

under: the Resource Management Act 1991

in the matter of: application RC210098 for land use consent to install
and operate a Gravity-Based Recreation Activity within
the Conical Hill Reserve, Hanmer Springs

between: **Hanmer Springs Thermal Pools & Spa**
Applicant

and: **Hurunui District Council**
Consent Authority

Memorandum of counsel for Applicant

Dated: 14 July 2022

REFERENCE: J M Appleyard (Jo.Appleyard@chapmantripp.com)

Chapman Tripp
T: +64 3 353 4130
F: +64 3 365 4587

60 Cashel Street
PO Box 2510, Christchurch 8140
New Zealand

www.chapmantripp.com
Auckland, Wellington,
Christchurch



MEMORANDUM OF COUNSEL FOR APPLICANT

May it please the Commissioner:

- 1 This memorandum responds to the memorandum filed by Gerard Cleary on behalf of the Appellant dated 12 July 2022 (*Appellant's memorandum*) on the issue of disclosure of documents beyond the level provided by the Department of Conservation (*DOC*) to date.
- 2 As a general comment, the Appellant's memorandum does not present a full picture of communications between the parties.
- 3 Below is a response to Mr Cleary's specific comments by reference to the paragraph numbers he has used as set out below.

Paragraph 9

- 4 The Lizard Management Plan (*LMP*) is a document required by the *DOC* part of its process of granting the wildlife permit. It is not a document required by the conditions of consent.
- 5 To date, the *DOC* has provided only a redacted copy of the *LMP* to the appellants. This is so those with criminal intent do not come into possession of information as to population and habitat of at risk lizard species.
- 6 On 20 May 2022 Mr Cleary requested "*all key documents associated with the Wildlife Permit issued by the Department of Conservation.*"
- 7 On 24 May 2022 I replied:

As already advised at mediation, the final lizard management plan (which includes an ecological impact assessment and details of the covenant) will be provided when you advise the name of an independent expert witness, with appropriate qualifications in herpetology, who agrees to abide by the expert code of conduct and is prepared to engage in witness caucusing. When such a witness is identified, the lizard management plan will be provided directly to that witness by Dr Mandy Tocher to facilitate the expert caucusing. Commercially sensitive details of the covenant will be redacted.

The wildlife permit approval letter and wildlife permit are **attached**. A schedule identifying the location of rough geckos has been redacted (p9 of the permit), to protect the location of the lizard habitat. This is because there is a risk of members of the public finding out the location of the lizard habitat and poaching the lizards, or damaging the habitat. An un-redacted permit can be provided to the independent expert witness, when that witness is identified.

- 8 This email chain is attached as Annexure 1.

- 9 On 2 June 2022 a reporting memorandum of counsel as to planning toward a hearing was filed with the Court. As noted at paragraph 2 of that memorandum, it was filed on behalf of the Respondent after conferring with counsel for the Appellant and myself. At paragraph 14 the expertise and qualifications of Professor Ogilvie are queried and whether his evidence relates to lizards at all.
- 10 Relevantly, at paragraph [25] the parties proposed the following sequencing for expert conferencing to occur:
- (a) Herpetologists conferencing to be completed no later than 18 July 2022. **This is subject to confirmation that Professor Ogilvie considers he has the appropriate qualifications and independence to participate in conferencing on this topic;**
[...]

[Emphasis added]

- 11 Neither the Applicant nor Respondent have received any confirmation from Professor Ogilvie that he has the appropriate qualifications and independence to participate in conferencing on herpetology, nor that he agrees to abide by the expert code of conduct. Once that confirmation is given the LMP will be provided to him subject to the comments below.

Paragraph 11

- 12 The QEII conservation covenant has been secured by the Applicant over rough gecko habitat on private land and covers 6 hectares. This is three times as large as the entire Flyride proposal's footprint, and at least 42 times as large as the area of rough gecko habitat affected by the Flyride proposal.
- 13 There is a need for confidentiality around the location of the QEII conservation covenant. There are two reasons for this:
- 13.1 there is a risk of members of the public finding out the location of the lizard habitat and poaching the lizards, or damaging the habitat; and
- 13.2 the QEII covenant is on private land with a private landowner who do not want their property to be a target for those with criminal intent.

- 14 I trust this clarifies why the exact location of the QEII covenant has not been released.

Dated: 14 July 2022

A handwritten signature in blue ink, appearing to read "Jo Appleyard", is centered on the page. The signature is written in a cursive style with a large initial 'J'.

Jo Appleyard
Counsel for Hanmer Springs Thermal
Pools & Spa

Aime Green

From: Kirsty Jacomb
Sent: Tuesday, 24 May 2022 9:03 AM
To: Gerard Cleary
Cc: Ann Brower; Jo Appleyard; Elizabeth Everingham; Cedric Carranceja
Subject: RE: Friends of Conical Hill v Hurunui District Council (ENV-2022-CHC-007) [BUD-LIVE.FID1169968]
Attachments: Approval Letter - Hurunui District Council - [93084-FAU].pdf; Authority - Hurunui District Council - [93084-FAU]_Redacted.pdf

Dear Gerard,

We refer to your emails below.

