

Before an Independent Hearing Commissioner at Hurunui District Council

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

Reply submissions on behalf of Hanmer Springs Thermal Pools &
Spa

Dated: 10 December 2021

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REPLY SUBMISSIONS ON BEHALF OF HANMER SPRINGS THERMAL POOLS & SPA

May it please the Commissioner

INTRODUCTION

- 1 These submissions set out the position of Hanmer Springs Thermal Pools & Spa (*HSTPS*) on matters raised during the hearing in relation to its application for land use consent to install and operate a gravity-based recreation activity within the Conical Hill Reserve, Hanmer Springs (*Flyride*).
- 2 HSTPS has amended the proposed conditions in response to these matters, where it considers it is appropriate to do so. An updated set of proposed conditions is included at **Appendix A** to these submissions.
- 3 Other topics raised at the hearing and not considered in these submissions are considered to have been adequately addressed at the hearing, through evidence and questions by the Commissioner. These will not be considered again here.

Key considerations

- 4 In brief, the key live matters for the Commissioner's consideration relate to:
 - 4.1 effects on the environment, including:
 - (a) positive benefits;
 - (b) amenity considerations;
 - (c) effects on wildlife;
 - 4.2 the traffic joint witness statement and, in particular, whether requiring pedestrian improvements to the Conical Hill access prior to opening is justified;
 - 4.3 consideration of alternatives; and
 - 4.4 the adequacy of proposed conditions, primarily associated with:
 - (a) traffic; and
 - (b) herpetofauna.

Other matters

- 5 Other matters that arose during the hearing, and which it is appropriate that we address, are:
- 5.1 legality of the 34 Acheron Heights access;
 - 5.2 effects on horses;
 - 5.3 the relevance of the Reserves Act 1977 and the Conical Hill Reserves Management Plan; and
 - 5.4 whether section 6(f) of the RMA is in play.

EFFECTS ON THE ENVIRONMENT

Legal considerations

- 6 The Commissioner is required to have regard to “any actual or potential effects on the environment of allowing the activity”.¹ The effects associated with the Flyride are discussed in detail in the Assessment of Environmental Effects (*AEE*), evidence of Jane Whyte, and the evidence of various experts on behalf of HSTPS. For the purpose of these submissions, we focus on the main effects in contention at the hearing.

Consideration of effects

- 7 The RMA is not a “no effects” statute. There is no requirement that all effects be addressed by way of mitigation, offset, or compensation. The High Court in *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council (No 2)* stated:²

It is clear that Parliament did not intend the RMA to be a zero sum game, in the sense that all adverse effects which were unavoidable had to be mitigated or compensated.

Evidence from submitters

Submitters with expertise

- 8 Some submitters introduced themselves by reference to their qualifications, then proceeded to proffer opinion (e.g. ecology/offsetting,³ noise/health and safety⁴). These submitters did not agree to comply with the Code of Conduct, and acknowledged they were presenting as lay people. We understand these submitters reside in close proximity to the site, and therefore their

¹ Resource Management Act 1991, section 104(1)(a).

² *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council (No 2)* [2013] NZHC 1346, [2013] NZRMA 293 at [52].

³ Dr Ann Brower.

⁴ Elizabeth Bermingham. Ms Bermingham paid her children \$1 to scream as loud as they could at the location of the stop station. She used that as a basis to make various assertions about likely noise and the impact of noise on people.

self-interest in the outcome is particularly high. Accordingly, it is submitted that little evidential weight can be given to these submissions and that their evidence must be treated with the utmost caution.

Expert versus submitter input

- 9 The topics of prime concern for submitters were:
- 9.1 amenity considerations (noise, visual and traffic); and
 - 9.2 effects on wildlife.
- 10 As a general comment, it was clear that many submitters were concerned about effects that – on the expert evidence before you – are not expected to materialise. If there are unanticipated effects, the conditions of consent can be reviewed pursuant to the proposed s128 condition.
- 11 We submit that the Commissioner can, and should, put considerably more weight on the opinions expressed by experts who have presented evidence, as contrasted to layperson’s views expressed by submitters. That is particularly so where submitters have an inherent interest in the outcome, given independent experts do not. Lay people may also ‘perceive’ effects on them whereas the role of experts is to objectively assess future realities.⁵
- 12 That is not to say that the submitters’ views should be discounted. It is fully acknowledged that their opinions are relevant considerations (but making a distinction between their perceptions of the Proposal which are not supported by the facts). As the Environment Court has stated,⁶ layperson views of the following matters are particularly relevant:
- 12.1 the identification of what comprises the amenity values of the area that are appreciated by them;
 - 12.2 how, in their view, the Project could affect those amenity values; and
 - 12.3 how, if adverse (in the sense of comprising a change to the current values enjoyed), it is considered those adverse effects might be mitigated.

⁵ *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66, “fears can only be given weight if they are reasonably based on real risk” (paragraph 193). Similarly, submitters concerns can only be given weight if they are based on factual evidence of effects.

⁶ *Panuku Development Ltd v Auckland Council* [2020] NZEnvC 24, at [90] and [91].

- 13 Again, HSTPS has been highly cognisant of the potential effects identified by submitters. It has adopted design techniques and proposed conditions which manage effects to be no more than minor. It has used considerable expertise across various topics to enable these outcomes. It has also proposed several conditions to directly address Council and submitter concerns.

Positive effects

- 14 As set out in our opening submissions, the Flyride has a number of positive effects that are important RMA considerations.⁷
- 15 Economic, social and recreational benefits associated with the Flyride include filling a "gap" in existing activities in the \$15 to \$100 price bracket, and bringing national and international attention to Hanmer Springs.⁸ Modelling indicates the Flyride will create 23 new jobs and inject \$4 million into the local economy in its first five years.⁹ The proposal – if consented – will also ensure Conical Hill receives much needed ongoing investment, and in the longer term will enable lizard populations to be maintained at higher levels than observed presently.¹⁰
- 16 Mr Fletcher, Managing Director of Hanmer Holiday Homes, spoke to the benefits he considers the Flyride would bring to Hanmer Springs. Of note, Mr Fletcher observed that feedback from tenants is that they want more activities to do in Hanmer Springs, if they are to keep coming back. In addition, Mr Fletcher considers the Flyride would extend the tourism season.
- 17 Friends of Conical Hill (*FoCH*) submitted that no weight should be given to Mr Abbot's expected revenue, as no independent economic analysis has been provided.¹¹ It is accepted that *more* weight would be given to the expected revenue if economic evidence were provided. But it cannot be seriously disputed that the Flyride will bring economic benefits to the region.
- 18 As noted in Mr Abbot's evidence, HSTPS is experienced in operating a world-class tourist attraction, as well as having considerable skill and expertise in developing and building new attractions. Tellingly, the Government have granted Hurunui District Council \$2.2 million from the Provincial Growth Fund (*PGF*) for the construction of a downhill amusement ride on Conical Hill. Key criterion for that funding included sustainable economic growth and creating

⁷ Opening legal submissions on behalf of Hanmer Springs Thermal Pools & Spa, dated 7 October 2021 at [16].

⁸ Evidence of Graeme Abbot dated 23 September 2021 at [51]-[56].

⁹ Evidence of Graeme Abbot dated 23 September 2021 at [56].

¹⁰ Te Tihi o Rauheia, Conical Hill Reserve Switchback™ project: Lizard Management Plan dated May 2021, at page 1.

¹¹ Submissions on behalf of Friends of Conical Hill at [4.3].

additional value. As Mr Abbot discussed at the hearing, the PGF process was vigorous, and required a comprehensive business case be put forward.

- 19 It is submitted that the Commissioner can proceed on the basis the proposal will bring social and economic benefit Hanmer Springs, and the Hurunui District more generally – consistent with the purpose of the RMA.¹²

Amenity affects

- 20 During the course of the hearing, the Commissioner heard from a number of submitters who live (or own property) in the vicinity of Conical Hill regarding their concerns about potential impacts on their current amenity.
- 21 The Act defines “amenity values” as meaning those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.¹³
- 22 The assessment of amenity values is therefore partly subjective by ascertaining the views of the residents who live nearby the proposed Flyride. Despite Mr Carter’s assertion that amenity is not capable of objective assessment, those views do need to be objectively scrutinised to determine whether they are reasonably held by reference to the District Plan and the experts’ assessment of the effects generated by the Proposal.
- 23 The objectives and policies of the Hurunui District Plan, along with the discretionary activity status of this Proposal, provide for activities that maintain and enhance amenity values.¹⁴
- 24 HSTPS acknowledges that for submitters, and the local community, this Proposal represents a change to their current amenity. However, as accepted by the Environment Court in *Yaldhurst Quarries*, a change to amenity does not mean that there is necessarily an adverse effect on amenity values, but rather the effect of the change must be evaluated.¹⁵
- 25 Change in the environment is a constant, particularly in areas like Hanmer Springs which is a popular tourist destination. Even so, while some changes to existing amenity cannot be avoided for a

¹² Resource Management Act, section 5(2).

