

BEFORE: An Independent Hearing Commissioner at Hurunui District Council

UNDER: The Resource Management Act 1991

IN THE MATTER OF: Land Use Resource Consent Application to Install and Operate a Gravity-Based Recreation Activity within the Conical Hill Reserve, Hanmer Springs (RC210098)

BETWEEN: Hanmer Springs Thermal Pools and Spa

AND: Hurunui District Council

STATEMENT OF PLANNING EVIDENCE OF VICKI BARKER

DATED: 30 SEPTEMBER 2021

1.0 INTRODUCTION

- 1.1 My full name is Vicki Ann Barker.
- 1.2 My qualifications include a Bachelor of Science and a Masters in Planning Practice (Hons) from the University of Auckland.
- 1.3 I am the Director of Barker Planning Limited, a planning consultancy based in Christchurch, and I have 24 years' experience as a resource management planner. My work experience includes central government, local government and private consultancy planning experience. I am familiar with Hanmer Springs and Conical Hill as an occasional visitor, and have visited the site in the preparation of this evidence.
- 1.4 I have experience in preparing and evaluating assessments of environmental effects and resource consent applications, and also in processing both land use and subdivision consent applications for Councils.
- 1.5 I have appeared as a witness at Council hearings and before the Environment Court relating to District Plan matters. I have also appeared as a s42a report writer on behalf of Councils as a Council employee, and latterly as a consultant planner.
- 1.6 I am familiar with the proposal to operate a gravity-based recreation activity within the Conical Hill Reserve, Hanmer Springs, to which this matter relates. I prepared the submission for Claire and Nigel Shatford¹ and Gavin Martin², and also assisted Julie and Nicholas Rogers³ with initial planning advice to inform their submission. I have also had discussions with submitters Ross Carter⁴ and William Smith⁵ about the proposal.

2.0 CODE OF CONDUCT

- 2.1 Although these proceedings are not before the Environment Court, I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and I agree to comply with it as if these proceedings were before the Court. I confirm that the issues addressed in this statement of evidence are within my area of expertise. I advise there are no conflicts of interest that would impede me from providing independent advice to the Hearings Panel.

3.0 SCOPE OF EVIDENCE

- 3.1 I have been asked to give evidence on behalf of the Friends of Conical Hill⁶ (FoCH), and individual submitters Gavin Martin and William Smith.
- 3.2 The FoCH is a group of approximately 100 Hanmer Springs residents, whose objective is to preserve and enhance the natural beauty, ambience, wildlife and walking tracks of Conical Hill for current and future generations.

¹ Submitter 11

² Submitter 16

³ Submitter 31

⁴ Submitter 6

⁵ Submitter 17

⁶ Submitter 41

3.3 The FoCH submission is in opposition to the proposal in full and seeks that the application be declined. The reasons for opposition include:

- (i) The proposal will have unacceptable adverse effects on the amenity of local residents and users of Conical Hill Reserve. These effects include, but are not limited to, noise effects, effects on privacy and traffic congestion effects on local roads;
- (ii) The proposal does not achieve the relevant objectives and policies of the Hurunui District Plan;
- (iii) The proposal is inconsistent with the provisions of the Reserve Management Plan;
- (iv) The proposal is inconsistent with, breaches, or has not taken into account section 6 of the Resource Management Act.

3.4 It is important to note that given FoCH has a large membership base, the views of every single submitter who is part of the FoCH group has not been canvassed and addressed in this evidence, but rather this evidence presents the key issues of the group.

3.5 Gavin Martin is a submitter who permanently resides at 32 Acheron Heights, immediately adjacent to the existing and proposed access to the reserve at 34 Acheron Heights. The submission of Gavin Martin is also in opposition to the proposal in full and is concerned with a range of matters including:

- (i) Utilisation of 34 Acheron Heights as a public access for Flyride patrons to Conical Hill Reserve and the loss of residential amenity value;
- (ii) Car parking;
- (iii) Vehicle movements;
- (iv) Noise;
- (v) Hours;
- (vi) Fire risk and access for fire appliances;
- (vii) Tree removal and land stability;
- (viii) Gecko and skinks;
- (ix) Threatened species;
- (x) Objectives and policies;
- (xi) No consideration of the Residential zoning in the application.

3.6 William Smith is a submitter who resides at 24 Oregon Heights, which is the closest existing dwelling to the proposed end station. Mr Smith's submission opposes the proposal in full due to the adverse effects on residential amenity and the users of Conical Hill Reserve, particularly with respect to noise and privacy. Mr Smith's submission also considers that the proposal will result in adverse traffic effects on roads and residents, that the objectives and policies of the Hurunui District Plan are not met, the proposal is inconsistent with the provisions of the Reserve Management Plan, and the removal of trees will increase the risk of instability.

3.7 My evidence will deal with the following matters within the scope of the above-mentioned submissions:

- (i) Site and Hurunui District Plan Framework
- (ii) Statutory Considerations
- (iii) Actual and potential effects on the environment - focussing on the points of contention
- (iv) Any matter proposed for ensuring positive effects
- (v) National, regional and district planning documents and other regulations
- (vi) Relevant Other Matters
- (vii) Part 2 Matters
- (viii) Conclusion

