- 1.3.2 No other matters required resource consent.

1.4 Decision

1.4.1 A decision to refuse consent was issued under delegated authority on 27 March 2020 (**Attachment E**). The reasons for refusal were outlined in the decision and reproduced below:

With the Reasons for this Decision Being:

1. *As identified by the Section 95 and 104 report for this application, there are no affected persons in terms of Section 95E of the Resource Management Act 1991.*
2. *The reasons for the decision are set out in detail in the s95 and 104 report for this application. In summary:*
 - a) *When assessed on its own, the proposal will likely to have less than minor effects on the environment, and will have positive effects for the landowner and intended tenant.*
 - b) *The newly operative District Plan seeks to retain the large format retail function for this zone, and to limit the creep of commercial office activities into the zone. To this end the Plan provides strong direction by making standalone offices non-complying activities. This type of office activity is the type of development the District Plan seeks to avoid.*
 - c) *The proposal is directly contrary to LFRP2 which requires Council to “ensure” standalone office development does not occur in the LFR Zone;*
 - d) *The proposal has no particular differentiating features and will set an adverse precedent. This will undermine the integrity of the newly operative HDP, particularly in relation to the integrity of the LFR zone and Central Commercial zone.*
 - e) *While this activity will not of itself have distributional effects, the grant of consent to the proposal would create a risk of adverse distributional effects on the Hastings CBD through other office activities seeking to establish in the LFR zone where there is potentially larger space, at lower cost. This would cut across the policy direction of the HDP, which itself seeks to implement the requirements of the RPS*
3. *The requirements of Part 2 are reflected in the objectives and policies of the HDP*
4. *While acknowledging there would be positive effects associated with the grant of consent, it is concluded that the proposal is inconsistent with and/or contrary to the objectives and policies of the Hastings District Plan*

5. *Approving such consent would undermine the integrity of the newly operative Hastings District Plan*

2.0 **OBJECTION**

2.1.1 A notice of Objection was received by Council on 8 April 2020 (**Attachment L**)

2.1.2 The reasons for the objection are summarised below:

- The Decision recognised that the proposed activity will likely have a less than minor effect on the environment. The Council has not appropriately considered this in terms of Section 104D of the RMA as Council can approve the application on that basis alone.
- Two independent market economic experts and the HBA supported the application, believing that the proposal will not create any adverse distributional effect or adverse precedent, and would have positive effects.
- The applicant had offered a condition to make the consent personal to the occupier being Development Nous Limited only as a multi-disciplinary land development consultancy, as a means of differentiation.
- The proposed activity has unique requirement for storage of equipment differentiating it from other office type activities.
- In absence of suitable alternative options, the Council should have considered the proposal at this location on the basis of there being no significant distribution effects (as assessed by experts) and the specificity of the occupancy as obviating the potential for the establishment of precedent.
- The decision identifies only one District Plan Policy (Policy LFRP2) that the proposal is seen to be contrary to. The appellant does not accept that the proposal is contrary to this Policy when the entirety of the policy and wider context is considered.
- The proposed tenant is a commercial service activity in nature, albeit, not a listed use under the District Plan's definition, and is not a standard stand-alone office activity.
- The proposal will see a commercial service use provided for in the Large Format Retail Zone, which will maximise the efficient use of

the land within the zone, especially given the property's small size.

- The decision did not consider the National Policy Statement on Urban Development Capacity (NPS-UDC) under Section 104 of the Resource Management Act.

2.1.3 This report therefore addresses the general grounds of objection raised, with reference to the reasons for the Decision as set out above.

3.0 **STATUTORY CONTEXT**

3.1 **Section 357A – Right of Objection**

3.1.1 Section 357A(1)(g) RMA sets out the rights of objection for consent holders and states the following:

357A Right of objection to consent authority against certain decisions or requirements.

(1) There is a right of objection to a consent authority, —

...

(g) in respect of the consent authority's decision on an application or review described in subsections (2) to (5), for an applicant or consent holder, if the application or review was not notified.

3.1.2 Section 357A(2) states that section 357A(1)(g) will apply to an application for resource consent made under section 88 of the RMA in the following circumstances:

(2) Subsection (1)(f) and (g) apply to an application made under section 88 for a resource consent. However, they do not apply if the consent authority refuses to grant the resource consent under sections 104B and 104C. They do apply if an officer of the consent authority exercising delegated authority under section 34A refuses to grant the resource consent under sections 104B and 104C.