¹³ Resource Management Act 1991, section 2.

¹⁴ Hurunui District Plan, Objective 4.1, Policy 4.21, and Policy 4.23.

¹⁵ *Yaldhurst Quarries Joint Action Inc v Christchurch City Council* [2017] NZEnvC 165 at [116].

recreational proposal such as the Flyride, the environmental effects of these changes can be, and will be, appropriately mitigated.

- 26 The key amenity effects of the Flyride of concern to the submitters are:
- 26.1 noise from users of the ride (both as experienced by residents and residents properties, and on the amenity and quality of the Conical Hill Reserve and its users) (and to a lesser extent, noise from the ride itself and noise from the generator);
 - 26.2 visual (both as experienced by residents and residents properties, and on the amenity and quality of the Conical Hill Reserve and its users); and
 - 26.3 traffic (relating to increased traffic movements and parking on residential amenity).
- 27 We discuss these matters below in terms of how HSTPS proposes to mitigate the Flyride's potential amenity effects through outcomes-focussed design measures and consent conditions.

Noise

- 28 At the outset, it is noted that the noise experts are agreed that the proposed conditions will appropriately limit and monitor any actual or potential noise related effects associated with the Flyride.

Residents and residential properties

- 29 In relation to noise impacts from users of the ride on residents and residential properties, Dr Jeremy Trevathan explained that the modelling undertaken to assess noise impacts was conservative. The modelling provides a 'worst case' scenario. The use of conservative modelling means that in almost all situations, noise impacts will be even lower than predicted.¹⁶

- 30 Dr Trevathan has proposed mitigation for the two spans (7 and 8) that have a line-of-site view to neighbouring dwellings. Dr Trevathan considers that slowing the ride as user's traverse those two spans is the best practicable option to limit the likelihood of users generating loud noises and thereby mitigate potential noise impacts on residents.

Conical Hill Reserve and its users

- 31 Vicki Barker, for FoCH, suggested that the impact on noise amenity is unable to be evaluated because baseline noise in the reserve has not been assessed. That is incorrect; one of the ambient measurement positions was by the stop station – i.e. within the

¹⁶ See Evidence of Dr Jeremy Trevathan at [77].

Reserve.¹⁷ Noise from nearby human activity was deliberately excluded from the ambient noise measurement – as the purpose was to quantify the ambient level of noise at the quieter times.¹⁸ Dr Trevathan confirms that trying to measure these one-off (i.e. sporadic) sounds while walking up and down the walkway would be difficult, and would not assist in providing an expert noise assessment.¹⁹

- 32 Notwithstanding the exclusion of human activity from the noise assessment, in paragraphs 7 and 8 of his summary statement Dr Trevathan describes the various ‘noise events’ sporadically experienced in the reserve currently – from the 53,000 walkers per year; and confirms that baseline noise is often higher and more frequent than noises associated with the Flyride is expected to be. The evidence is that there will be a “just noticeable” average noise level change.²⁰

Flyride noise

- 33 With regard to noise from the Flyride itself, one submitter²¹ suggested a noise assessment from the Switchback™ ride in Tennessee would have been helpful.
- 34 In the present circumstances, however, comparison to the ride in Tennessee is neither helpful nor relevant. As Dr Trevathan explained, Holmes Solutions have continued to develop and refine the Switchback™ technology since the installation of the ride in Tennessee.
- 35 The design of the rides are also very different. The ride in Tennessee is mainly on rail with very little on zipwire, whereas the Flyride is mainly on zipwire and has very little rail. The zipwire portions of the ride produce very little noise. There are also less junctions on the Flyride, which further reduces noise. Comparing the two rides is like comparing ‘apples with oranges’.
- 36 Notwithstanding the irrelevance of the Tennessee ride, Dr Trevathan has visited the Flyride test track at the Holmes Solutions warehouse in Hornby, Christchurch. Dr Trevathan observed and measured track / trolley noise. The measurements suggested noise from the track /

¹⁷ See section 2.4 of the Assessment of Environmental Noise Effects.

¹⁸ See email from Dr Jeremy Trevathan dated 13 October 2021, included in **Appendix B** of these submissions.

¹⁹ See email from Dr Jeremy Trevathan dated 13 October 2021, included in **Appendix B** of these submissions.

²⁰ Summary statement of Dr Jeremy Trevathan dated 7 October 2021, at [9].

²¹ Mr Ross Carter.

trolley will be lower than the existing ambient level at residential sites in the vicinity of the stop station.²²

Generator noise

- 37 Comments were made throughout the hearing about the lack of an assessment regarding noise from the diesel generator. Those comments were not accurate. The original noise assessment recorded that there might be mechanical equipment associated with the start and stop stations, which would need to be designed, installed and operated in compliance with District Plan noise limits at the site boundaries using standard good practice.²³
- 38 As discussed in Mr Abbot's evidence, the Flyride will be powered by a solar power generation system at the start station.²⁴ It will be supplemented by a small 'back-up' petrol generator, used only in unusual circumstances: when there is power loss or reduced power generation following periods of extended poor weather.²⁵
- 39 Dr Trevathan has advised that the nearest boundary to the start station is to the north, approximately 10 metres away. Dr Trevathan confirms that a small generator (which is what the Applicant intends to purchase) will be able to be selected and positioned so as to ensure compliance at the closest boundary.²⁶
- 40 For completeness, it is recorded that HSTPS has not yet purchased a generator for the Flyride (which was inferred by one submitter). That submitter may have been referring to a very large diesel generator purchased for the Thermal Pools complex earlier this year, which is much larger than what would be purchased as a back-up generator for the Flyride.

Summary

- 41 Overall, it is submitted that the slowing of the Flyride over the final two spans and the proposed conditions for the management and monitoring of noise associated with the construction and operation of the Flyride are appropriate. These measures will ensure that the concerns raised by the submitters are appropriately managed, and that the effects will be reasonable. The same applies for the generators compliance with the District Plan requirements.

²² Summary statement of Dr Jeremy Trevathan dated 7 October 2021, at [10].

²³ Original resource consent application, Appendix 4 at section 3.4, page 9.

²⁴ Evidence of Graeme Abbot dated 23 September 2021 at [59].

²⁵ Evidence of Graeme Abbot dated 23 September 2021 at [59].

²⁶ See email from Dr Jeremy Trevathan dated 13 October 2021, included in **Appendix B** of these submissions.

Visual impact

Residents and residential properties

- 42 The primary concern raised by residents in terms of potential visual effects relate to visibility of the stop station from nearby residential properties.
- 43 As Mr Milne explained, many of the visual effects of the Flyride can be remedied or mitigated over time, by “softening and settling” the area through revegetation landscaping. Proposed condition 13 will require planting between T7 and the stop station and the site boundary to the south. This includes the area between the stop station and the nearest residential properties.
- 44 Condition 13 also requires a pest and weed maintenance strategy outlining maintenance and monitoring to ensure the planting establishes successfully. As that area is currently weed infested, Mr Milne considers condition 13 will enhance the current amenity, while reducing the visual impact of the stop station.²⁷
- 45 Specific concerns were raised at the hearing in relation to visual and privacy impacts on 17 and 24 Oregon Heights, as the stop station can be viewed from the decks of these properties. Mr Milne undertook a site visit to these properties and confirmed that, in his expert opinion, proposed condition 13 will provide a high level of visual amenity to these properties. Further, that he is satisfied the landscaping undertaken pursuant to condition 13 will make it difficult to see into those properties. In other words, the concerns of those residents will be addressed (and mitigated) through the landscaping plan.

