

**IN THE MATTER OF** The Resource Management Act 1991

**AND**

**IN THE MATTER OF** An application for resource consent  
RM170114 Earth and Sky Limited Partnership

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**Decision of Commissioner Cindy Robinson**

**22 December 2017**

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**The application**

[1] The applicant is Earth and Sky Limited Partnership ('Earth and Sky'), a joint venture between Earth and Sky Limited and Ngāi Tahu Tourism Limited. This application involves the establishment and operation of an observatory and visitor centre in Lake Tekapo Village Centre ('the proposal'). The site is located at 1 Motuariki Lane, Lake Tekapo and is 2998m<sup>2</sup>.<sup>1</sup>

[2] Earth and Sky currently operate stargazing and observatory tours out of Tekapo, including tours to Mt John and Cowan's Observatory. The proposal will provide an interactive visitor experience including the display and use of the historical 1890's Brashear Telescope.<sup>2</sup> The new building will include the ticketing office for the Mt John observatory tour and ancillary retail, licensed café and restaurant with indoor and outdoor seating.

[3] The proposed building is a purpose built architecturally designed facility that includes a central dome, to enable the installation and use of the Brashear Telescope. The building is described in the application as being large scale, single story with a part mono-pitch and part

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<sup>1</sup> Lot 3 DP 486377

<sup>2</sup> The history of the Brashear Telescope is described in the statement of Martyn Whitely and Margaret Munro on behalf of Earth and Sky Limited Partnership, December 2017 at [28]-[29]

flat metal roof. The main area of the roof slopes downwards towards Lake Tekapo and the lower flat roofed portions sit to the south east side of the building. The mono-pitched section of the roof reaches a maximum height of 7.38m above existing ground level; however, the fibreglass observatory dome reaches a height of 12.13m above ground level and is 10m in diameter.

[4] The wall claddings include natural precast concrete and grey fibre cement with dark painted columns and aluminium joinery. The concrete walls have a smooth natural finish with cast vertical rib profile. The observatory dome will be a similar colour to the exterior cladding.

[5] The building sits within a landscaped setting that is intended to reflect the geology and ecology of the area, including rocks and native plantings with small trees and predominantly low level plantings. There is a 10m 'no build' setback at the northern (Lake Tekapo) end of the building, that will also be planted with alpine, tussock species. The landscaping will include some seating and paving elements to provide a physical connection to the neighbouring domain. Some outdoor dining will extend into the no build area.

[6] Vehicle access to the site is via Motuariki Lane and the application includes 9 accessible carparks for staff on-site and manoeuvring areas for heavy vehicles. The plans accompanying the original application illustrated 10 carparks, however, at the hearing the applicant conceded that only 9 were practically available for use. The site is bounded by Council owned reserve land, which was set aside at subdivision stage as 'view shafts'; to the east and a no build reserve area to the north west. The front entrance to the building is oriented to the public carpark. The building is accessible both from the front entrance and lake side.

[7] Further details regarding the operational aspects of the activity are contained in the Assessment of Environmental Effects, responses to requests for further information and summarised in the s42A Report.<sup>3</sup> These are not repeated here, but are adopted as part of my evaluation of the application.

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<sup>3</sup> Earth and Sky Limited Partnership Limited New Observatory and Visitors Centre, 1 Motuariki Lane, Tekapo Resource Consent Application, 15 July 2017, RFI responses and further information 17 August 2017 and 20 November 2017, and Section 42A Report on a Limited Notified Resource Consent Application RM 170114.

## **District Plan framework**

[8] The site is zoned Village Centre 1. The Zone seeks to achieve an integrated, compact, pedestrian friendly village centre that provides for a diverse range of activities and employment acts as a strong community and tourist focal point.<sup>4</sup>

[9] The proposed activity is a discretionary activity because various elements do not meet the restricted discretionary standards in the Plan relating to height, retail frontage requirements, building setbacks, parking and design guidelines.<sup>5</sup> A summary of the matters triggering the requirement for resource consent as a fully discretionary activity under the District Plan are set out in the s42A Report, which I adopt, except to the extent identified below.<sup>6</sup>

## **Procedural matters**

[10] The application was limited notified to a number of residential properties located to the south of the site, elevated above State Highway 8, who were likely have existing views affected by the visibility of observatory dome above the existing village centre. Three submissions were received from the owners of properties in Aorangi Crescent<sup>7</sup>, Roto Place<sup>8</sup> and a unit within Peppers Resort<sup>9</sup>, none of whom wished to be heard. A number of written approvals were provided from neighbouring owners and occupiers.<sup>10</sup>

[11] The hearing took place in Christchurch at 9.30am on 13 December 2017. The hearing was attended by the applicant's representatives, planning, traffic, landscape expert witnesses and the architects for the proposal. The Councils consultant planners, traffic engineer and landscape architect were also present.

