

Thursday, 23 June 2022

*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*  
**Hastings District Council**  
**Commissioner Hearing Meeting**

*Kaupapataka*

# Decision Agenda

## Drainways Contracting Ltd

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*Te Rā Hui:*  
Meeting date: **Thursday, 23 June 2022**

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*Te Wā:*  
Time: **9.30am**

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*Te Wāhi:*  
Venue: **Landmarks Room  
Ground Floor  
Civic Administration Building  
Lyndon Road East  
Hastings**

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*Te Hoapā:*  
Contact: **Democracy and Governance Services  
P: 06 871 5000 | E: [democracy@hdc.govt.nz](mailto:democracy@hdc.govt.nz)**

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*Te Āpiha Matua:*  
Responsible  
Officer: **Group Manager: Planning & Regulatory Services - John  
O'Shaughnessy**

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## *Kaupapataka*

# Agenda

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*Te Komihana Whakahoahoa:*  
**Hearing Commissioner:**

*Heamana*  
**Chair:** Commissioner Bill Wasley

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*Apiha Matua:*  
**Officer Responsible:**

Group Manager: Planning & Regulatory Services – John O'Shaughnessy

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*Mahere Maarama:*  
**Reporting Planner:**

Senior Environmental Planner (Consents) - Liam Wang

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*Te Rōpū Manapori me te Kāwanatanga:*  
**Democracy & Governance Services:**

Christine Hilton (Extn 5633)

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## *Te Rārangi Take*

# Order of Business

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**Section 357 Objection to Decision to Refuse Consent for an Industrial Activity in the Plains Production Zone at 2570 Omaha Road, Hastings - Drainways Contracting Ltd (RMA20220082)**

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

**Document 1**      The covering administrative report      **Pg 1**

**Attachments:**

1	Attachment 1 - Signed Commissioner Decision	25080#0135	Pg 3
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Thursday, 23 June 2022

Item 2

*Te Hui o Te Kaunihera ā-Rohe o Heretaunga*

**Hastings District Council: Commissioner Hearing**

*Te Rārangi Take*

# Report to Commissioner Hearing

**Nā:**  
**From:** Christine Hilton, Democracy and Governance Advisor

**Te Take:**  
**Subject:** Section 357 Objection to Decision to Refuse Consent for an  
Industrial Activity in the Plains Production Zone at 2570 Omaha  
Road, Hastings - Drainways Contracting Ltd (RMA20220082)

## 1.0 Purpose and summary - *Te Kaupapa Me Te Whakarāpopototanga*

- 1.1 The purpose of this report is to have a means to put the Commissioner Decision from the Hearing to address the Section 357 Objection to Decision to Refuse Consent for an Industrial Activity in the Plains Production Zone at 2570 Omaha Road, Hastings – Drainways Contracting Ltd (RMA20220082) held on 23 June 2022 onto the website following completion of the hearing and release of the decision.

## 2.0 Recommendations - *Ngā Tūtohunga*

That the Commissioner Decision from the hearing to address the Section 357 Objection (Drainways Contracting Ltd) held on 23 June 2022 be put onto the website so it can be viewed by members of the public.

## Attachments:

[A↓](#) Signed Commissioner Decision

25080#0135



**In the matter**

of the Resource Management Act 1991

**And in the matter**

of an objection by Drainways Contracting Ltd to the Hastings District Council's decision to decline consent for the establishment of an industrial activity and associated educational activity, in the Plains Production Zone at 2570 Omahu Road Hastings legally described as Lot 1 DP 11200 (RMA20220082)

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**Decision of Hearing Commissioner  
Dated: 24 August 2022**

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### **Introduction**

1. The objector Drainways Contracting Ltd had lodged an objection under section 357 of the Resource Management Act 1991 ("RMA") to a decision of the Hastings District Council to decline consent for the establishment of an industrial activity in the Plains Production Zone at 2570 Omahu Road Hastings.
2. I was appointed pursuant to section 34A of the RMA to hear, consider and determine the objection.

### **Hearing and Site Visit**

3. I conducted a hearing on 23 June 2022 via remote access (Zoom). It is noted that the parties (objector and Council) were present in the Landmarks Room, of the Hastings District Council offices.
4. I advised that due to this situation I had not undertaken a site visit prior to the hearing. I was intending to rely on photographs of the subject site provided by both the objector and Council. Mr Lawson prior to the hearing invited me to undertake a site inspection given the context of the subject site, its location and to gain an appreciation of the surrounding environment. I advised at the commencement of the hearing that I would undertake a physical site visit and I had the opportunity to do so on Wednesday 13 July 2022. I undertook this visit on my own and no parties were present. I wish to note that the site visit was helpful in gaining an overall understanding of the nature and location of the Omahu industrial enclave and the subject site location within it., and the activities within the enclave.
5. Those in attendance at the hearing were as follows:

### **Objector**

Mr Matthew Lawson - Counsel  
Mr Brendan Currie- Director: Drainways Contracting Ltd  
Mr Ian Millner- Land Management Consultant  
Mr Mike Donnelly - Save the Plains representative  
Mr Phil McKay - Consultant Planner

### **Council**

Mr Liam Wang - Reporting Officer & Environmental Planner  
Mr Caleb Sutton - Team Leader Environmental Consents/Subdivision  
Mrs Christine Hilton - Democracy & Governance Adviser  
Mrs Yvonne Moorcock - Business Support Team Leader

6. I requested that the right of reply be in writing, and this was provided to me on 15 July 2022. I subsequently closed the hearing on 3 August 2022 after I had undertaken the site visit and received Mr Lawson's reply submissions.

