

**BEFORE**

A Commissioner appointed by the  
Hurunui District Council

**AND**

**IN THE MATTER OF**

the Resource Management Act  
1991

**AND**

**IN THE MATTER OF**

a publicly notified application  
under Section 95A of the Act

**BETWEEN**

**Hanmer Springs Thermal Pools  
and Spa**

The Applicant

**AND**

**Hurunui District Council**

Consent Authority

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**RESPONSE BY KELSEY BEWLEY TO THE PEER REVIEW OF THE LIZARD MANAGEMENT PLAN**

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## Introduction

1. My full name is Kelsey Jade Bewley. My qualifications and experience were outlined in paragraphs 1 and 2 of my section 42A Officer's report which is dated 16 September 2021.
2. On October 11 2021, the Commissioner issued Minute 3 requiring the commissioning of an independent peer review of the Lizard Management Plan (LMP) provided by the Applicant, by suitably qualified herpetologist Ms Lettink. The peer review was to consider what the analysis was based on and whether it was robust, how significant the effects on lizards will be, and whether the proposed mitigation contained within the LMP will be adequate and effective and be able to achieve what is proposed.
3. Dr Lettink provided her peer review of the LMP on Sunday 31 October 2021, and this was circulated to all relevant parties on Monday 1 November 2021.
4. In Minute 4 issued by the Commissioner, it was outlined that the Applicant or any submitter were to provide a response to any matters raised in the peer review of the LMP by 5 November 2021. On 8 November 2021, the Commissioner provided Council with an opportunity to comment on the peer review of the LMP and in particular, whether the peer review changed any of my previous views as stated in my section 42A Officer's report.

## Section 42A Report

5. I consider it pertinent to firstly outline my consideration of the adverse effects of the proposal on lizards, as addressed in my section 42A Officer's report. I considered that any actual or potential effects of the proposal on lizards on site was most appropriately addressed and managed under the Wildlife Act 1953 and it was appropriate to link the resource consent consideration with the Wildlife Act matters by imposing conditions of consent. These proposed conditions of consent were outlined in paragraph 151 of my section 42A Officer's report.

## Significance of effects

6. During the hearing held on 7 and 8 October 2021, it arose that the proposed flyride footprint is significant habitat of indigenous fauna under section 6(c) of the Resource Management Act 1991 (RMA). Since the time of writing my section 42A Officer's report and having considered all information presented at the hearing and the peer review of the LMP, I agree that the proposed flyride footprint is significant habitat of indigenous fauna under section 6(c) of the RMA.
7. In the peer review of the LMP, Dr Lettink assesses the significance of effects on lizards in paragraphs 37 and 38. Dr Lettink states, *'DOC regards all adverse effects on New Zealand lizards, and their habitats, as significant because all indigenous New Zealand lizards are absolutely protected under the Wildlife Act (1953). Thus, adverse effects on all four lizard species are considered significant irrespective of their threat status.'* Dr Lettink further states that she is unable to quantify how significant these effects will be due to uncertainties

regarding both the numbers of individuals affected in relation to local population sizes and the effectiveness of the proposed mitigation. In her concluding paragraph (57), Dr Lettink states that she is of the view that there will be significant residual adverse effects if restricted to the proposed mitigation and remediation actions (paragraph 39, measures 1-4), and the rodent monitoring (measure 5) which is neither mitigation nor remediation. However, securing a sizeable covenant over an appropriate site that supports a viable population of rough geckos would alter her view.

