

**UNDER THE** Resource Management Act 1991 ("Act")

**IN THE MATTER OF** An appeal under s.120 of the Act

**BETWEEN** **FRIENDS OF CONICAL HILL INCORPORATED**

Appellant

**AND** **HURUNUI DISTRICT COUNCIL**

Respondent

**HANMER SPRINGS THERMAL POOLS**

Applicant

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**NOTICE OF APPEAL BY THE FRIENDS OF CONICAL HILL INC  
10 MARCH 2022**

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**Christchurch**  
Counsel acting: Gerard Cleary  
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**TO: The Registrar  
Environment Court  
Christchurch**

**AND TO: The Respondent & Applicant**

**AND TO: Submitters**

### **Notice of Appeal**

- 1 This is an appeal against decision by the Respondent to grant resource consent to Hanmer Springs Thermal Pools and Spa (the Applicant) to install and operate a gravity-based recreation activity (Flyride) at Conical Hill Reserve – Conical Hill Road and 54 Lucas Lane, Hanmer Springs, Hurunui (RC210098).
- 2 Friends of Conical Hill Incorporated (FOCH) is the successor to an unincorporated group which made a submission on the Flyride Application.
- 3 FOCH comprises the following original submitters to the Application (\* below are “original submitters”) and other concerned citizens (without\* connotes these members attended meetings and briefings with the unincorporated group):
  - (a) Prof. Ann Brower\*
  - (b) Mr Ross Carter\*
  - (c) Mr Gavin Martin\*
  - (d) Mr David Rodley\*
  - (e) Ms Celia Rodley\*
  - (f) Mr Jeff Dalley\*
  - (g) Ms Sheri Weinberg\*
  - (h) Ms Anne Carter\*
  - (i) Mr Stephen Carter\*
  - (j) Ms Ashleigh Taylor
  - (k) Ms Shannon Taylor
  - (l) Marin Marinov
  - (m) Adam Jakes
  - (n) Jo Adams
  - (o) Wayne Hood
- 4 The unincorporated Friends of Conical Hill collective shared a common purpose to oppose the Flyride Application, seeking its rejection. The group attended public meetings together and agreed to lodge submissions both individually and collectively against the Application, which they did.
- 5 Submitters in opposition to the Flyride Application raised the following concerns, among others:
  - (a) Concern for loss of historic heritage value of Conical Hill

- (b) Concern for the native, rare, at-risk, and endangered herpetofauna resident on the reserve
- (c) Concern for the native falcons making use of the reserve
- (d) Concern for the loss of 'natural quiet' of an iconic and well-loved reserve
- (e) Concern for visual impacts on the reserve
- (f) Concern from local residents for loss of privacy
- (g) Concern from local residents for noise
- (h) Parking and how it might affect access for emergency fire and ambulance vehicles to local homes on narrow streets

**No prohibited trade competition purposes**

6 FOCH is not a trade competitor for the purposes of s. 308D of the Act.

**Decision**

7 The Decision was made by the Hurunui District Council (HDC) through an independent commissioner on 18 February 2022.

8 FOCH received notice of the Decision on 18 February 2022.

**Scope of appeal**

9 FOCH appeals the entirety of the Decision.

**Land affected**

10 The Application relates to land comprising the Conical Hill Reserve, in Hanmer Springs.

**Reasons for the appeal**

11 The general reasons for the appeal include that the Decision to grant consent to the Flyride proposal:

- (a) Is inappropriate because it fails to protect a 'significant habitat of indigenous fauna', under s. 6c of the Act, most notably the site of the proposal contains four species of native herpetofauna, of which one is nationally endangered and 3 are at risk. Conical Hill Reserve also is a habitat for native falcons;
- (b) Fails to protect 'historic heritage' under s. 6f of the Act, as Conical Hill and its walkway are central to the heritage and historic fabric of Hanmer Springs. The Flyride proposal will result profound changes to the natural and historic character of the Conical Hill Reserve, resulting in effects to the Hill as an experiential whole that will be significant;
- (c) Is erroneous in accepting that the compensation measures offered by the Applicant form part of the assessment of whether the effect is significant

or not and, as a consequence, errs in concluding that the Applicant did not need to consider alternative sites pursuant to the Fourth Schedule to the Act. More specifically:

- (i) Compensation does not fit within the avoid-remedy-mitigate (ARM) hierarchy of the RMA. Offset was added as a 4<sup>th</sup> option in 2017, only when none of the first three is possible. Compensation, by definition, neither offsets nor mitigates the effect for which it compensates. Compensation accepts that there will be an effect, and offers compensatory (not remedial) measures.
- (ii) Accordingly, to include compensation in the assessment of whether the effects of the proposal will be significant or not circumvents the hierarchy of the RMA.

- (d) Erroneously considers '*all measures*' offered as per under s. 104(1)(ab) of the Act, even those measures are demonstrably inconsistent with regional, national, and international provisions regarding the adequacy and/or appropriateness of biodiversity compensation and lizard protection;
- (e) Does not address concerns of submitters, most notably in the matters of: geckos, falcons, noise, privacy, and amenity values of Conical Hill Reserve itself;
- (f) Will not enable social and cultural well-being of local residents and generations of future visitors to the iconic Conical Hill; and
- (g) Is inconsistent with the purpose of Conical Hill Reserve and the provisions of the Reserves Act 1977.

12 In addition to the above, the Decision is flawed on the basis that consent was granted without key documents being made available to the Commissioner, in particular the Lizard Management Plan and associated Covenant proposed by the Applicant to address inevitable fatalities to, and habitat disturbance of, endangered and at risk indigenous fauna on Conical Hill.

#### **Relief sought**

- 13 FOCH seeks:
- (a) The Application to be declined; and
  - (b) Costs.

#### **Alternative dispute resolution**

14 FOCH agrees to be open to mediation or other alternative dispute resolution of the proceeding.

**Attachments**

- 15 The following documents are attached to this notice:
- (a) a copy of the Decision; and
  - (b) a list of names and addresses of persons to be served with a copy of this notice.
- 16 This Notice of Appeal is issued by **GERARD JOSEPH CLEARY**, Solicitor for the above named Appellant of the firm of Anthony Harper.
- 17 The address for service of the above named Appellants is:

Anthony Harper Lawyers,  
  
62 Worcester Boulevard,  
  
PO Box 2646,  
  
Christchurch  
  
Attention: Gerard Cleary  
  
[gerard.cleary@ah.co.nz](mailto:gerard.cleary@ah.co.nz)



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G J Cleary

10 March 2022

## **ADVICE TO RECIPIENTS OF NOTICE**

How to become party to proceedings

You may be a party to the appeal if you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

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).

How to obtain copies of documents relating to appeal or inquiry

The copy of this notice served on you does not attach a copy of the relevant application. This document may be obtained, on request, from the Appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department of Courts in Christchurch.

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

**The Christchurch address** of the Environment Court is:

Justice and Emergency Precinct

20 Lichfield Street

Christchurch

8013

Telephone: (03) 3650905 or 03 3534434

Facsimile: (03) 365 1740