

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

Summary of evidence of Jane Whyte

Dated: 7 October 2021

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

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SUMMARY OF EVIDENCE OF JANE WHYTE

INTRODUCTION

- 1 My full name is Margaret Jane Whyte. My qualifications and experience were outlined in my Evidence in Chief dated 23 September 2021.
- 2 This summary of evidence addresses the key points within my Evidence in Chief. Since the circulation of that evidence I have reviewed the evidence of Mr Nathan Broerse.
- 3 I have also read the evidence of Ms Vicki Barker, Mr Ray Edwards and the summary of Mr Dave Smith and I respond to any relevant matters.

SUMMARY

- 4 In my evidence I have considered the proposal in the context of the relevant matters to be considered in Section 104 of the Resource Management Act.
- 5 I conclude that:
 - 5.1 the adverse effects of the proposal are able to be avoided, remedied and mitigated and where appropriate I have recommended conditions of consent to ensure that relevant matters will be implemented as part of the proposal;
 - 5.2 the proposal is consistent with the relevant objectives and policies of the Hurunui District Plan, including those relating to settlements, Hanmer Springs, Natural Hazards, Biodiversity and Transport; and
 - 5.3 the proposal is consistent with any relevant matters in Part 2 of the Resource Management Act.

SECTION 42A REPORT AND SUBMISSIONS

- 6 The evaluation undertaken in the Section 42A report by Ms Bewley is consistent with my assessment other than in relation to the potential effects of the proposal, regarding effects on:
 - 6.1 noise on horses; and
 - 6.2 kārearea/falcon.
- 7 I conclude that the proposal appropriately addresses these two matters. Having now considered the evidence of evidence of Mr Nathan Broerse I remain of the view that the effects of the proposal

in relation to horses is appropriate and the proposal is consistent with any objectives and policies relevant to this matter, particularly those addressing noise and amenity values.

- 8 I rely on the evidence of Dr Tocher in relation to kārearea/falcon. I consider that that the actual or potential effects of the proposal on kārearea/falcon have been adequately addressed and adverse effects are appropriately avoided, remedied or mitigated. Conditions of consent are recommended to ensure that any potential adverse effects are mitigated. I conclude that the proposal is consistent with the relevant objectives and policies relating to biodiversity.
- 9 Ms Barker disagrees with my view in relation to the permitted baseline. The permitted baseline is a discretionary matter that the Commissioner can determine whether to apply or not. It is not a mandatory consideration. My consideration of the appropriateness of the proposal, in relation to the effects, or my assessment of the objectives and policies, is not reliant on it being applied.
- 10 Ms Barker and I disagree as to the relevance of Chapter 9 of the CRPS. My view, as stated in my evidence, is that the Hurunui District Plan provisions, including those in Chapter 13 addressing Biodiversity give effect to the Canterbury Regional Policy Statement (CRPS) and as such there is no need to give specific consideration to the CRPS provisions. However, for completeness I record that I have considered the CRPS provisions, particularly the objectives and policies in Chapter 9 relating to Ecosystems and Indigenous Biodiversity and I consider that the proposal is consistent with these.
- 11 Ms Barker considers that the proposal may not be consistent with Section 6(c) of the Resource Management Act in that the proposal may not be consistent with protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
- 12 The key matter under Section 6(c) for this proposal relates to significant habitat of indigenous fauna, particularly lizards. Dr Tocher, in her summary, has identified the key components of the Lizard Management Plan¹, that will provide for the protection of significant habitat of indigenous fauna. This is the same information I relied upon in my evidence when considering the effects of the proposal relating to ecosystem and biodiversity matters and when I considered the objectives and policies in Chapter 13 of the Hurunui District Plan and matters in Part 2 of the Resource Management Act.

¹ The Lizard Management Plan prepared by Dr Tocher has not been provided due to the Plan identifying the specific location of lizard habitat.

- 13 Condition 10 creates a link between the resource consent and the Wildlife Act Permit processes. The Lizard Management Plan forms part of the Wildlife Permit process. The Wildlife Permit, if granted, will require the habitat protection and pest control measures outlined by Dr Tocher.
- 14 Conditions of consent 10a and 10b implement the matters identified by Dr Tocher as being necessary to address any potential adverse effects on kārearea/falcon.
- 15 I remain of the view that the effects in relation to biodiversity and indigenous fauna have been appropriately avoided, remedied and mitigated and the proposal is consistent with the relevant objectives and policies of the Hurunui District Plan, the CRPS, and the matters in Section 6(c) of the Resource Management Act.

CONDITIONS OF CONSENT

- 16 Appendix 1 of my Evidence in Chief set out conditions of consent based on those identified in the Section 42A report. I have attached an updated Appendix 1 which sets out the additional conditions addressed in the summary of Dr Trevathan and Mr De Verteuil. It also addresses the mitigation relating to signage addressed by Mr Broerse.
- 17 For ease of reference I have not renumbered the conditions, retaining the original numbering in Ms Bewley's report. Conditions amended subsequent to the Evidence in Chief are identified in bold font.