7. In order to assist me to determine the objection, I received and considered the following:
- Section 42A Report
  - Opening and closing submissions of Mr Lawson
  - Expert evidence
  - Applicant's assessment of environmental effects
  - Section 92 Further information request
  - Planning report (Notification and substantive assessment)
  - Letter of support from the Save the Plains group and statement of evidence from Mr Mike Donnelly
  - Environment Court judgements submitted by Mr Lawson

**Submissions/ Evidence Presented**

8. **Objector**

**Mr Lawson** highlighted the main points in his legal submissions with some interpolation, expanding in some detail on issues raised in those submissions.

Among the points raised he emphasised that it was appropriate to assess the versatility of the subject site and that the RMA enabled a proper consideration of a site through the resource consent process. He noted that rigid adherence to the mantra that all land and soils require protection and that such an approach "trumps" all other considerations, did not promote sustainable management of natural and physical resources.

He submitted that the proposal met both 'gateway tests' of s104D of the RMA and outlined that while there may be inconsistencies with some policies and objectives, it did not mean the application was contrary to such policies and objectives. He supported his contention by highlighting case law which was referenced in his submissions and provided to me.

Mr Lawson outlined that the effects of the proposal were no more than minor, that there were a number of features that made the proposal unique including its location in a historic industrial enclave where there were adjacent activities of an industrial nature. He noted that the land was compromised through previous land uses that resulted in its contamination and which resulted in it being unsuitable for the production of food.

Because of the site- specific matters and its location, he considered it appropriate for consent to be granted.

**Mr Currie** outlined the reasons for the application being the need to obtain larger premises for a growing business and a need to upskill employees beyond simply being labourers. Hence the company was seeking to have a large site that could be the subject of continual excavation to enable training of staff and students generally through training programmes run by the Eastern Institute of Technology.



A minimum of two hectares of land was required with a significant proportion being allocated to the training facility and that serviced industrial land was not required for the proposal.

**Mr Donnelly** noted that he was a member of the Save the Plains group who were concerned about urban development spreading onto the fertile productive land of the Heretaunga Plains.

He did not think the proposal would create a precedent as he could not think of another site in Hawkes Bay that was located within a cluster of industrial uses and contained soils that had been affected by previous industrial use.

He noted that the site did not contain high quality soils and had not been used for any form of primary production for many years.

9. **Mr Millner** referenced the Lattey Group report which had been prepared in respect of assessing the contamination status of the subject site and that key findings from that report noted elevated levels of copper, chromium, and arsenic over significant areas of the site. In addition, he outlined that significant parts of the site had been utilised for the storage of sawdust and that residual bark and sawdust were still evident and up to 500mm deep.

Mr Millner also noted that treated timber had been stored on the site as had chemicals used to treat timber.

He further outlined that the subject site is not Class 1-3 soil and that its natural soil type would be Class 7 consistent with the Gimblett Gravels Omaha soil. However, he concluded that because of the soils' chemistry and organic matter status and profile resulting from previous land uses on the site, the soil should be considered a "Refuse Anthropic soil, not Omaha soil."<sup>1</sup>

Mr Millner concluded that the site was not suitable for the production of produce for human or animal consumption and that its versatility was restricted to non-food production crops such as forestry.

**Mr McKay** provided a brief of evidence that included an extensive analysis of the policies and objectives of the regional and district planning instruments. He concluded that due to the unique circumstances of the site and the proposal itself, that it was not contrary to the District Plan objectives and policies when taking an overall view.

He was of the view that the subject site was not versatile land relying on the evidence of Mr Millner and on that basis, it could achieve general consistency with the relevant objectives and policies of the RPS.

Given the distinguishable features of the subject site including its location in an enclave of existing industrial uses, its soil contamination and that the soil as per Mr Millner's evidence being classed as Refuse Anthropic and not Omaha soil, and the severe limitations for

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<sup>1</sup> Millner Evidence - Para 13

productive purposes, he was of the opinion that consent be granted, and it would not give rise to precedent effects or for the integrity of the District Plan to be brought into question.

10. **Council**

**Mr Wang** explained how he had assessed the proposal. He outlined that in his opinion the proposal was contrary to a number of District Plan policies and objectives.

He was not convinced that an assessment of land versatility was required, but if it was considered so, he was of the opinion that the land was versatile.

Mr Wang did not consider that the proposal exhibited unusual or exceptional characteristics that would differentiate it from other potential applications in respect of the Plains Production zone. Furthermore, he was of the view that the educational component of the proposal was not of sufficient scale to justify a departure from what the District Plan anticipated for the area.

He was of the view that there needed to be more certainty around the Eastern Institute of Technology commitment to undertake training, and that weight should only be placed on the education facility being part of the proposal if a functional need for co-location with the industrial activity was established.

He concluded that consent be refused.

11. **Objectors Right of Reply**

**Mr Lawson** provided a partial oral right-of-reply on the basis that he would submit a full reply in writing as requested by me. The formal reply covered several matters highlighted at the hearing.

He re-iterated that an assessment of the versatility of the land was a pivotal consideration when assessing the application against the policy and objective framework of the District Plan. He noted that as the land did not have productive capacity, it did not fall within the definition of versatile land.

