

# *Hastings District Council*

Civic Administration Building  
Lyndon Road East, Hastings

Phone: (06) 871 5000

Fax: (06) 871 5100

[WWW.hastingsdc.govt.nz](http://WWW.hastingsdc.govt.nz)

---

## **PRE-CIRCULATED EXPERT SUBMITTER EVIDENCE**

---

## **HEARINGS COMMITTEE MEETING**

**(PRE-CIRCULATED EXPERT SUBMITTER EVIDENCE -  
KAHUNGUNU HEALTH SERVICES)**

Meeting Date: **Friday, 13 September 2019**

Time: **10.00am**

Venue: **Council Chamber  
Ground Floor  
Civic Administration Building  
Lyndon Road East  
Hastings**

<b>Committee Members</b>	<b>Panel Members Rostered on for this hearing:</b> Chair: Councillor Lyons and Councillor Schollum and Mr P Kay  <b>Other Hearings Committee Members (not rostered on for this hearing):</b> Councillors Barber, Heaps, Kerr (Deputy Chair), Lawson, Redstone and Schollum and Mr P Kay
<b>Officer Responsible</b>	Environmental Consents Manager – Murray Arnold
<b>Reporting Planner</b>	Senior Environmental Planner (Consents) – Liam Wang
<b>Democracy &amp; Governance Advisor</b>	Christine Hilton (Ext 5633)

## Hearings Committee – Terms of Reference

### Fields of Activity

The Hearings Committee is established to assist the Council by hearing and determining matters where a formal hearing is required under the provisions of the:

- Resource Management Act 1991
- Building Act 2004
- Health Act 1956
- Dog Control Act 1996
- Litter Act 1979
- Hastings District Council Bylaws
- Local Government Act 1974
- Local Government Act 2002
- Gambling Act 2003

### Membership (7 including 6 Councillors)

Chairman appointed by the Council from the membership of 6 Councillors

Deputy Chairman appointed by the Council from the membership of 6 Councillors

4 other Councillors

1 externally appointed member with relevant qualifications and experience

### Quorum\* –

- a) All members including the Chair (or Deputy Chair, in the Chair's absence) sitting on a hearing must be accredited (as of 12 September 2014).
- b) A maximum of three members including the Chairperson (or Deputy Chair, in the Chair's absence) to meet for any one hearing, except for Council Initiated Plan Change hearings where all members may attend and take part in the decision making process.
- c) For Hearings other than Council Initiated Plan Change hearings the quorum shall be two members.
- d) For Council Initiated Plan Change Hearings the quorum shall be three members.
- e) Members to sit on any hearing other than a Council Initiated Plan Change Hearing shall be selected by agreement between the Chair (or Deputy Chair, in the Chair's absence) and the Group Manager: Planning and Regulatory Services.
- f) For the purpose of hearing any objection in respect of the matters detailed under the Dog Control Act 1996 the Hearings Committee will consist of any three members selected by the Chair.

\*In the case of hearings under the provisions of the Resource Management Act 1991 the quorum is to meet the obligations contained in section 39B of the Act.

### Delegated Powers

#### HEARINGS COMMITTEE

##### 1. RESOURCE MANAGEMENT ACT 1991

Pursuant to Section 34(1) of the Resource Management Act 1991 the Hearings Committee of Council is delegated power to:

- |    |   |  |
|----|---|--|
| 1) | Hear, consider and decide upon any Resource Consent application or any other application made to Council under the Act (including private plan change requests). For the avoidance of doubt, this includes the use or exercise of any powers vested in the Council under the Act to process, hear and decide upon any such application. | Decide on Applications and Private Plan Change requests. |
| 2) | Hear, consider and recommend to the Strategy, Planning and Partnerships Committee or Council as it considers appropriate, on submissions made on any proposed plan or any Council initiated change to the District Plan or variations to the Proposed Plan.   | Submission on Council Plan Changes.                      |
| 3) | Appoint a Commissioner or Commissioners to hear, consider and decide on any Resource Consent application or any other application made to Council under the Act. This   | Appoint Commissioner for Resource Consents.              |