Conical Hill Reserve and its users

- 46 In terms of visual impact on the Conical Hill Reserve and its users, the landscape and visual amenity assessment concludes that:²⁸
- 46.1 the built form is unlikely to be noticeable from beyond the town centre (viewpoints 1 – 4);
- 46.2 while T7 and the stop station will be visible from in and near the town centre (viewpoints 5 – 7), the design ensures the Flyride is appropriate for the Conical Hill Reserve;
- 46.3 the “moderate” impact when viewing in close proximity (viewpoints 8 – 10) will be mitigated by the proposed landscaping; and

²⁷ Statement of evidence of Tony Milne dated 23 October at [27].

²⁸ This assessment is summarised in the statement of evidence of Mr Tony Milne at [25] – [27].

46.4 the design and colour of the poles will mitigate the visual impact on the Conical Hill Reserve and its users by ensuring the poles largely blend in with the treed setting.

47 I submit that the proposed landscaping conditions, in combination with the well-considered design of the Flyride, appropriately address the visual impacts on residents, the Conical Hill Reserve and its users. The effects will be reasonable and appropriately managed.

Traffic

48 Increased traffic movements and parking demand on residential streets also emerged as a key amenity concern. The three traffic experts have provided a joint witness statement which records an outline of what should be included in the consent conditions in order to address residential amenity related traffic concerns.²⁹

49 Following the traffic experts' conferencing, the planners (Ms Whyte and Ms Bewley) agreed on the wording of the proposed traffic conditions. All aspects of the considerations recommended by the traffic experts have been incorporated by the planners in this updated set of conditions.

50 The applicant accepts each condition, with the exception of condition 12 (which relates to footpath realignment). This is discussed in more detail in paragraphs [109] – [114] as it does not relate to residential amenity.

51 It is submitted that the comprehensive monitoring conditions, along with an s128 review condition, will identify and address parking related effects and provide confidence that parking related effects on residential amenity will be no more than minor.

Effects on wildlife

52 The Commissioner in Minute 4 asked the Applicant to address the following matters relating to effects on wildlife:

52.1 Discussion/assessment in terms of section 6(c) of the RMA (*item 1*);

52.2 The peer review of the Lizard Management Plan and whether changes are proposed (*item 2*);

52.3 A response to the issues raised about the breeding of eastern Kārearea/falcons in the area and whether this changes any views expressed (*item 3*); and

²⁹ Joint witness statement relating to traffic monitoring, dated 27 October 2021.

52.4 The processes associated with the Wildlife Act, including the permits and mitigation package (*item 4*).

- 53 Dr Tocher addressed items 2, 3 and 4 in detail in her response to the peer review dated 5 November 2021, and right of reply dated 15 November 2021. Those matters will not be repeated here. Instead, these submissions address item 1, provide further analysis of the proposal against the relevant planning provisions, and make comment on one submitters' concern regarding wildlife permit compliance.
- 54 Before moving on to address item 1, it is recorded that HSTPS strongly refutes that it seeks to "oust" the Commissioner's jurisdiction, as asserted by FoCH.³⁰ The Hurunui District Plan explicitly states that it aims not to unnecessarily duplicate habitats already protected under other legislation and authorities.³¹ As the Wildlife Act 1953 provides for an "absolute protection" of all indigenous lizard species, and the Department of Conservation (*DOC*) have specific technical experience in the protection and conservation of wildlife, the applicant considers that the wildlife authorisation is the best process for any actual and potential effects of the Flyride in lizards to be addressed and managed through.
- 55 The Commissioner is entitled to turn his mind to whether there are other authorisations and/or others with specific expertise and satisfy himself that legislation exists and will appropriately manage effects. Provided that the thought process is undertaken, he has not ignored relevant matters or delegated his functions to another authority.³²

Assessment in terms of s 6(c) RMA

- 56 As outlined in our opening submissions, where a plan has been prepared with appropriate regard to Part 2 and with a "*coherent set of policies designed to achieve clear environmental outcomes*", consent applications should be assessed with regard to the provisions of the plan and may leave little room for Part 2 to influence the outcome.³³ Where there is doubt over the preparation of a plan appropriately reflecting the provisions of Part 2 it will be necessary to refer back to Part 2.³⁴
- 57 In this case, the CRPS and Hurunui District Plan were both prepared in accordance with Part 2 of the RMA and consideration against those plans is therefore the primary framework for assessment of

³⁰ Submissions on behalf of Friends of Conical Hill, at [5.25].

³¹ Hurunui District Plan, Policy 13.3, explanation section.

³² *Southern Alps Air Ltd v Queenstown Lakes District Council* [2008] NZRMA 289 at [78].

³³ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [82].

³⁴ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [75].

the Application.³⁵ For completeness, however, these submissions address section 6(c) considerations.

- 58 Section 6(c) RMA identifies the protection of significant indigenous fauna as a matter of national importance. The word protection is not defined in the RMA, but courts interpret it as meaning to “keep safe from harm, injury or damage”.³⁶
- 59 The following passage of the High Court in *NZ Rail v Marlborough District Council* provides further explanation as to the correct application of section 6 matters:³⁷

The recognition and provision for the preservation of the natural character of the coastal environment in the words of s 6(a) is to achieve the purpose of the Act, that is to say to promote the sustainable management of natural and physical resources. That means the preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management. It is not an end or an objective on its own but is accessory to the principal purpose ... It is certainly not the case that the preservation of natural character is to be achieved at all costs. The achievement which is to be promoted is sustainable management and questions of national importance, national value and benefit, and national needs must all play their part within the overall consideration and discuss.

- 60 The High Court has observed that the same considerations apply when considering wetlands under section 6(a) and significant indigenous vegetation and fauna under section 6(c).³⁸
- 61 As the High Court held in *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council and West Coast Regional Council*:³⁹

[N]otwithstanding the strong language of section 6(c), the preservation of significant indigenous flora and significant habitats of fauna might have to bow to the promotion of the mine as part of the promotion of sustainable management of natural and physical resources, applying s 5(2).

³⁵ Opening legal submissions on behalf of Hanmer Springs Thermal Pools & Spa, dated 7 October 2021 at [48].

³⁶ *Environmental Defence Society v Mangonui County Council* [1989] 3 NZLR 257 (CA) at 262; *Port Otago Ltd v Dunedin City Council* C4/2002; *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC 219 at [63].

³⁷ *NZ Rail v Marlborough District Council* [1994] NZRMA 70 at p18; cited in *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC 219 at [332].

³⁸ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council and West Coast Regional Council* [2013] NZHC 1346 at [332].

³⁹ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council and West Coast Regional Council* [2013] NZHC 1346 at [105].

- 62 There is agreement that the Flyride site contains significant habitat of indigenous fauna (lizards and falcons) and these are to be protected in terms of section 6(c) of the RMA and also the Regional Policy Statement and Hurunui District Plan.⁴⁰
- 63 In terms of the protection of falcons, HSTPS offers consent conditions that go further than best practice for forestry operations, and further than recommendations endorsed by DOC.⁴¹ Implementation of those consent conditions will ensure falcons are kept safe from harm.
- 64 In terms of protection of lizards, a comprehensive effects management package is proposed. That package is considered to “more than address” residual adverse effects,⁴² and HSTPS’s expert evidence is that:⁴³
- Lizard management and lizard values will be all the better for these changes.
- 65 In addition, although the Flyride site has lizard values that meet the section 6(c) criteria, it is relevant that the rough gecko habitat is considered small, highly modified (unnatural), and already disturbed (by the public).⁴⁴ In the longer term, implementation of the LMP is anticipated to enable lizard populations (including the rough gecko population) to be maintained at higher levels than observed without the Flyride.⁴⁵
- 66 The Department of Conservation is aware of the Flyride proposal as a result of the wildlife authorisation process. Despite this awareness, they did not make a submission on the proposal. It can therefore be assumed that they do not have concerns relating to the proposal (or they consider any concerns are best directly addressed through the processes they have under the Wildlife Act 1953).
- 67 It is submitted that implementation of the LMP, incorporating the changes outlined in Appendix 2 of Dr Tocher’s response to the peer

⁴⁰ Te Tihi o Rauheia, Conical Hill Reserve Switchback™ project: Lizard Management Plan dated May 2021, at pages 28-29; Statement of evidence of Marieke Lettink at page 8 (table 2, row 1); and summary statement of Mandy Tocher dated 7 October 2021 at [53].

⁴¹ Right of reply by Mandy Tocher dated 15 November at [10].