[12] The applicant amended aspects of the proposal in response to concerns expressed in the s42A Report, in particular the provision of an alternative carparking and landscape plan. The changes are intended to mitigate identified effects on the environment, and are within the scope of the application as notified.

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<sup>4</sup> Mackenzie District Plan, section 5 Business Issues, Objectives and Policies.

<sup>5</sup> Mackenzie District Plan, rule 1.5.4

<sup>6</sup> S42A Report at [27]-[29].

<sup>7</sup> 1 Aorangi Cres, MH and MA Turley.

<sup>8</sup> 1 Roto Place, BV Williamson.

<sup>9</sup> Unit 39, GC Newton.

<sup>10</sup> S42A Report at [6].

[13] I am familiar with the site and views towards the Lake from the public areas and residential areas of Tekapo.<sup>11</sup>

[14] Prior to the hearing I directed the pre circulation of evidence. I then requested the traffic engineers and landscape architects to prepare joint statements of evidence to address areas of contention.

[15] I received and heard the following evidence:

- (a) Applicants Statement (Martyn Whitley and Margaret Munro);
- (b) Applicants Traffic Evidence – Mr Chris Rossiter;
- (c) Applicants Landscape Evidence and Appendices – Mr Matt Lester; and
- (d) Applicants Planning Evidence – Ms Joanne Pacey.
- (e) Joint expert witness statement from Chris Rossiter and Mr Andy Carr.
- (f) Joint expert witness statement from Mark Lester and Jeremy Head.
- (g) Ms Patricia Harte and Ms Arlene Baird s42A Report and appendices including a letter from Traffic Engineer, Mr Carr<sup>12</sup>

## **Issues**

[16] There was general agreement between the applicant and the Council that the proposed land use was appropriate and that the design of the building was of a high standard and sympathetic in the surrounding environment.

[17] The main issues arising from the application and written submissions were as follows:

- (a) What is the visual impact of the observatory dome on views towards Lake Tekapo from the submitters' properties? ('Visual impact')

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<sup>11</sup> I have visited Lake Tekapo on a number of occasions, and most recently in May and July 2017.

<sup>12</sup> Letter to Patricia Harte from Carriageway Consulting, 27 November 2017.

- (b) What is the carparking demand for the activity and how best to calculate demand given the unique nature of the activity? ('Carparking demand')
- (c) How many car parks can be located on-site and what is the appropriate extent of landscaping required to mitigate the visual impact of on-site carparking? ('On-site car parks')
- (d) What is the appropriate cash-in-lieu payment for the remaining carparking demand? ('Calculation of cash-in-lieu')

[18] During the hearing a number of other issues arose regarding drafting of conditions, in particular:

- (a) Is it appropriate for a bond or guarantee to be provided for cash-in-lieu payments in part or in whole?
- (b) Is it appropriate to provide a condition related to noise given the activity is anticipated to comply with District Plan requirements?
- (c) Should a condition require the payment of a charge for Council approval of engineering and infrastructure requirements?

[19] I address each of the issues below.

### **Visual impact**

[20] The highest parts dome reach 12.31m. Although the District Plan does not provide for permitted activities within the Village Centre the standards that apply to restricted discretionary activities requires that buildings do not exceed 8m in height. Although not a 'permitted baseline' the 8m height is considered, by the submitters at least, to represent the anticipated height limit within the Village. As Ms Pacey noted in her evidence, this application is a full discretionary activity and must be considered as a whole, on its merits, rather than simply focusing on that part of the building that is over 8m. From the submitters perspective, it is the dome element which impacts on their existing views.