As already advised at mediation, the final lizard management plan (which includes an ecological impact assessment and details of the covenant) will be provided when you advise the name of an independent expert witness, with appropriate qualifications in herpetology, who agrees to abide by the expert code of conduct and is prepared to engage in witness caucusing. When such a witness is identified, the lizard management plan will be provided directly to that witness by Dr Mandy Tocher to facilitate the expert caucusing. Commercially sensitive details of the covenant will be redacted.

The wildlife permit approval letter and wildlife permit are **attached**. A schedule identifying the location of rough geckos has been redacted (p9 of the permit), to protect the location of the lizard habitat. This is because there is a risk of members of the public finding out the location of the lizard habitat and poaching the lizards, or damaging the habitat. An un-redacted permit can be provided to the independent expert witness, when that witness is identified.

Kind regards
Kirsty

KIRSTY JACOMB

SOLICITOR

Chapman Tripp

D: +64 3 353 0398

LEGAL ADMINISTRATOR: Aimé Green | D: +64 3 353 0344

www.chapmantripp.com

From: Gerard Cleary <gerard.cleary@ah.co.nz>
Sent: Friday, 20 May 2022 4:28 PM
To: Jo Appleyard <Jo.Appleyard@chapmantripp.com>; Kirsty Jacomb <Kirsty.Jacomb@chapmantripp.com>
Cc: Ann Brower <ann.brower@canterbury.ac.nz>
Subject: RE: Friends of Conical Hill v Hurunui District Council (ENV-2022-CHC-007) [BUD-LIVE.FID1169968]

Jo/ Kirsty

Cedric has confirmed that the Council does not have any of the relevant documents outlined below, so grateful if you could attend to the request.

As a point of clarification, Professor Brower has advised that the reference to environmental impact assessment should instead read ecological impact assessment.

Kind regards

Gerard Cleary
Partner

| DDI: +64 3 364 3809 | MOB: +64 21 227 5500



Anthony Harper



Proud to support the payment of the Living Wage through our supply chain

Level 9, Anthony Harper Tower, 62 Worcester Boulevard, PO Box 2646, Christchurch, 8140, Tel: +64 3 379 0920 Fax: +64 3 366 9277
Level 6, 66 Wyndham Street, PO Box 2646, Auckland, 1140, Tel: +64 9 920 6400 Fax: +64 9 920 9599

www.anthonyparker.co.nz

From: Gerard Cleary

Sent: Friday, 20 May 2022 3:42 PM

To: 'Elizabeth Everingham' <Elizabeth.Everingham@buddlefindlay.com>

Cc: Jo Appleyard <Jo.Appleyard@chapmantripp.com>; Kirsty Jacomb <Kirsty.Jacomb@chapmantripp.com>; Cedric Carranceja <cedric.carranceja@buddlefindlay.com>; 'Ann Brower' <ann.brower@canterbury.ac.nz>

Subject: RE: Friends of Conical Hill v Hurunui District Council (ENV-2022-CHC-007) [BUD-LIVE.FID1169968]

Thanks Elizabeth

Advice from Professor Brower is that, for the purposes of finalising the memorandum required by next Friday 27 May 2022, it is necessary to sight all key documents associated with the Wildlife Permit issued by the Department of Conservation.

We anticipate the key documents to include an environmental impact assessment (or similar), any DOC reports, the final lizard management plan and full details of the conservation covenant.

We undertake of course to ensure that, unless otherwise agreed, these documents will be treated in confidence and will only be distributed to relevant technical witnesses appearing on behalf of the Appellant.

Appreciate a prompt response to the above request.

Kind regards

Gerard Cleary

Partner

| DDI: +64 3 364 3809 | MOB: +64 21 227 5500



Anthony Harper



Proud to support the payment of the Living Wage through our supply chain


www.anthonharper.co.nz

From: Elizabeth Everingham <Elizabeth.Everingham@buddlefindlay.com>
Sent: Monday, 16 May 2022 3:50 PM
To: Kelly, Karina <Karina.Kelly@justice.govt.nz>; maddy.brownlee@justice.govt.nz
Cc: Gerard Cleary <gerard.cleary@ah.co.nz>; Jo Appleyard <Jo.Appleyard@chapmantripp.com>; Kirsty Jacomb <Kirsty.Jacomb@chapmantripp.com>; Cedric Carranceja <cedric.carranceja@buddlefindlay.com>
Subject: Friends of Conical Hill v Hurunui District Council (ENV-2022-CHC-007) [BUD-LIVE.FID1169968]

Hi Karina and Maddy

Please find **attached** a scanned copy of the Mediation Heads of Agreement in relation to the above matter.

Kind regards
Elizabeth



Elizabeth Everingham (she • her) ⓘ
Solicitor
83 Victoria Street, PO Box 322, Christchurch 8140
DDI • +64 3 371 3508
elizabeth.everingham@buddlefindlay.com

Buddle Findlay produces a range of topical legal updates. If you would like to subscribe please [click here](#).
www.buddlefindlay.com

This email (including any attachments) is confidential and contains information which may be subject to legal privilege. If you have received this email in error, you may not read, use, copy, or distribute any part of it or disclose its content or existence. Please notify the sender immediately and delete all copies of this email, including any attachments, from your system.

This email from Anthony Harper is intended solely for the use of the addressee and may contain information that is confidential or subject to legal professional privilege. If you receive this email in error please immediately notify the sender and delete the email.