

BEFORE THE HURUNUI DISTRICT COUNCIL

UNDER the Resource Management Act 1991

AND

IN THE MATTER Of an application by Hanmer Springs Thermal Pools & Spa for land use consent to install and operate a Gravity-Based Recreation Activity within the Conical Hill Reserve, Hanmer Springs. (RC210098)

COMMENTS ON BEHALF OF FRIENDS OF CONICAL HILL- PEER REVIEW OF LIZARD MANAGEMENT PLAN

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1 INTRODUCTION

- 1.1 Ms. Lettink's Peer review of the May 2021 Lizard Management Plan (LMP) was received by submitters on 01 November 2021.
- 1.2 In addition, I have been provided with a copy of the LMP on Tuesday 02 November 2021. The LMP was provided on a confidential basis, consistent with the Commissioner's Minute 3 in respect of the peer review. To the extent that any reference is made in these comments to the LMP, care has been taken to ensure that no confidential information i.e. specific location data is disclosed.
- 1.3 At the hearing, Ms Appleyard advised that the key reason for requiring confidentiality is the location of the habitat to be used for mitigation of effects, as opposed to the disclosure of information regarding lizard habitat and population under the footprint of the proposed Flyride. That is accepted, however it is apparent from a review of the LMP that significant extracts, including in particular the assessment of effects on lizard population and habitat, should properly have been made available to all parties and the Commissioner at the time of evidence exchange. To do so would not have increased the risk to the lizard population of Conical Hill.
- 1.4 In addition, it is evident from the LMP that earlier documentation (from 2019) held by the Te Tihi o Rauheha Conservation Trust/ Department of Conservation recognised Conical Hill as a significant site for lizards. Accordingly, the Applicant was well aware of this status during the preparation of the Application, and was therefore on notice as to the need to consider alternative locations other than Conical Hill Reserve. The issue of alternatives is discussed in more detail below.

2 EFFECTS ON LIZARD POPULATIONS

- 2.1 In her peer review, Ms Lettink assesses the significance of the effects on lizards at paragraphs 37-38. She states that: *"... adverse effects on all four lizard species are considered significant irrespective of their threat status.*
- 2.2 Ms Lettink goes on (38) to say that she is unable to quantify how significant those effects will be.
- 2.3 In the concluding paragraph of the peer review, Ms. Lettink is of the view that there: *"... will be significant residual adverse effects if restricted to the proposed mitigation and remediation actions within the Reserve (para 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 my view.*
- 2.4 Ms Lettink's quantification of residual effects therefore differs markedly from Ms. Tocher's assessment.

2.5 Ms Tocher's evidence at the hearing addressed concerns regarding the assessment of effects on lizard population and habitat by reference to her analysis in the LMP:

36 I then detail the actual and potential effects of the Flyride construction and ongoing operation on lizard values of the footprint. To this end, I provide a breakdown of effects at multiple scales; for example, effect are detailed on individual lizards (number of lizards of each species affected); lizard habitat (area affected for each species), and effects at the lizard population level for each species (Section 10 of the LMP).

2.6 From a reading of the LMP, it is accepted by Ms Tocher that there will be: "... disturbance, death, serious injury, minor injury and/or displacement of resident rough geckos, Canterbury grass skinks, pygmy geckos and Southern Alps geckos as earthwork (and vegetation removal) takes place to construct the Switchback..

2.7 In addition, the LMP states:

The potential disturbance of rough geckos, Canterbury grass skinks, pygmy geckos and Southern Alps geckos not directly affected by works, by noise, dust and vibration generated during activities over the footprint (e.g., by vehicles and foot traffic). Disturbance may cause lizards to move away (be displaced) from preferred retreat sites, foraging and basking sites. Displacement may elevate predation risk; alter levels of intra-lizard species interactions/competition and may reduce survival of lizards during extreme weather. The scale and significance of effects of noise, vibration and dust on individuals affected is not possible to ascertain with certain, but maybe [sic] a significant albeit temporary effect for a small number of individuals.

2.8 A summary table is provided in the LMP as to the anticipated numbers of lizard species that are anticipated to be affected by disturbance, death, serious injury, minor and or displacement due to earthworks and vegetation clearance.