[21] I have considered the building as a whole in my evaluation including its function and design. The central positioning of the dome and the proposed sloping mono-pitch room design means that within the immediate vicinity of the building, on adjacent sites, the dome will be difficult to see. The effect of the dome in the immediate vicinity is less than minor. At greater distances, however, particularly south of the site and within the elevated parts of the residential zone and along the ‘lions corner’ walkway, the dome will be visible to a greater or lesser degree above the existing village centre.<sup>13</sup> The dome will be partially obscured by buildings and trees in some views. The applicant illustrated the likely impact on views from a series of photographs and montage.<sup>14</sup> I accept that those visual depictions are illustrative only, and may not necessarily replicate the impact on views upon construction. Also visibility of the dome will likely differ in varying weather conditions, seasons and will also be impacted by the colour of the dome.

[22] The three submissions were all concerned about the impact upon their views (and consequential impact on property values). The submitters expressed concern about the integrity of the District Plan if buildings were permitted beyond the anticipated 8m height limit. None of the submitters provided any evidence to support their objections. The applicant was able to access two properties to create a montage but was unable to reach one owner. For the purpose of my evaluation I have accepted that there will be some obstruction of views currently enjoyed by submitters.

[23] It is accepted by the applicant and the s42A Report and by Mr Head that the dome will be visually distinct from existing roof lines in Tekapo Village. Ms Harte said the dome ‘undeniably will be the dominant feature of the development and will clearly identify the building as an astronomy centre.’ The visual prominence of the dome is a characteristic of its astronomy function, and when considered in the context of the Aoraki Mackenzie International Dark Sky Reserve status of the Lake Tekapo area, then the fact that the dome may be seen from a distance, is not incongruous within its landscape setting. I have also considered that size and shape of the dome, in the context of the wider landscape looking towards the lake and mountain ranges and note that the main views will remain dominated by the natural landscape. The dome will appear nested amongst the existing buildings in the Village Centre, and the existing vegetation. I have considered the possibility of glare or sun

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<sup>13</sup> s42A Report at [127] and [128] and in Mr Jeremy Head’s Advice Note, 28 August 2017 Figure 1  
<sup>14</sup> AEE, Appendix 8.

strike from the dome. The applicants architect noted that there needed to be at least low sheen paint for maintenance purposes, but confirmed that appropriate colour options could be offered. I address this in conditions below.

[24] Overall, while clearly the dome will be visible, in the context of its setting and the wider landscape the effect will be minor.

[25] The submitters raised a concern that approval would set a precedent of exceeding 8m. I note that the plan treats this application as discretionary, so the activity is to be assessed on its merits. The dome element of the building has a unique function as an observatory and therefore is sufficiently unique so as not to create a precedent that would undermine the administration of the plan. It is unlikely to result in a proliferation of structures exceeding 8m in height in Tekapo. As discussed below the proposal is not contrary to the District Plan objectives and policies.

### **Carparking demand**

[26] The District Plan provides a table of minimum carparking requirements for various activity categories, including cafes and restaurants, commercial activities, recreation and entertainment facilities.<sup>15</sup> Aside from the café/restaurant component of the activity, the components of the proposal do not sit wholly within the definitions for commercial activities, recreation facilities or entertainment facilities. There is an element of each within the activity. The applicant's traffic engineer, Mr Chris Rossiter, and the Council's consultant traffic engineer, Mr Andy Carr, agreed that it was appropriate to take a 'first principles' approach to an assessment of carparking demand. They produced a joint statement setting out the basis of their agreed position and the areas where they reached different conclusions.<sup>16</sup>

[27] The following table summarises their differing positions regarding demand for parking for the various elements of the activity and for staff parking.

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<sup>15</sup> Section 15 Transportation Table 1.

<sup>16</sup> Joint Statement of Transport Experts, 8 December 2017.

Activity	Existing Parking Demand	Rossiter Future Parking Demand	Carr Future Parking Demand
Staff	5	8	10
Cafe	0	3	14
Experience	0	12	14
<b>Total</b>	<b>0</b>	<b>23</b>	<b>38</b>

[28] In terms of staff car parking, the difference between the traffic engineers is small (2). Although there are likely to be 20 staff employed at the activity, the applicant's evidence was that as most of the staff were involved the Mt John tour component which took place at night, and those staff would not be based at the visitor centre so therefore would not create a demand for village parking during day time hours. The applicant's evidence was that they would endeavour to run the visitor experience, admin and café with 5 to 6 staff on-site at a time. Although, the applicant accepted that staffing numbers were not fixed and may vary seasonally. Some staff would reside locally and would likely walk to work.