Mr Lawson also addressed matters related to precedent and plan integrity and referred to case law on this matter. In particular, he emphasised that a question of judgment needs to be applied to the facts of any particular proposal.

He referenced the evidence of Mr Millner noting it was uncontested, and the conclusions reached by him regarding the nature of the soils being unproductive, were contaminated and that the productive capacity of the subject site was severely limited the versatility of the subject site.

Mr Lawson outlined that the education facility was an integral part of the proposal and sets it apart from other industrial activities that might wish to locate in the Plains Production zone.

He highlighted that the site had not been developed in the last 60 years and that it was fanciful to believe that the site would be used for food production or serving of the food production activity. He noted that the 4-hectare site could not support its own packhouse.

He concluded that the proposal promotes sustainable management of natural and physical resources, has clearly identified distinguishing characteristics, passes the gateway tests of s104D and any effects are no more than minor.

#### Original Decision

12. The decision to refuse consent to the non-complying activity application, was made by the Council under delegated authority to staff, on 14 April 2022. The reasons for refusing consent were as follows:
  1. *"There are no adversely affected persons in terms of Section 95E of the Resource Management Act 1991.*
  2. *The proposal is unlikely to result in any more than minor adverse effects on the environment. The reasons are discussed in Section 4 of the Sections 95 and 104 Planning Report, and are summarised as below:*
    - *While the Council does not agree with the applicant's assessment that the subject site is not versatile, it was concluded that the effect on versatile land, in relation to the site itself, is no more than minor.*
    - *The site is located within an atypical Plains Production environment that contains existing industrial activities. Visually, the proposed development will not adversely affect the existing visual and landscape amenity values of the area.*
    - *The Council generally accepts the recommendations and conclusions of the Transport Impact Assessment provided by the applicant, in that safe access to the site can be provided subject to conditions and controls.*
    - *Subject to standard controls and practices, and on-going monitoring of training activities on site, earthworks effects associated with the proposal can be controlled to a less than minor level.*
    - *In addition to the reasons discussed in the bullet point above, additional measures such as buffer zones and implementation of best practices will minimise potential dust effects to less than minor.*
    - *Subject to a Detailed Site Investigation, it is expected any soil contamination will be mitigated to a level appropriate for the proposed land uses.*
  3. *The proposal has been assessed as contrary to relevant objectives, policies and other provisions of the Hastings District Plan and the Regional Resource Management Plan. The reasons are discussed in Section 8 of the Sections 95 and 104 Planning Report, and are summarised as below:*
    - *The industrial component of the proposal is an ad-hoc industrial development in the Plains Production zone. Objective and policies for both the Industrial and Plains Production zones specifically seek to avoid such developments.*
    - *The proposal is also inconsistent with the overall intent of spatial planning through the Heretaunga Plains Urban Development Strategy, as the land sits outside of areas anticipated for future growth. Other than economic reasons, which are not considered relevant to consideration of the proposal,*



*the applicant has not identified any other planning reasons why the subject site is an appropriate location for the proposed activities.*

- *The proposed activities have no direct relationship to the primary production activities within the Plains Production zone. The scale of those activities is not anticipated by the District Plan.*
- *The applicant has not established that the land is not versatile, but in any event, the relevant objectives and policies tell against this type of industrial development within the Plains Production zone regardless of the characteristics of the specific site.*

*For completeness, the Council also notes the associated earthworks activities are considered to be consistent with relevant objectives and policies.*

4. *The proposal will create an adverse precedent and directly challenge the integrity of the District Plan. Reasons for this conclusion are discussed in Section 10 of the Sections 95 and 104 Planning Report, and are summarised as below:*
  - *The site's location and being surrounded by existing, legally established industrial activities are not unique, as there are many similar locations within the vicinity.*
  - *While there are a number of factors limiting the productive potential of the site, those factors, including access to water, soil quality and contamination are not unique to this site nor unusual in the Plains Production zone.*
  - *While effects on the environment from this proposal will be minor, this is not considered to be a feature which differentiates the proposal from other potential industrial uses within the Plains Production Zone.*
  - *Land price, and the economics of establishing a training facility in the Industrial Zone, is not considered as a differentiating factor as it is not relevant consideration under the RMA. The Explanation to the objectives and policies specifically identifies the fact that rural land is cheaper to be a risk factor in undermining the outcomes sought for the Industrial and Plains Production Zones.*
  - *The fact that the proposal involves an educational aspect is not considered to be a relevant differentiating factor.*

*In the absence of any factor which differentiates this proposal from other potential activities which could seek to establish in the Plains Production Zone on similar grounds, it is considered that granting consent to this proposal would set an adverse precedent and would undermine the integrity of the District Plan."*

#### **Objection**

13. The objector subsequently lodged an objection to the decision which was received by the Council on 8 May 2022.
14. The objection against that decision was made under section 357A of the Resource Management Act 1991 and the reasons for the objection are summarised<sup>2</sup> as follows:

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<sup>2</sup> S42A Report- Para 2.1.2

- *That the application should be granted as it achieves the purpose of the Resource Management Act of sustainable management of natural and physical resources.*
- *That there are no effects on the environment that are more than minor.*
- *That the activity for which resource consents were sought are not contrary to the relevant objectives, policies and provisions of the Hastings District Plan and Regional Resource Management Plan.*
- *The site is not suitable for activities usually associated with Plains Production zone.*
- *That the proposed activities and educational activities are unique and represent a sustainable use of a compromised resource in a manner that does not give rise to precedent or the expectation that such activities would be replicated throughout the zone.*