delegation is subject to the requirement that any Hearings Commissioner(s) appointed shall hold a valid certificate of accreditation under section 39A of the Act.	
4) Appoint a Commissioner or Commissioners to hear, consider and recommend to the Strategy, Planning and Partnerships Committee or Council as it considers appropriate, on any submissions made on any proposed plan or any Council or privately initiated change to the District Plan. This delegation is subject to the requirement that any Hearings Commissioner(s) appointed shall hold a valid certificate of accreditation under section 39A of the Act.	Appoint Commissioner for Proposed District Plan and Council or Private Plan Changes.
5) Extend any time limits or waive compliance with any requirement specified in the Act or Regulations in respect of any matter before it under the Act and pursuant to the above delegations pursuant to Section 37 of the Act.	Extend Time Limits and Waive Compliance.
6) Hear and determine any objection made pursuant to Section 357, 357A, 357B, 357C and 357D of the Act	Review of Decisions made under Delegation.
7) Make an order, pursuant to Section 42 of the Act, relating to the protection of sensitive information in respect of any matter before it.	Protection of Sensitive Information.
8) Waive, pursuant to Section 42A(4) of the Act, compliance with Section 42A(3) of the Act relating to the receiving of officers' reports in respect of any matter before it.	Waive Time for Receipt of Officers' Reports.
9) Determine, pursuant to Section 91 of the Act, not to proceed with a hearing of an application for Resource Consent where it considers additional consents under the Act are required in respect of any application before it.	Defer Application Where Other Consents Required.
10) Require, pursuant to Section 92 of the Act, further information relating to any application before it and postpone notification, hearing or determination of the application.	Require Further Information.
11) The above delegations shall apply with all necessary modifications to:	
i) Any notice of review of Consent conditions issued by Council pursuant to Section 128 of the Act or by any committee or officer or the Council having delegated authority to do so.	Review of Consent Conditions.
ii) Any submissions on any requirement for a designation or alteration to a designation made pursuant to Sections 168, 168A or 181 of the Act.	Hear Submissions on Designations.
iii) Any submissions on any requirement for a Heritage Order made pursuant to Section 189 and 189A of the Act.	Hear Submissions on Heritage Orders.
12) Consider and make recommendations on any requirement for a designation or alteration to a designation pursuant to Section 171 of the Act.	Recommendations and Designations.
13) Consider and decide on any amendments to Council's District Plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors pursuant to Clause 16(2) or 20A of Part 1 of the First Schedule to the Act.	Amend District Plan.

## 2. HEALTH ACT 1956

Pursuant to Clause 32 of Part 1 of the Seventh Schedule to the Local Government Act 2002 and Section 23 of the Health Act 1956 the Hearings Committee is delegated authority to:

i) Hear explanations against a notice to revoke registration issued pursuant to Clause 9 of the Health (Registration of Premises) Regulations 1966.	Explanations Registration Should Not be Revoked.	Why
ii) Hear and determine any appeal against a direction or decision of any officer acting under delegated authority and any application or objection made pursuant to Clause 22 of the Housing Improvement Regulations 1974.	Determine Applications or Objections to Requirements Under Housing Improvement Regulations.	Appeals,

### 3. DOG CONTROL ACT 1996

Pursuant to Clause 32 of Part 1 of the Seventh Schedule to the Local Government Act 2002, the Hearings Committee is delegated authority to hear and determine any objections lodged against any decision of an officer acting under delegated authority or any notice issued by a Dog Control Officer pursuant to the following Sections.

Decide on objections under the Dog Control Act 1996

Section 22	Objection to the classification as a probationary owner.
Section 26	Objection to disqualification from being an owner of a dog
Section 31	Objection to the classification of a dog as a dangerous dog
Section 33B	Objection to the classification of a dog as a menacing dog under section 33A.
Section 33D	Objection to the classification of a dog as a menacing dog under section 33C as it is believed to belong to 1 or more classified breeds.
Section 55	Objection to the issue of an abatement notice for a barking dog.
Section 70	An application for the return of a barking dog seized under section 56 for causing distress.
Section 71	An application for the release of a dog that is being held in custody under section 71(1) and (2) for threatening public safety.
Section 71(1)(a)	To be satisfied that a dog seized under section 15(1)(c) because the dog was without access to proper and sufficient food, water or shelter, will be given access to proper and sufficient food, water, or shelter if returned to the land or premises from which it was removed.
Section 71A(2)(a)(i)	To be satisfied that the owner of a dog seized under section 33EC (because the owner failed to comply with his obligations in respect of a dog classified as menacing), or of a dog classified as a menacing dog seized under section 33EB (because the owner failed to have the dog neutered), has demonstrated a willingness to comply with the relevant requirements".

### 4. LITTER ACT 1979

Pursuant to Clause 32 of Part 1 of the Seventh Schedule to the Local Government Act 2002, the Hearings Committee is delegated authority to hear and decide on any objection lodged pursuant to Section 10 of the Litter Act 1979 against a notice issued under that section.

Decide on Objections to Notices Issued by a Litter Control Officer.

### 5. Building Act 2004

Pursuant to Section 67A of the Building Act 2004 the Hearings Committee is delegated authority to grant a waiver or modification to section 162C(1) or (2) (which requires residential pools to have means of restricting access by unsupervised children) the requirements of the Act (with or without conditions) in the case of any particular pool.

Grant Exemptions to Pool Fencing Requirements.

### 6. HASTINGS DISTRICT COUNCIL BYLAWS

Pursuant to Clause 32(1) of Part 1 of the Seventh Schedule to the Local Government Act 2002, the Hearings Committee is delegated

authority to:

- |     |  |   |
|-----|--|---|
| i)  | Hear and determine any application for a review of any decision of a duly authorised officer pursuant to any part or provision of the Hastings District Council Bylaws.                            | Review of Delegated Decisions.          |
| ii) | Consider and determine any application under Clause 1.5 of Chapter 1 of the Hastings District Council Consolidated Bylaw for a dispensation from full compliance with any provision of the Bylaws. | Dispensations from Bylaws Requirements. |

## **7. LOCAL GOVERNMENT ACT 1974**

Pursuant to Clause 32(1) of Part 1 of the Seventh Schedule to the Local Government Act 2002 the Hearings Committee is authority to hear and recommend to Council on any objections to any proposal to stop any road pursuant to Section 342 and the Tenth Schedule to the Local Government Act 1974.

Hearing Objections to Road Stopping.