4.1.3 The application was non-notified and was declined consent under section 104B of the RMA by an officer exercising delegated authority. Therefore, the applicant has a right of objection under s357A (1)(g) in respect of Council's decision.

3.2 **Section 357C – Procedure for Hearing Objections**

3.2.1 Section 357C sets out the procedures for making and hearing objections under 357A and 357B. In the case of an objection under

section 357A the Council must consider the objection within 20 working days.

3.2.2 If the objection has not been resolved, the Council must give at least 5 working days written notice to the objector of the date, time and place for a hearing of the objection.

3.3 Section 357D – Decision on Objections

3.3.1 Section 357D sets out possible decisions that can be made in relation to an objection under section 375A and the procedural requirements for making a decision.

357D Decision on objections made under sections 357 to 357B

(1) *The person or body to which an objection is made under sections 357 to 357B may—*

(a) *dismiss the objection; or*

(b) *uphold the objection in whole or in part; or*

(c) *in the case of an objection under section 357B(a), as it relates to an additional charge under section 36(5), remit the whole or any part of the additional charge over which the objection was made.*

(2) *The person or body to which the objection is made must, within 15 working days after making its decision on the objection, give to the objector, and to every person whom the person or body considers appropriate, notice in writing of its decision on the objection and the reasons for it.*

3.3.2 Pursuant to section 358 of the RMA, any person who has made an objection under section 357A may appeal to the Environment Court against the decision on the objection.

4.0 CONSIDERATION OF THE OBJECTION

I note that most of the issues raised in the objection were considered as part of the decision report, and I adopt the reasoning in that report in full. I also make the following additional comments in response to specific issues raised in the objection.

4.1 **Effect being less than minor and Section 104D**

4.1.1 The objection states that the decision did not appropriately consider the application under s 104D “in so far as the Council can approve an application on this basis alone”.

4.1.2 Section 104D is a threshold test which must be met in order for the application to be eligible for consideration for the grant of consent. It is not correct to suggest that merely having effects that are considered to be no more than minor, and therefore meeting the threshold test of s 104D is a sufficient basis to grant consent. All matters under s 104 must be considered.

4.1.3 The Council planners report attached to the decision stated that as the effects on the environment were assessed as less than minor the proposal met the test of s104D(1)(a) and Council could consider granting the application. I am satisfied that s 104D was applied correctly.

4.2 **Economic Impact Assessments and letter of support**

4.2.1 The applicant submitted that two independent reports and the support letter from the HBA have confirmed that the activity will not result in adverse distributional effect or, in the case of the economic reports, that the activity would set an adverse precedent.

4.2.2 These matters will be individually discussed below.

Letter of support

4.2.3 Section 4.1 (Public notification assessment) of the planning report briefly considered the letter of support. It was identified that the activity, of itself, will not result in any adverse distributional effect on the Hastings CBD.

4.2.4 As acknowledged in the objection, the letter did not indicate any consideration of the activity's potential to set an adverse precedent.

- 4.2.5 The HBA letter was not considered as expert evidence in the assessment of adverse, distributional effect. The Economic reports and associated peer review have been relied on for that assessment.
- 4.2.6 The Association represents the businesses in the Hastings City, and is a group that advocate on behalf of its members.
- 4.2.7 I acknowledge that businesses have a shared interest in the continued vibrancy and viability of the Hastings CBD. It is obvious from the letter that the proposed activity by itself, has not caused any concern in this aspect for existing businesses. That is consistent with the conclusion reached in the original report that the proposal would not result in significant distributional effects.