**Proposal**

15. The proposal was fully described in section 4 of the Assessment of Environmental Effects. The subject site is 4.04 hectares in area and is located within the Plains Production zone. It primarily involves the establishment of an industrial activity (drainage contractors depot) and associated educational activities on a property located at 2570 Omahu Road, Hastings. It includes construction of a building of approximately 1500m<sup>2</sup> in area and associated access and hardstand areas. To the rear of the proposed development, a training ground is proposed for the drain laying operation of diggers.
16. As outlined by Mr Currie in his evidence,<sup>3</sup> it is proposed that the site would be subject to continual excavation, drain laying and drain removal operations as part of a training programme to be run in conjunction with the Eastern Institute of Technology (EIT) using machinery provided by the applicant. This is to enable students to be trained on modern excavation machinery, so they are work ready upon completion of their course.

**Surrounding Environment**

17. An understanding of the surrounding environment is important part of the consideration of this objection. I undertook a site visit subsequent to the hearing which included examining adjacent land use activities, a walk over of the subject site and driving around the industrial enclave which contains a mix of industrial activities and viticulture.
18. The site is vacant and is located between existing industrial/ processing activities. To the rear of the site are viticulture plantings. To the north- west a timber mill, and treatment facility is located and to the south- east are large depot buildings utilised by a harvester contractor, and to the rear of that development, is an area planted in grapes. Across the road from the site are located a range of industrial activities including an engineering depot and transport depot with associated buildings and extensive parking and outdoor storage areas.

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<sup>3</sup> Currie Evidence- Paras 11-13

19. Despite the Plains Production zoning, the sites described all have an industrial appearance as does the wider area and form an industrial enclave to the south- east of Omaha Road intersection with State Highway 50. In effect, the subject site is a separate vacant area within this industrial enclave, surrounded by industrial type activities that have developed over a long period of time, in fact going back to pre-1989 when the area was located within the former Hawkes Bay County.

#### **Statutory Context**

20. The relevant provisions of the RMA relating to this matter in respect of hearing and determining the objection are outlined in section 357D. These are outlined as follows:
- (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.*

#### **Consideration of the Objection**

##### **Background Commentary**

21. In considering the objection before me, there were many matters where there was common ground between Mr McKay and Mr Wang. These areas of commonality were well documented in the opening submissions of Mr Lawson<sup>4</sup> and there is no need to repeat them here. I would note however that there was agreement by the planning witnesses (Wang & McKay) that the proposal would have no more than minor effects on the environment and that any effects can be appropriately mitigated, avoided, or remedied by the imposition of relevant conditions.
22. There had been agreement that the proposal meets the test of s104D(1)(a) of the RMA and that the application can be assessed against the provisions of s104 and a substantive decision made.

##### **Land Versatility**

23. Mr Lawson in his opening submissions was of the opinion that consideration needed to be given to whether the subject site was 'versatile land'. It is further noted that there is disagreement between Mr Wang and Mr McKay regarding whether consideration and determination of whether the subject site is versatile land.

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<sup>4</sup> Opening Submissions- Lawson- Paras 15 & 16



24. Mr Wang seems to take a 'macro view' and that there is no need to determine whether the land is versatile as ad-hoc development within the Plains Production zone should be avoided and that the overall planning approach is to limit activities within the zone to those that have a direct relationship with the primary production activities within the zone<sup>5</sup>. He further noted that the District Plan anticipated a range of activities that did not rely on soil quality.
25. Mr McKay focused on the subject site and was of the opinion that it was necessary to determine whether the site is versatile land given it was a key premise of the non-complying activity application that the nature of the site as non-versatile land located in an enclave of industrial activities, which made the site unique regarding its Plains Production zoning.<sup>6</sup>
26. Mr McKay further outlined that given the term 'versatile land' was referenced in a number of objectives and policies in the planning instruments, it was important in his opinion, to determine whether or not the subject land was 'versatile' prior to assessing those objectives and policies.
27. Having considered the opinions of both Mr Wang and Mr McKay on this matter, I conclude that it is appropriate to consider whether the land is versatile or not, so an appropriate assessment of the policies and objectives of the Plains Production zone can be undertaken. Without such an assessment, it is somewhat difficult in my view to adequately assess the objection and the matters that the objector has raised in the objection.
28. I have considered the definition of versatile land contained in the District Plan which is as follows:

*Versatile Land: In relation to the Heretaunga Plains sub-region means contiguous flat to undulating terrain within the Heretaunga Plains Sub-region that acts collectively to support regional (and nationally) significant primary production and associated secondary services on the Heretaunga Plains, based around:*

*(a) An exceptionally high proportion of versatile Class 1-3 soils (comprising almost 90%); or*

*(b) Class 7 soils that are internationally recognised as having a very high value for viticultural production (comprising almost 7%);*

*(c) Its proximity to a cluster of national and international processing industries and associated qualified labour force; and*

*(d) Its proximity to the Port of Napier and other strategic transport networks providing efficient transport of produce.*

In respect of land versatility, the objector called evidence from Mr Millner a land management consultant. His evidence<sup>7</sup> referenced the Lattey Group report which had been prepared in

<sup>5</sup> Objection Report- Wang- Paras 5.4.5 & 5.4.7

<sup>6</sup> McKay Evidence- Paras 34-35

<sup>7</sup> Millner Evidence- Paras 8,9, & 17

respect of assessing the contamination status of the subject site and that key findings from that report noted elevated levels of copper, chromium, and arsenic over significant areas of the site. It was noted that significant parts of the site had been utilised for the storage of sawdust and that residual bark and sawdust were still evident and up to 500mm deep.