Changes to noise conditions

- 18 The noise conditions Dr Trevathan and Mr Walton have recommended in paragraph 13 of Dr Trevathan's summary are addressed in Appendix 1 in the following ways:

18.1 Condition 1 in the summary is original Condition 9.

18.2 Condition 2 in the summary is new Condition 9A.

18.3 Condition 3 in the summary is new Condition 9B.

18.4 Condition 4 in the summary is new Condition 9C.

18.5 Condition 5 in the summary is new Condition 9D.

Changes to traffic conditions

- 19 Mr De Verteuil has recommended that changes be made to the car parking monitoring condition to make it more explicit where and when the monitoring should take place. I assisted in drafting these conditions. I consider the conditions are clear in what is to be

monitored and should the specified threshold be met the additional information that is to be provided will inform whether a review of consent conditions under Section 128 should be considered. I consider this is consistent with the intent of the advice notes suggested by Mr Smith. It is a different means to achieve a similar outcome.

- 20 I consider changing the carparking monitoring conditions is a better approach than altering the Section 128 review condition that was suggested by Mr Edwards. I have identified that an advice note could be added to reinforce the link between the carparking monitoring condition and the potential for conditions to be reviewed.
- 21 The amendments to the carparking monitoring conditions Mr De Verteuil has addressed in his summary are addressed in Appendix 1 in the following ways:
- 21.1 Original Appendix 1 Condition 4 is deleted and replaced with new Condition 4.
- 21.2 Original Appendix 1 Condition 5 is deleted and has been replaced with new Conditions 5B.
- 21.3 Appendix 1 Condition 5A has had the wording amended to refer to baseline and annual monitoring, and the time period for reporting the results has been reduced from 8 to 4 weeks and is new Condition 5.
- 21.4 Condition 4A is new and addresses the actions to be taken by the applicant if the monitoring shows occupancy of specific areas above 85%.
- 21.5 Condition 5C is new and provides for the baseline and annual monitoring of Acheron Heights to be provided to the Council.
- 21.6 Condition 5D is new and addresses the actions to be taken by the applicant if the monitoring shows occupancy of parking on Acheron Heights is above 85%.
- 21.7 The advice note is new.
- 21.8 Condition 6 incorporates Proposed Alternative Condition 6 recommended in the summary of Mr Smith which is generally supported by Mr De Verteuil. I have incorporated the 85% threshold recommended by Mr De Verteuil. I have recommended changing 'should' to 'shall' in the condition. Finally, I recommend the final sentence in Mr Smith's proposed condition be deleted as in my view it is not appropriate to contain a recommendation within a condition of consent.

Additional signage condition

- 22 Mr Broerse in his evidence and summary has identified that installing signage on the Lucas Lane track to offer notice to riders of the track of the Flyride's operation would be helpful. The applicant is willing to provide this signage. However, I understand that the entry to the Lucas Lane Track where the signage would be located is not part of the application site. Therefore the ability to install signage would need to be subject to landowner agreement. I have drafted a condition identifying that the applicant will provide signage, subject to landowner agreement being obtained. This is provided Condition 16A.

CONCLUSION

- 23 I consider that any adverse effects of the proposal have been addressed and where necessary are reinforced by conditions of consent.
- 24 The proposal is consistent with the relevant objectives and policies in the District Plan and with Part 2 of the Resource Management Act.
- 25 I am happy to answer any questions.

Dated: 7 October 2021



Jane Whyte

APPENDIX 1 - PROPOSED CONDITIONS OF CONSENT - UPDATED

This document is based on the conditions in the Section 42A report. Changes to conditions addressed in my evidence shown as strike through and underlined text. Changes in relation to matters addressed in the summary statements prepared are in bold.

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 10am-6pm seven days a week, 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 and thereafter twice annually for two years after the activity has commenced, with this monitoring to be undertaken on a school holiday or public holiday weekend.~~
- ~~5. Monitoring under condition 4 shall extend to the extent of parking associated with the activity on Acheron Heights.~~
- ~~5a. Results of monitoring undertaken in relation to conditions 4 and 5 shall be provided to the Hurunui District Council within eight weeks of each monitoring period being completed.~~

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 twice annually (annual monitoring) for two years after the activity has commenced.

Monitoring shall:

a) Include the following locations:

i) Thomas Hanmer Drive

ii) Oregon Heights

iii) Conical Hill Road (north of Chalet Crescent)

b) Be undertaken within a school holiday weekend or public holiday weekend over a period of 4 hours between 10am and 2pm.

5. Results of the baseline and annual monitoring undertaken in Condition 4 shall be provided to the Hurunui District Council within four weeks of each monitoring period being completed.