## **8. GAMBLING ACT 2003**

Pursuant to Clause 32(1) of Part 1 of the Seventh Schedule to the Local Government Act 2002, the Hearings Committee is delegated authority to:

- |    |   |  |
|----|---|--|
| i) | Hear, consider and determine in accordance with section 100 of the Gambling Act 2003, applications for territorial authority consent required under section 98 of that Act, as required by the Hastings District Council Class 4 Gambling Venue Policy. | Hear and Decide on Applications for Territorial Authority Consent. |
|----|---|--|

# HASTINGS DISTRICT COUNCIL

A HEARINGS COMMITTEE MEETING WILL BE HELD IN THE COUNCIL CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION BUILDING, LYNDON ROAD EAST, HASTINGS ON FRIDAY, 13 SEPTEMBER 2019 AT 10.00AM.

---

1. **APOLOGIES**

At the close of the agenda no requests for leave of absence had been received.

2. **PRE-CIRCULATED EXPERT SUBMITTER EVIDENCE - KAHUNGUNU HEALTH SERVICES**

**DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS ONE DOCUMENT**

<b><u>Document 1</u></b>	The covering administrative report	<b>Pg 1</b>
<b>Attachment A</b>	Evidence from McKay Evidence on behalf of submitter	<b>Pg 3</b>

**REPORT TO:** HEARINGS COMMITTEE

**MEETING DATE:** FRIDAY 13 SEPTEMBER 2019

**FROM:** DEMOCRACY AND GOVERNANCE ADVISOR  
CHRISTINE HILTON

**SUBJECT:** PRE-CIRCULATED EXPERT SUBMITTER EVIDENCE -  
KAHUNGUNU HEALTH SERVICES

---

## **1.0 PURPOSE AND SUMMARY - *TE KAUPAPA ME TE WHAKARĀPOPOTOTANGA***

The purpose of this report is to have a way to attach the pre-circulated Expert Submitter evidence and to then put it onto the website prior to the hearing – as is required by the provisions of the Resource Management Act.

## **2.0 RECOMMENDATIONS - *NGĀ TŪTOHUNGA***

That the Expert Submitter evidence pre-circulated on behalf of Kahungunu Health Services be put onto the website prior to the hearing commencing on 13 September 2019 so it can be viewed by the submitters and members of the public.

### **Attachments:**

[!\[\]\(2b376d1a92330ab09dad2665d2f89bf5\_img.jpg\) Evidence from McKay Evidence on behalf of submitter](#) 59548#0350





**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of hearing by the Hastings District Council  
Hearings Committee regarding an application for  
resource consent by Kahungunu Health Services  
for the conversion of an incomplete implement  
shed to a habitable building at 151 Waimarama  
Road to expand a current place of assembly

---

**STATEMENT OF EVIDENCE OF PHILIP ANTHONY MCKAY ON BEHALF OF**

**P Potaka & M Matthews**

---

**INTRODUCTION**

1. My full name is Philip Anthony McKay and I reside in Hastings. I hold a Bachelor of Regional Planning with Honours from Massey University and am a Member of the New Zealand Planning Institute. I have had some 26 years' experience as a practising planner, with 22 of these working for local government including, consent processing, plan preparation and general policy planning work. I have also had 4 years' experience as a planning consultant working on a variety of planning matters.
2. I am currently employed by Mitchell Daysh Limited as a consultant planner. From 2009 until September 2015 I held the position of Environmental Policy Manager with the Hastings District Council. Until I left that position in September 2015, I was responsible for overseeing the Proposed Hastings District Plan and its progress through the Resource Management Act 1991 (the 'Act') Schedule 1 process.
3. Since commencing work as a consultant, of relevance to this evidence, I have prepared a number of resource consent applications for private clients under the Proposed Hastings District Plan (2015 Decisions Version) (the 'PDP'); and I have prepared Environment Court evidence on behalf of the Hastings District Council for both district plan and resource consent hearings.
4. I am a certified Commissioner under the Ministry for the Environment 'Making Good Decisions' programme.

**CODE OF CONDUCT**

5. I confirm I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. My evidence has been prepared in compliance with that Code and I agree to follow it when presenting evidence to the Hearing.
6. I confirm that my evidence is within my area of expertise except where I state that I am relying upon the specified evidence of another person, and that I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

**SCOPE/SUMMARY OF EVIDENCE**

7. I have been engaged by Mr Pehi Potaka and Ms Myda Matthews ("the submitters") to present planning evidence in support of their submission opposing the resource consent application on their neighbour's property for the conversion of an incomplete

implement shed to a habitable building forming part of a 'Place of Assembly' activity at 151 Waimarama Road ("the application"). The opinions given in my evidence are qualified to the consideration of the application as it affects the submitters' property.