29. Mr Millner also noted that treated timber had been stored on the site as had chemicals used to treat timber.
30. He further outlined that the subject site is not Class 1-3 soil and that its natural soil type would be Class 7 consistent with the Gimblett Gravels Omaha soil. However, he concluded that because of the soils' chemistry and organic matter status and profile resulting from previous land uses on the site, the soil should be considered a "Refuse Anthropic soil, not Omaha soil."<sup>8</sup>
31. Mr Millner concluded that the site was not suitable for the production of produce for human or animal consumption and that its versatility was restricted to non-food production crops such as forestry.
32. I observe that no evidence was called to counter the Millner evidence.
33. Mr McKay concurred with Mr Millners' evidence and concluded that the site was not capable of practically supporting any form of primary production that is permitted within the Plains Production zone. He further outlined that the subject site was the result of a previous planning regime, is located within an existing industrial enclave on land that had been previously used for industrial activities and had reached the same conclusion as Mr Millner that it cannot be utilised for any form of production of produce for human or animal consumption.
34. I also note that the site had been created in the mid 1960's and that the proposal did not involve any lateral expansion of the current industrial enclave.
35. It is also appropriate to refer to the evidence<sup>9</sup> of Mr Donnelly who noted that the site had previously been used as a 'dumping ground and storage area' by the adjacent sawmill operation, and that the land had not been used for a number of years.
36. It is acknowledged that Mr Wang and Mr McKay take two different approaches regarding the matter of whether the site is versatile land or not. Mr Wang has focused on a macro approach and of the view that policies and objectives should be applied to the subject site, that consideration of versatile land applicability is not required, and that given the site is within the Plains Production zone, it is worthy of protection from non- Plains Production zone activities.

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<sup>8</sup> Millner Evidence - Para 13

<sup>9</sup> Donnelly Evidence- Paras 6 & 8



37. Mr McKay on the other hand in assessing the policies and objectives believed that it was appropriate to consider that the land is not versatile in terms of the District Plan definition of versatile land, and that this had been adequately proven through the evidence of Mr Millner.
38. Overall, I conclude that the land being a site in the Plains Production zone, is not considered to be versatile in respect of the District Plan definition and has been appropriately demonstrated by the objector that this is the case.

**Application should be granted as it achieves the purpose of the RMA**

39. The original s42A report on the application had concluded that an assessment under Part 2 of the RMA was not considered necessary as the District Plan had been recently made operative and it had been determined in recent Environment Court judgments that its provisions were coherent. Mr Wang did not identify any potentially conflicting or incoherent provisions within the District Plan or other planning instruments.
40. Mr Wang noted that the Regional Resource Management Plan and the District Plan had identified consistent themes which are reflected in the Plains Production zone objectives and one of those themes was to avoid ad-hoc industrial development within the zone, and that the proposal was contrary to a number of policies and objectives of the District Plan.
41. I can understand why Mr Wang has reached this conclusion given he did not see any need for consideration of whether the site was versatile land or not. Without the consideration of land versatility, any assessment could well conclude then that the proposal was contrary to the intent, policies, and objectives of the District Plan in respect of the Plains Production zoning.
42. The objector did not raise in submissions or evidence that an assessment in respect of Part 2 of the RMA was required.
43. While I accept that such an assessment is not necessary given the District Plan has recently been made operative and subject to Environment Court scrutiny, I am of the opinion that the proposal as considered in this decision, does provide for the sustainable management and use of natural and physical resources such as the subject land, that would not otherwise be suitable for sites within the Plains Production zone. The particular set of circumstances and distinguishing features that apply in respect of the subject site, allow for it to be used in the manner proposed and allow it to fulfil the purpose of the RMA.

**There are no effects on the environment that are more than minor**

44. I have considered the evidence of Mr Wang and Mr McKay. They both conclude that there are no effects in respect of the proposal that cannot be remedied, avoided, or mitigated through the imposition of appropriate consent conditions, and therefore the matter is not in contention. Given this situation, no further discussion on this matter is considered necessary.

**Proposal not contrary to the objectives and policies of the District Plan and the Regional Resource Management Plan**

45. As discussed previously in the Land Versatility section of this decision, consideration of versatile land is in my opinion a relevant consideration and assists in the assessment of the proposal in respect of the relevant policy and objective frameworks of the abovementioned planning instruments.
46. Mr Wang and Mr McKay in their respective assessments of the proposal against the policy and objective frameworks of the planning instruments reach different conclusions.
47. Mr Wang is of the view that proposal was in direct conflict with a number of key objectives and policies and reasoned as follows:

*"The proposal represents an unnecessary encroachment of urban activities into the Plains Production zone, which is something the Regional Policy Statement requires be 'avoided' (OBJ-UD1(d), POL UD2(e)). The applicant has explained why construction on the Plains Production Zone is desirable for them, but not why it is 'necessary' particularly where there are existing Industrial Zone areas that would appear appropriate to accommodate the proposal.*

*The proposal represents an ad-hoc development in the Plains Production zone which is something the Regional Policy Statement (OBJ UD4) and the District Plan (ISO2, PPP7) requires be 'avoided'.*