Economic Impact Assessments

- 4.2.8 Both the UE and PE reports concluded that the proposed activity will not have any adverse distributional effect. This was further supported by the peer review report commissioned by the Council, and is consistent with the conclusion on distributional effects in the planner's report.
- 4.2.9 Section 4.1 (Public notification assessment) of the planning report has taken the UE and PE reports and ME peer review into account and based on that information concluded that the activity, of itself, will not result in an adverse distributional effect on the Hastings CBD.
- 4.2.10 Section 5 of the ME peer review report states:
- “Ultimately the matter of precedent is a planning concern, and having identified the issues from an economics perspective we leave consideration of the issue to the processing planner.”*
- 4.2.11 Neither of the UE or PE reports provided conclusive information and analysis on the existing and likely future demand for office and large format retail activities..
- 4.2.12 The section 95 and 104 assessments, therefore also relied on the best available information, including the *Housing and Business Capacity Assessment (HBCA) for the Napier-Hastings Urban Area* published in October 2019. The report was prepared to meet Councils' obligation under the National Policy Statement for Urban Development Capacity (NPSUDC) and is a recent document.
- 4.2.13 The assessment can be found in section 8.2.1 of the planning report, which states:
- The report concluded that there will likely be a shortage of office space in the medium term in both Hastings and Napier. The report further identified Karamu Road North as a potential area for*

future commercial expansion. However, the existing capacity is likely to be able to accommodate for the demand to at least 2025, and the report only recommended this option to be considered at the time of the review.

4.2.14 Given the conclusion that the proposed activity lacked any differentiating factor, there is a real risk that the proposed activity will lead to other similar activities being established in the area, undermining the Hasting District Plan's policy framework which sought to protect the vibrancy of the CBD.

4.2.15 The PE and UE reports have provided no conclusive evidence to show either immediate shortage of office space within the Central Commercial zone, or a surplus of Large Format Retail land.

4.2.16 Similar to the letter of support, it was concluded that while the reports provide useful insight into the potential effects that may arise by the activity itself, they had limited application when assessing the effects associated with adverse precedent.

4.3 Personalised consent

4.3.1 During the assessment process, the applicant offered an *Augier* condition that would limit the consent to the nominated occupier only, being Development Nous Limited.

4.3.2 The offered condition restricting the consent to a specific tenant could provide some assurance that the proposed non-LFR use will not become entrenched on this particular site. However, as the proposal has no differentiating features it does not alleviate the potential for an adverse precedent to be set..

4.3.3 It would not prevent other, similar activities being established on the same, personalised basis. Such result can still fundamentally change the distribution of office activities and affect the long-term outcome that the newly operative Plan is seeking to achieve through its policy direction.

4.4 Definition of "standalone office"

4.4.1 The application is to establish a standalone office activity under Rule LFRR14 of the HDP. However the objection asserts that the proposal is not an 'office' activity, but a 'commercial service activity (unlisted)'.

4.4.2 The objection states that:

The proposed tenant is not a stand-alone office activity in the true sense. There is no definition of stand-alone office activity nor is there a definition of standalone office building. The plan does list the definition of Office which appears to reference "a place of

business for non-manual work”, whereas the proposed use undertakes a substantial amount of offsite manual work, hence its categorisation as a commercial service activity (unlisted).

Item 2

4.4.3 This is a key matter for the Commissioner's decision, because the LFR Zone treats 'office' and 'commercial service' activities very differently. As discussed below, a key reason for the decision to decline consent was Policy LFRP2 which contains directive wording about 'ensuring' standalone office activity is not established in the LFR Zone. If the activity is instead classified as a type of commercial activity, the assessment against objectives and policies is very different.

4.4.4 The HDP definition of 'office' is “*a room, set of rooms, space or building used as a place of business for non-manual work such as administration, clerical, consulting, advising or information processing.*”

4.4.5 The HDP definition of 'commercial service activity' is:

Attachment A

... the use of land or buildings to carry out a business providing personal, property, financial, household, private, and business, services to the general public or trades people and is limited to (and does not include standalone retail activity):

- Bicycle sales and repair services*
- Building improvement centres*
- Car or Machinery Repairs and Servicing (includes the sale of parts, including tyres, but does not include the repair or servicing of heavy industrial machinery or equipment, trucks or panel beating)*
- Charity Services and/or associated Op Shops*
- Commercial, agricultural and industrial machinery and equipment sales and service*
- Copy and printing services*
- Counter insurance services*
- Credit unions, building societies and investment co-operatives*
- Customer banking facilities*
- Customer postal services*
- Dairies*
- Drive-through restaurants*
- Dry-cleaning and laundrette services*
- Electrical repair services*
- Entertainment/recreation services*
- Food and beverage sales (except supermarkets)*
- Funeral Parlours (not including crematoriums)*
- Furniture upholstery services*
- Garden supply stores*
- Hairdressing & beauty salons and barbers*