8. My familiarity with this project dates to April 2019 when Mr Potaka contacted me for advice about his neighbour's building and resource consent application. I subsequently prepared the submission on behalf of Mr Potaka & Ms Matthews as lodged with the Hastings District Council (the Council) on 2 August 2019.
9. I am familiar with the site having visited Waitangi Road several times during my employment at Hastings District Council, but most recently visiting the submitters' site on Thursday 5<sup>th</sup> September 2019, from which I viewed the subject site and building.
10. The purpose of my evidence is to lend planning support to the submission of Mr Potaka & Ms Matthews in opposing the resource consent application and to comment on the section 42A officer's report prepared by Mr Wang and the evidence provided on behalf of the applicant.
11. Specifically, in preparing my evidence, I have reviewed:
  - (a) The application document and responses to further information;
  - (b) The S42A Hearing Report to the Hearings Committee prepared by Mr Liam Wang and included in the Agenda for the hearing of 13 September 2019 (the 'S42A Report');
  - (c) The statement of evidence prepared by Mr Jason Kaye dated 30 August 2019; and
  - (d) The statement of evidence prepared by Ms Jean Te Huia received 30 August 2019.
12. My evidence will address the following matters:
  - Application Overview;
  - Statutory Requirements;
  - Summary of Submission Key Points;
  - Comment on the S42A Report;

- Comment on the Applicant's evidence; and
- My conclusions.

#### APPLICATION OVERVIEW

13. The application for land use consent is described in section 2.2 of the S42A Report. In brief the application is to use a 543.5m<sup>2</sup> building ("the subject building") recently constructed as an 'implement shed', as a habitable building as part of the existing Place of Assembly operation at 151 Waitangi Road. The subject building is proposed to sleep up to 40 people and provide space for indoor activities for the educational, cultural and community activities to take place in times of bad weather.
14. The existing Place of Assembly involves two buildings, including a wharenuī, totalling 717m<sup>2</sup> in area, and according to paragraph 2.2.4 of the of the S42A Report, provides sleeping accommodation for up to 44 people. With the inclusion of the subject building the Place of Assembly floor area will increase to 1,261m<sup>2</sup> and the sleeping accommodation capacity to 84 people.

#### STATUTORY REQUIREMENTS

15. At paragraph 2.3.4 the S42A Report correctly sets out the application is required to be assessed as a non-complying activity under Rule RZ27. The application also requires assessment under Rule NH10 as a Restricted Discretionary Activity, due to its location in a Tsunami Hazard Zone; and Rule TP2 as a Restricted Discretionary Activity, due to the private road access not meeting the standards of Table 26.1.6.1-2. The overall activity status is that of a non-complying activity.
16. The location of the activity in a Tsunami Hazard Zone is not relevant to the concerns of the submitters, therefore this evidence will focus on Rules RZ27 and TP2.
17. Assessment of a non-complying activity is required to be undertaken in accordance with sections 104 and 104D of the Resource Management Act 1991 ("the RMA"). The provisions of these sections of the RMA are correctly set out in paragraphs 3.1 and 7.1 of the S42A Report.
18. The S42A Report sets out in paragraph 2.3.5 the reasons why the application was limited notified to 145 Waitangi Road. These being that "*the proposal will result in a loss of amenity and the overall level of adverse effect is likely to be minor.*" I respectfully suggest that this wording should correctly state the level of adverse

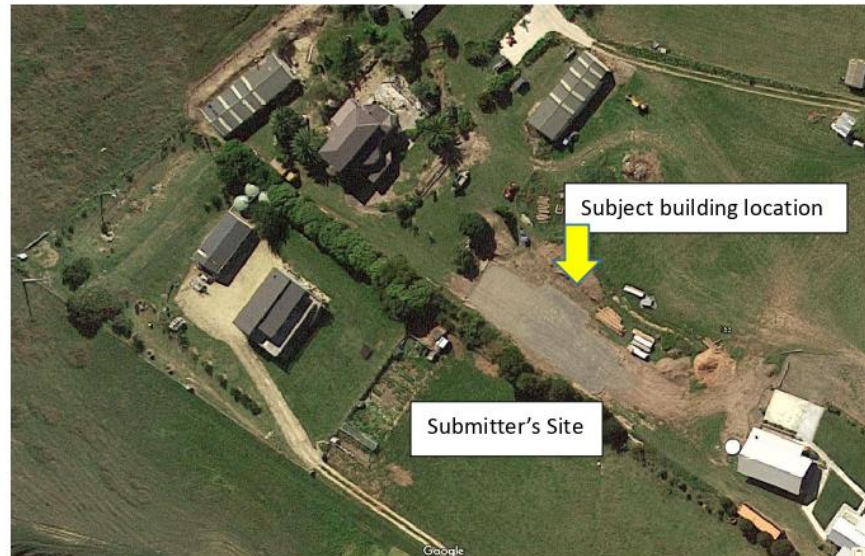
effect is likely to be minor 'or more than minor'. A notification assessment cannot determine that the level of effects on a neighbour is 'minor' without having first considered any submission from that neighbour, albeit that even a minor effect necessitates limited notification under RMA section 95B.