*The activities have no direct relationship with rural production activities and will undermine the life-supporting capacity of the rural resources"<sup>10</sup>.*

48. Mr McKay held an alternative view that the proposal because the subject site was not considered to be versatile land, the proposal was generally consistent with and not contrary to the policies and objectives from an overall perspective. He acknowledged that the proposal was contrary though to policies related to activities needing to be linked to land-based production (PSMP2) and that the proposal did not have a direct relationship to crops grown or stock farmed in the zone.
49. However, given the distinguishing features of the subject site that have been discussed elsewhere in this decision, which include the site not being considered versatile land, I conclude taking a holistic view and generally agreeing with the assessment of Mr McKay, that the proposal is not contrary to the overall policy and objective framework of the planning instruments.
50. I do not agree that the proposal is ad-hoc development given it is to be undertaken on an existing site and is of a similar scale and character to other activities that are located in the Omahu industrial enclave. While as noted above the proposal has no direct relationship with rural production activities, it does provide for the sustainable management and use of the land resource notwithstanding the limitations on its use for rural production due to its

<sup>10</sup> Wang Objection Report-Section 5.3.2

previous use and associated contamination issues and that the subject site soils are not considered to be Omahu soil.

51. I also note Mr Lawson's reference to and discussion of the JARA Family Trust case<sup>11</sup> which has assisted in my consideration of this matter

**Site is not suitable for activities usually associated with the Plains Production zone**

52. Given the discussion regarding land versatility and the evidence of Mr Millner in particular, I conclude that the site is not suitable for activities that would be normally associated with the Plains Production zone, primarily being the production of food.
53. While it is accepted that some secondary activities associated with the Plains Production zone could be located on the site such as packhouses and cool stores but would require some form of resource consent. I note the evidence<sup>12</sup> of Mr McKay where he discusses this matter. He further outlines that it does not mean that that if a site is not suitable for primary production related activities, that it should be used for primary production secondary service activities.

**Proposal is unique and represents a sustainable use of a compromised resource that does not give rise to precedent or expectation that such activities would not be replicated in the zone**

54. Given the conclusions reached by me that it is appropriate to consider versatility of the subject site and that it is not appropriate to be used for food production because of the identified constraints and issues, the proposal does provide for sustainable use and management of the site.
55. As previously noted in this decision, the title for the site indicates its creation in the 1960's and that the proposal does not involve any subdivision of the site. No lateral expansion is proposed, and the proposal involves utilisation of the site which is located within an existing industrial enclave created many decades ago. The site is located between existing industrial/packhouse activities and there are a range of industrial activities located across from the site on Omahu Road.
56. Mr McKay provides a useful summary<sup>13</sup> of matters that differentiate it or provide some unique factors that set it apart from other sites in the Plains Production zone, in addition to the proposed education training facility being an integral part of the proposal, and that the classification of the subject site soil should be amended from Class 7 Omahu soil to Refuse Anthropic soil.
57. Given the proposal's location on a site that is not versatile land, is compromised through its contamination from previous industrial use, and within an existing industrial enclave

<sup>11</sup> JARA Family Trust vs Hastings District Council

<sup>12</sup> McKay Evidence-Para 42

<sup>13</sup> Ibid Paras105-110



notwithstanding the Plains Production zoning, and including the matters outlined in the McKay evidence, I am of the view that such circumstances are unlikely to be replicated elsewhere within the zone and it is unlikely that any issue of precedent will arise.

#### **Conclusion**

58. The proposal provides for the efficient use and development of the land resource given that the land is not considered as being versatile and is unable to be used for the production of food. Therefore, the proposal provides for the sustainable management of the land resource through the establishment of an industrial activity in conjunction with an education training facility.
59. It is an existing site that is adjacent to and in proximity to other industrial type activities, in an enclave of industrial activities that has been in existence for many years.
60. While the subject site is within the Plains Production zone, it has significant limitations that reduce its ability to contribute to production activities and therefore is suited to the proposal as outlined.
61. It is considered to meet the various statutory provisions of the RMA and is consistent with its the purpose and principles in that the proposal will achieve sustainable management and use of the land resource.
62. While I appreciate Mr Wang's clearly expressed concerns that the proposal was contrary to the policy and objective framework of the District Plan and the RPS, was not a unique proposition in the Plains Production zone, I am of an alternative view as discussed previously in this decision. That view is pivotal on the subject site not being considered to be versatile land.
63. In examining the evidence, I concur with the summary provided by Mr McKay in his evidence<sup>14</sup> where he outlined a list of factors as being significant in determining the uniqueness of the proposal and this combination of factors setting aside from other sites within the Plains Production zone. The site not being comprised of versatile land is a key consideration in my opinion.
64. Overall and having considered all relevant matters, I conclude that upholding the objection is appropriate in the circumstances.
65. Given the conclusion reached I wish to note draft conditions had been attached to the right of reply as per my request. The conditions had been agreed by both the objector and Council, to be applied if consent was granted. There was one outstanding matter where agreement was not reached and this related to the timeframe that would apply in condition 4 c if the educational facility ceased to operate and when the consented industrial activity would then have to cease operation of the site.

