



# *Hastings District Council*

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**OPEN**

## **MINUTES**

**(Recorded in the form of a Procedural Note)**

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## **COMMISSIONER HEARING**

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

**(S357 Objection to decision made under delegated authority to refuse 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))**

## HASTINGS DISTRICT COUNCIL

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

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**PRESENT:** Chair: Commissioner Bill Wasley

**IN ATTENDANCE:** Environmental Consents Manager (Mr M Arnold)  
Team Leader Environmental Consents/Subdivision (Mr C Sutton)  
Environmental Planner (Consents) (Mr L Wang)  
Democracy & Governance Advisor (Mrs C Hilton)  
Executive Assistant & Business Support Team Leader (Mrs Y Moorcock)

**ALSO PRESENT:** *“Applicant”*  
Mr M Nicol – Objector, May Holdings 2019 Limited  
Mr M Lawson – Legal Counsel for Objector  
Mr A Hartstone – planning consultant for Objector  
Mr M Holder – agent for Objector and intended tenant of the premises, as Director of Development Nous

#### 1. APOLOGIES

There were no apologies.

#### 2. S357 OBJECTION TO DECISION MADE UNDER DELEGATED AUTHORITY TO REFUSE 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)

Council’s Document Reference: Covering report (20/366) and planning report (11531#0183) together with associated agenda documentation had been circulated prior to the meeting and put onto the council’s website.

Written evidence from the applicant (11531#0203) and from the applicant’s planning consultant (11531#0200) had been pre-circulated to the Hearing Commissioner and council officers. The legal submissions from the applicant’s legal counsel (11531#0202) were also pre-circulated at the commissioner’s request, given that this hearing was being held via remote access (Zoom). The above pre-circulated evidence and submissions were addressed at the hearing, as detailed in these minutes.

Commissioner Bill Wasley introduced himself, and outlined the process to be followed at this Zoom hearing. He advised that due to the pandemic and alert

level status and as this hearing was being held via Zoom, he had not undertaken a site visit prior to this hearing.

As the hearing was being held using remote access facilities during the Covid-19 pandemic alert it would be recorded and then be put onto the Hastings District Council's website so it was available for the public to view. This was in accordance with the new provisions in the Resource Management Act (sec39AA - which came into force on 15 May 2020).

**Mr M Lawson, Legal Counsel** introduced the parties appearing for the applicant. The Commissioner gave an indication that he would require a written copy of Mr Lawson's closing submissions in due course, but at the hearing session today the latter could provide an oral overview.

The council officers involved with the hearing also introduced themselves.

The Commissioner advised that the pre-circulated evidence had been taken as read, but asked those presenting expert evidence to highlight the main points in their respective evidence and respond to any questions he may ask.

**Mr Lawson** highlighted the main points in his pre-circulated legal submissions (11531#0202), with some interpolation, expanding in some detail on issues raised in those submissions. He responded to questions and points of clarification asked by the commissioner.

Among the points raised by Mr Lawson, he emphasised that the intended tenant was a multi-disciplinary land management and development consultancy seeking a secure base/depot for the storage, loading and unloading of equipment used. This was not an application for a standalone office as a significant amount of the tenant's work was undertaken off-site.

Mr Lawson addressed the issue of precedent and plan integrity – copies of case law supporting his submissions would be forwarded to the Commissioner.

At this point the Commissioner agreed to hear the applicant's evidence as Mr Nicol had time constraints. The presentation of this evidence would be followed by the morning tea break and then the Commissioner would continue with his questions in regard to Mr Lawson's submissions.

**Mr Nicol**, the applicant, addressed his pre-circulated statement of evidence (11531#0203). He responded to questions from the Commissioner regarding the site and his discussions with the proposed tenant and the council, regarding the use of the site and existing building located on it.

Due to the current pandemic alert level, the Commissioner had not visited the site and the applicant, his legal counsel and council officers were asked to describe the uses of the adjoining and near-by sites and their respective zonings to clarify and expand on some of the detail shown on the aerial photograph of the subject site and its environs.

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The hearing adjourned at 11.00am for morning tea  
and resumed at 11.27am

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The Commissioner continued his questions of Mr Lawson in regard to the latter's earlier submissions. Mr Lawson responded to extensive questions from the Commissioner. Mr Lawson referred to a number of cases in his submissions (*following the hearing he provided electronic copies of the case law he had referred to*).

**Mr A Hartstone, Planning Consultant for the applicant**, addressed his pre-circulated evidence (11531#0200). He highlighted the main points in his evidence, with some interpolation and responded to questions and points of clarification asked by the commissioner.

In response to a question from the Commissioner, Mr Hartstone concurred with Mr Lawson's earlier statements that the proposal was not a standalone office.

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The hearing adjourned at 12.35pm for lunch  
and resumed at 1.10pm

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**The Reporting Planner, Mr L Wang**, spoke to his agenda report, the supporting appendices and his report recommendation. He also commented extensively on the issues that had been raised earlier in the hearing by the applicant, including the following points.