#### SUMMARY OF SUBMISSION KEY POINTS

19. The submission that I prepared on behalf of Mr Potaka and Ms Matthews explains that the effects of the application on them are more than minor. The submission is taken as read and I will not repeat each point in this evidence, however I summarise the key points of each effect as follows:

- a) *Visual* – The visual effects of the 36m long and 6.8m high building are considered significant by the submitters in blocking their views to the north east. This will be explained further by the submitters at the hearing. I acknowledge that in planning law, the bulk and location of the building and therefore its visual effects are within the permitted baseline of buildings that could be erected without resource consent in the Rural Zone.
- b) *Privacy and Amenity* – the application would result in buildings being used for a Place of Assembly within 30m of the submitters' dwelling, compared to the existing 110m separation of the existing Place of Assembly buildings. The submitters purchased their property in 2012 knowing that the neighbouring property at 151 Waitangi Road contained 2 dwellings and six visitor accommodation buildings. The 717m<sup>2</sup> of Place of Assembly buildings were established on the site during 2014 and 2015. With the existing Place of Assembly buildings located near the road frontage and the other buildings spread over the property this has generally not resulted in an unacceptable level of effects on the submitters. The use of the subject building for Place of Assembly purposes and accommodating an additional 40 people within 5m of the boundary, 30m from their dwelling and immediately adjacent to their outdoor living space, however, changes the situation significantly. The concentration of people and activity near to the submitters' dwelling and outdoor living space that would result from the application is in my view a significant adverse effect on the submitters' privacy and amenity as will be expanded upon throughout this evidence. The following image from Google Maps shows the subject building location as a construction site as it predates the erection of the building, however it is useful for illustrating the proximity

of the subject building to the submitters' dwelling and outdoor living space in comparison to the existing Place of Assembly buildings.



- c) *Noise* – I acknowledge that measures can be taken to soundproof the applicant's building and to place a visual and sound barrier wall on the deck of that building as proposed in the S42A Report recommendation. Noise caused by the activity of people on the site around the building and from people moving to and from the building is more difficult to control and mitigate by conditions. As such I consider that noise effects from the concentration of activity on the site near to the subject building has the potential to cause adverse noise effects on the submitters.
- d) *Traffic* – The unsealed private road (Māori Roadway) known as Waitangi Road servicing both the submitters' and the applicant's site does not comply with the district plan standards for private access<sup>1</sup>. The formed width of the private road is not sufficient for opposing vehicles to pass easily. The unsealed road also produces dust from passing vehicles and requires ongoing maintenance. This is an existing situation which will be exacerbated by additional traffic. Once the subject building is operating as a Place of Assembly for up to 40 additional people, there is potential for continuous bookings, particularly during the summer months. Every new group of people arriving at and leaving the site will generate additional use of Waitangi Road.

<sup>1</sup> Standard 26.16A(1)(c) and Table 26.1.6.1-2.



As well as the traffic safety, dust and adverse amenity effects that additional traffic can produce, there is also the economic effects on the submitters and other Waitangi Road residents from additional maintenance costs.

20. The submission also set out the relevant objectives and policies of the Proposed Hastings District Plan ("the District Plan") in terms of the application's potential effect on the submitters. I acknowledge that there will be other objectives and policies relevant to the application, including those set out by Mr Wang in the S42A Report, such as those relating to the Coastal Environment, Natural Hazards and Natural Features and Landscapes sections. This evidence however focusses on those objectives and policies that seek to manage activities within the land resource of the Rural Zone.
21. Rather than repeat the relevant objectives and policies quoted in the submission, I set out my conclusions as to the application's consistency with each set of objectives and policies as follows:
  - a) Section 2.8 Rural Resource Strategy, Policy RRSP2 & RRSO2 - the proposed activity, due to its scale and location, will threaten the submitters' sustainable use and enjoyment of their rural land resource, including through a reduction in privacy and a potential increase in noise. Similarly, regarding objective RRSO2, the proposed intensification of Place of Assembly activities at 151 Waimarama Road does not avoid, remedy and mitigate the adverse effects on the submitters (as established above). The proposed activity is therefore not consistent with the objectives and policies of Section 2.8 of the District Plan.
  - b) Section 5.1 Rural Strategic Management Area, Overarching Objective RSMO1 & Policy RSMP2 - Policy RSMP2 seeks compatibility with the rural environment and consideration of visual and amenity values. While Places of Assembly are not specifically referred to it is noted that the policy only seeks to provide for commercial and industrial activities up to a certain scale 'to safeguard rural amenity'. In my opinion the proposed additional 543.5m<sup>2</sup> of Place of Assembly building, with sleeping accommodation for 40 people, will not safeguard rural amenity generally, nor the amenity that the submitters currently enjoy within that rural environment, given the location of the applicant's building on the site and its close proximity to the submitters' residence.

- c) Section 5.2 Rural Zone, Objective RZO2 and Policy RZP4 – This objective and policy again requires regard to be had to retaining the amenity values of the Rural Zone, which the submitters' property is part of. Policy RZP4 specifically refers to a character of open pasture and low scale and sparsely populated buildings. The development of 151 Waitangi Road is clearly not consistent with this policy with the subject building removing the remaining open and low scale character that the site had, particularly as viewed from the submitters' property. I however acknowledge that the Rural Zone provides a permitted baseline for a building of the same bulk and location of the subject building.
- d) Section 5.2 Rural Zone, Policy RZP5 – In my opinion, despite Policy RZP5 referring to industrial and commercial activities it is still relevant to consider as the proposed activity is akin to a commercial activity (as explained further below) such as a school camp, with groups able to hire out the accommodation and recreation facilities. The District Plan limits commercial activities to a maximum floor area of 100m<sup>2</sup> with Places of Assembly being non-complying regardless of their size. I consider that the following statement in the explanation to RZP5 is particularly relevant: *"The Council wishes to continue to provide for such activities but at a scale that is both beneficial to the landowner and does not have adverse effects on the environment or the neighbouring property owners."* In my opinion, while the proposed additional Place of Assembly activity may be beneficial to the landowner it does have adverse effects on the environment, these being primarily on the submitters who are the neighbouring property owner, and in this regard is not consistent with this policy.
22. As set out in the submission the proposed activity can meet either the definitions of: 'Commercial Activity' in offering the service of an accommodation base for school and other groups; or 'Place of Assembly' being the use of land and buildings for education, recreational, social, ceremonial, cultural and spiritual activities of a community character – may include marae – charges for use may only be made by grounds operating on a non-profit making basis.
23. As there is no reference to places of assembly in the objectives and policies referred to above, in my opinion references in the District Plan provisions to commercial activities are relevant to an assessment of the application.



