

**Before the Environment Court  
at Auckland**

**I Te Kōti Taiao o Aotearoa  
Ki Tāmaki Makaurau**

**ENV-2023-AKLD**

**In the matter** of the Resource Management Act 1991 (**RMA**)

**And**

**In the matter** an appeal under section 120 of the Act

**Between** **Andrew Macniven Caseley**

**Appellant**

**And** **Hastings District Council**

**Respondent**

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**Notice of appeal to Environment Court by Andrew Macniven Caseley**

**31 January 2023**

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Address for service of appellant:  
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Contact person: Andrew Macniven Caseley

To The Registrar  
Environment Court  
**AUCKLAND**

1 I, Andrew Macniven Caseley, appeal part of a decision made by the Hastings District Council on a Land Use Consent application by No.8 Studios Limited to establish a screen production studio on land in the rural zone at Gordon Road and 376 Parkhill Road, Te Awanga (RMA20210474).

2 I received notice of the decision on 20 December 2022.

3 The decision was made by Independent Commissioner Kitt Littlejohn acting on behalf of the Hastings District Council.

4 I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

5 The parts of the decision I am appealing is:

5.1 Condition 10 - Condition Precedent

5.2 Condition 30 - Earthworks

5.3 Condition 38 – Studio Access Road / Road Safety Audit

5.4 Condition 40 – Studio Access Road

5.5 Condition 45 – Parkhill Road upgrading

5.6 Condition 48 – Parkhill Road upgrading

5.7 Condition 53

5.8 Condition 55

5.9 Condition 61

5.10 Condition 66

5.11 Condition 71 – Hours of Operation

5.12 Condition 72 – Transportation Management Plan

5.13 Condition 76

5.14 Condition 83

5.15 Condition 85

5.16 Condition 86

5.17 Condition 87 – Review condition

6 The reasons for the appeal and the relief sought are as follows:

6.1 In general terms, the conditions:

- (i) do not adequately mitigate the more than minor adverse effects of the activity on my property and myself;
- (ii) are too vague for effective compliance monitoring to occur;
- (iii) contain typographical and other errors which require correction; and
- (iv) are contrary to the material provided by the Applicant in support of the application.

6.2 Without limiting the generality of the reasons outlined in paragraph 6.1 above, the specific reasons for the appeal on each condition and the relief sought are set out in the table below.

***Condition 10 – Condition Precedent***

Reasons for the appeal – the Condition is ineffectual or inappropriate for effective compliance monitoring to occur.

Reasons for the views expressed – this condition is fundamental to the location (and potential viability of the proposed site) of the screen production studio and as such it should not be left to the Applicant's suitably qualified person alone to determine if the land is or is not classified as LUC 1, 2 or 3 land as defined in the National Policy Statement for Highly Productive Land 2022.

Relief Sought - That an additional condition is added with words to the effect – *Upon receipt of the report the Council will seek a peer review (at the consent holders' cost) of the report in order to verify the findings and any subsequent*

*change to the current proposed location of any built development or impermeable surfaces for the screen production studio.*

### **Condition 30 – Earthworks**

Reasons for the appeal - the condition is contrary to the Applicant's stated intentions which were summarised in paragraph 4.2.5 of the Section 42A Report as follows: "*large volumes of aggregate are to be sourced from within the Te Awanga Downs property for the establishment of the new road.*" That is the basis on which the assessment of effects has been undertaken.

Reasons for the views expressed – The condition infers clean fill will be trucked to site. The applicant made it clear that any fill required for site and internal access road construction would be sourced from the property and consequently none of the potential truck movements for the substantial amount of fill required was included in the assessment of traffic network effects. Consequently, the allowance for clean fill to be trucked to site should be removed or the condition should clearly specify the number of traffic movements associated with the importation of clean fill given the assumed heavy vehicle movements during the construction phase.

Relief Sought – Condition 30 be deleted in its current form and replaced with the words – *No clean fill can be trucked onsite given the applicant's intention that all required clean fill and required roading aggregate will be sourced on the property.*

### **Condition 38 – Studio Access Road / Road Safety Audit**

Reasons for the appeal – the Condition is ineffectual as a consent condition.