⁴² Response to peer review of LMP by Mandy Tocher, dated 5 November 2021 at [111].

⁴³ Response to peer review of LMP by Mandy Tocher, dated 5 November 2021 at [114].

⁴⁴ Response to peer review of LMP by Mandy Tocher, dated 5 November 2021 at [24.3].

⁴⁵ Te Tihi o Rauheia, Conical Hill Reserve Switchback™ project: Lizard Management Plan dated May 2021, at page 1.

review of the LMP (which respond to recommendations made by Dr Lettink), provides sufficient certainty as to the protection of lizards.

Planning provisions

- 68 The District Plan seeks to protect areas of significant habitats of indigenous fauna through the following relevant provisions. As these are central to the Commissioner’s decision, we set them out in full.

Objective 13.3

Exercise Kaitiakitanga/guardianship by managing ecosystems and indigenous biodiversity within the district through:

- (a) The protection of ecosystem values, ecosystem functioning and areas of significant indigenous biodiversity;

...

Policy 13.1

To identify areas of significant indigenous biodiversity values by applying criteria (set out in Appendix 13.1).

Policy 13.2

To protect areas identified as having significant indigenous biodiversity value, by avoiding, remedying, or mitigating adverse effects using appropriate mechanisms including where identified through a resource consent process.

Policy 13.3

When considering resource consent applications:

- (a) ensure that any adverse effects of the activity on the indigenous biodiversity of the district’s environment are avoided, remedied or mitigated;
- (b) encourage landowners to take opportunities and consider the site specific management factors to promote the restoration and enhancement of indigenous vegetation and habitats;
- (c) encourage provision of mechanisms that assist in protection or enhancement of significant indigenous biodiversity such as QE II covenants and the use of Biodiversity Management Plans;
- (d) provide for consideration of biodiversity offsets where it has been demonstrated that the adverse effects have been avoided as far as practical in the first instance, minimised when total avoidance is impracticable, and any remaining adverse effects are remedied or

mitigated and where the adverse effects cannot be avoided, remedied or mitigated it is demonstrated that, with the offset, that will achieve no net loss; and

- (e) provide for conservation lots to be created, or reduced site areas to be considered, where significant indigenous biodiversity is protected.

- 69 A variety of avoidance, remediation, mitigation and off-site measures are proposed. These are outlined in the LMP⁴⁶ and summarised in Dr Tocher's summary statement⁴⁷ and are not repeated here, except to note that an agreement has now been entered into with a landowner for a 6 hectare QEII covenant over private land that is otherwise unprotected. The covenant will be the first ever established on private land for rough gecko.
- 70 As Dr Tocher explained in her response to the LMP peer review, the covenant will be subject to a management plan prohibiting earthworks and vegetation clearance, afforestation, and providing for woody weed control to increase naturalness in perpetuity.⁴⁸ In addition, the covenanted area is anticipated to provide habitat for Southern Alps geckos and possibly pygmy gecko.⁴⁹
- 71 When applying the terminology "offset" and "biodiversity compensation" in a strict sense, the QEII covenant is being offered as "biodiversity compensation", rather than an "offset". This is because lizards, and lizard values, do not lend themselves to be managed through offsets.⁵⁰ The courts have previously recognised that (although technically incorrect) the terminology associated with offsets / compensation is often "loosely employed and confusing".⁵¹ It is submitted that although the term "biodiversity compensation" is not explicitly provided for in the HDP or CRPS, both planning documents envisage use of compensation for residual adverse effects following appropriate avoidance, remedy and mitigation, and where the compensation offered will achieve no net loss.
- 72 In the context of the Flyride proposal, Dr Mandy Tocher has explained the rigorous process she followed in applying the mitigation hierarchy, before providing for compensation which is

⁴⁶ Te Tihi o Rauheia, Conical Hill Reserve Switchback™ project: Lizard Management Plan dated May 2021, section 12.

⁴⁷ Summary statement of Mandy Tocher dated 7 October 2021 at [38] - [50].

⁴⁸ Response to peer review of LMP by Mandy Tocher, dated 5 November 2021 at [19].

⁴⁹ Response to peer review of LMP by Mandy Tocher, dated 5 November 2021 at [20].

⁵⁰ Response to peer review of LMP by Mandy Tocher, dated 5 November 2021 at [23].

⁵¹ *Mainpower NZ Ltd v Hurunui District Council* [2011] NZEnvC 384 at [460].

designed to achieve no net loss, and is likely to achieve a net gain.⁵² Dr Tocher has considered site specific management factors in developing the LMP, and a QEII conservation covenant will also be created to protect high quality rough gecko habitat. Accordingly, the Commissioner can be satisfied that the proposal will achieve the relevant objective and policies of the District Plan.

Wildlife permit compliance

- 73 Dr Ann Brower raised concern regarding compliance with the wildlife permit that is being sought, both at the hearing and in her response to the peer review of the LMP.
- 74 Compliance concerns reinforce the importance of robust condition drafting to ensure clarity and enforceability. However, they do not connote a failing in the conditions themselves. As a matter of law, compliance with conditions of consent must be assumed.⁵³
- 75 As the governing body for the wildlife approval, DOC will be responsible for approving the lizard management plan, and for monitoring and compliance. DOC has considerable regulatory and technical experience in the conservation of wildlife.
- 76 HSTPS strongly refutes any suggestion that it will not comply with the wildlife permit. The wildlife permit will include conditions that must be complied with. Any failure to comply with a condition on which the permit is granted is an offence against the Wildlife Act 1953.⁵⁴
- 77 Further, the lizard management plan includes proposed reporting requirements. This includes a salvage report to be prepared following the completion of all lizard salvage. The report will include the locations, age and sex of all Canterbury grass skinks and rough geckos salvaged. It will also detail the methods used to support the release of Canterbury grass skinks, including photos of key design features, and details of the release site/s for rough gecko. In addition, rodent tracking data will be collated, annually, by HSTPS and provided to DOC in a summary form in June each year.
- 78 Dr Brower's primary concern appears to be that a possible covenant will not come to fruition.⁵⁵ To respond to that concern, HSTPS has offered a further condition to require a QEII covenant to be entered into. That covenant will also be a requirement of the wildlife permit (DOC have advised they will not grant the permit without it). HSTPS

⁵² Response to peer review of LMP by Mandy Tocher, dated 5 November 2021 at [26].

⁵³ *New Zealand Kennel Club Inc v Papakura District Council* EnvC Auckland A1/06, 12 January 2006 at [5].

⁵⁴ Wildlife Act 1953, section 53(7).

⁵⁵ Response to peer review of LMP by Ann Brower, dated 4 November 2021 at p 2.

considers that this condition will achieve the outcome and certainty that Ms Brower seeks.

- 79 FOCH also emphasised at the hearing that the measures proposed in the lizard management plan are not proposed as conditions of consent. In addition to proposed condition 10 (requiring a wildlife permit to be obtained prior to construction), HSTPS has offered a condition requiring all works on site to comply with the wildlife permit. HSTPS considers this condition addresses FoCH's concern.

CONSIDERATION OF ALTERNATIVES

- 80 FoCH suggest it is open to the Commissioner to decide that the application is inadequate in its "*failure*" to consider alternative locations.⁵⁶ In addition, the Council Officer filed a response to the peer review of the LMP suggesting clause 6(1)(a) is triggered and a description of alternative locations or methods must be provided.⁵⁷
- 81 A requirement to consider alternative locations or methods is predicated by the need to find on the evidence that significant adverse effects on the environment will arise from the proposal in its intended form.⁵⁸
- 82 Whether or not that threshold is met in this case depends on whether the entire proposal in its intended form is considered (i.e. including the QEII covenant).
- 83 Ms Bewley considers the QEII covenant should not be taken into account when assessing the effects on lizards, as it is "separate" from the proposal.⁵⁹ To the contrary, HSTPS submits that the protection provided to rough gecko through the QEII covenant is an intrinsic part of the proposal: the Flyride will not happen without the QEII covenant; and the QEII covenant will not happen without the Flyride. This is made explicit by the proposed condition of consent requiring a QEII covenant.
- 84 Nevertheless, the decision by HSTPS to employ an extremely skilled and experienced herpetologist is indicative of HSTPS's commitment to investigate, and adopt, alternatives where practical. In developing the lizard management plan, endorsed by Dr Lettink as one of the two best lizard management plans she has reviewed in

⁵⁶ Comments on behalf of Friends of Conical Hill – Peer review of lizard management plan, dated 8 November 2021 at [2.15].