4.0 SUMMARY OF EVIDENCE

- 4.1 The actual and potential effects of the proposal will be more than minor and the proposal is considered contrary to the objectives and policies of the Hurunui District Plan and potentially the Canterbury Regional Policy Statement.
- 4.2 In particular, there has been inadequate consideration of the noise effects on recreation users using the pathways within the reserve. Also, residents will be subject to increased and more frequent vocalisation noise which has not been assessed in terms of the annoyance level, and which is not proposed to be monitored to ensure operational compliance. The increased car parking demand on residential streets will also result in more than minor effects with respect to residential amenity and potentially the operation of the road network.
- 4.3 A critical issue is the lack of information available relating to the effects on indigenous biodiversity. The reliance on the Wildlife Permit process with respect to lizards has not afforded submitters to undertake any form of assessment as the information is simply not available. Furthermore, the application does not assess whether or not the presence of gecko and karearea/falcon may qualify the site as a significant habitat of indigenous fauna (section 6c of the RMA), or whether the site could qualify under Appendix 13. 1 of the District Plan as an area of significant indigenous biodiversity value. Also, no assessment has been undertaken against the objectives and policies of Chapter 9 of the CRPS.
- 4.4 In terms of the access to the reserve at 34 Acheron Heights, the use of this access will increase significantly as a direct result of the proposal impacting on the residential amenity of surrounding residents. The use of this access is considered inappropriate, and as the effects on residential amenity are not able to be mitigated under the current proposal, the access should not be used.
- 4.5 The Reserves Act seeks to conserve those qualities of the reserve which contribute to the pleasantness, harmony, and cohesion of the natural environment and to the better use and enjoyment of the reserve. Whether the Reserve's qualities have been conserved has not been addressed, and nor has the necessity of the business within the reserve.
- 4.6 With respect to Part 2 matters, section 5, and possibly section 6(c) of the RMA has not been met.
- 4.7 Overall, in the absence of critical information and the inability to mitigate residential amenity effects based on the current proposal, it is my opinion that the application should be declined.

5.0 SITE AND HURUNUI DISTRICT PLAN FRAMEWORK

- 5.1 The application site is zoned Open Space in the District Plan, and the rules applying to the Open Space zone are contained in Rules 4.20-4.23.
- 5.2 The site is also located within a slope hazard 4 area as identified in Appendix 15.1.
- 5.3 The site contains the Conical Hill Lookout and plaque which is identified as a historic building in the Hurunui District Plan (H101).
- 5.4 The activity has been assessed by the Council Officer and the applicant as being a discretionary activity overall. The reasons for consent are described in the Council Officer's s42a report and in summary include:
- (i) The following permitted activity standards (Rule 4.20) are breached which is a discretionary activity in accordance with 4.22.1.
 - a. Height - Five of the proposed poles are greater than 8m high

- b. Noise - Noise levels will be exceeded
 - c. Car parking - No car parking is proposed
 - d. Additional design standards for Hanmer Springs - Roof pitch of toilet less than 20 degrees; poles are constructed of steel which is not a permitted cladding material and cladding of toilet is fibreglass which is not a permitted cladding material.
- (ii) Car parking - Rule 8.4.5.1 - discretionary activity
 - (iii) Natural hazards - Rule 15.4.5.1 - discretionary activity
- 5.5 Based on the zoning of the site being entirely Open Space, I agree with the overall activity status of discretionary as outlined in the Council Officer's report⁷.
- 5.6 Furthermore, if the site was agreed to include the 34 Acheron Heights access as discussed at paragraph 7.42, it is my view that the 'worst-case' activity status would also be discretionary based on the current proposal (i.e., if noise was not met).

6.0 STATUTORY CONSIDERATIONS

- 6.1 When considering an application for a discretionary activity, the consent authority must have regard to the matters listed in sections 104 and 104B of the RMA.
- 6.2 In summary, section 104 requires consideration of:
- (i) Actual and potential effects on the environment
 - (ii) Any measure proposed for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effect
 - (iii) Any relevant provisions of a national environmental standard; other regulations, a national policy statement, a NZ coastal policy statement, a regional policy statement or proposed regional policy statement, and a plan or proposed plan
 - (iv) Any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- 6.3 In addition, s104(6) provides for a consent authority to decline an application for resource consent on the grounds that it has inadequate information to determine the application.
- 6.4 Furthermore, section 104B states that after considering an application for resource consent for a discretionary or non-complying activity, a consent authority may grant or refuse the application and if it grants the application, may impose conditions under s108.
- 6.5 Section 128 also provides for consent conditions to be reviewed to deal with any adverse effect on the environment which may arise from the exercise of the consent or for any other purpose specified in the consent.

7.0 ACTUAL AND POTENTIAL EFFECTS ON THE ENVIRONMENT

- 7.1 This planning evidence has focussed on the main points of contention with respect to the assessment of effects of both the evidence of the applicant's experts and the Council's s42A Officer report.

PERMITTED BASELINE

- 7.2 Ms Whyte has referred to the permitted baseline in her evidence and considers it is appropriate to apply when considering this consent, and considers *"it is not fanciful to consider that another recreation proposal, including a commercial recreation proposal, could establish as of right"*.⁸

⁷ Paragraph 41 - Section 42a Council Officer's Report

⁸ Paragraphs 71-73 Statement of Evidence of Jane Whyte

7.3 I disagree that a commercial recreation activity could likely establish within the Conical Hill Reserve as of right. Under the District Plan car parking and natural hazard rules would almost certainly be breached, and noise and design standards may also be difficult to meet with respect to any commercial recreation activity of a comparable nature and scale. Notably, Ms Whyte has not identified a specific example of another commercial recreational activity that might seek to establish within this reserve, which shows that there is no valid alternative against which to test whether the permitted baseline is appropriate.

NOISE

7.4 The District Plan noise standards are considered by the noise experts for the applicant and the Council to be inappropriate in the context of this application as they do not allow for vocalisations of ride users, which has been identified as the major noise source associated with this proposal. Dr Trevathan also notes that the District Plan noise limits are relatively lenient and there is no LAFmax limit which applies during the daytime, and therefore the District Plan noise limits do not provide a high level of amenity protection⁹. The ambient noise levels in the area have also been recorded as being low¹⁰.

7.5 The noise experts subsequently arrived at an agreed application of a noise level of 45 db LAFmax against which to assess the proposal.¹¹ Dr Trevathan states that “*where sounds from ride users typically do not exceed a level of 45 db LAFmax at dwellings and outdoor living areas, the noise effects will be minimal*”¹². However; there appears to be no conclusions drawn as to what the noise levels should be within the Conical Hill Reserve itself to ensure noise effects are not significant with respect to recreational amenity.