[29] The application had originally assumed a 50/50 split between on and offsite staffing. Mr Carr noted that there would be some overlap of carparking needs when staff arrived for their shifts. On the basis of the assessments by Mr Rossiter, Mr Carr, and with the benefit of the more detailed explanation of staffing arrangements by the applicant, I find that allowing for a 8 carparks for staff is likely to be sufficient to meet actual demand, and that these can be provided in part with the on-site carparking allocation (as discussed below) and with the remainder available in the wider public parking areas.

[30] In terms of the 85 seat café/restaurant component Mr Rossiter had undertaken a survey of another café in Tekapo<sup>17</sup> that showed that 70% of customers travelled by car and the mean occupancy of each vehicle were 2.5 people. Mr Carr agreed that these figures were reasonable to apply to this application. In terms of the duration of stay, the survey showed a mean duration of 24 minutes, and allowing for 3 minutes each way walking time to the café and carparking resulted in a calculation of 12 parking spaces for the café/restaurant. The 85<sup>th</sup>

<sup>17</sup> Evidence of Chris Rossiter, 4 December 2017 at [25] to [30].



percentile of the surveyed duration was 40 minutes and allowing for walking time results in a demand of 18 spaces. Mr Rossiter adopted the mean and Mr Carr the 85<sup>th</sup> percentile. Mr Carr's figure is supported by NZTA Research Report 453 'Trips and Parking Relating to Land Use' which supports a 'practical parking demand design for a whole year' based on 85<sup>th</sup> percentile. Mr Rossiter's figure is based on the survey of the busiest hour of the day during the busiest month of the year.

[31] Mr Rossiter then applied a discount to reach his demand calculation of 3 additional parks on the basis that patrons of the café/restaurant would likely already be visitors to Tekapo (they would have gone to other cafes in the Village) and were not solely visiting the café and restaurant. He allowed for only 25% of customers stopping to eat that would not have otherwise. Mr Rossiter's calculation appeared to be influenced by additional traffic generation attributable to the café rather than considering how the café component influenced people's duration of stay.

[32] Mr Carr highlighted that it is the length of stay that influences parking demand. Mr Carr did not consider there was sufficient support of Mr Rossiter's assessment and instead argued for a more conservative approach which anticipated that 80% of customers using the café are people choosing to use the café that would not have otherwise stopped to eat. Mr Carr assessed demand to be 14 parking spaces. Mr Carr then compared his estimate with the District Plan calculation for a standalone activity and took into account the floor area allocated for the café on the site plans.<sup>18</sup> This gave him comfort that his calculation, which although was less than half of the stand-alone figure, was not as low as Mr Rossiter's figure.

[33] I prefer Mr Carr's evidence on this issue. I note in particular that the proposal is to offer a licensed café/restaurant and that public carparking may be some distance from the activity, so it is reasonable to allow for a longer stay. Further I note that although Mr Rossiter remained of the view that allowing for 3 parks would suffice, he indicated that it could actually be 'somewhere between his figure and Mr Carrs (although at the lower end)'. His evidence demonstrated that there is likely to be a degree of uncertainty in the actual calculations, therefore, I prefer Mr Carr's more conservative approach. An under supply of parking (or contribution to provision of public parking) will have an impact on other visitors and businesses within the Village.

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<sup>18</sup> 286m<sup>2</sup>

[34] The differences in calculations between Mr Carr and Mr Rossiter were also small with regard to the visitor experience component of the activity (2). Based on his knowledge of other visitor attractions, such as ‘Pancake Rocks’ at Punakaiki, Mr Rossiter considered allowing for 30 minute visitor stay was reasonable. Mr Carr did not dispute the estimated 30 minutes stay, however, he noted the unique nature of the activity and the fact that Mr Rossiter did not allow for the walking distance to carparking, as he had accepted was necessary in the case of the café/restaurant activity. Mr Rossiter considered that was already factored into the café/restaurant so did not need to be recounted.