5A. In the event that annual monitoring undertaken in Condition 4 undertaken records an occupancy of 85% on street parking at each of the following 5 kerbside locations:

a) Thomas Hanmer Drive (both sides of the road extending 120m from its intersection with Conical Hill Road),

b) Oregon Heights (north side of the road extending 120m from its intersection with Conical Hill Road),

c) Conical Hill Road (both sides of the road north of Chalet Crescent)

then the results of the annual monitoring reported in Condition 5 must also include:

i) data identifying the numbers of riders using the activity over the monitoring period

ii) identification of any known reasons, other than the activity, that would affect the occupancy over the monitoring period, and

iii) identification of any adverse traffic and parking effects resulting from the occupancy reported.

5B. Monitoring of on street parking on Acheron Heights shall be undertaken by an independent and suitably qualified transportation engineer prior to the activity commencing (baseline monitoring) and thereafter twice annually (annual monitoring) for two years after the activity has commenced. Monitoring shall be undertaken within a school holiday weekend or public holiday weekend over a period of 4 hours between 10am and 2pm.

5C. Results of the baseline and annual monitoring of Acheron Heights shall be provided to the Hurunui District Council within four weeks of each monitoring period being completed.

5D. In the event that annual monitoring of Acheron Heights records an occupancy of 85% on street parking then the results of the annual monitoring reported in Condition 5C must also include:

- i) data identifying the numbers of riders using the activity over the monitoring period**
- ii) identification of any known reasons, other than the activity, that would affect the occupancy over the monitoring period, and**
- iii) identification of any adverse traffic and parking effects resulting from the occupancy reported.**

Advice Note: The information provided in conditions 5A and 5D may inform any review that can be initiated under condition 17.

~~6. Prior to the activity commencing on site, a pedestrian crossing shall be installed across Conical Hill Road, on the south side of Thomas Hanmer Drive. The form and design of the pedestrian crossing shall be consulted on and approved by Council.~~

6. If monitoring under condition 4 indicates that vehicles associated with the activity ~~are consistently~~ have an 85% parking occupancy along Thomas Hanmer Drive or along Conical Hill Road on the south side of Thomas Hanmer Drive during the monitoring period, a formal crossing facility should be installed to provide for safe pedestrian movement across Conical Hill Road on the south side of Thomas Hanmer Drive, The specific location, form and design of the crossing ~~should~~ shall be agreed and approved by Hurunui District Council. ~~It is recommended that pedestrian improvements to the Conical Hill access be completed prior to the activity opening"~~

- ~~7. 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.~~
8. A wayfinding plan shall be prepared and submitted to Council for certification prior to the activity commencing. Any signage required to be installed in accordance with the certified wayfinding plan shall be installed prior to the activity commencing.

Noise

9. Noise arising from construction activities shall comply with the noise standards contained in NZS 6803:1999 "Acoustics – Construction Noise."
- 9A. Once the Flyride is operational, 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"**
- 9B. Prior to the commencement of commercial use of the Flyride, a draft "Noise Compliance Measurement & Assessment Plan" (NCMAP), prepared by a suitably qualified and experienced noise 3 100499729/1754846.1 expert, shall be submitted to Council's Consent Manager 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 Flyride is operational 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.

c) If Council fails to certify the NCMAP within twenty working days of receiving the draft NCMAP, or within ten working days of receiving any requested amendments to the draft NCMAP, the NCMAP can be assumed to be certified.

9C) Noise monitoring shall be undertaken within 30 working days of the commencement of commercial use of the Flyride, in accordance with the certified NCMAP. A compliance assessment report shall be provided to Council's Consent Manager.

9D) Further noise monitoring should be undertaken at the earliest practical time of anticipated peak usage of the ride (e.g. a school or public holiday period), should such an instance not occur within the first 30 working days identified above. A compliance assessment report shall be provided to Council's Consent Manager.

Herpetofauna

10. 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.

~~10. Prior to any physical construction works occurring on site the Consent Holder will provide the Hurunui District Council with either:~~

~~(a) confirmation, in liaison with the Department of Conservation, that no Rough Gecko habitat or Canterbury Grass Skink habitat will be disturbed as a result of construction of the activity, or~~

~~(b) if there is potential for Rough Gecko habitat or Canterbury Grass skink habitat, or other lizards to be affected the Consent Holder will not undertake physical works associated with the construction of the activity unless any permit required under the Wildlife Act has been obtained from the Department of Conservation.~~

Kārearea/falcon

10a. The consent holder will:

(a) Prior to any physical construction works occurring on site the Consent Holder will provide the Hurunui District Council 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 from works 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 10(a) or 10(b), this shall be reported to Hurunui District Council within 14 days the works ceasing.

10b. Following commissioning 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

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

Landscaping

12. *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.*
13. *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.*
14. *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.*
15. *The planting required under conditions 13 and 14 shall be implemented, if not prior to, within the first planting season (1st April to 30th August) following completion of construction.*
16. *All planting required by conditions 13 and 14 shall be maintained with any diseased, damaged or dying plants to be replaced immediately as soon as reasonably practicable upon failure, with plants of a similar species.*

Signage

16A. Prior to the commencement of the activity, subject to the agreement of the landowner, signage alerting horse riders to the Flyride activity shall be 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

17. *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 carparking 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*