⁵⁷ Response by Kelsey Bewley to the peer review of the lizard management plan, dated 18 November 2021 at [14].

⁵⁸ Resource Management Act 1991, Fourth Schedule, clause 6(1)(a).

⁵⁹ Response by Kelsey Bewley to the peer review of the lizard management plan, dated 18 November 2021 at [10].

the last decade,⁶⁰ Dr Tocher considered various alternative methods and her recommendations have all been accepted by the applicant. These include:⁶¹

- 84.1 Avoidance of lizard habitat: some known habitat for rough gecko, Canterbury grass skink, pygmy gecko and Southern Alps gecko will be avoided during installation. An approximately 35 metre section of an existing bulldozed track, that was to be utilised as access to Tower 1 will now not be used;
- 84.2 Alternative routes to access towers: various alternative routes were scoped for accessing Towers 2, 3, 5 and 6, to minimise effects of the access track construction on lizards;⁶²
- 84.3 Use of known contractors to construct the Flyride: to manage inadvertent damage to lizard habitat on Conical Hill through contractor activity, HSTPS will engage contractors to build the Flyride that have a proven environmental track record;
- 84.4 Frequency of tree maintenance: trimming and removal of vegetation that grows and encroaches on access tracks and the passenger envelope around towers and cable lines at six month intervals. Dr Tocher advises that at this frequency rough geckos are not expected to take up residence in these areas and, accordingly, adverse effects of this necessary maintenance works on lizards will be negligible;
- 84.5 Use of 'exclusion zones': areas of potential lizard habitat will be fenced off as 'exclusion zones' prior to works commencing. Fencing off these areas will ensure the habitat remains untouched by incidental (unplanned) construction activity;
- 84.6 Use of a qualified arborist: the felling and pruning of trees and shrubs will only be undertaken by a qualified arborist who will oversee the dismantling of trees, piece by piece;
- 84.7 Timing of lizard salvage: lizard salvage will be carried out within 10 days of commencement of works to install the Flyride. Salvaging lizards too far ahead of works risks any lizards not captured moving back into the project areas between the completion of salvage and commencement of works;

⁶⁰ Peer review of the lizard management plan by Dr Marieke Lettink at [25].

⁶¹ Te Tihi o Rauheia, Conical Hill Reserve Switchback™ project: Lizard Management Plan dated May 2021, pp 42 – 45.

⁶² Detail of the routes considered and chosen are outlined on page 45 of the lizard management plan.

- 84.8 Achieving effective rehabilitation: rehabilitation of affected areas will only use eco-sourced indigenous plants suitable as habitat for rough gecko and/or Canterbury grass skinks. In addition, rehabilitation will feature a rigorous maintenance regime to ensure woody weeds cannot get established in favour of indigenous species;
- 84.9 Salvage and release methodology: best practice methodology will be followed during the salvage and release program.⁶³
- 85 As Dr Tocher has explained, rough gecko are known to reside on a number of hills in Hanmer Springs.⁶⁴ Indeed, nearby hills are like to have “*even better lizard values to Conical Hill*”.⁶⁵ HSTPS is not aware of another location in Hanmer Springs where a more appropriate site would exist.
- 86 As the Environment Court recently stated in *Wilson v Waikato Regional Council*:⁶⁶
- There is no requirement to prove that an application site is the best available or that other sites are not available. Rather, at least for discretionary activities, proposals will generally stand or fall on their merits.
- 87 In essence, provided the proposal is consistent with the sustainable management purpose of the Act, little weight should be given to the question of alternatives. It is submitted that the issue of alternative locations does not weigh against grant of consent.

OTHER MATTERS

Legality of the 34 Acheron Heights access

- 88 There was some discussion at the hearing about the legality of use of the 34 Acheron Heights access.
- 89 34 Acheron Heights is owned by Hurunui District Council. As it is zoned residential, the rules in the residential zone chapter apply. Beyond that, the landowner is entitled to use the land as they wish.
- 90 There are no rules or standards in the Residential Zone chapter that restrict the pedestrian access to a property. The maximum number

⁶³ Te Tihi o Rauheia, Conical Hill Reserve Switchback™ project: Lizard Management Plan dated May 2021, pp 52.

⁶⁴ Response to peer review of LMP by Mandy Tocher, dated 5 November 2021 at [48].

⁶⁵ Response to peer review of LMP by Mandy Tocher, dated 5 November 2021 at [46].

⁶⁶ *Wilson v Waikato Regional Council* [2021] NZEnvC 131 at [58].

of vehicle movements is limited to 20 movements per day,⁶⁷ but at the hearing there was no indication that this threshold is being exceeded.⁶⁸ Rather, Mr Martin advised that the majority of people who use the access are staying in holiday homes in the area, with most walking up the pedestrian footpath from Alpine Avenue (following Council signage).

- 91 Regardless, as Mr Abbot's evidence explains, HSTPS does not propose to use (or encourage) the existing access at 34 Acheron Heights. HSTPS intends to encourage and promote use of the common access at the top of Conical Hill Road and will do so through a range of mechanisms. Mr Milne considers a wayfinding plan (as proffered in condition 11), together with signage, information on the Flyride website and at the i-SITE will provide adequate mitigation for the privacy of dwellings adjacent to 34 Acheron Heights.⁶⁹

Horses

- 92 Hanmer Springs Horse Riders asserted at the hearing that if they "had the chance" to ask someone else, that person might have provided a different view to Mr Broerse (i.e. that the Flyride will compromise horse and rider safety).
- 93 With all due respect, HSHR could have engaged an expert – just as HSTPS did. It is nevertheless emphasised that HSHR remain concerned about effects that, on the expert evidence in front of you, are not expected to materialise.
- 94 HSHR also asserted that the pine trees currently providing a visual blockade between the Lucas Lane track and the proposed Flyride are part of Matariki's plantation forestry and could be felled at any time. However, the Conical Hill Reserve boundary essentially follows the Lucas Lane track;⁷⁰ the dense vegetation is not able to be harvested by Matariki and will continue to provide visual blockage (along with the topography of the hill and a horse's visual fields).
- 95 HSHR suggested that one possibility might be to negotiate with Matariki Forestry that Pawsons Road be re-opened to horse riders. Although HSTPS is not opposed to that in anyway, it notes that Pawsons Road is the main forestry road Matariki uses to undertake its forestry operations and approximately 10 years ago Pawsons Road was closed to horse and mountain bike riders as part of an

⁶⁷ Hurunui District Plan, rule 4.6.15(b).

⁶⁸ If that were the case, it would be a matter for the Council to address.

⁶⁹ Summary statement of Tony Milne, dated 7 October 2021 at [17].

⁷⁰ For reference see page 6 of the Recreation Effects Assessment included in the original resource consent application – the landscape concept image shows the boundary of the reserve in green, existing walking tracks (including the Lucas Lane track) in green, and the route of the Flyride in orange.

agreement with the Hanmer Springs Recreational Track Network Group, due to health and safety risks.

- 96 In terms of HSHR's concern that signage could be "counter-productive", the proposed consent condition requires the signage be prepared in consultation with HSHR. Should HSHR advise they want signage installed, it will be able to assist with regard to appropriate wording designed to make riders aware of the Flyride without inducing anxiety.

Hurunui District Council Reserve Management Plan

- 97 FoCH appeared to suggest the Flyride proposal is contrary to the Reserves Management Plan (*RMP*). However, as Mr Greenaway explained, development within the recreation reserve is contemplated in the RMP. Indeed, the RMP contemplates commercial recreational activities that "enhance recreational use of the reserve and [are] considered to benefit the community".⁷¹ The evidence is that the Flyride proposal will do just that.
- 98 The poor state of the track was mentioned throughout the hearing. One submitter described it as "*disgraceful*" and "*dangerous*", despite a management plan being in place since 2012. The Flyride proposal will vastly improve the standards of maintenance at Conical Hill, while complementing the role of Hanmer Springs as a developed tourism destination, and utilising the existing recreation values on the Conical Hill track.⁷²

Reserves Act 1977

- 99 FoCH also suggested the Flyride proposal is contrary to the Reserves Act 1977.
- 100 FoCH's submissions rely on an assertion that the Flyride will not conserve the "*pleasantness, harmony, and cohesion of the natural environment*" currently experienced on the Reserve.⁷³ Submitters opposing the Flyride emphasised the quiet, tranquil nature of Conical Hill.⁷⁴ It is acknowledged that the values attributed to Conical Hill by submitters are genuinely held. Without detracting from that acknowledgement, the reality is that Conical Hill is already visited by over 50,000 people per year. The evidence is that there will be a "just noticeable" average noise level change.⁷⁵ As Mr

⁷¹ Hurunui District Council Reserves Management Plan, Policy 5.2 (at p 12).