7.6 Dr Trevathan’s evidence notes that 45dB LAF max is predicted to be exceeded at the outdoor living area of the dwelling at 17 Oregon Heights¹³, and levels as high as 65 dB LAFmax are expected over a small portion of the Conical Hill summit pathway, and up to 75 dB LAFmax over a small portion of the ‘cross-town’ link track.¹⁴

7.7 Mr Walton in his noise peer review for the Council suggests operational noise measurements may be appropriate to verify that the operational noise limits are as expected. Dr Trevathan is open to a suitable monitoring condition, but notes that his analysis is conservative.¹⁵ Dr Trevathan also recommends the ride be managed in the final two spans (7 and 8) and possibly in the vicinity of Pole T4 to slow the ride down and limit noise as far as practicable¹⁶. Despite these recommendations, no draft conditions of consent are proposed by either the applicant or the Council Officer to monitor operational noise. Furthermore, no specific condition as recommended by Dr Trevathan is proposed to manage the ride by slowing it in sections, especially at the final two spans, to reduce noise.

7.8 Malcom Hunt of Malcom Hunt Associates has prepared a letter dated 27 September 2021, which is attached to my statement of evidence as **Appendix 1**. Mr Hunt is a noise expert who has reviewed the application and the available noise information on behalf of FoCH. Mr Hunt considers that if consent were to be approved that it is imperative that a noise limit of 45dB LAFmax is applied as a condition of consent to be measured at any residential zoned site to provide a good degree of protection against

⁹ Paragraph 28 - Statement of Evidence of Jeremy Trevathan

¹⁰ Paragraphs 36 and 37 - Statement of Evidence of Jeremy Trevathan

¹¹ Paragraphs 41-43 - Statement of Evidence of Jeremy Trevathan

¹² Paragraph 43 - Statement of Evidence of Jeremy Trevathan

¹² Paragraph 44 - - Statement of Evidence of Jeremy Trevathan

¹³ Paragraph 50 - Evidence of Jeremy Trevathan

¹⁴ Paragraphs 55 and 56 - Evidence of Jeremy Trevathan

¹⁵ Paragraph 81 - Evidence of Jeremy Trevathan

¹⁶ Paragraphs 53 and 86 - Evidence of Jeremy Trevathan

adverse noise effects. Mr Hunt states that if the application is granted in the absence of such a condition that the District Plan permitted activity noise limits would apply, which would be exceeded beyond some parts of the site boundary.

- 7.9 Mr Hunt also considers that measuring the noise level will be difficult due to the low ambient noise levels and recommends a further condition of consent requiring a 'Noise Compliance Measurement and Assessment Plan' (NMAP) to be developed to determine compliance with the 45dB LAFmax limit, and that the NMAP is required to be submitted to the Council for approval and reviewed by an expert on Council's behalf. I concur with Mr Hunt that should consent be granted that additional operational noise conditions would be vital to ensure operational noise is as predicted.
- 7.10 A further matter is how the noise is characterised and the level of annoyance to residents. Mr Trevathan's evidence states: *"However, while the noise will have a distinctive character compared to more benign sounds, I expect it will typically be subjectively better described as 'whoops of joy' as are generated by users of the hydrosleds at the Hanmer Springs Thermal Pools & Spa or the zip lines at the Christchurch Adventure Park. This can be contrasted to the vocalisations of people in genuine existential stress which are typically louder, harsher and more abrupt (for example, the Maize Maze in the Selwyn District ran a night time 'Horror Maze', which generated this different character of participant noise)."*¹⁷
- 7.11 Whether or not the 'whoops of joy' or otherwise associated with users of the Zipline will result in annoyance to residential neighbours has not been assessed, particularly with respect to those residents who are accustomed to the very low levels of ambient background noise. Mr Smith's property at 24 Oregon Heights will be one of those particularly exposed to regular vocalisations over a nine-hour period, seven days a week. The proximity of his property to the end station of the Flyride proposal is shown in the photos in **Appendix 2**.
- 7.12 It is understood that there is one other "Switchback" zipline facility operating in the USA. It would have been useful to have any available noise data from this operational facility to review and compare against. It is understood that the Christchurch Adventure Park Zipline operates on a completely different system and therefore is not directly comparable.
- 7.13 A separate but related issue is the noise experienced within the reserve on the pathways which could be as high as 75 dB LAFmax. Dr Trevathan states that *"I do not expect this aspect of the noise to have any adverse effect."*¹⁸ The reasons provided for his view include the pathways only being occupied intermittently and for brief periods by those already engaged in recreation, and that occasional noise events of this level are typical in shared-use environments generated for example by vehicles, mountain bikers, bird calls or broken branches.¹⁹
- 7.14 Noise levels as high as 65 and 75 dB LAFmax on the pathways within Conical Hill are considered significant, and even though the noise will be intermittent, this will result in an adverse effect on the amenity of the users of the reserve. It is not considered accurate to say that this aspect of noise will not have any adverse effect. Furthermore, Conical Hill is not the typical shared environment referred to in the applicant's noise evidence as vehicles (and the associated noise they generate) are not permitted in the reserve, and mountain biking is also prohibited on the walking tracks. The low ambient noise levels recorded in the area demonstrate that levels of 65 and 75 dB LAFmax will be well beyond the existing noise levels experienced by track users and from my understanding of Dr Trevathan's evidence, the implications associated with this increase have not been assessed. The evidence of Mr Greenaway states that regular users of Conical Hill walking tracks may experience a *"step-change in activity on the tracks and that this may be experienced as an adverse effect"*.²⁰ I also consider that whilst the Conical

¹⁷ Paragraph 40 - Evidence of Jeremy Trevathan

¹⁸ Paragraph 55 - Evidence of Jeremy Trevathan

¹⁹ Paragraphs 55 and 56 - Evidence of Jeremy Trevathan

²⁰ Paragraph 19 - Evidence of Robert James Greenaway

Hill site is not an unmodified environment, it is largely undeveloped and, from my own experience, is a peaceful and quiet environment.