24. In my opinion, the key theme of the objectives and policies referred to above is that of retaining the character and amenity of the rural environment and limiting the scale of activities not related to land based primary production activities. The proposed activity results in a significant increase in scale of non-land based activities, with the floor area of the Place of Assembly proposed to increase by 543.5m<sup>2</sup> or 75% of the existing 717m<sup>2</sup> floor area. Additionally, it is proposed that the accommodation offered as part of the activity will almost double to 84 beds, from the existing 44. As well as the overall increase in scale, it is the concentration of the additional scale within 30m of the submitters' dwelling and immediately adjacent to their outdoor living area that will significantly affect the character and amenity of the rural environment currently available to the submitters.
25. I therefore consider that the proposed activity is not consistent with the objectives and policies of the district plan seeking to sustainably manage activities in the rural environment and is in fact contrary to them.

#### COMMENT ON THE SECTION 42A REPORT

26. In the following part of my evidence I comment on the assessment and recommendations in the S42A Report. In preparing that report Mr Wang has come to the conclusion that the potential adverse effects on the environment can be mitigated to a level that is less than minor and that the activity will not be contrary to the objectives and policies of the District Plan. Therefore, Mr Wang has recommended that consent should be granted subject to conditions. In reaching his conclusions I do not consider that the S42A Report author adequately assessed the significance of the scale and location of the proposed activity and consequently underestimated its potential effect on the submitters.
27. Section 4.3 of the S42A Report assess the 'visual and privacy' effects of the proposed activity. I agree with the conclusions in paragraphs 4.3.4 – 4.3.6 that:
- The number of windows on the proposed building is not consistent with the character generally expected for an implement shed.
  - The deck on the first floor is not commonly found on non-habitable accessory buildings.
  - The extra windows and deck can potentially lead to a loss of privacy and sense of separation generally expected in the Rural Zone.

28. In paragraphs 4.3.7 – 4.3.10 the S42A Report sets out why the *"level of visual and privacy effects can be managed and controlled to the level that is comparable to a complying activity."*<sup>2</sup> I disagree with this conclusion and some of the statements made in forming this conclusion.
29. Paragraph 4.3.7 states that *"the building is not a dwelling and will only be occupied when there is a gathering or event or use by a group such as a school."* A dwelling is typically occupied by 2 – 6 people, with the average household size for New Zealand being 2.7 people.<sup>3</sup> The submitters' concern is that the subject building will have capacity to sleep 40 people and during the summer months such occupation could be relatively continuous. In my view that is not a fanciful proposition. The proposed use will therefore result in the potential for a significantly greater level of activity in proximity to the submitters' dwelling and outdoor living space than what a dwelling would.
30. Paragraph 4.3.7 itemises the approximate 30m separation of the submitter's dwelling as a mitigating factor. In the context of a rural environment with large site sizes, as illustrated in the Google Maps image at paragraph 19b) above, the subject building will be relatively close to the submitters' dwelling. This is different to an urban environment where such a separation distance may be buffered by other properties and buildings. More significantly however, the subject building is immediately adjacent to the outdoor living area associated with the submitters' dwelling.
31. The loss of privacy and potential increased noise associated with the use of the applicant's building as proposed will not realistically be attenuated by it being 30m from the submitters' dwelling.
32. My opinion therefore remains as set out in paragraph 19b) above that the proposed 'privacy and amenity effects' of the subject building will be significant and more than minor on the submitters. While the proposed window treatment, deck wall and landscape screening conditions may be able to mitigate the effect of the applicant's building overlooking the submitters' dwelling to some extent, the level of activity that the building will generate in close proximity to the submitters' dwelling and outdoor living space cannot be practicably mitigated. Such activity would be much greater than might be expected to arise from the use of an implement shed in that same location.

---

<sup>2</sup> S42A Report paragraph 4.3.10

<sup>3</sup> 2013 Census QuickStats about families and house holds - <http://archive.stats.govt.nz/Census/2013-census/profile-and-summary-reports/qstats-families-households/households.aspx>