⁷² See summary statement of Rob Greenaway, dated 7 October 2021 at [8].

⁷³ Submissions on behalf of Friends of Conical Hill at [7.8].

⁷⁴ See for example oral submission of Ross Carter, quoted in Submissions on behalf of Friends of Conical Hill at [5.7].

⁷⁵ See summary statement of Jeremy Trevathan at [9].

Greenaway explained at the hearing, all of the essential features of the Conical Hill walkway will remain.

- 101 Mr Greenaway provided a comprehensive assessment of the Flyride proposal against the Reserves Act in his evidence. He notes that it is important to apply Reserves Act considerations in the context of the existing use and values of the reserve, and the primary purpose of a recreation reserve, which is to provide “*areas for the recreation and sporting activities and the physical welfare and enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of outdoor recreational activities, including recreational tracks in the countryside*”.⁷⁶
- 102 Mr Greenaway ultimately concludes that the proposal is consistent with that purpose, while providing enhanced recreational offering on Conical Hill, and increasing the general level of physical activity in Hanmer Springs (by requiring users to walk to the start station).⁷⁷ Accordingly, in our submission, the Flyride proposal is consistent with the Reserves Act 1977.

Section 6(f) of the RMA

- 103 FoCH also suggested that the Applicant omitted to assess the “iconic” heritage values associated with Conical Hill, contrary to section 6(f) of the RMA.⁷⁸
- 104 With respect, the Hurunui District Plan seeks to protect scheduled historic heritage from inappropriate subdivision, use and development and in doing so gives effect to section 6(f) of the RMA. Neither the Conical Hill Reserve nor the Site itself hold heritage status. As the Flyride does not affect the lookout or plaque (which do hold heritage status under the District Plan), no assessment is required.

PROPOSED CONDITIONS

- 105 Conditions are the primary means of managing effects of a project in order to help achieve the sustainable management purpose of the RMA. Conditions imposed by the Commissioner must meet the *Newbury*⁷⁹ tests and be in accordance with the requirements of s108AA.
- 106 A final version of the conditions proposed by HSTPS is attached as **Appendix A**. HSTPS confirms that the final version of conditions

⁷⁶ Reserves Act 1977, section 17(1).

⁷⁷ Evidence of Rob Greenaway, dated 23 September 2021 at [59] – [61].

⁷⁸ Submissions on behalf of Friends of Conical Hill, at paragraph [5.28].

⁷⁹ *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HC), at 739.

provided at **Appendix A** represent its view on the appropriate conditions for the Flyride.

- 107 The conditions make only three changes to the set of conditions provided by the Council's Officer following the hearing (which incorporate the traffic joint witness statement). These changes are made to conditions relating to:

107.1 traffic; and

107.2 herpetofauna.

- 108 HSTPS provides comments and reasoning on these amendments below.

Traffic

- 109 The joint witness statement of the traffic experts identifies only one residual area of disagreement.⁸⁰ This relates to design improvements to pedestrian access to Conical Hill Reserve.

- 110 The design improvements are included in the Council's Long Term Plan and are scheduled for construction by March 2022. Mr Smith considers there are two reasons justifying a consent condition requiring the improvements to be completed prior to the Flyride opening: safety, and because the improvements are an important part of the wayfinding scheme. Mr de Verteuil considers a condition of consent is not required as any effects would only be for a short period, and the effects do not justify delay of the project.

- 111 HSTPS's position is two-fold:

111.1 the requirement is not practicable; and

111.2 the requirement is unnecessary.

- 112 While HSTPS will do its best to influence the improvements being completed expeditiously, it is ultimately a matter outside of its control.

- 113 In any event it is submitted the improvements are unnecessary to manage pedestrian access to Conical Hill. It must be borne in mind that over 53,000 people already locate and safely access the Reserve each year. No traffic expert has identified any pedestrian related safety incidents having occurred in the past, despite Mr Smith and Mr de Verteuil both reviewing crash data from Waka Kotahi's Crash Analysis System.

⁸⁰ Mr Edwards refrained from involvement in this matter, as it does not relate to residential amenity.

- 114 It is submitted that the wayfinding plan, including signage, is sufficient to mitigate Mr Smith's concerns in the event the Council's programmed improvement works are not completed on schedule.⁸¹ A requirement to delay opening of the Flyride until the works are completed is a disproportionate response and not justified on the evidence.

Herpetofauna

- 115 As mentioned earlier in these submissions,⁸² HSTPS has offered two further conditions relating to herpetofauna:
- 115.1 Condition 18, which requires all works on site to comply with the Wildlife Act permit; and
- 115.2 Condition 19, which requires an off-site QEII conservation covenant (with management plan) over rough gecko habitat be created and registered as soon as reasonably practicable, but no later than two years from the exercise of the consent. It also requires confirmation that the covenant has been registered to be provided to the Hurunui District Council within 20 working days of the covenant being registered.
- 116 HSTPS considers condition 18 is self-explanatory, and responds to FoCH's concern that measures proposed in the lizard management plan were not proposed as conditions of consent.
- 117 HSTPS offers condition 19 in response to Dr Brower's concern that a possible covenant will not come to fruition. It also makes it explicit that the QEII covenant is an intrinsic part of the proposal.
- 118 The condition proposed by HSTPS requires it to have the covenant created and registered as soon as reasonably practicable, but within a maximum timeframe of two years. The QEII National Trust have advised that a covenant process sometimes takes time but it should be able to be progressed within a shorter timeframe than two years. The date is just to allow for any unexpected issues that might arise. A two year timeframe is considered a reasonable length of time to allow for the covenant to be prepared and registered.
- 119 For completeness, it is noted that it is considered unnecessary to require the covenant be in place prior to exercise of the consent. Such a requirement could delay the project by up to two years and is considered disproportionate and not justified given no lizards are being transferred from Conical Hill to the off-site covenant. Any lizards salvaged from the project footprint are to be released into

⁸¹ HSTPS have marked up condition 11 in red in the revised set of conditions at **Appendix A**. HSTPS considers the condition has inadvertently been left of the set of conditions provided by the Council's Officer following the hearing.

⁸² At paragraphs [78] and [79].

suitable habitat nearby (i.e. within the Conical Hill Reserve). It also matches the expectations of DOC and their experience in relation to the process by which the QEII covenant will be registered to satisfy the wildlife permit. DOC does not require the covenant to be in place prior to works commencing.

CONCLUSION

- 120 In summary, the evidence provided by HSTPS demonstrates that the Flyride will best able the community to provide for its economic and social wellbeing. Any adverse effects will be adequately avoided, remedied, mitigated or compensated through the conditions which HSTPS has offered.
- 121 HSTPS acknowledges the varied concerns the community has raised since consultation commenced. HSTPS has actively listened, both before and during the hearing, and has reacted genuinely and positively. It has adopted a pragmatic and solution-focussed approach to managing issues identified by experts, Council officers and submitters.
- 122 HSTPS has offered a range of conditions to accommodate the concerns of the Council officers and residents in the interests of good faith and with the intent of ensuring residents are not adversely impacted by the Flyride proposal.
- 123 HSTPS respectfully submits that the Commissioner should grant the Application, subject to the conditions attached at **Appendix A**.

Dated: 10 December 2021



J M Appleyard / K Jacomb

Counsel for Hanmer Springs Thermal Springs & Spa

APPENDIX A – UPDATED SET OF PROPOSED CONDITIONS

This document is based on an updated set of draft conditions provided by the Council Officer following the hearing.

Further updates proposed by HSTPS are shown in red text.