- 7.15 It is also not clear how the noise from additional vehicles parking on the road and people in the area will affect the noise levels in the area in a cumulative sense when added to the noise generated by the ride itself and its users, and whether this is an issue. Furthermore, there is an acknowledgement in Mr Trevathan's evidence that whilst the noise increases as a result of additional cars and people is predicted to be small (2-3db for each activity), this noise will occur more often than it does currently. This will result in a change in the existing environment that is expected to be noticeable to residents in neighbouring streets as a result of the additional parking demand and pedestrians accessing the site; i.e., Oregon Heights and Acheron Heights.
- 7.16 Overall, I consider there has been inadequate consideration of the noise effects on recreation users using the pathways within the reserve. Users of the reserve will now be subjected to levels of noise which on the applicant's own assessment will be well above existing levels. As these noise effects have not been duly considered, as a planner I am unable to conclude that these effects will be appropriate or acceptable. Furthermore, residents will be subject to frequent vocalisation noise from the reserve, which has not been assessed in terms of the annoyance level and which is not proposed to be monitored. There will also be increased noise associated with cars parking and greater numbers of people accessing the reserve, which has not been considered in a cumulative sense and not duly considered in terms of the impact on residential amenity.

TRAFFIC & CAR PARKING

- 7.17 The proposal is not providing any on-site car parking and no other dedicated off-site car parking provision is proposed. People will access the ride via foot, or will drive their cars to surrounding residential streets and will park near the access points to the reserve; i.e., Acheron Heights. This will result in an increase in traffic on surrounding streets (and an associated increase in noise) and increased on-street car parking demand.
- 7.18 Both the applicant's evidence and the Council Officer's report has concluded that the adverse effects of the activity from a traffic and car parking perspective are able to be mitigated, subject to conditions of consent. Conditions of consent recommended by the Council Officer include: requiring monitoring of on street car parking prior to the activity commencing and twice annually thereafter (condition 4); that the monitoring include Acheron Heights (condition 5); that the results of monitoring are provided to Council within 8 weeks of completion (condition 5.a.); and that a 'wayfinding plan' is submitted to Council for certification prior to the activity commencing (condition 8). The applicant is seeking pedestrian crossing and footpath realignment conditions not be included (conditions 6 and 7).
- 7.19 Traffic evidence has been prepared by Mr Edwards of Urbis on behalf of the FoCH. Mr Edwards has reviewed the Council Officer's Report, the parking assessment prepared by Novogroup dated May 2021, the peer review by Abley dated 15 September 2021 and the evidence of Mr de Verteuil for the applicant. With respect to the parking assessment the key findings of Mr Edward's evidence include:
- (i) The Novogroup analysis of car parking demand being met on-street assumes that the majority of patrons will walk to the activity, but there is no data to substantiate the claim. It is considered that the potential for people to drive rather than walk has been underestimated.
 - (ii) The parking demand survey by Novogroup was undertaken during April 2021 and was intended to capture peak trading periods associated with Hanmer township. No evidence is provided to substantiate the claim it was a peak period.
 - (iii) Car parking demand is influenced by the occupancy of holiday homes. No evidence is provided to substantiate the claim that the occupancy of holiday homes was high on the surveyed weekend.

- (iv) The survey date of 24 April between 11am and 2pm was short and as it was a long weekend and many people may not have arrived in Hanmer until later on Saturday afternoon. The parking demand survey should have been extended to cover Sunday as well.
- 7.20 Mr Edwards considers that as the parking demand estimates are based on a series of unsubstantiated assumptions and a single short site survey, the analysis cannot be claimed to be a reliable assessment of the potential visitor car parking effects of the proposal. In Mr Edward's view, there is potential for the northern end of Conical Hill Road and Oregon Heights to have high levels of on-street car parking as a direct result of the activity.
- 7.21 In terms of effects, high levels of on-street car parking demand can adversely affect both the operation of the road and residential amenity. With respect to road operation, Mr Edwards has identified that a no-stopping restriction which has been applied on the southern side of Oregon Heights to compensate for the reduced carriageway width is not well marked or clear and that there is potential for parking demand to occur here regardless of the restriction. Mr Edwards also notes that a similar situation could eventuate in Acheron Heights. On this particular point, Mr. Vincent on behalf of Fire and Emergency NZ has also commented that:
- "It is noted that other submitters raised concerns about emergency vehicle access including concern that the Fire and Emergency 4.0 metre access gap requirement is often not achievable in surrounding areas. While this was not included in the Fire and Emergency submission, this is supported by Fire and Emergency."*
- 7.22 With respect to residential amenity, Mr Edwards considers car parking will be most noticeable within Oregon Heights, Acheron Heights, Conical Hill Road and Thomas Hanmer Drive and considers there is potential for these streets to essentially become commercial car parks. Staff car parking has also not been fully explained. In Mr Edward's opinion, the proposal has the potential to result in more than minor effects on the road network and residential amenity, and is inconsistent with the residential amenity policies.
- 7.23 Mr Edwards in his evidence concurs with Mr Smith that expected on-street car parking demand will be concentrated on the streets closest to the activity access points (i.e. Oregon Heights and 34 Acheron Heights) and not spread over the survey cordon area as suggested by Mr de Verteuil, which is a critical consideration in terms of residential amenity effects. As a result of this conclusion, it is of note that the residential amenity of Mr Martin of 32 Acheron Heights will be especially impacted as a result of on-street car parking. Both Mr Edwards and Smith conclude that there is a risk parking demand will exceed that in the assessment at peak times and that a monitoring condition, including Acheron Heights, is appropriate.
- 7.24 Mr Edwards has also suggested solutions should the proposal proceed to address the disproportionate car parking load on the surrounding streets and the more than minor effects on residential amenity. Alternative solutions include a dedicated car parking facility or a shuttle bus operation. Mr Edwards also strongly recommends a more precisely worded section 128 review condition should consent be granted to provide greater clarity about what will be done to measure and mitigate effects.
- 7.25 I concur with Mr Edwards that there are several question marks over the base analysis that indicate that the data upon which the assessment has been based could be considered unreliable. I also consider there has been inadequate regard to the effect of increased on-street car parking on residential amenity, especially where an increase in noise and frequency of on-street car parking is acknowledged in the applicant's evidence. I consider that the resulting effects of on-street car parking are potentially more than minor with respect to residential amenity, particularly in those areas near the access points to the reserve.
- 7.26 The proposed draft traffic conditions 4 and 5 contained in the Council Officer's report are acceptable in principle should the Commissioner be of the mind to approve the application, and including Acheron

Heights in any monitoring is considered vital. A more specific s128 review condition would also be necessary. The proposed 'wayfinding plan' condition is discussed further at paragraph 7.43.