33. Under the heading 'Amenity and Cumulative Effects' the S42A Report notes that the existing 'place of assembly' has been established as a permitted activity under the previous district plan and that a place of assembly does not have to be contained within a building. As set out in paragraph 19b) above, the submitters are comfortable with the existing place of assembly as the location of the buildings near the front of 151 Waitangi Road generally keeps the associated activity away from their dwelling and outdoor living space. Paragraph 4.3.13 concludes that *"...cumulatively the proposal will be unlikely to significantly change the nature of the existing legally established 'place of assembly'."* While this may be the case from the applicant's perspective, in my opinion increasing the 'place of assembly' building floor area by 75% in much closer proximity to the submitters' dwelling and outdoor living space with the provision to accommodate an additional 40 people with sleeping facilities, constitutes a significant and more than minor effect on the submitters.
34. Paragraph 4.3.16 refers to effects being limited to the amenity and privacy effects of activities located within the subject building and that with visual screening those effects can be reduced to less than minor. While visual screening may be able to mitigate 'overlooking' effects from the building, general amenity associated with increased activity on this part of the site from people gathering outside and adjacent the building or on the outdoor deck or entering and exiting the building are more difficult to mitigate.
35. It is also a concern to the submitters' that the potential mitigation measures can become an adverse effect in themselves. For example, soundproof fences, changing the rural post and wire fence character to that akin to a closed fence urban environment; but perhaps most significantly the visual screening of a 6m high shelter belt adjacent the boundary blocking the northern sun to the fruit trees and vegetable garden area on the submitters' property. This is illustrated by the photograph below, taken from the submitters' deck on 5 September 2019. It shows the subject building visible through the existing gap in the boundary plantings and shows the cluster of fruit trees and vegetable garden area on the submitters' property benefitting from the additional sunshine available through that gap.



36. At paragraph 4.3.9 the S42A Report refers to the building bulk being within the permitted baseline and states that the “only” matter triggering resource consent is its intended use. With respect, it is the intended use that is the fundamental issue that has created significant concerns for the submitters, and in my opinion creates adverse effects on them that are more than minor.
37. At paragraph 4.3.21 the S42A Report states that the overall density of the development on the site remains low and that the buildings can *“still be built as of right if their uses are limited”*. In my opinion the overall density of existing development on the site is significant in the context of a 2.59ha Rural Zone property and particularly the concentration of that development adjacent to the submitters’ boundary as is illustrated in the image in paragraph 19b) above. I accept that there is a permitted baseline associated with the bulk and location of the subject building but consider that its intended use is significant in creating a level of adverse effects on the submitters that would not be associated with a permitted accessory building occasionally used for genuine ‘production land’ activities.
38. Under the ‘Noise’ heading the S42A report concludes that it is expected that noise-generating activities will be unlikely to generate noise directed to the submitters’ direction; that a condition is recommended requiring a physical barrier or screen be erected to prevent a direct sightline to 145 Waitangi Road; and that conditions can be imposed following a s128 review should noise become an issue. There is no expert noise evidence provided to support the conclusions that noise will not be directed to the submitters and that a screen on the first-floor deck would be an

effective noise barrier. The potential for the general increase in activity around the building to produce noise remains a concern for the submitters.

39. In regard to the 'Traffic and accessibility' heading I do not accept the statement in paragraph 4.5.2 that *"attendees using the proposed place of assembly are likely to be transported by 1 bus and 5 cars"*. In my opinion such an assumption has little factual basis as every group will be different, some may have access to mini vans, others may only have private vehicles and others may use a bus.
40. Paragraph 4.5.3 of the S42A Report states that *"Considering Waitangi Road is a low traffic volume road the number of vehicle movements will be unlikely to result in any significant impact on the safe and efficient operation of the road."* In my opinion the opposite applies as the proportion of movements associated with the place of assembly will be greater and more noticeable to other Waitangi Road users. Potential effects include increased dust and road maintenance. Traffic safety may be a potential issue should the activity generate the use of buses, which may occupy most of the formed road in its narrowest portions. In saying this I acknowledge that traffic safety is beyond my area of expertise.
41. The section 42A Report goes on to consider the relevant statutory documents under section 104 including the District Plan and relevant objectives and policies to the application. I do not propose to comment on this assessment point by point and stand by my conclusions in paragraph 24 above that the proposed activity is not consistent with the objectives and policies of the District Plan seeking to sustainably manage activities in the rural environment and is in fact contrary to them.
42. As a general comment I consider that the section 42A Report author has consistently dismissed the significance of the resulting increase in scale and intensity of use of the Place of Assembly activity that will occupy the subject building. I note the following references in the S42A report in relation to this, with the relevant paragraph number stated:
  - 5.3.4 "...the level of cumulative effect will be minimal and will not significantly change the nature of the existing activity on the site."
  - 5.4.1 "The proposed activity is a small addition to the existing 'place of assembly'."
  - 5.5.7 (page 29) "...the cumulative scale of the increase in size of the place of assembly is not considered inappropriate to this particular location."



- 5.5.16 "The proposal will result in one additional building with a GFA of 543m<sup>2</sup> being added to the environment. The proposed building complies with all other bulk and location requirements with the exception of the minimum boundary setback with the common boundary of the submitter's site. The infringement is entirely due to the use of the building..."
- 8.1.4 "...with appropriate conditions imposed, the proposed activity can be carried out in a way that does not compromise the quality of the environment and the amenity values."

43. With respect to the last of the above bullet points, in my opinion that conclusion may be valid when considering the wider environment but is not so in regard to the amenity values of the submitters' property. As set out in paragraphs 21 – 23 above, the relevant objectives and policies of the District Plan are enabling of activities in the Rural Zone provided their scale and level of effects is appropriate. In this case the proposed use of the subject building for a Place of Assembly sleeping up to 40 people within 5m of the submitter's boundary and adjacent to their outdoor living space, is not in my opinion appropriate and represents more than a minor effect on the submitters.
44. Given the above I disagree with the overall conclusion of the S42A report author as in my opinion the effects of the proposed activity on the submitters will be more than minor and the application is not consistent with and is contrary to the objectives and policies of the District Plan seeking to sustainably manage activities in the rural environment.