Reasons for the views expressed – this relates to the part *Action taken*. The current wording of this part of the condition requires a response back to HDC for "*any significant and serious rated matters in the RSA*", but RSA guidelines require a response to **every** issue raised. Further it does not allow HDC to determine whether the response is adequate.

Relief Sought – the final paragraph be amended to read – *For every issue raised in the RSA, specific response back to the HDC Engineering and Planning Teams must be given who will then determine at their sole discretion that every issue raised has been adequately addressed through the views and opinions of the HDC Road Safety Engineer.*

#### ***Condition 40 - Studio Access Road***

Reasons for the appeal – the Condition is ineffectual as a consent condition.

Reasons for the views expressed – The reference in the last sentence of the condition to *preventing uncontrolled access* is undefined and so very unclear and requires clarification and amendment. The Applicant's traffic network effects assessment gave no consideration to the traffic volume impacts should the Outfoxed access road traffic be allowed to use the Parkhill Road entrance to the film production studio. Accordingly, none of this traffic should be able to use the access from Parkhill Road.

Relief Sought - That the last sentence in condition 40 be deleted and a new condition be added after existing condition 42 stating - *Any activities associated with the Outfoxed access road (including Outfoxed, the Clifton County Cricket Club and Outfield Music Events etc) are prohibited from using the Parkhill Road entrance and that compliance with this condition be given effect by CCTV number plate recognition technology which once operational must be supplied to HDC, for compliance purposes, 3 monthly, together with number plate details of all vehicles given legitimate access through the security point / barrier arm to the Screen Production Studio access road.*

#### ***Condition 45 Parkhill Road Upgrading***

Reasons for the appeal – the condition in its current form does not adequately mitigate against the more than minor adverse effects of the activity on my property and self as an identified directly affected person under Section 95E of the Resource Management Act 1991.

Reasons for the views expressed – A number of submitters requested a noise-reducing surface such as asphaltic-concrete be used for the upgrade of Parkhill Road south of Raymond Road, to reduce the adverse noise effects of increased traffic movements. This is seen by residents as the most effective guaranteed mitigation which will not rely on the behaviour of other parties, which is the case with the Traffic Management Plan. This was endorsed by HDC's acoustic expert (Mr Styles) in his evidence for the hearing. He stated at paragraph 4.21(c):

*Asphalt pavement – I consider that an asphaltic concrete pavement will reduce the traffic noise by 2-4dB compared to a coarse (Grade 2/3) chip seal surface. An asphalt surface will reduce the noise levels from those I predict above by approximately 1-2dB. This is potentially a noticeable reduction in noise level.*

Relief sought – Add an additional sentence to the end of condition 45 as follows: *The engineering plans shall provide for the upgrade of Parkhill Road south of Raymond Road to include Open Graded Porous Asphalt (OGPA).*

### ***Condition 48 - Parkhill Road upgrading***

Reasons for the appeal – the condition in its current form is insufficient to adequately mitigate against the more than minor adverse effects of the activity on my property and self as an identified directly affected person under Section 95E of the Resource Management Act 1991.

Reasons for the views expressed – our property at 227 Parkhill Road has a non-conforming sight line to the east and with the increased traffic volumes this could become a serious traffic safety issue. This can be mitigated by reducing the hump in the road to create the necessary sight line and so the condition should not refer to the inability to achieve those sight lines. There are no other access sight lines on Parkhill Road that would not similarly be achieved if required and so this condition is superfluous.

Relief Sought – That condition 48 in its current form be deleted and replaced with – *All properties on Parkhill Road south of the intersection with Raymond Road must have complying road safety sight lines as part of the upgrade of Parkhill Road.*

### ***Condition 53***

Reasons for the appeal – the condition requires clerical correction.

Reasons for the views expressed – there appears to be a typographical error in the condition cross-reference.

Relief Sought - Replace the reference to *Condition 51* with reference to *Condition 52*.