INDIGENOUS BIODIVERSITY

- 7.27 No evidence has been provided by the applicant with respect to the impact of the development on the lizards, skinks and gecko's identified within the reserve and what specific mitigation is proposed. Furthermore, the Lizard Management Plan was not included in Appendix 2 to Ms Tocher's evidence and this appears to still not be available at the time of writing this evidence, even after the Hearings Commissioner Minute of 24 September 2021 denied the request by the applicant to keep the plan confidential.
- 7.28 From the evidence of Ms Whyte²¹ and Mr Abbott²², it is clear that the Department of Conservation Wildlife Permit process is being relied on to address the effects of the development on lizards and biodiversity more generally. It is understood that the applicant accepts that if the Wildlife Permit is not granted, then the proposal cannot go ahead and a condition to that effect is recommended by the applicant (condition 10).
- 7.29 Ms Whyte concludes that the proposal is consistent with the relevant objectives and policies relating to biodiversity with respect to lizards and Karearea/falcon²³. The questions are, how can such an assessment even be undertaken by submitters when no lizard assessment has been made available, the Lizard Management Plan is still not available at the time of preparing this evidence, and the Wildlife Permit information is not available to submitters? An Official Information Act (OIA) request was made by a submitter to the Department of Conservation (DoC) to understand details of the Wildlife Permit application. DoC responded citing section 18 of the OIA and that the information is not able to be provided as no decision has been made as yet relating to this activity. Therefore, I am unable to conclude what the effects are and to comment on whether the proposal is consistent with objectives and policies in the absence of this information. In order to make a full and informed decision all information is required within reason and in this case the information is non-existent.
- 7.30 The application also does not assess whether or not the presence of gecko and karearea/falcon may qualify the site as a significant habitat of indigenous fauna (section 6c of the RMA). Publicly available evidence confirms the presence²⁴. The evidence of Dave and Celia Rodley of Oregon Heights also notes:
- "Conical hill is a very popular breeding area for these Karearea/falcon because of the tall trees and ample food sources. It is unfortunate that in paragraph 37 Dr. Tocher says that "lack of evidence that the Karearea/falcon is nesting on Conical Hill is a key finding" This is just not correct as both Celia and I have observed Karearea/falcon nesting just above our house about 100 metres away. My observation and reading about Karearea/falcon note that the Karearea/falcon only act aggressively when defending their territory, nest and their young. We have observed this aggressive behaviour by Karearea/falcon on several occasions with their young on Conical Hill."*
- 7.31 There is also the related question as to whether the site could qualify under Appendix 13. 1 of the District Plan as an area of significant indigenous biodiversity value. There is no evidence of such an assessment having taken place.

FIRE RISK

- 7.32 The applicant has proposed a condition of consent that a Fire Operations Emergency Procedure shall be drafted in consultation with FENZ and a copy provided to the Council prior to any activity commencing on the site (condition 11).

²¹ Paragraph 58 - Evidence of Jane Whyte

²² Paragraphs 33-39 - Evidence of Graeme Abbot

²³ Paragraphs 60 and 61 - Evidence of Jane Whyte

²⁴ <http://sonnywhitelaw.com/wp-content/uploads/2019/08/Predator-free-Hanmer-Springs-March-2019.pdf>

- 7.33 It is of note that Fire and Emergency NZ (FENZ) support such a condition in their evidence dated 28 September 2021. Such a condition of consent is sensible in principle should consent be granted, but it is unclear from the condition whether the procedure would actually address fire risk in the way of preventative measures, as well as operational procedure to deal with fire if and when it occurs.
- 7.34 Should the proposal progress, a comprehensive approach to both fire risk management and operational response is sought to address the potential devastating consequence of a fire on both the reserve and established surrounding residences.