[35] Given the unique nature of the activity, and the likely overlapping demand for carparking from the various components, I find it is reasonable to take the mid-point between the two estimates for the purpose of carparking demand for the visitor experience. It is acknowledged by the traffic engineers that there is a degree of uncertainty and I have already erred on the conservative side for the café and restaurant demand component. I find that the carparking demand for the visitor experience of 13 carparks to be reasonable and supported by the evidence.

[36] I find that the proposal will generate a demand for a total of 35 carparks (8+14+13)<sup>19</sup>, these are to be provided partly on-site, with the balance to be considered when fixing the cash-in-lieu payment. Both of these matters are addressed below.

### **On-site carparking**

[37] As noted above the applicant’s plans originally showed 10 on-site parks that would be available for staff and accessible parks. At the hearing Mr Carr and Mr Rossiter agreed that one of those parks was impractical and therefore I should base my assessment on 9 parks being potentially available on-site (‘Option 1’). The s42A Report recommended 4 carparks on-site, to ensure appropriate landscaping to mitigate the effect of hard surfaces and minimise impact on pedestrians from vehicle movements onto the service lane. Following concerns expressed in the s42A report the applicant’s landscape architect, Mr Lester, offered an alternative of 6 on-site parks (‘Option 2’). This enabled an increased landscaping depth between the carparks and the adjoining Council owned reserve. Mr Lester and the Council’s landscape consultant, Mr Head, agreed in their joint statement that the Option 2 was

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<sup>19</sup> The existing activity provides 5 staff carparks and these are taken to account below at [42].

preferable from a landscape perspective. Mr Lester and Mr Head, however, considered that if there was an opportunity to work in with the Council to merge on-site landscaping with future landscaping within the adjoining reserve, then the effect of Option 1 could be adequately mitigated. The applicant advised following the hearing that negotiations in that regard had been unsuccessful with the Council's Community Board, however, the applicant wished to maintain some future flexibility and asked if any consent condition could still provide Option 1 as an alternative that could be substituted if circumstances changed.<sup>20</sup>

[38] The applicant's representative advised at the hearing that Option 1 remained its preferred outcome, because it would reduce the amount of cash-in-lieu payable for the remaining carparking demand.

[39] I find that based on the agreed evidence of Mr Head and Mr Lester, that Option 2 offers the most appropriate form of mitigation of on-site carparks within the site boundaries. Although more carparks might be able to be accommodated if landscape mitigation could be extended into the reserve, in the absence of an agreement from the Council it is premature to provide for that alternative as a condition of consent. If there is a future change in circumstances and agreement is forthcoming then the appropriate course is for the applicant to seek a variation of consent conditions, which would enable the effects to be considered at that time.

[40] I note the s42A Report recommended only 4 carparks, partly due to the visual impact (now resolved by Option 2) but also because of the potential pedestrian safety issues arising from cars coming and going via the service lane. The applicant's explanation of staffing numbers partly addresses that concern and I do not have specific evidence as to the additional impact between 4 or 6 carparks. On the basis that the carparks are located separately from the pedestrian access to the development I find that the provision of 6 onsite carparks, with the relatively low turn-over of staff parks will not result in any significant impact on pedestrian safety over and above the limit of 4 carparks recommended in the s42A Report.

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<sup>20</sup> Email from Joanne Pacey to Patricia Harte, 14 December 2017.

### **Calculation of cash-in-lieu**

[41] Although Ms Harte expressed cash-in-lieu for carparking demand to be a ‘requirement’ of the District Plan, the plan in fact identifies cash-in-lieu as one method of achieving the plans objective of a consolidated and pedestrian friendly Village.<sup>21</sup> It is a discretionary element.

[42] My findings on the evidence presented are that the total demand for carparking for this activity is 35 carparks. The applicant and Council agree that there should be recognition that 5 public parking spaces are occupied by staff for the existing operation and if the equivalent 5 parks are now to be available on-site then those existing 5 parks will become available for general use. Any calculated cash-in-lieu would also exclude the 6 on-site carparks shown in Option 2. Therefore, I find on the evidence that the applicant should cash-in-lieu is to be provided for 24 carparks.