- *Health care services*
- *Hire of goods and equipment*
- *Key cutting services and locksmiths*
- *Money lenders*
- *Motels*
- *Motor vehicle sale yards and associated parts servicing and repair workshops*
- *Real estate agents and valuers*
- *Service Stations*
- *Shoe and clothing repair services*
- *Sports Betting Agencies*
- *The display and sale of floor coverings (but not their manufacture)*
- *The manufacture and sale of curtains and blinds*
- *Travel agency services*

...

4.4.6 The definition of commercial service activity was reviewed during the District Plan review process and was changed to a specific list of activities to address interpretation issues that had arisen with the previous definition. The proposal is not within the list of specified activities and by definition is not a 'commercial service activity'.

4.4.7 It is possible that what the objector means to say is that, despite having applied for a 'standalone office' activity under Rule LFRR14, the proposal is actually an 'activity not provided for' under Rule LFRR15, which is also a non-complying activity. If this is the argument, I assume the objector will address this at the hearing, and will provide further detail as to why the proposal is more analogous with a 'commercial service' activity than an 'office'. My reading of the objection is that it does not provide a proper rationale as to why what is proposed to occur on the subject site is analogous with those activities specifically listed as commercial services activities.

4.4.8 It is my opinion that the proposal is correctly defined as a 'standalone office'. Regardless of what work may be carried on by the business off-site, it is what is done on the subject site that must be considered. The activity proposed to be carried on within the building is clearly intended to be "non-manual work such as administration, clerical, consulting, advising or information processing". The listed activities are not categorised by what occurs off-site, as that is generally irrelevant to effects that will be generated on the subject site. I note that while many commercial service activities have an office component on site, this is generally supplementary to the servicing activity which occurs either on-site or off-site.

4.5 I therefore remain of the view that the proposal is a standalone office activity appropriately applied for under Rule LFRR14, and that the objectives and policy assessment must reflect the fact that standalone offices are expressly discouraged in the LFR zone.

4.6 Differentiating factors

4.6.1 The applicant submitted that the activity has unique distinguishing features in that it requires secure storage space for expensive specialist equipment. In addition, the activity requires additional parking spaces for on-demand parking for staff who have been on site visits.

4.6.2 The assessment of the application considered these potential differentiating factors of the activity in Section 9.1 of the Planning Report. These matters will be further discussed below.

Storage space

4.6.3 The storage requirement, while being somewhat unusual, does not constitute a differentiating factor that would materially affect the outcome of this application.

4.6.4 Such requirement is generally a consideration of specific building design, rather than a locational or zoning issue. These matters are not site or land use specific.

Off-site works / on-site meetings

4.6.5 The applicant has also submitted that the activity involves significant time on off-site work, which leads to a greater need for 'on-demand' car parking spaces.

4.6.6 This matter was considered in Section 3.3.2 of the report, which states:

I note that office activities often require off-site components of various degrees. These off-site activities can include visiting customers, work sites/fields and attending meetings, and in this

case, field works related to surveying and engineering component of the business.

While the site visits are essential for the running of the business, they do not directly relate to the subject site and the office activity (or to any specific location). Such off-site activities do not change the nature of office activities on the subject site – the office activity generally provides for administration, consulting and processing of site visits and information gathered from those visits.

4.6.7 The ME peer review report states that:

We disagree that the application is unique, and a medium sized office building of 400-500m² with at-grade carparking and ability to receive couriers is in fact reasonably typical of what might be expected to locate on a site in the vicinity of 502 Karamu Road given either a suitably enabling zoning or precedent.

The overall scale and type of office activity is not unusual and standalone office activities of a similar type (Civil Engineering and Survey firms) are currently located within the Central Commercial zone.

Alternative options

4.6.8 The matter of alternative options was fully considered in Section 8.5.1 of the s95 and 104 assessment report. Relevant parts are reproduced below.