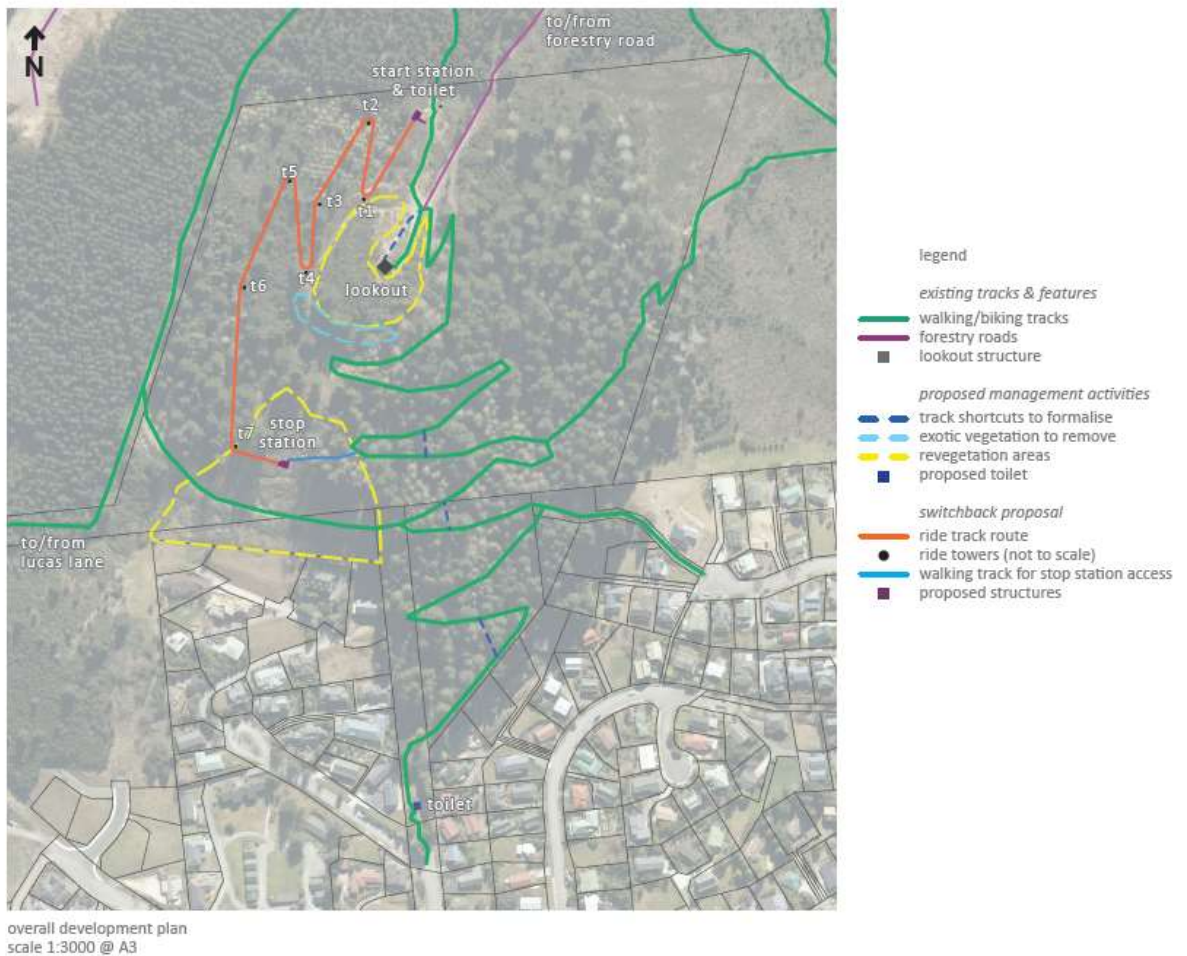
RESIDENTIAL AMENITY

- 7.35 In my view the impacts on residential amenity include: an increase in noise at residences as a result of on-street car parking and additional people in the area in general; an increase in people accessing the reserve via residential streets and especially the access at 34 Acheron Heights resulting in increased noise and privacy being compromised; and direct overlooking from the ride into residential properties.
- 7.36 The applicant's noise expert predicts an increase in noise level on residential streets as a result of noise from vehicles parking on the road in the order of 2-3 dB and that this is a "just noticeable" average level of change, but these events will occur more often. The noise from additional people in the area is estimated to increase by 3 dB which is described as a "barely discernible" change. It is of note that these levels have also been predicted based on the Novogroup survey parking data, the reliability of which has also been questioned. The cumulative effect of these increases also has not been considered. Residents will at the very least notice an increase in noise and on a more regular basis.
- 7.37 A greater number of people will also be walking on the residential streets to access the reserve which will have some effect on privacy. Mr Martin has advised that his level of privacy is compromised by the walkway at 34 Acheron Heights now, which will only likely worsen with an increase in people.
- 7.38 Mr Smith of 24 Oregon Heights is also especially concerned with privacy effects and the ability for ride patrons to look directly into his property from the ride above. It is of note that he is the closest existing resident to the end station and will also be subject to potentially annoying noise levels. The photographs in **Appendix 2** illustrate the proximity of his residence to the ride and the ability for persons to overlook his property.
- 7.39 Overall, it is expected that the proposal will have a more than minor effect on residential amenity and that this is impossible to mitigate under the current proposal which necessitates on-street car parking on residential streets, and due to the proposed access points to the reserve via residential streets and a residential zoned access at 34 Acheron Heights.

UTILISATION OF 34 ACHERON HEIGHTS AS AN ACCESS AND ZONING

- 7.40 The application shows the "walking/biking tracks" both to and within Conical Hill which enable pedestrian access to Conical Hill and the proposed activity. This includes a track at 34 Acheron Heights (at the far bottom right of the map below), which is zoned Residential 1H. This access is immediately adjacent to 32 Acheron Heights owned by Gavin Martin, and other residences, including 40 Acheron Heights owned by Nigel and Claire Shatford²⁵.

²⁵ Submitter 11



7.41 Ms Whyte’s planning evidence addresses the zoning of the access at 34 Acheron Heights and states: “The residential zoning was not assessed as the proposed activity is not occurring on residential land. The proposal is making no changes to existing access arrangements on land zoned residential.”²⁶

7.42 The Acheron Heights access provides access to Conical Hill now and under the proposal will continue to provide access to Conical Hill, and to a greater number of persons once the Flyride is operational. Therefore, the number of people utilising this access will increase as a direct result of the proposal, which is also supported by the evidence of Mr Edwards. I therefore disagree that the proposal is making no changes to existing access arrangements. Whilst the access is not proposed to be changed physically, there will be a clear increase in use as a direct result of the proposal and to that end in my view the access does form part of the application site. This is notable as the site and surrounds is zoned Residential 1H and the use of this access in my view should have been included in the application site and assessed in the context of the Residential 1H provisions, which includes noise. I expect that if consent was required that the overall activity status would still be discretionary, however as the application currently stands it is incomplete.

7.43 The Council Officer’s report notes that Mr Smith of Abley’s in the traffic peer review considers that Flyride customers will use the main entrance from Conical Hill as this a more direct route from town. It is agreed that this is a more direct route when walking, but people will also drive up to Conical Hill parking on surrounding streets, including Acheron Heights. Mr Smith also notes that he does not expect pedestrian volumes through Acheron Heights to increase significantly and considers this can be

²⁶ Paragraph 20 - Evidence of Jane Whyte

reinforced through wayfinding encouraging the use of the Conical Hill Road access. Subsequently a 'Wayfinding Plan' requirement has been included as a proposed condition in the council officer's report (condition 8).

7.44 Mr Abbot states in his evidence that the application does not propose to use or encourage use of the existing track at 34 Acheron Heights, and that the Conical Hill Road access will be encouraged through the website, signage and customer service information at the ISITE information centre.²⁷ This is a change from the proposal described in the application. However; there is no assurance by way of the proposed draft consent conditions that the Acheron Heights access is not to be used. The condition requiring a 'wayfinding plan' be prepared and submitted to Council for certification prior to the activity commencing provides the residents near the Acheron Heights access with no assurance about the level of its future use should the proposal proceed, and does not preclude 34 Acheron Heights being used.

7.45 It is considered that Mr Abbott's proposal not to use Acheron Heights as an access should be made explicit in the any consent condition and that Council should also erect signage at the Acheron Heights access point to restrict access. Such measures would be appropriate to lessen impacts on resident's amenity (as well as alternative car parking solutions).