8. I acknowledge that clause 6(1) of the Fourth Schedule of the RMA requires that an assessment of the activity's effects on the environment must include a description of any possible alternative locations or methods for undertaking the activity if it is likely that the activity will result in any significant adverse effect on the environment.
9. Having had a discussion with Council's legal counsel on what constitutes a "significant" adverse effect for triggering clause 6(1) of the Fourth Schedule of the RMA, I understand that there is no case law commenting on what constitutes a "significant" adverse effect for the purposes of clause 6(1) of the Fourth Schedule of the RMA. However, there is case law on what constitutes a "significant" adverse effect to trigger a consideration of alternatives in terms of sections 168A/171 of the RMA regarding notices of requirement. I note that sections 168A/171 have a similar "significant" adverse effect trigger for considering alternatives. Paragraph 63 in *Pukekohe East Community Society Inc v Auckland Council* [2017] NZEnvC 27 (*Pukekohe East*) states:

*"The RMA does not define or otherwise set any threshold for what may be "significant," which may be seen as consistent with the approach taken to the use of the word "minor" in similar contexts. In the Court's experience the use of the word "significant" tends to require a generalised evaluative approach, consistent with its ordinary meaning, to look for effects that are sufficiently great or important in terms of their consequences for or influences on an identified value to warrant attention. There is no absolute scale of effects, nor any fixed datum from which an effect is to be measured."*

10. In considering whether the proposal is likely to generate significant adverse effects on lizards on site, I consider it pertinent to firstly determine whether it is appropriate to consider the proposed off-site covenant when assessing whether adverse effects are "significant." In my opinion, this consideration is important since Dr Lettink considers that securing a sizeable covenant over an appropriate site that supports a viable population of rough geckos would alter her view on whether there will be significant residual adverse effects on lizards. I agree with Dr Lettink as stated in paragraph 53 of the peer review of the LMP, that the proposed covenant is compensation, rather than mitigation. I note that paragraph 64 of *Pukekohe East* states:

*"It is not clear whether the degree of effect should be assessed as if there were no mitigation or whether the net effect of the work and any proposed mitigation is a more appropriate basis for assessment and evaluation. In general terms, that seems also to require consideration of the relevant context. In some circumstances the proposed mitigation may be an intrinsic part of the work, so that it would be unreal to separate the two; in other cases the mitigation may be sufficiently separate from the work itself that its effectiveness should also be considered separately from the work."*

I consider that as the proposal to install and operate a flyride would cause the adverse effect and the proposed off-site covenant is separate from that proposal, that the appropriate approach is to assess adverse effects on lizards on site without considering the proposed off-site covenant. On that basis, I have relied on Dr Lettink's expertise that the proposal is likely to generate significant adverse effects on lizards in the absence of an off-site covenant. Therefore, I consider that the proposal will trigger clause 6(1) of the Fourth Schedule of the RMA and as such, a description of any possible alternative locations or methods for undertaking the activity must be provided.

## **Addressing clause 6(1) of the Fourth Schedule of the RMA**

11. In the absence of any information on alternative locations or methods, I note that the pursuant to section 104(6) of the RMA, the Commissioner has the ability to decline the resource consent application on the grounds that there is inadequate information to determine the application. However, section 104(7) of the RMA requires an assessment on the adequacy of the information to have regard to whether any request made of the applicant for further information resulted in further information being available. It is my understanding that section 104(7) anticipates that further information introduced during the processing and hearing of a resource consent application can cure what might otherwise have been a situation where there is inadequate information to determine the application. Therefore, I also note that pursuant to section 41C(3) of the RMA, the Commissioner may request the applicant to provide further information regarding a consideration of alternatives. If the Commissioner uses this approach, a copy of the further information provided by the applicant would then need to be made available to submitters as anticipated by section 41(C)(5B) and submitters should then be given an opportunity to respond to that further information.

## **Conclusion**

12. I acknowledge that the proposed flyride footprint is significant habitat of indigenous fauna under section 6(c) of the RMA.
13. I consider that in assessing whether the adverse effects are "significant" on lizards from the proposal, and in the context of triggering the need to consider alternatives, the proposed off-site covenant should not form part of such assessment.
14. Having relied on Dr Lettink's expertise, I consider that the proposal is likely to generate significant adverse effects on lizards and as such, clause 6(1) of the Fourth Schedule of the RMA applies. Therefore, I consider that the applicant must provide a description of any possible alternative locations or methods for undertaking the activity.



Kelsey Bewley  
**Senior Planner**  
18 November 2021