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<sup>14</sup> McKay Evidence- Para 105

66. The objector advised that 6 months would be appropriate as being a reasonable timeframe, while Mr Wang proposed 3 months. I have given consideration to both suggested timeframes and appreciate Mr Wang's concern that the industrial activity could stay on the site for up to a year without the training facility operating, given the training facility is an integral part of the proposal.
67. Conversely, Mr Lawson noted that a reasonable amount of time was required for relocation of the industrial activity to occur. Given the amount of time that is likely required to undertake due diligence on alternative sites, and the potential timeframes if resource and building consents were required, I have imposed the six- month timeframe.

#### **Decision**

*Pursuant to section 357 of the Resource Management Act 1991, the Hastings District Council upholds the objection of Drainways Contracting Ltd, and grants consent (non-complying activity) to the establishment of an industrial activity (drainage contractor's depot) and associated educational activities; and grants consent (discretionary activity) in respect of the National Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011; in respect of a property at 2570 Omahu Road, Hastings and legally described as Lot 1 DP 11200 (RMA20220082), and subject to the following conditions:*

#### **Application and plans**

1. That unless otherwise altered by the conditions of this consent, the development shall proceed in accordance with the plans and information submitted as part of the resource consent application RMA20220082 (PID 25080):
  - a) The application and assessment of environmental effects titled "Drainways Contracting Limited - to Establish and Operate a Drainage Contractors Depot and Associated Education Training Facility at 2570 Omahu Road, Hastings - Resource Consent Application and Assessment of Environmental Effects", dated 28 February 2022, prepared by Mitchell Daysh Limited (HDC reference:25080#0038);
  - b) Development plans submitted as part of the application and attached as Attachment 1 to this decision (HDC Reference:25080#0037); and
  - c) Any other information submitted as part of this application.

#### **Training activity**

2. That all earthworks related to the training activity shall be limited to the 'training area' as shown on the approved plan. The earthworks shall also be located at least 15 metres away from all side boundaries, and 100 metres from the rear boundary.
3. That the training activities shall be limited to 7.00am - 5.00pm Monday – Friday, and 8.00am – 5.00pm Saturday only (excluding public holidays).
4. That the practical education training activities shall be provided on an ongoing basis from the site in compliance with the following:
  - a) That prior to operation of the drainage contractors' depot commencing, the consent holder shall provide written evidence confirming that the training activity will be proceeding, and the

scope, duration and frequency of the training activity is consistent with the information provided as part of the application.

- b) That in the event that the educational training activity ceases to operate on site, the consent holder shall, within one month from the cessation of the educational activity, notify the Hastings District Council in writing of the last date that such activity had occurred on site.
- c) That within 6 months of cessation of the educational activity, the consented industrial activity shall cease to operate on site.
- d) For the purpose of conditions 4(b) & (c) above, the educational training activity shall be deemed as being 'ceased' if the existing practical outdoor training activities have been terminated, and no other similar and regular training activities have been scheduled for more than 6 months from this termination.
- e) That pursuant to Section 108(2)(b) of the RMA, a covenant securing the performance of condition 4 above shall be registered against the Record of Title for the subject site, prior to the commencement of operation of the consented activities.

**Noise Limit**

- 5. That the consent holder shall ensure that in relation to all of the consented activities, the following noise limits shall not be exceeded at any point within the notional boundary of any noise sensitive activity on any other site within a Rural Zone, or at any point within the boundary of any site, in any Zone other than an Industrial Zone:

Control Hours	Noise Level
0700 to 1900 hours	55 dB LA <sub>eq</sub> (15 min)
1900 to 2200 hours	50 dB LA <sub>eq</sub> (15 min)
2200 to 0700 hours the following day	45 dB LA <sub>eq</sub> (15 min)
2200 to 0700 hours the following day	75 dB LAF <sub>max</sub>

**Light and Glare**

- 6. That all external lighting shall be shaded or directed away from any residential buildings or roads and shall be less than 8 lux spill measured at a height of 1.5 metres above the ground at the boundary of the site.

**Storage of hazardous substances**

- 7. That all hazardous substances associated with the consented industrial activity shall be stored and/or handled on areas which have impervious surfaces and where facilities are provided to prevent contaminants from being washed or spilled into natural ground or entering any piped stormwater systems or stormwater ground soakage, such as bunds, filters, separators or settling areas.

**On-site Landscaping**

- 8. That prior to the commencement of the construction activities on site, the consent holder shall submit a landscape plan for the certification of the Environmental Consents Manager, Planning & Regulatory Services, Hastings District Council (or nominee).

The landscape plan shall demonstrate how requirements under Section 6.2.5D (Screening) of the District Plan can be complied with:

- a. Outdoor storage areas of commercial, industrial, and winery activities shall be fully



screened by fencing and/or planting from adjacent or opposite commercial and residential activities and motorists using public roads.

- b. Outdoor display areas and parking areas of commercial, industrial, and winery activities shall have landscaping which consists of a mixture of ground cover and specimen trees with a minimum width of 2.5 metres.
9. That prior to the activity commencing on the site, all landscaping as required by condition (8) shall be implemented and maintained to the satisfaction of the Environmental Consents Manager, Hastings District Council (or nominee).

Advice note

*Maintenance means the ongoing replacement of any dangerous, dead, or dying matter, the replacement of any plants that are lost or otherwise defective and the general preservation of the landscaping to a healthy standard.*

**Transport**

10. That the layout of the access way to the site shall be designed to accommodate a 11.5-metre-long truck with the gate position setback 20 metres from the centreline of the road.  
The design shall be submitted to the Environmental Consents Manager (or nominee), Hastings District Council for certification prior to the construction of the access way.
11. That prior to the commencement of the construction of consented building on site, an assessment of the available sight line distances shall be submitted to the Environmental Consents Manager (or nominee), Hastings District Council for certification.  
Any obstructions with the road reserve to vehicle sightlines identified in this assessment shall be remedied at the cost of the consent holder.