8.0 ANY MEASURE PROPOSED FOR THE PURPOSE OF ENSURING POSITIVE EFFECTS ON THE ENVIRONMENT TO OFFSET OR COMPENSATE AN ADVERSE EFFECT

8.1 The Lizard Management Plan is potentially a means of ensuring positive effects on the environment to offset an adverse effect. However, as no detail is available about the plan or lizard management in general, such measures are not able to be considered.

8.2 Mr Abbott also discusses the commitment of the applicant to improving the general condition of Conical Hill, including native planting, and as part of the lease agreement with the Council that a set percentage of turnover is used for Conical Hill upgrades.²⁸ However, without the detail or some form of guarantee in any consent, these measures are not able to be taken into account.

9.0 NATIONAL, REGIONAL AND DISTRICT PLANNING DOCUMENTS AND OTHER REGULATIONS

9.1 Section 104B of the RMA requires any relevant provisions of a national environmental standard; other regulations, a national policy statement, a NZ Coastal Policy Statement (NZCPS), a regional policy statement or proposed regional policy statement, and a plan or proposed plan to be considered when making a decision.

NATIONAL ENVIRONMENTAL STANDARD

9.2 I agree with the Council Officer that there are no national environmental standards relevant to this application.

NATIONAL POLICY STATEMENTS AND NZCPS

9.3 I do agree with the applicant's planning evidence and the Council Officer that there are no operative national policy statements of relevance to the proposal.

9.4 There is a draft National Policy Statement for Indigenous Biodiversity but it currently has no statutory basis, and therefore has not been applied to this proposal. The NZCPS is not relevant.

²⁷ Paragraph 82 - Evidence of Graeme Abbott

²⁸ Paragraphs 64 and 65 - Evidence of Graeme Abbott

CRPS

- 9.5 Ms Whyte has not addressed the CRPS in her evidence as she considers the provisions of the CRPS have already been given effect to in the District Plan²⁹.
- 9.6 The Council reporting officer considers that Chapter 9 - Ecosystems and indigenous biodiversity of the CRPS is relevant to this application, but goes on to note that the effects on the karearea/falcon are unable to be adequately assessed, and therefore the proposal has not been assessed against the objectives and policies of Chapter 9.³⁰
- 9.7 Chapter 9 of the CRPS in my view is relevant to this application given the proposal will have a direct impact on indigenous biodiversity. Objectives seek to: halt the decline of Canterbury's ecosystems and indigenous biodiversity (9.23.1); to restore or enhance ecosystem functioning and indigenous biodiversity, in appropriate locations, where it can contribute to Canterbury's distinctive natural character and identity and to the social, cultural, environmental and economic well-being of its people and communities (9.2.2); and areas of significant indigenous vegetation and significant habitats of indigenous fauna are identified and their values and ecosystem functions protected (9.2.3). Policy 9.3.1 seeks to protect significant natural areas by assessing areas and habitats against matters using criteria to determine significance, and notes that local authorities should protect areas of significant indigenous vegetation and significant habitats of indigenous fauna as they undertake activities. Under s6(c) of the RMA local authorities have to recognise and provide for protection.
- 9.8 There has been no assessment undertaken against the objectives and policies of Chapter 9 of the CRPS by the applicant or the Council and this assessment is unable to be undertaken in the absence of any indigenous biodiversity assessment being provided by the applicant and in the vacuum of indigenous biodiversity information.

HURUNUI DISTRICT PLAN OBJECTIVES AND POLICIES

- 9.9 The Council Officer's Report sets out the relevant objectives and policies of the Hurunui District Plan so they have not been repeated here for efficiency.³¹ Policy 4.1 is also considered relevant and especially Policy 4.1(iv) which requires consideration of whether the potential adverse effects on the amenity values of residents in adjoining areas can be avoided, remedied or mitigated. This policy has not been included in the Council Officers report or considered.
- 9.10 I consider that the proposal does not meet the general objectives and policies and in particular Objective 4 and Policy 4.1, 4.3, 4.4, 4.6, and 4.17. The proposal diminishes the value of the open space zone and does not protect the special character and environmental qualities of the area. Furthermore, noise has not been demonstrated as being managed within the reserve, and potentially beyond, to levels appropriate within the zone. The commercial recreation development will also not protect the privacy, amenity values and outlook of residential areas in its current form without a reduction in on-street car parking and no pedestrian access via 34 Acheron Heights. The levels of on-street car parking anticipated will also compromise residential amenity values.
- 9.11 In terms of the Open Space policies, Policy 4.20 is particularly relevant in that it seeks to maintain and enhance amenity values. It can be clearly shown that amenity values are not maintained and enhanced, both within the reserve as a result of noise in particular, and outside the reserve as a result of the on-street car parking and increase in persons accessing Conical Hill.
- 9.12 There are also objectives and policies specific to Hanmer Springs which are relevant. Objective 4.1 seeks to protect and enhance the special qualities of Hanmer Basin. Policy 4.21 seeks to ensure business developments are designed to maintain or enhance the amenity values of the Township. It is

²⁹ Paragraph 25 - Evidence of Jane Whyte

³⁰ Paragraph 215 – Section 42a Officer Report

³¹ Paragraphs 194 to 306 - Section 42a Officer

clear that the proposal does not protect and enhance the special qualities of Conical Hill and in fact undermines the special qualities of the reserve and compromises residential amenity.

- 9.13 The Transport objectives and policies of relevance include Objective 8.1 and Policies 8.1 and 8.5. The proposal is in contravention of Policy 8.5 which requires on-site parking to provide for the needs of each activity, while maintaining the safety and efficiency of the road network. No dedicated car parking is proposed and instead parking will need to be accommodated on surrounding streets, potentially compromising the safety and efficiency of the road network. I acknowledge Ms Whyte's comment that other consents have been approved in Hanmer Springs without the requirement to provide for on-site car-parking, however no details have been provided which would allow for a comparison.
- 9.14 The ecosystem and indigenous biodiversity Objective 13 and Policies 13.1, 13.2, 13.3 and 13.4 are considered relevant. In particular, Policy 13.1 seeks to identify areas of significant indigenous biodiversity value by applying criteria as set out in Appendix 13.1 (consistent with the CRPS). Conical Hill is potentially an area of significant indigenous biodiversity value and accordingly the criteria in Appendix 13.1 should have been applied, and if identified as significant, then protected (policy 13.2). Policy 13.3 which provides guidance on assessing resource consent applications is not able to be assessed due to the vacuum of information on indigenous biodiversity on Conical Hill and how effects are proposed to be avoided, remedied or mitigated. Like the Council Officer, I am unable to conclude whether the proposal is consistent with these objectives and policies.
- 9.15 Natural hazard objectives and policies seek to avoid or mitigate the adverse effects on natural hazards and to avoid development if the risk is unacceptable (Objective 15.1 and Policy 15.1). The proposal appears to be consistent with this objective and policy.