### ***Condition 55***

Reasons for the appeal – the condition fails to adequately address safety risks at the East Road/Parkhill Road intersection raised by experts in the consent hearing and post hearing conference.

Reasons for the views expressed – Mr Smith (HDC expert) and Mr Durdin (submitter expert) raised safety concerns regarding this intersection in the hearing and post-hearing conference which were not resolved and need to be specifically addressed in the design for the intersection.

Relief Sought – Add before the last sentence: *These engineering designs must specifically address the safety concerns identified by Mr Smith and Mr Durdin in the hearing and post hearing conference, and to record how these have been addressed.*

**Condition 61**

Reasons for the appeal – this condition is silent on who bears the cost of the works.

Reasons for the views expressed – Condition 47 is explicit that the works required by that condition are at the consent holder's cost. Condition 61 should be amended so that it is clear that all public roading improvements required to address the effects of this activity are completed at the consent holder's cost.

Relief Sought – add in line, after the word *completed*, the following words –, at *the consent holder's cost*.

**Condition 66**

Reasons for the appeal – the Condition is ineffectual for effective compliance monitoring to occur.

Reasons for the views expressed – the times specified in condition 68 are at odds with those in condition 66 and so the practical implementation of these conditions and associated compliance monitoring will be problematic.

Relief Sought – modify Condition 66 to be consistent with Condition 68 which is for access to the site to only be allowed from 8.00 am to 1.00 pm on Saturday.

**Condition 71 – Hours of Operation**

Reasons for the appeal – the condition in its current form is insufficient to adequately mitigate the more than minor adverse effects of the activity on my property and self as an identified directly affected person under Section 95E of the Resource Management Act 1991.

Reasons for the views expressed – the hours of operation of the screen production studio are fundamental to the degree of adverse effects on directly affected persons including myself. Mr Styles (the acoustic expert engaged by HDC) stated:

- At paragraph 4.14 of his final report: *In my view (based on his projected noise levels stated in the table on page 190 of the Officer's Report), these noise levels are high. They are high enough to cause disruption and sleep disturbance in the morning peak hour and will result in a significant change in the noise environment across the day generally and especially in the morning peak hour.*
- At para 4.19 of his final report: *I consider that the 6am start is likely to generate noise levels that will be dominant and intrusive in the hour between 6am and 7am. Sleep disturbance effects are likely. This hour is recognised by the District Plan as*

*'night-time' and as such, I consider that the noise effects are greater than they would be during the daytime at the same decibel level.*

- In his report dated 22 May 2022 he states: "... *traffic movements in the hour before 7am would need to be controlled to be less than approximately 10-15 light vehicle movements and no heavy trucks in order to comply with the permitted noise limits applying in the night-time control period.*"
- The applicant's acoustic expert Mr Peakall endorsed the concern regarding noise before 7.00am: *In his evidence para 58 he stated "...I do agree with Mt Styles that such traffic noise levels before 7am may be problematic. Therefore, the management of operational hours and early morning traffic movements to mitigate this would be beneficial and warrants further consideration by the applicant."*

The conditions included in the decision failed to address these findings and recommendation (despite the attempts of the Hearing Commissioner to address this issue through the Transportation Management Plan). Absolute clarification of the hours of operation of the Screen Production Studios is essential before any resource consent is granted and finalised.

Due to these shortcomings the adverse effects on various directly affected persons are without doubt more than minor and must be adequately addressed in the conditions.

Relief Sought – that this condition be amended to read as follows: *The hours of Operation of the Screen Production Studio activities authorised by this consent, other than in emergencies, shall be limited to the hours of 7:00am to 6:00 pm Monday to Saturday inclusive with access to the site (being the security point / barrier arm referred to in condition 42) prohibited prior to 7am. No consented activities shall take place outside of these hours or on Public Holidays.*

### **Condition 72 - Transportation Management Plan**

Reasons for the appeal – parts of the condition are ineffectual as a consent condition.