Advice note

*If any of the existing road trees requires removal, the applicant shall be responsible to all cost associated with replanting a replacement tree at a location determined by the Transport Engineer, Hastings District Council.*

**Construction Earthworks**

12. That all earthworks (excluding those associated with training activities) shall be so conducted as to comply with the typical duration provisions of New Zealand Standard NZS 6803: 1999 Acoustics – Construction Noise.
13. That there shall be no airborne or deposited dust beyond the subject site as a result of the earthworks/construction activities that is noxious, offensive, or objectionable.
14. That site erosion and sediment control measures shall be installed in accordance with the most recent version of the "Hawkes Bay Waterway Guidelines – Erosion and Sediment Control" to limit the run-off of sediment from the site while any earthworks are being undertaken.
15. That all areas of earthworks shall be either sealed re-grassed with a minimum cover of 70%, to the satisfaction of the Environmental Consents Manager, Planning and Regulatory Services Hastings District Council (or nominee).
16. That construction earthworks shall be limited to the hours of 7.00am - 5.00pm Monday – Friday, and 8.00am – 5.00pm Saturday.

**Earthworks associated with training activities**

17. That there shall be no airborne or deposited dust beyond the subject site as a result of the earthworks activities that is noxious, offensive, or objectionable.

18. That all earthworks shall be managed to minimise any discharge of debris, soil, silt, sediment, or sediment-laden water beyond the subject site to either land, stormwater drainage systems, watercourses or receiving waters. In the event that a discharge occurs, works shall cease immediately, and the discharge shall be mitigated and/or rectified to the satisfaction of the Environmental Consents Manager Planning and Regulatory Services Hastings District Council (or nominee).
19. That after the completion of each training secession, the training area shall be reinstated to its original contour within 7 days so that there is no stockpiling of excavated material on site.

***Soil Contamination***

20. That prior to undertaking any earthworks on this site, the consent holder shall submit a Detailed Site Investigation, along with a Remediation Action Plan prepared by a suitably qualified and experienced practitioner to the Environmental Consents Manager (or nominee), Hastings District Council for certification.

The Plan shall detail how any existing contaminated soils will be remediated or otherwise managed to comply with the requirements of the NESCS, including the on-going training activities that require continuous disturbance of potentially contaminated soil. The Plan shall take into account the findings and recommendations of the existing PSI report for the site: "Preliminary Site Investigation, 2570 Omahu Road, Twyford, Hawke's Bay, Lattey Group, April 2021" (HDC Reference:25080#0048).

21. Remediation of the site shall occur in accordance with the certified Remediation Action Plan under the supervision of the suitably qualified and experienced professional, and to the satisfaction of the Environmental Consents Manager, Planning and Regulatory Services Hastings District Council (or nominee).
22. Upon completion of remedial earthworks, a Site Validation Report (SVR) shall be prepared by the suitably qualified and experienced professional and submitted to Council detailing the remediation work undertaken and confirming that the site will comply with the appropriate threshold limits contained within the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. The SVR shall be prepared in accordance with CLMG No.1: Reporting on Contaminated Sites in New Zealand.

***Review condition***

23. Pursuant to Sections 128 of the Resource Management Act 1991, in the event of a justified complaint, the Council may review conditions 17 – 19 relating to dust, silt and sediment runoff management measures for on-going training activities.

The purpose of the review is to ensure that the conditions remain adequate in managing the environment arising from the exercise of this consent, which were not foreseen at the time of the application.

***Monitoring***

24. A monitoring deposit of \$210 (including GST) shall be payable to cover the reasonable costs of monitoring compliance with the consent conditions in accordance with Council's schedule of charges. In the event of non-compliance being detected by monitoring or justified complaint and/or the costs of monitoring the consent exceeding the deposit, the costs to Council of any additional monitoring shall be paid by the consent holder in accordance with the Council's advertised schedule of fees.



*Reasons for upholding the objection are outlined in the decision report but can be summarised as follows:*

- 1. That it is appropriate to consider land versatility in the assessment of policies and objectives of the relevant planning instrument, and that as such, the proposal is in general accord with the relevant policies and objectives given the subject site is not considered to be versatile land and based on the Millner evidence, the site is not suitable for the production of produce for human or animal consumption.*
- 2. That as discussed in this decision, the subject site has a range of features and characteristics that distinguish it from other similar sites within the Plains Production zone and granting consent to the proposal is unlikely to give rise to any issues of precedent or compromise the integrity of the District Plan.*
- 3. That there are no effects on the environment that are greater than minor, and any effects can be appropriately avoided, remedied, or mitigated through the imposition of consent conditions.*
- 4. The proposal provides for the efficient use and development of the existing land resource.*
- 5. The proposal meets the various statutory provisions to be given regard in terms of the Resource Management Act 1991.*
- 6. The proposal is consistent with the purpose and principles of the Resource Management Act 1991 and provides for the sustainable management of the existing land resource through its use for industrial and education training purposes.*



**William Wasley**  
**Commissioner**

**24 August 2022**

ATTACHMENT 1

Approved Plans (HDC Reference: 25080#0037)