RESERVES ACT AND RESERVE MANAGEMENT PLAN

- 9.16 The site is classified under the Reserves Act as 'Recreation Reserve' and therefore the Reserves Act 1977 and a Reserve Management Plan apply to the site.
- 9.17 Section 17(1) of the Reserves Act sets out the purpose of recreation reserves. It is of note that the application does not refer to section 17 in full and that in addition to the protection of the natural environment addressed in s17(1), s17(c) also seeks to conserve those qualities of the reserve which contribute to the pleasantness, harmony, and cohesion of the natural environment and to the better use and enjoyment of the reserve.
- 9.18 The key question arising from the Reserves Act is whether or not the proposal would be consistent with the obligation of the Council (as administering body) to conserve its qualities? This question has not been answered in the applicant's evidence. It is considered necessary to understand precisely what the contributing qualities of the reserves are and evaluate whether or not those qualities will be conserved.
- 9.19 Furthermore, section 54 of the Reserves Act enables leases to be granted to any business within the reserve subject to the provisions set out in Schedule 1, provided that the business "must be necessary to enable the public to obtain the benefit and enjoyment of the reserve".
- 9.20 Mr Greenaway considers whether the proposal is "necessary", but in my opinion does not reach any conclusion about whether the activity is necessary or not. He states that assessment must consider the necessity of the proposal, and references the benefits of the activity in a tourism and economic sense, but does not conclude that the proposal is actually necessary.³² The lease process is understood to be a separate process and without a lease the activity is unable to proceed. The question remains as to whether the activity is actually necessary, which is considered appropriate to turn minds to now given the proposal cannot proceed without a lease approval. This is particularly the case given that the lease

³² Paragraphs 56-60 - Evidence of Robert James Greenaway

application does not need to be subject to the usual public notification process, which effectively means that this application is the only opportunity for submitters to address this question.

- 9.21 The Reserve Management Plan objectives also reference “protection of the environment”, “protection and preservation of natural features”, and “preservation of the natural character of indigenous vegetation and native wildlife habitat”. The application states that the proposal does not create tension with these objectives.³³ It is unclear how this conclusion has been reached, amongst other matters, in the absence of evidence about gecko, skinks and lizard management and inconclusive evidence about the karearea/falcon and its protection under s6(c) of the RMA.

10.0 OTHER MATTERS

ALTERNATIVE LOCATIONS

- 10.1 The applicant’s evidence outlines the community consultation undertaken and how the location of the proposed activity was changed from the south face to the west face of Conical Hill after initial community consultation. Whilst this is acknowledged, there remains overwhelming local opposition to the proposal in its current location on Conical Hill. Many submitters requested that alternative locations be explored further from residential development, but the applicant has not undertaken any consideration of location alternatives.

- 10.2 Clause 6(1)(a) of Schedule 4³⁴ of the RMA addresses the information required in an application for resource consent and requires that an assessment of the 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.

- 10.3 Ms Whyte has said that as the proposal is not a proposal where any significant adverse effects on the environment are identified, and therefore there is no requirement to describe possible alternative locations and methods³⁵.
- 10.4 As outlined in my evidence it is considered that there are potential significant noise, residential amenity and possible indigenous biodiversity effects as a result of the proposal. There are submitters who are not opposed to the Flyride activity itself and recognise its potential economic and tourism benefits, but seek that it be more appropriately located elsewhere than on Conical Hill, which should be given consideration.
- 10.5 Mr Greenway has assumed for his assessment that the community input to the proposal (at the early planning stages) has confirmed a certain level of community support for the proposal and he refers to those submissions in support³⁶. It is considered that this is an unbalanced view as no mention is made of the overwhelming submissions in opposition and the clear continuing opposition to the current location.

HERITAGE

- 10.6 The site contains the "Conical Hill Lookout and plaque" which is identified as a historic building in Schedule 14.1 of District Plan (H101). Chapter 14 of the District Plan includes a specific Policy 14.1, which refers to the identification of significant heritage resources on the basis of one or more of a list of values including historic, cultural, archaeological, social, traditional, contextual, aesthetic and community values. Unfortunately, it is unclear why Conical Hill lookout is listed as a historic building and what values have justified its inclusion in Schedule 14.1. The Council Officer’s report states that the

³³Paragraph 72 - Resource consent application

³⁴ Not Clause 6 of Schedule 1 as referred to at para 30 of Jane Whyte’s evidence.

³⁵ Para 30 - Evidence of Jane Whyte

³⁶ Para 81 - Evidence of Robert James Greenway

proposed activity will not affect this historic building, however I am unsure how this conclusion has been reached given that no heritage effects assessment has been provided by the applicant, notwithstanding the acknowledgement in the application that Conical Hill Lookout is a historic building.

11.0 PART 2 MATTERS

11.1 Part 2 of the RMA contains the purpose and principles of the RMA. The purpose of the RMA is to promote sustainable management of natural and physical resources. Sections 6 and 7 contain matters of national importance. The proposal is not in accordance with section 5 and possibly also section 6(c).

12.0 CONCLUSION

12.1 After considering the actual and potential effects of the proposal on the environment based on the information available, I consider that the effects on the environment are likely to be more than minor and, accordingly, the proposal is contrary to several objectives and policies of the Hurunui District Plan and potentially the indigenous biodiversity provisions of the CRPS. I also consider there is insufficient information available to fully assess the application, particularly in respect of potential effects on indigenous fauna. Overall, it is my opinion that the application should be declined.

Appendix 1: Letter from Malcom Hunt

Appendix 2: Photos of 24 Oregon Heights