[43] The District Plan rule 2e sets out the basis for calculating cash-in-lieu, however, there is agreement between Ms Harte and Ms Pacey that a rate of \$4000 (excluding GST) per carpark is reasonable in this case given the Council is not likely to need to purchase land to provide for the additional parking demand and will apply the funds towards the reconfiguration and improvements to existing public carparking areas, or to land already owned by the Council. I accept the agreed figure as fair and reasonable.

[44] The cash-in-lieu payment is therefore calculated to be \$96,000 (excluding GST).

### **Payment and/or security for cash-in-lieu**

[45] The applicant indicated that it may have cash flow difficulties regarding the payment of cash-in-lieu for carparking prior to the commencement of operations if the calculated payment exceeded \$70,000. Therefore the applicant requested a condition that enabled a staged payment and/or some form of guarantee. Ms Pacey also noted that there may be an argument that the payment is not in fact warranted at this time (or should be delayed) because the Council has not yet budgeted for carparking improvements in the Long Term planning process, therefore, in terms of Transportation rule 2.e. District Plan, the Council could not

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<sup>21</sup> Transport standard 2.e provides ‘a cash payment may be made in lieu of part or all of the parking requirements where the Council is anticipating the creation of parking that would serve the area of development.’

actually be said to be ‘anticipating creation of public parking that would serve the areas of development’.

[46] When interpreting this provision in the District Plan I have considered the ordinary meaning of the word ‘anticipating’ which means to ‘take into consideration or mention before the due time’.<sup>22</sup> There is nothing that suggests there must be some formalisation of that consideration as argued by Ms Pacey. It is clear from the steps already taken by the Council that provision of adequate parking in Tekapo is under consideration.<sup>23</sup> Ms Pacey’s interpretation could also lead to the outcome that the activity or indeed any other new activity in Tekapo could not be approved when it creates a demand for carparking that is unable to be met privately until such time as the Council has formally approved funding for new parking areas. I do not find the drafting of the District Plan to support that interpretation, if that was intended it could have been clearly expressed in those terms. Further, I note that RMA s111 ensures that cash contributions are used for their proper purpose.

[47] The plan objectives do not specifically address cash-in-lieu payments, however, the plan is clear that cash-in-lieu payments for carparking is a method available to ensure that appropriate carparking is provided and that it does not detract from the efficiency, safety and amenity of the various activity areas.<sup>24</sup>

[48] I requested clarification from Ms Harte as to whether the Council had previously provided for a bond or guarantee to secure future payment of cash-in-lieu for carparking. Ms Harte advised by email that the Council had not, and further, that the Council anticipated some practical difficulties in providing for a bond, particularly because the development was not likely to be staged and that the mechanism for collecting the cash-in-lieu was the issue of building consent.<sup>25</sup> Ms Pacey’s suggestion was to provide for \$70,000 at the time of commencement of operation and the balance (if any) to be payable the following year, or deferred or guaranteed at a future date the Council requires.

[49] I have carefully considered whether part deferral of payment is appropriate; however, the difficulty is that the requirement for parking will come into effect once the activity is

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<sup>22</sup> Shorter Oxford Dictionary

<sup>23</sup> Tekapo Transport Consultation

<sup>24</sup> Transport Objective 1.

<sup>25</sup> Email from Patricia Harte to Commissioner in response to Minute of 14 December 2017, dated 18 December 2017.

operational. As noted by Ms Harte there may be administrative and enforcement issues arising from a deferral of part of the payment or the provision of a guarantee. Given the scale of the proposed development, the findings on carparking demand and the fact that provision of cash-in-lieu is clearly provided for in the District Plan, I have concluded that a condition requiring full payment prior to commencement of operation is not unreasonable. Although the figure is more than the amount set aside by the applicant, the calculated payment is significantly less than it would have been had the payment been calculated in accordance with the provisions of the District Plan. If the Council as operator of the public carparks wishes to enter into an alternative arrangement for receiving payment, then that is a matter between the Mackenzie District Council and the Consent Holder.

### **Engineering approval charges**

[50] Ms Harte initially recommended conditions requiring a charge for engineering fees to approve various servicing connections. I requested clarification as to the legal basis for that charge. The Council advised that in this case the site is already serviced; therefore, no charge is required.<sup>26</sup> Recommended conditions 14 and 15 have therefore been deleted.