Mr Wang explained how he had assessed the proposal. He said the key purpose of Policy LFRP2 was to ensure that small scale retail activity and standalone office activity did not establish in the Large Format Retail zone resulting in distributional effects that could undermine the vitality and viability of the Hastings CBD. He believed that the proposal will be contrary to this policy.

Mr Wang did not believe that undertaking works off-site was unique, neither was the storage of specialist equipment. The development plans relating to the underlying consent for the extension of the building had not indicated storage for any equipment. The underlying consent for the extension had a condition that the premises can only be used for commercial service activities. The baseline is what was on the site now and not what the underlying consent has approved. He commented on the letter from the Hastings City Business Association submitted in support of the application.

Mr Wang referred to the definition of a commercial service activity and expanded on this issue and the plan's aim to locate main retail and office activities in the CBD. He considered the proposal was not a commercial service activity and was a standalone office activity. He reiterated that he did not wish to change his recommendation that the application should be declined.

Mr Wang then responded to questions and points of clarification sought by the Commissioner regarding his report and evidence given at the hearing, including providing more detail on his assessment of the application as being a standalone activity as opposed to a broader commercial activity.

The Commissioner asked Mr Lawson to comment during the latter's Right-Of-Reply as to whether there were any impediments to this application being considered as a standalone office activity, if the objection was to be upheld and if consent was to be granted on that basis.

In response to questions from the Commissioner, Mr Wang confirmed that he believed it was relevant to consider the possible adverse precedent effect of other office activities relocating to outer areas of commercial zones if the objection was upheld. He would have the same concerns whether the activity was a standalone or a commercial activity. He was also asked to comment on the matter of possible cumulative effects.

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At this point, the hearing adjourned, at the Commissioner's request, at 2.25pm and resumed at 2.40pm.

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Mr Lawson then undertook a partial oral Right-of-Reply on the basis that he would submit a written version, expanding on the points he raised at this hearing, following the adjournment of the hearing. He addressed matters and countered some comments that had been raised during the hearing, in some detail, including the following issues:

*(A written copy of the Reply Submissions (11531 #0204) was received on 5 June 2020 with copies of the supporting case law he had referred to in his submissions at this hearing (11531#0206 and 11531#0207) being received on 2 July 2020 and forwarded to the Commissioner and council officers).*

Mr Lawson referred to the resource consent that had already been granted for redevelopment of the site, commenting on the landuse consent (included in Attachment K, Page 41 of Document 3) and highlighted that the resource consent granted to reconfigure the building was not specific to it only being for a large format retail use. It could be any permitted use or any other consented use. He also commented on whether this is a standalone office activity, highlighting the nature of the activity that was fully described on Page 8 of the AEE.

Mr Lawson corrected Mr Wang's earlier statement regarding proposed storage in the building and referred the Commissioner to the floor plan showing a storage room at the rear of the building (*addressed in Paragraph 9 of his Synopsis of Submissions in Reply*).

At this point, the Commissioner sought to clarify that, if he was of a mind to uphold the objection, there would be no impediment to doing that, notwithstanding the wording about applying for a standalone office activity. Mr Lawson confirmed that he believed this was correct and expanded on his comments in some detail – including referring to Rules LFRR14, LFRR15 and Policy LFRP2 and the peer review undertaken by the Council.

Mr Lawson continued his Submissions in Reply, highlighting the Act provisions referring to the efficient use of both the natural and physical resources, including the existing building and services on the site. He did not believe that cumulative effects needed to be considered in this situation.

The Commissioner asked Mr Lawson to also forward copies of the case law references that the latter had referred to in his submissions. He also asked for draft conditions to be forwarded that could be applied, if the consent was to be granted, asking the parties to work together on these and to show which suggested conditions the parties agreed to and which were not agreed to. These suggested conditions would form part of the overall information that he would consider as part of his deliberations.

It was agreed that this information would be provided to the Commissioner within two weeks – i.e. by Friday, 5 June 2020.

The meeting adjourned at 3.33pm

At this point in the hearing process, the following evidence or further information was subsequently received (in the order shown below) and was forwarded to the Commissioner and also sent to the council officers:

- On 5/6/20 – Written Synopsis of Submissions in Reply received from Mr M Lawson, Applicant's Legal Counsel. (11531#0204) – appended to this document was a copy of the suggested conditions – with areas of agreement and non-agreement between the two parties highlighted and signed by Mr Wang (reporting planner) and Mr Holder (acting as the applicant's representative).
- On 5/6/20; 10/6/20 and 29/6/20 – series of emails exchanged with Applicant's agent and Legal Counsel seeking copies of case law supporting the Right-of-Reply and discussing the format in which this case law would be provided to the Commissioner.
- On 2/7/20 – Two emails (11531#0206 and 11531#0207) received from Mr Lawson, containing copies of case law (a total of 11 cases) which supported the cases referred to in the submissions he had presented at the hearing.

- On 7/7/20 - Formal closure of hearing by Commissioner (*as noted in decision*).
- On 17/7/20 – Commissioner undertook site visit (*as noted in decision, as he had been unable to go on site visit prior to May Holdings hearing due to Covid-19 lockdown requirements. Hearing held via remote access (Zoom)*).
- Signed Decision issued by Commissioner on 28 July 2020 (11531#0210).