General

1. *The activity shall proceed in general accordance with the plans and details submitted with the application and referenced as RC210098 in Council records.*
2. *The activity shall be located in accordance with the Overall Development Plan on sheet 11 of the Graphic Attachment to Landscape and Visual Assessment Addendum, with the exception that towers T1-T7 may be relocated within ten metres of the location shown. The final location of each structure shall be subject to a detailed on site geotechnical assessment undertaken by a suitably qualified and experienced person, which shall be provided to and certified by the Council before any physical construction works can proceed.*
3. *The hours of operation shall be limited to seven days a week:*
 - *10am-6pm, except in the months of December to February, where the hours shall be limited to 9am-7pm*

Traffic

4. *Monitoring of on street parking shall be undertaken by an independent and suitably qualified transportation engineer prior to the activity commencing (baseline monitoring) and thereafter three times annually for two years following commencement of public use of the activity (commencement monitoring). Monitoring shall:*
 - (a) *Include the following locations:*
 - (i) *Oregon Heights*
 - (ii) *Conical Hill Road (north of Chalet Crescent)*
 - (iii) *Thomas Hanmer Drive (the first 120 metres measured from the intersection with Conical Hill Road)*
 - (iv) *Acheron Heights*
 - (b) *All monitoring shall be undertaken over a period of four hours between 10am and 2pm on a fine weather day.*
 - (c) *All monitoring shall not be undertaken on a day or time where a special event is occurring within the Hanmer Springs township.*
 - (d) *Baseline monitoring is to be undertaken within a school holiday weekend or public holiday weekend.*
 - (e) *Commencement monitoring is to be undertaken at a time when the activity is operating within the following periods:*

- (i) *One school term-time week during the period of September – November (inclusive). The monitoring period is to include one weekday and one weekend day.*
 - (ii) *One school holiday week during the period of December – February (inclusive). The monitoring period is to include one weekday and one weekend day.*
 - (iii) *One public holiday weekend during the period of September – February (inclusive).*
5. *Results of the baseline and commencement monitoring undertaken in **condition 4** shall be provided to the Hurunui District Council within 20 working days of each monitoring period being completed. The monitoring shall be provided in the form of a report which:*
- (i) *Presents the baseline monitoring data in the form of on-street parking space occupancy levels and outlines any changes in demand of the latest monitoring, compared to the baseline monitoring for the equivalent time.*
 - (ii) *Confirms that there were no special events occurring at the time of the monitoring being undertaken.*
 - (iii) *Reports any changes in the on-street parking supply that have occurred since the previous monitoring and confirm the on-street parking supply at the time of the latest monitoring.*
 - (iv) *Presents rider booking data on the activity for the same time period as the monitoring data. This data shall include actual rider numbers, and how many of the bookings during the monitoring period were for multiple-person rides.*
 - (v) *Identifies the likely level of on-street parking demand to have been generated by the activity during the monitoring period.*
 - (vi) *Includes any observations of illegal parking within the monitoring area.*
6. *If in the second year of commencement monitoring undertaken under **condition 4**, an on-street parking occupancy of 75% or more on aggregate across Oregon Heights, Conical Hill Road and Thomas Hanmer Drive occurs then the Hurunui District Council may initiate a review in accordance with **condition 27**.*
7. *If a review in accordance with **condition 27** is initiated due to the on-street parking occupancy of Oregon Heights, Conical Hill Road and Thomas Hanmer Drive, commencement monitoring of these areas shall continue for a minimum of 12 months following the completion of any review. Commencement monitoring shall cease if on-street parking occupancy of 75% or more on aggregate across Oregon Heights, Conical*

Hill Road and Thomas Hanmer Drive does not occur within the 12 month monitoring period.

8. *If in the second year of commencement monitoring undertaken under **condition 4**, an on-street parking occupancy of 75% or more along Acheron Heights occurs, then the Hurunui District Council may initiate a review in accordance with **condition 27**.*
9. *If a review in accordance with **condition 27** is initiated due to the on-street parking occupancy of Acheron Heights, commencement monitoring shall continue for a minimum of 12 months following the completion of the review. Commencement monitoring shall cease if on-street parking occupancy of 75% or more along Acheron Heights does not occur within the 12 month monitoring period.*
10. *If in the second year of monitoring undertaken under **condition 4**, an on-street parking occupancy of 50% or more along the first 120 metres of Thomas Hanmer Drive when measured from the intersection with Conical Hill Road occurs, a pedestrian crossing of Conical Hill Road in the vicinity of Thomas Hanmer Drive shall be installed. The specific location, form and design of the crossing shall be agreed and approved by Hurunui District Council.*
11. *A wayfinding plan shall be prepared and submitted to Council for certification prior to the activity commencing. Any signage required to be in accordance with the certified wayfinding plan shall be installed prior to the activity commencing.*

~~*12. Prior to the activity commencing on site, the footpath realignment at the corner of Conical Hill Road and Oregon Heights shall be completed in accordance with KF Consilium, Drawing No: 2001h/SK or an alternative design as approved by Hurunui District Council.*~~

Noise

12. *Noise arising from construction activities shall comply with the noise standards contained in NZS 6803:1999 "Acoustics – Construction Noise."*
13. *Once the activity commences, the following noise limits shall apply:*
 - (a) *Noise arising from people riding on the Flyride shall not exceed 45 dB L_{AFmax} at any point within any residentially zoned site.*
 - (b) *All other noise arising from the operation of activities authorised by this Consent on the site shall comply with the following noise limits at or outside the boundary of the site:*
 - i) *55 dB $L_{Aeq}(1 hr)$, 7am – 7pm daily*
 - ii) *45 dB $L_{Aeq}(1 hr)$, 7pm – 7am daily*

- iii) 75 dB L_{AFmax} all days between 10pm and 7am
 - (c) Noise shall be measured and assessed in accordance with NZS 6801:2008 “Acoustics – Measurement of environmental sound” and NZS 6802:2008 “Acoustics – Environmental noise”

- 14. Prior to the commencement of public use of the activity, a draft “Noise Compliance Measurement & Assessment Plan” (NCMAP), prepared by a suitably qualified and experienced noise expert, shall be submitted to the Hurunui District Council for certification. The NCMAP shall include:
 - (a) A description of the commissioning investigations and measurements that have been undertaken to verify the noise modelling and assumptions relating to noise arising from people riding on the Flyride, and any resulting specific recommendations relating to ride controls.
 - (b) Recommendations relating to appropriate processes for monitoring noise levels once the activity commences such as:
 - (i) Descriptions of methods and procedures for the measurement of L_{AFmax} sound levels at known distances in close proximity to identified Flyride noise sources, and the minimum number of readings to be taken.
 - (ii) Methods for calculating adjustments to these measured L_{AFmax} levels to predict representative L_{AFmax} noise levels expected at residentially zoned sites, including reference to relevant acoustic Standards or guidelines on which the calculations are based.
 - (iii) If the Hurunui District Council fails to certify the NCMAP within 20 working days of receiving the draft NCMAP, or within 10 working days of receiving any requested amendments to the draft NCMAP, the NCMAP can be assumed to be certified.

- 15. Noise monitoring shall be undertaken within 30 working days of the commencement of public use of the activity, in accordance with the certified NCMAP. A compliance assessment report shall be provided to the Hurunui District Council within 20 working days of the monitoring being undertaken.

- 16. If the noise monitoring in **condition 15** is not undertaken on a school holiday or public holiday weekend (or time of similar peak usage), then further noise monitoring shall be undertaken at the earliest appropriate peak time after the activity has commenced. A compliance assessment report shall be provided to the Hurunui District Council within 20 working days of the monitoring being undertaken.

Herpetofauna

17. Prior to any physical construction works occurring on site the Consent Holder will provide the Hurunui District Council with confirmation that a Wildlife Act permit has been obtained from the Department of Conservation.
18. All works on site must comply with the Wildlife Act permit.
19. An off-site QEII conservation covenant (with management plan) over rough gecko habitat shall be created and registered as soon as reasonably practicable, but no later than 2 years from the exercise of this consent. Confirmation that the covenant has been registered shall be provided to Hurunui District Council within 20 working days of the covenant being registered.