### **Noise**

[51] The AEE demonstrates that with appropriate management that the proposal will meet the District Plan noise standards.<sup>27</sup> Ms Harte had recommended conditions limiting the use of outdoor areas at night and the use of amplified music. Ms Pacey questioned the resource management purpose of the conditions given that the application does not seek to depart from the District Plan noise limits. Ms Pacey suggested an amendment to the conditions to ensure that if included they related to matters within the control of the applicant and accepted that restricting amplified music was appropriate.<sup>28</sup> I note that the acoustic advice the applicant received was on the basis of a recommended noise management plan. The applicant accepts that noise generation will need to be managed appropriately and confirmed that a condition limiting the hours of outdoor table service and amplified music was accepted. I have imposed the amended conditions on that basis.

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<sup>26</sup> Email from Patricia Harte to Commissioner, 18 December 2017.

<sup>27</sup> AEE, Appendix 4.

<sup>28</sup> Evidence of Joanne Pacey, 5 December 2017 at [93].

## **Positive effects**

[52] The proposal will make a positive contribution to cultural and scientific understanding of astronomy and the consequential benefits to the economic well-being of the district. The architecturally designed building will contribute to the visual amenity of the village centre and attract visitors to the area.

## **Objectives and Policies**

[53] Ms Harte set out the relevant objectives and policies and her evaluation of them in her s42A Report.<sup>29</sup> The applicant had also addressed these in the AEE and Ms Pacey confirmed that she agreed with Ms Harte's evaluation of them, noting the differences regarding on-site carparking. I adopt Ms Harte's assessment and find that the proposed activity, with the provision of only 6 on-site carparks and landscaping as shown in Mr Lester's Option 2, is supported by the objectives and policies in the District Plan.

## **Part 2**

[54] I adopt Ms Harte's evaluation under Part 2.<sup>30</sup> With the amendments made to the proposed conditions which mitigate the actual and potential effects of the activity, granting of consent achieves the purpose and principles of the Act.

## **Overall Conclusion**

[55] Having considered the matters set out in section 104 and 104B of the RMA and for the reasons set out above the actual and potential effects on the environment are minor and are able to be mitigated through conditions of consent, therefore, resource consent for the establishment and operation of the Earth and Sky Observatory and Visitor Centre is approved subject to conditions.

## **Conditions**

[56] The applicant provided a tracked changes version of the conditions recommended in the s42A Report during the hearing and some of the changes were also discussed during the

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<sup>29</sup> s42A Report, 142-153

<sup>30</sup> s42A report 154-156

hearing. I have considered those changes and along with my findings above I set out a draft set of conditions for comment from the applicant and the Council's consultants. I am providing a draft because some minor changes to various details on-site plans were discussed at the hearing and I wish to provide the opportunity for comment to ensure that the drafting accurately reflects those matters. I am also mindful that we are entering the Christmas period and I wish to ensure my decision is issued in a timely manner, notwithstanding the statutory break. The applicant offered to provide three alternative recessive, low sheen colour options for the dome. I have added a place holder condition, however, it requires the paint colours to be identified for certainty. I ask the applicant to confer with the Council and agree on the appropriate alternatives. The applicant may wish to update the landscape plan to correct the error identified in draft condition 6.

[57] On that basis the draft conditions are as follows:

### **General**

1. Except as required by subsequent conditions (if relevant) the development shall proceed in accordance with the information and plans submitted with the application, including the further information/amended plans dated 17 August 2017 and 20 November 2017.
2. That unless it is otherwise specified in the conditions of this consent, compliance with any monitoring requirement imposed by this consent shall be at the consent holder's own expense.

### **Lighting**

3. Prior to the opening of the development to the public and illumination of any external lighting within the site, the consent holder shall provide the following to the Council's Planning and Regulations Manager (or their nominee):
  - a) Layout plans (including mounting heights) and specifications for all proposed outdoor lighting fixtures and certification by a suitably qualified professional



that the design complies with all Lighting Standards in section 12 rule 13 of the Mackenzie District Plan, or the Mackenzie District Plan Lighting Standards in place at the time.

- b) A Lighting Operation and Maintenance Plan, highlighting that any replacement or additional lighting is required to comply with the outdoor lighting standards set out in the Mackenzie District Plan, in place at the time of any replacement or additional lighting being undertaken.
- c) Light from internal areas within the building shall be controlled to minimise the extent of practicable light emissions, including the following measures:
  - i. Directing light sources away from external windows to minimise light spill;
  - ii. Lamp (light source) selection to minimise UV or blue spectrum light (particularly avoiding light below 440nm within the spectrum) and with a preference for LEDs in the 2700K-3000K range.