Reasons for the views expressed - several parts of the condition require definitions and processes to improve clarity and compliance monitoring effectiveness.

Relief Sought –

- That the term *peak hours* be defined in the first bullet and the phrase *reasonable level* likewise be defined in the second bullet with both definitions defined as - *peak hours to have the same meaning as restricted hours as referred to in part a. and reasonable level to be defined as any level at or below 40 dB.*



- That the reference to terms and conditions of staff employment contracts referred to in c. be amended to - *require* instead of *requesting* and the words *with HDC having the ability to sign such contracts at any stage they may request* being inserted after the end of the second bullet point sentence.

#### ***Condition 76***

Reasons for the appeal – parts of the condition are ineffectual as a consent condition.

Reasons for the views expressed - a part of the condition requires definition to improve clarity and compliance monitoring effectiveness.

Relief Sought – that the term *heavy commercial vehicle* be defined in accordance with the definition of the New Zealand Transport Agency being – *any vehicle with a gross mass of more than 3,500 kilograms.*

#### ***Condition 83***

Reasons for the appeal – the condition is inconsistent with other conditions which limit hours of operations.

Reasons for the views expressed – part of the condition is inconsistent with the operating hours and should be amended.

Relief Sought – replace *8:00pm* with *6:00pm*.

#### ***Condition 85***

Reasons for the appeal – parts of the condition are ineffectual as a consent condition.

Reasons for the views expressed - a part of the condition requires definition to improve clarity and compliance monitoring effectiveness.

Relief Sought – That the term *ambient / background noise levels* be established immediately and specified in the conditions based on the findings of the HDC's acoustic expert and so consequently the last bullet in this condition be changed to read: *An assessment of the ambient/ background noise levels at these receiver locations being noise levels at or below 40 dB.*

#### ***Condition 86***

Reasons for the appeal – This condition may become partially superfluous and so should be amended accordingly if the amendment to Condition 85 above is adopted. If it is not adopted, then the condition is ineffectual as a consent condition as it allows too much discretion at the hands of the consent holder.

Reasons for the views expressed – The method of measuring ambient and noise from travelling to and from the site must be independently assessed and if appropriate endorsed by the HDC as being fit and proper as the consequences of these are critical to all parties.

Relief Sought – add the words, *for their consideration and approval*, after the words *or nominee*.

### ***Condition 87 – Review condition***

Reasons for the appeal – parts of the condition are ineffectual as a consent condition.

Reasons for the views expressed –

- The matters subject to review of the conditions are fundamental as concern noise (being a major adverse effect consideration for directly affected persons) and traffic safety which is an issue for all road users impacted by the granting of this consent. Therefore, there should be a corresponding mandatory requirement for Council to review the conditions of the consent at the times specified.
- The reference to *adverse noise effect* in a. requires definition so it is clear for all concerned what is considered *adverse*.

Relief Sought -

- That the word *may* in line one be replaced with the word *will*.
- That *adverse* be defined as any *dB reading that exceeds the limits specified in amended Conditions 72 & 85*.

7 I **attach** the following documents\* to this notice:

- (a) a copy of the relevant decision (attachment)
- (b) a list of names and addresses of persons to be served with a copy of this notice – refer page 12
- (c) a copy of my evidence presented at the Hearing (attachment)
- (d) a copy of the acoustic report and subsequent evidence of Mr Styles (attachment)

\*These documents constitute part of this form and, as such, must be attached to both copies of the notice lodged with the Environment Court. The appellant does not need to attach copies of these documents to copies of the notice served on other persons if the copy served lists these documents and states that copies may be obtained on request from the appellant.

Dated 31 January 2023



.....  
Andrew Macniven Caseley

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**Note to appellant**

You may use this form for any appeal for which you cannot identify a prescribed form.

You must lodge the original and 1 copy of this notice with the Environment Court. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

**Advice to recipients of copy of notice of appeal***How to become party to proceedings*

If you wish to become a party to the appeal, you must,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (*see* form 38).

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

*Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch

**List of names and addresses of persons to be served with a copy of this  
notice**

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