The applicant has considered a number of other options located in both Napier and Hastings. The AEE concludes that those alternatives were not pursued because they lacked the required characteristics to meet the applicant's requirements, based on:

- Lack of secure storage located at the ground floor in order to accommodate specialist surveying and engineering equipment;*
- Lack of sufficient car parking spaces;*
- Floor area being too great / too small;*
- Uncertainty over the need to have multiple tenancies;*
- Earthquake strengthening requirements; and*
- Cost associated with additional building works required.*

This assessment does not indicate that there is a lack of development capacity or options for accommodating office activities generally, but rather that the specific requirements of this

business cannot be met by existing buildings within suitably zoned land.

The consideration of alternative options was largely based on commercial considerations and has little planning relevance. Instead, it shows there are number of options for office floor space in zones that permit standalone office activities as of right.

4.6.9 The conclusion is further reinforced by this report. The storage requirement is a building design matter, not a locational requirement. It does not materially change the nature of the activity being a standalone office activity.

4.6.10 For those reasons, I remain of the view that the proposed activity is neither unique nor unusual, and does not contain differentiating factors that would set the activity apart from other standalone office activities.

4.7 Efficient use of land

4.7.1 proposal will see a office activity provided for in the Large Format Retail Zone, which will maximise the efficient use of the land within the zone, especially given the property's small size, without undermining the central retail core. To this end its use for a commercial service activity, does not effectively remove the site from a future ability to be utilised for an LFR activity. Similarly, the LFR zone is not the only zone where LFR activities can establish in the District.

4.7.2 As stated in the previous sections, Council's view remains that the activity is a standalone office activity and is not a commercial service activity.

4.7.3 The small property size although potentially restrictive for LFR, does not necessarily preclude use of the use of site for activities permitted within the zone, as evidenced by the previous application to extend the building for commercial service activities. It is acknowledged that LFR activities generally require larger parcels of land meaning that amalgamation of some form would usually be required, however although aggregation of land can be difficult it is not impossible.

4.7.4 I concur with the applicant that "LFR zone is not the only zone where LFR activities can establish in the District". However LFR activities will likely encounter similar need for aggregation of land issues in other zones, especially in the CBD where land parcels tend to be small.

4.7.5 Permitting a new standalone office activity to establish in the middle of a block of LFR zoned land, has the potential to adversely affect the potential for amalgamation.

4.7.6 Commercial service activities by comparison do not necessarily require large lot sizes. The surrounding activities can be generally categorised as commercial service activities occupying similarly sized lots.

4.7.7 Section 8.5.1 of the s95 and s104 planning report noted that:

The (underlying) consent is very recent. The fact that the land owner is willing to invest into an extension, sought a consent for it, and explicitly agreed the condition limiting the type of activities on site (HDC Reference: 11531#0126), indicates that there was at least some level of expectation that a complying activity of such size would occur on this site.

4.7.8 For those reasons, it is concluded that while the proposed activity may represent an efficient use of the site in the short term, the same argument applies to commercial service and any other activities which are provided for in this zone.

4.8 Policy framework

4.8.1 The applicant has raised a number of policy matters in the notice of objection, and specifically refers to LFR Policy 2 and 3, and CC Policy 1. In discussing the specific points raised I note that the decision was based on the provisions of the Plan which make standalone offices non-complying activities, and that this type of office activity is the type of development the District Plan seeks to avoid. The specific matters raised in the objection will be discussed below.

Central Commercial Zone Policy CCP1

4.8.2 The applicant submitted that the LFR zone is one of the commercial zones that LFR activities can occur. .

4.8.3 As discussed in the Section 5.6 of this report, it does not necessarily mean that the places like Central Commercial Zone would be first or the easiest option. The application also did not provide sufficient information on the existing demand of LFR activities and where they are likely to locate.

4.8.4 The presence of policy CCP1, therefore does not negate the concern with how the application, being an adverse precedent, will influence the distribution of future LFR activities.

Policy LFRP2 and 3

4.8.5 The applicant submitted that when read within the wider context, the proposal is not contrary to Policy LFRP2, as the proposal is a type of commercial service activity.

4.8.6 Previous sections have discussed why the proposed activity is in my view, a standalone office activity and not a commercial service activity. LFRP2 specifically mentions the establishment of standalone office activity in the LFR zone. A principle of interpreting documents such as district plans is that 'the specific overrides the general'. Where there is a specific, directive policy in respect of standalone offices, it is important that is applied as intended.