#### COMMENT ON THE APPLICANT'S EVIDENCE

45. I wish to comment on the Statement of Evidence of Jason Kaye and particularly the section titled 'Activity Status of Application'. Mr Kaye correctly points out that 'Places of Assembly' within proximity of 'Intensive Rural Production' ("IRP") activities would be assessed as a discretionary activity under Rural Zone rules RZ20 – RZ22. Mr Kaye states that it is therefore an anomalous situation that a 'Place of Assembly' not in proximity to an IRP activity falls to be considered as a 'non-complying activity'. While I agree that a lack of specific reference to IRP activities in the rule table is an anomalous situation, it does not follow that a non-complying activity status for this application is inappropriate.
46. In comparing the Plains Production Zone section of the District Plan, the equivalent rule table does in rule PP34 provide for: "*Alterations to, or the addition of new*

*buildings to existing Places of Assembly or any building ancillary to a recreation activity exceeding 15% of the gross floor area as at 12/09/2015*" as a discretionary activity. As is established in paragraph 23 above the subject building represents a 75% increase in the gross floor area of the existing Place of Assembly on the site. I also note that the rules in the Plains Production Zone activity table are subject to the standards of that zone. Standard 6.2.5B requires a 15m boundary setback for all residential and commercial buildings, which the subject building would fail to comply with. Given this, if the equivalent Place of Assembly rules as applicable to the Plains Production Zone were applied, the application would still fail to be considered as a non-complying activity as rule PP34 would not be complied with due to the boundary set back standard.

47. If a comparison is made to similar activities that are provided for in the Rural Zone, I note that Table 5.2.4 provides for under rule RZ18: *"The alteration of existing Recreation Activity exceeding 15% of the gross floor area, or exceeding 15% of the site area, as at 12/09/2015"* as a restricted discretionary activity. Again, each rule is subject to compliance with the standards applying to the zone. Standard 5.2.5B requires a minimum boundary setback of 15m for all residential buildings and commercial activity buildings. As the subject building is located only 5m from the submitter's boundary rule RZ18 would not be complied with and the activity would fall to be assessed as a non-complying activity under Rule RZ27, which is how the application has been assessed in any case.
48. From my experience with the Hastings District Plan review I am aware that the change to require resource consent for Places of Assembly in the Plains Production and Rural Zones was a direction from HPUDS. Also drawing on that experience, there was no intentional decision to make Places of Assembly a non-complying activity in the Rural Zone and I suspect that it was intended to provide for Places of Assembly alongside recreation activities in the way that this has been done in the Plains Production Zone. This being the case however, where a 15m boundary setback is not complied with, it is likely that the subject building would still fall to be assessed as a non-complying activity even if Places of Assembly were specifically provided for in the Rural Zone rules.
49. I note that Mr Kaye supports the recommendation of Mr Wang's S42A report and I have already covered why I do not support those recommendations.
50. In commenting on the submission Mr Kaye refers to the relationship that the development has with the land and states that it *"is the purpose of resource*

*consenting, where the merits of detailed specific circumstances of a site and proposal can be assessed, and in this case, where the association to the land can be recognised.”* In my opinion it is also the purpose of resource consenting to assess the specific effects of a proposal on the surrounding environment including any affected neighbours. That is clear from the wording of section 104(1)(a) of the RMA.

51. In regard to Ms Te Huia’s statement of evidence I acknowledge her aspirations for Hinetemoa Marae and the measures listed under the heading ‘Mitigating Risk’. As explained in my evidence above however, it is the location of the subject building and its proposed use that create the adverse effects on the submitters. The effect of concentrating activity on the site adjacent to their boundary and outdoor living area and near to their dwelling can not in my opinion be readily mitigated.

### CONCLUSIONS

52. I consider that the proposed extension of the existing place of assembly by 543.5m<sup>2</sup> or 75% with the accommodation offered as part of the activity almost doubling to 84 beds, from the existing 44 is a significant increase in scale. The concentration of the additional scale within 30m of the submitters’ dwelling and immediately adjacent to their outdoor living area will in my opinion significantly affect the character and amenity of the rural environment available to the submitters. I also consider it significant that some of the conditions recommended to mitigate these effects in Mr Wang’s S42A report could in themselves create an adverse effect on the submitter, such as the recommended 6m high shelter planting between the building and the boundary.
53. Given the above it is my opinion that the effects of the proposed activity on the submitters will be more than minor and the application is not consistent with and is contrary to the objectives and policies of the district plan seeking to sustainably manage activities in the rural environment.



16

54. On that basis the application fails to pass either of the 'gateway' tests for non-complying activities in section 104D of the RMA. The application cannot therefore be granted. Even if it is decided that one or other of the section 104D 'gateway' tests can be passed, I remain of the view that the adverse effects on the submitters are of a scale that strongly weighs in favour of declining the application and not allowing the proposed change of use of the subject building.



Philip McKay

6<sup>th</sup> September 2019

Item 2

Attachment A