2.9 In terms of *Lizard Population Effects*, the LMP states:

- *Should c 14 rough geckos be displaced or otherwise affected by earthworks, vegetation clearance, vehicle movements, noise, dust and vibration during works, the viability of the wider Conical Hill/ Te Tihi o Rauheha rough gecko population may be significantly affected.*
- *It is estimated that up to 60% of the Canterbury grass skink population within the c 11.7ha Conical Hill/ Te Tihi o Rauheha Recreation Reserve may be directly affected by the works (killed, injured, or displaced); with another 10% indirectly affected. These estimates are based on the distribution of Canterbury Grass skinks on Conical Hill/ Te Tihi o Rauheha observed during the February and April Surveys*
- *The potential loss of up to 60% of the Canterbury grass skink population may adversely affect the wider population of Canterbury grass skinks on Conical Hill/ Te Tihi o Rauheha by causing what remains to be fragmented and less resilient to natural predation/habitat loss and/or future perturbations i.e., the long-term viability of the Conical Hill/ Te Tihi o Rauheha population may be compromised.*

- *It is estimated that < 5% of the pygmy gecko population within the within the c 11.7ha Conical Hill/ Te Tihi o Rauheha Recreation Reserve may be directly affected by the works (killed, injured, or displaced); with another 5% indirectly affected. These estimates are very crude and are based on the distribution of the pygmy gecko in and directly adjacent to the Switchback footprint and over the Conical Hill/ Te Tihi o Rauheha Reserve. The potential loss of up to 5% of the resident pygmy gecko population over the Conical Hill/ Te Tihi o Rauheha Reserve is unlikely to adversely affect the wider Conical Hill/ Te Tihi o Rauheha population of pygmy geckos.*
- *It is estimated that < 5% of the Southern Alps population within the within the c 11.7ha Conical Hill/ Te Tihi o Rauheha Recreation Reserve may be directly affected by the works (killed, injured, or displaced); with another 5% indirectly affected. These estimates are very crude and are based on the distribution of the pygmy gecko in and directly adjacent to the Switchback footprint and over the Conical Hill/ Te Tihi o Rauheha Reserve. The potential loss of up to 5% of the resident pygmy gecko population over the Conical Hill/ Te Tihi o Rauheha Reserve is unlikely to adversely affect the wider Conical Hill/ Te Tihi o Rauheha population of Southern Alps geckos.*

2.10 In respect of on-going operational effects, the LMP states:

Noise and movement of users of the Switchback will cause ongoing disturbance and displacement of lizards and birds currently residing in the vicinity of the cable line and Towers, or those that take up residence in these areas post-installation. This effect is expected to have the most impact on day-active lizards such as the rough gecko and Canterbury grass skink...

2.11 Under the heading *Significance of Effects*, the LMP states:

The protection of significant habitat by Regional and District Councils is required under Section 6 (c) of the RMA (1991). Effects on significant habitats, for example, the habitat of nationally threatened and at risk lizard species, by inference, are also significant.

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), including the nationally "not threatened" Southern Alps gecko and pygmy gecko.

2.12 Ms Lettink in her peer review has provided an update as to change to the threatened status of lizard species on Conical Hill, recording the fact that the Rough Gecko is now Nationally Endangered.

2.13 While acknowledging that the Applicant proposes to mitigate/offset/compensate for effects on lizard populations, the acceptance of the significance of effects has implications for the Commissioner's decision as to whether or not consent should be granted. More specifically, the issue of whether or not alternative locations should have been considered comes squarely into focus.

2.14 Clause 6 (1) of the Fourth Schedule to the Act provides that an assessment of an activity's effects on the environment must include the following information:

(a) *If it is likely that the activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity.*

2.15 Given this imperative, it is readily open to the Commissioner to conclude that the Application is inadequate in its failure to consider alternative locations other than Conical Hill/ Te Tihi o Rauheha Reserve for the Flyride proposal. Such a requirement is not obviated by the existence or otherwise of a conservation covenant off-site.

2.16 The details of the proposed off-site conservation covenant are not known and therefore it has been impossible for Ms Lettink (or anyone else) to fully evaluate the adequacy or otherwise of this approach towards the compensation of effects. This further increases the difficulty of making a decision on the Application.

Limits on Offsetting/ Compensation

2.17 Dr. Brower addresses this matter in detail in her comments.

2.18 The concepts of biodiversity offsetting and compensation have been subject to ongoing analysis by the Courts, analysis that has typically made reference to the principles developed in the International Business and Biodiversity Offsetting Programme (BBOP). A key principle of BBOP is that there are limits to offsetting. In *Oceana Gold (New Zealand) Ltd v Otago Regional Council* [2019] NZEnvC 41 the Environment Court held that that limit or principle would be breached where the effect be offset involved the loss of individuals of threatened species:

[95] The reason we hold that individual plants or animals should not be lost is that while the "no net loss" policy 5.4.6(b) is generally adequate for indigenous biological diversity (noting that it allows for loss of individual plants or animals on one site provided others are established elsewhere in the region) it is too risky to extend that method of management to threatened species..

2.19 It is of course acknowledged that *Oceana Gold* is a case involving the preparation of a Regional Policy, and in particular the appropriateness of a Policy on biodiversity offsetting, however the Court's justification for the application of a limit to offsetting can apply more broadly to the resource consent context.

G J Cleary

08 November 2021