4.8.7 Policy LFRP3 seeks to "***continue*** to provide for commercial service and limited industrial activities within the Large Format Retail Zone". This policy recognises the existing commercial service and industrial activities within the zone and provides for continuance of this activity.. As the proposal is an office, this policy is not applicable.

4.8.8 The explanation for the policy states:

*"It is recognised that there are other activities which have these characteristics and are appropriate in the Zone. It is also recognised that there were a large number of activities which existed in the Zone **prior to it being rezoned** that don't create distributional effects on the Hastings CBD ..."*

4.8.9 This policy has been given effect to through the definition of "Commercial Service Activities" under the Plan, which includes an exclusive list of activities as "commercial service activities".

4.8.10 While LFRP2 may be the only policy that the proposal is directly contrary to, it plays a fundamental role in precluding a specific type of activity and influencing the land development pattern in both the LFR zone and other commercial zones.

4.8.11 From a number of other objective and policies, for example, Objective CSO1 and Policy HSMAP1, it is clear that the commercial strategy is to provide separate zoned areas for different types of commercial activity. This is then reinforced by Policy LFRP2 by specifically precluding office activities from the LFR zone.

4.8.12 By being in contrary to Policy LFRP2 the proposal is directly at odds with the overall direction and theme of the Operative Plan. As such, I remain within the view that, as stated in Section 8.5.2 of the Planning Report:

The HDP is clear that the commercial strategy is to provide separate zoned areas for different types of commercial activity, and that the LFR zone is explicitly not to be used for standalone office activity. Evaluating all of the relevant objectives and policies above, I conclude that the proposal is contrary to the

purpose and scheme of the HDP in terms of how it seeks to provide for commercial activity in the District generally, and how it manages large format retail and office activity specifically.

Item 2

National Policy Statement on Urban Development Capacity (NPS-UDC)

4.8.13 The objection states that the decision failed to consider the National Policy Statement on Urban Development Capacity. Given the decision spent nearly 3 pages assessing the NPS-UDC, I disagree with that statement. I refer to and adopt that discussion at section 8.2 of the original decision report.

4.8.14 The applicant specifically submitted that the Council has failed to consider Policy PA3 of the NPSUDC, which states:

PA3: When making planning decisions that affect the way and the rate at which development capacity is provided, decision-makers shall provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, whilst having particular regard to:

a) Providing for choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses;

b) Promoting the efficient use of urban land and development infrastructure and other infrastructure; and

c) Limiting as much as possible adverse impacts on the competitive operation of land and development markets.

4.8.15 In respect of this provision, the decision recorded:

PA3 relates to making planning decisions “that affect the way and the rate at which development capacity is provided...”. “Development capacity” is defined as meaning the capacity of land intended for urban development based on the zoning, objectives, policies, rules and overlays that apply to land in the

Attachment A

plans, and the provision of infrastructure. The current decision does not “provide” development capacity in that sense, and therefore I do not consider that policy to be directly relevant.

Item 2

4.8.16 I remain of the view that Policy PA3 is not directly relevant to this decision.

4.8.17 The direction of NPS-UDC is primarily delivered through the HDP through the zoning of land for urban purposes based on evidence of demands for residential and commercial land.

4.8.18

4.8.19 I am still of the opinion that this proposal if granted would cut across the policy direction of the HDP, which itself seeks to implement the requirements of the RPS and NPS.

5.0 CONCLUSION

5.1.1 Based on the discussion above and the original planning report, it is concluded that the proposed activity does not have any unique or unusual aspect that would set it aside from other standalone office activities. The notion that it is an unlisted commercial service activity, based on activities the business carries on off-site, is unsupported.

5.1.2 For this reason, the potential of the activity creating an adverse precedent, must be, and has been, taken into account by the original planning report.

5.1.3 Current evidence suggests there is no immediate shortage in the supply of office land.

5.1.4 For those reasons, I remain of the view that the proposed activity is contrary to the relevant provisions of the HDP, specifically Policy LFRP2, and has the potential to create an adverse precedent that may lead to other similar office activities being relocated to the LFR zone.

5.1.5 The application will therefore undermine the integrity of the District Plan and should be declined.

Attachment A