#### **Use**

- 4. The outdoor seating area of the café/restaurant/bar shall have no table service between 12.30am and 7am.
- 5. No live or amplified music shall be played in the outdoor seating area of the café/restaurant/ bar.

#### **Landscaping**

- 6. Landscaping shall be in accordance with the Landscape Concept Plan by Earthwork Landscape Architects Ltd dated 5 December 2017 (Option 2) except to the extent that the coloured shading for the eastern 1m parking strip which shall be shown as Planting tussock mix rather than Planting low-med mix.
- 8. All required landscaping shall be undertaken and completed by the end of the first planting season (1 May to 30 November) following any activity commencing on-site. Notwithstanding this, when the activity commences during the months of October or

November, the landscaping shall be undertaken and completed within 12 months of the activity commencing on the site.

9. All landscaping required for this consent shall be maintained. Any dead, diseased, or damaged landscaping is to be replaced immediately with plants of a similar species.
10. Prior to the commencement of building work, a Site Plan detailing revised on-site car parking with a maximum of six spaces shall be provided to Council's Planning and Regulations Manager (or their nominee).

### **Car Parking and Cash-in-Lieu**

11. No more than six car parks shall be established on-site.
12. The on-site car parks shall only be used for staff or for accessible parking for people with disabilities.
13. A cash-in-lieu contribution shall be paid to the Mackenzie District Council equivalent to 24 car park spaces at the rate of \$4000 (excluding GST) each, prior to the Observatory and Visitor Centre commencing operation.

### **Construction/earthworks**

14. All proposed works shall to be carried out in accordance with an Erosion and Sediment Control Plan (ESCP). Unless approved as part of a separate stormwater discharge permit or land use permit for excavation/filling from Environment Canterbury, the consent holder shall prepare an ESCP and submit this to Council at least 10 working days prior to the commencement of construction work associated with this consent. The performance criteria for the ESCP, unless directed by Council subdivision engineers, will be based on ECAN's Erosion & Sediment Control Toolbox For Canterbury (<http://esccanterbury.co.nz/>) . The ESCP shall include (but is not limited to):
  - Site description, i.e. topography, vegetation, soils etc.

- Details of proposed activities.
- A report including the method and time of monitoring to be undertaken.
- A locality map.
- Drawings showing the site, type and location of sediment control measures, onsite catchment boundaries and offsite sources of runoff.
- Drawings and specifications showing the positions of all proposed mitigation areas with supporting calculations if appropriate.

This plan is to be certified by the Head of Resource Consents (or their nominee) as meeting the requirements of this condition prior to the commencement of any construction work. Once certified, the ESCP will thereafter form part of the Approved Consent Document.

15. No earthworks shall commence on-site until such time as:
- (a) The ESCP has been certified by Council in accordance with Condition 14 with Council to provide certification (where all necessary information has been provided) within five working days of the ESCP being received;
  - (b) The approved ESC measures are in place and;

The consent holder has submitted an Engineering Completion Certificate signed by an appropriately qualified and experienced engineer to Council. The Certificate shall attest that the erosion and sediment control measures have been properly installed and in accordance with ECAN's Erosion & Sediment Control Toolbox For Canterbury. This certificate shall also name the person(s) responsible for the maintenance of these measure and be sent to the Council.

16. Adequate dust control measures must be in place at all times so as to minimise any nuisance to neighbouring properties, including from any temporary stockpiles. Appropriate equipment (e.g. water hose, sprinkler system) shall be available on-site at all times and used whenever required by adverse conditions (windy weather, etc) as well as to reduce dust emission from heavy traffic within the site.

## **Observatory dome**

17. The Observatory dome shall be painted with [recessive, low sheen paint].

### **Advice Notes:**

- i. The Council may elect to exercise its functions and duties through the employment of independent consultants.

### **Directions for comment on conditions**

[58] The applicant and Ms Harte shall confer on the draft conditions set out above and provide any drafting comments on or before 5pm Monday 22nd January 2018.



Cindy Robinson