Kārearea/falcon

20. The Consent Holder shall:
- (a) Prior to any physical construction works occurring on site, the Consent Holder shall provide the Hurunui District Council with confirmation that any contracts for construction activities include a requirement to adhere to best practice forestry guidelines; namely that a pre-works walk-through of the footprint is required to be carried out between August to March, no more than 3-days ahead of works, with the purpose of identifying the location of breeding behaviour and scrapes/nests such that:
- (i) If dive-bombing is observed, or eggs found, or small white fluffy chicks/large grey chicks are found, planned works must withdraw 200 m for 75, 45, 20 days respectively.
- (ii) If feathered chicks that cannot fly are found, planned works must withdraw 100 m for 15 days.
- (iii) If young falcon that can fly are found, works can continue as planned.
- (b) If the location of the scrape/nest cannot be identified, then any works within 200 m of the location where aggressive breeding/dive-bombing was observed must cease until chicks have fledged (75 days).
- (c) If any works are required to cease under **condition 18**, this shall be reported to Hurunui District Council within 14 days of the works ceasing.
21. Following commencement of the activity, the Consent Holder shall report any evidence of near misses, injury and/or mortality of kārearea/falcon through interaction with infrastructure or riders associated with the

activity to the Hurunui District Council and the Department of Conservation. In the event that collisions occur at a frequency of more than 1 every 2 years then the Consent Holder shall, as soon as practicable provide a report to the Hurunui District Council detailing a suitable monitoring and management regime to be implemented to address any net negative impact at the local population level.

Fire risk

22. *A Fire Emergency Operations Procedure shall be drafted in consultation with Fire and Emergency New Zealand and a copy provided to the Council prior to the activity commencing on the site.*

Landscaping

23. *Any tree planting, aftercare, maintenance of mature trees and tree felling operations on site shall be carried out or supervised on site by competent/qualified operators in accordance with established arboricultural/horticultural work practices and industry standards.*
24. *A landscaping plan shall be submitted and approved by Council identifying the existing and proposed landscaping between T7 and the stop station and the site boundary to the south. The landscape plan should include a pest and weed maintenance strategy setting out how the landscape plantings are to be maintained and monitored.*
25. *Landscaping shall be established in accordance with the Graphic Attachment to Landscape and Visual Assessment Addendum prepared by Rough & Milne Landscape Architects, in particular, the Preliminary Revegetation Strategy, (sheet 31), or as otherwise approved by Council.*
26. *The planting required under **conditions 22 and 23** shall be implemented, if not prior to, within the first planting season (1st April to 30th August) following completion of construction.*
27. *All planting required by **conditions 22 and 23** shall be maintained with any diseased, damaged or dying plants to be replaced as soon as reasonably practicable upon failure, with plants of a similar species.*

Signage

28. *Prior to the commencement of the activity, subject to the agreement of the landowner, signage alerting horse riders to the Flyride activity shall be prepared in consultation with the Hanmer Springs Horse Riders Incorporated and installed on the Lucas Lane Track. In the event that*

landowner agreement is not obtained the consent holder shall advise the consent authority that the signage cannot be installed.

Review condition

27. Pursuant to section 128 of the Resource Management Act 1991, the Hurunui District Council may, at any time, serve notice on the consent holder of its intention to review the conditions of the consent in order to:
- (i) *respond to any adverse effect on the environment in relation to on-street car parking or noise which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage;*
 - (ii) *require the consent holder to adopt the best practicable option to mitigate any adverse effect on the environment; and ensure that the conditions are effective and appropriate in managing the effects of the activities authorised by this consent*

**APPENDIX B - EMAIL FROM DR JEREMY TREVATHAN DATED 13
OCTOBER 2021**

Kirsty Jacomb

From: Jeremy Trevathan <jt@aeservices.co.nz>
Sent: Wednesday, 13 October 2021 11:53 AM
To: Jo Appleyard
Cc: Nick Radburn; Kirsty Jacomb; Graeme Abbot; jane@responseplanning.co.nz; Ben Smith
Subject: RE: Hanmer Flyride - Applicant reply
Categories: #100499729 : Flyride project : 23296 : JMA

Hi Jo,

As requested, please find below a number of notes relating to matters raised at the Hearing.

1.0 Generator

In our original report Section 3.4 *Noise from external plant associated with the Stations* we mention various possible mechanical equipment and note that it would be good practice for any such equipment to comply with the District Plan limits. Based on the proposed Conditions, a generator would indeed be required to comply with the District Plan limits at the site boundary. I understand any generator would be located at the Start Station, and be used to power basic fixed systems (e.g. computers and communications equipment but not the trolleys which charge themselves through regenerative braking on each descent and do not require charging during normal operation). The generator would only be used when there has been a period with limited solar power and high customer numbers – and those two things are unlikely to frequently coincide. The Start Station is close to the site boundary to the north (approximately 10 metres away), and so a generator will need to be selected / arranged to ensure compliance at that boundary – which will ensure much lower noise levels at other more distant locations. I expect that a small generator (such as the example Mr Abbot has shown me) will readily be able to be selected and arranged comply with the District Plan daytime noise limit at this closest site boundary to the north.

2.0 Start Station and other Flyride noise received at the Conical Hill Lookout

When you walk up the track and spend time at the Conical Hill Lookout, sometimes you may hear people, and sometimes it is quiet. When setting out for a walk you can't control what experience you may have (i.e. whether you happen to be walking alongside some people engaged in conversation, or encounter children playing on the rock by the Lookout). Generally when the town is busier you are more likely to hear sounds from other walkers.

When the Flyride is operational, fundamentally the situation will still be the same. Sometimes there will be no human sounds, sometimes you will hear human sounds. Again when setting out for a walk you will have no control over what you experience – sometimes the experience will be 'tranquil', other times you will hear a range of human sounds. The sounds from voices at the Start Station which is 100 metres away from the Lookout will sometimes be audible. But about 1/3 of the Conical Hill Summit track is within a 100 metre radius of the Lookout – so at busier times hearing voices at this sort of distance is not uncommon. Sounds will be heard more frequently – and raised voices from those setting off on the Flyride will be heard from time to time. As I suggested at the Hearing, perhaps 10 – 20% of riders will make some sort of vocalisation. At 60 riders per hour, that means that every 5 to 10 minutes you might hear a distant shout as someone sets off on the Flyride. That frequency of occurrence would only occur at peak times – when walkers and those that the Lookout are already more likely to hear other human sounds. Other times when there are, say, 10 riders per hour, a Flyride shout would only be heard once every 30 - 60 minutes - and so the probability that this sound interrupts a 'tranquil' moment for someone at the Lookout is low. Overall, as per my evidence relating to the Conical Hill Summit Pathway generally, I would expect a +3 dB increase in long term average noise levels in this area. That is a small, but perceptible, increase.

In my view, genuine potential 'loss of tranquillity' would need to be considered if the activity were instead introduced into a true wilderness area which is currently sparsely and rarely occupied i.e where 53,000 people don't currently already walk per year and doesn't overlook a township (e.g. Jacks Pass down to the Alpine Adventure Holiday Park).

3.0 Existing ambient noise levels in the Reserve

As per section 2.4 of our original report, one of the ambient measurement positions was in the Reserve – so it is not correct to suggest that noise levels have not been measured in the Reserve. However during this measurement any noise from nearby human activity was deliberately excluded, as the purpose of that measurement was to quantify the ambient level at the quieter times. Paragraphs 7 and 8 of my Summary Statement describe how loud the various 'noise events' sporadically experienced by those using the walkways in the Reserve are likely to be. Trying to measure these one-off sounds while walking up and down the walkway would be difficult, and would not provide any better understanding of the situation.

4.0 Evidence of Ms Bermingham

Ms Bermingham paid her 15 year old children to scream as loudly as they could, and the sound power they generated still wasn't as loud as the assumption used in our modelling – demonstrating just how conservative our analysis has been. By instructing her children to generate these loud noises at the Stop Station, Ms Bermingham has simply confirmed the finding which was already readily available in section 3.2 of our December 2020 report – that management of the ride would be required in this area. I cannot think of a reason why a person would scream at this maximal level when traversing the last spans of the ride at a low speed. That behaviour is not evident in any of the footage of the last portions of any similar activities which I have reviewed.

Ms Bermingham's explanation as to the limitations of 'time averages' was exactly why we used the LAFmax parameter in our December 2020 report – a fact which I expect the noise experts which she has sought advice from would have recognised. By contrast Ms Bermingham's discussion of Health and Safety trigger levels (65, 85 dBA) did not acknowledge that these are time average levels – with a very long time base (average over a 40 hour working week). The time-average levels expected in this case are very low, and that guidance is not relevant.

Trust this is of some assistance.

Regards,

Jeremy

Jeremy Trevathan

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