

IN THE MATTER OF The Resource Management Act 1991

AND

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

Section 95A-95F Resource Management Act 1991

Notification Decision of Commissioner Cindy Robinson

4 September 2017

[1] I have been delegated authority by the Mackenzie District Council ('the Council') to decide whether an application by Earth and Sky Limited Partnership ('the applicant'), to establish and operate an Observatory and Visitor Centre at 1 Motuariki Lane, Lake Tekapo ('the application'), can proceed with or without public or limited notification pursuant to s95A-95F of the Resource Management Act 1991 ('RMA').

[2] I have been provided with copies of the application materials¹, requests and responses for further information² and a report containing recommendations on the relevant statutory assessments required by s95A-95F RMA prepared by Ms Patricia Harte and Ms Arlene Baird, planning consultants engaged by the Council pursuant to s42A RMA ('s42A Report').

[3] The s42A Report refers to, and relies in part upon, a visual assessment undertaken by Landscape Architect Mr Jeremy Head ('Head Report').³ I requested a copy of the Head Report and directed that Ms Harte serve the applicant with the s42A Report and the Head Report. I provided an opportunity for the applicant to respond to any of the matters raised

¹ Application and AEE prepared by RMG Limited, 15 July 2017 and appendices.

² RFI from Davie Lovell Smith to Applicant, 28 July 2017; response from RMG Limited, 17 August 2017.

³ Advice Note to Landscape Effects, 28 August 2017 prepared by Jeremy Head Landscape Architects Limited.

that were relevant to the issue of notification.⁴ I have been forwarded a response by email from RMG Group, the applicant's consultant.⁵

[4] I do not repeat the description of the application or the District Planning matters which are set out comprehensively in the s42A Report. I adopt the description of the activity and the identification of the relevant provisions of the District Plan, except to the extent I note below. A copy of the s42A Report is attached to this decision as Schedule 1 for ease of reference.

Public Notification

[5] I find, having considered the application and s42A Report, that there are no adverse effects on the environment from the activity that are more than minor and no special circumstances that require public notification under s95A(2) or (4) RMA for the reasons set out in the Section 42A Report.⁶

Limited Notification

[6] Overall the s42A report concludes the effects are minor, however, this conclusion is influenced by two specific effects on the environment discussed below.

Carparking

[7] There is a difference in opinion between the applicant and the s42A Report regarding the categorisation of the activity for the purposes of calculating car parking requirements in Chapter 15 Transport Rule 2a and 2e. The applicant has assessed the Visitor Attraction and Observatory parts of the activity as a 'commercial' activity. The section 42A Report assesses those activities as 'recreational' or 'entertainment'. This results in a difference of approximately 30 carparks for the purposes of calculating cash in lieu payments. Regardless of the difference in numbers, the s42A Report concludes that the effect on the environment is minor.

⁴ Section 42A Report, dated 29 August 2017, provided to me on 30 August 2017.

⁵ Email from Davie Lovell Smith forwarding email from RMG, 1 September 2017.

⁶ Section 5.0 and 6.0 s42A Report.

[8] The section 42A Report does not consider that there are any identifiable affected persons that require notification on a limited basis, however, the Report notes that if insufficient cash in lieu is provided this will likely result in a public carpark shortfall and impact on the wider business areas and visitor experience.

[9] The Four Square Supermarket, Tavern (Occupier), Lake Tekapo Motel and the YHA Hostel proposed for the adjacent lot, have provided written approvals and therefore I do not need to consider any impacts on those persons.

[10] In terms of the actual and potential effects of any shortfall in carparking or cash in lieu payment as a consequence, I note that the application involves the relocation of the existing Earth and Sky activity within Tekapo Village and, therefore, the relocation of the tour activity is unlikely to generate any significantly different effects from the current situation. Any additional car parking demand associated with the café and bar activity is not considered by the applicant to be significant as that part of the activity is not anticipated to generate a significant demand in its own right, rather it will derive business from existing visitors to the Tekapo Village and/or visitors to the new Earth and Sky visitor attraction. The applicant and its Traffic Engineer identifies that the most significant impact is likely to arise as a consequence of the Visitor Attraction, but that this is also off set by the provision of on-site staff parking. The applicant anticipates an additional demand of 7 parking spaces.⁷ The applicant concludes the effects are less than minor.

[11] The s42A Report concludes that the effect of a potential underestimate of carparking requirements on the calculation for cash in lieu payment is ‘minor’. This appears to be on the basis of the differing assessment undertaken of a ‘recreational’ activity rather than any independent carparking demand analysis. Based on the information provided I find that in relation to traffic effects, including the appropriate calculation of cash in lieu payments to meet carparking demand, there are no persons affected by any minor effect for the purposes of s95E RMA. To the extent that an individual business might be affected by any underestimate of carparking, such effects would be less than minor on an individual business basis. The effect of any shortfall of carparking or cash in lieu payment would be spread across the Tekapo Village.

⁷ Traffic Design Group Limited, 5 July 2017 and 14 August 2017.

Design of building

[12] In respect of the overall design of the proposed activity the effects are considered by the s42A Report to be less than minor, however, one element, is considered to generate 'minor' effects, which triggers the need to consider whether there are affected persons under s95E RMA. The element of concern is the dome of the observatory which has a height exceeding the minimum building height of 8m in the Village Centre 1 Zone by 3.9m.

[13] The applicant has assessed the effect on the surrounding area and identifies those most likely impacted are properties in the elevated residential areas across State Highway 8. The applicant has assessed the impact, and has concluded that although visible, the height intrusion is of such a small degree and mitigated by vegetation, the effects are less than minor. The s42A Report, relying on the Head Report concludes that the effect is 'minor'. Mr Head has identified a band of properties shown in his Figure 1 (reproduced in the s42A Report as Figure 4 on page 15) that are likely to be affected. The s42A Report recommends those affected landowners be notified.

[14] I have considered the assessments provided and find that given the likely varying degree of the impact of the dome on individual properties due to orientation, location of living areas and outdoor areas it is not possible to conclude that the effects are less than minor, therefore, I accept Mr Head's assessment and adopt the recommendation on the s42A Report.

[15] Accordingly, I direct the application proceed with limited notification on the landowners identified in Section 7.0 of the s42A Report in accordance with section 95B and 95E RMA.



Cindy Robinson

Schedule 1

S42A Report