

Report for an application to change conditions of a resource consent under section 127 of the Resource Management Act 1991



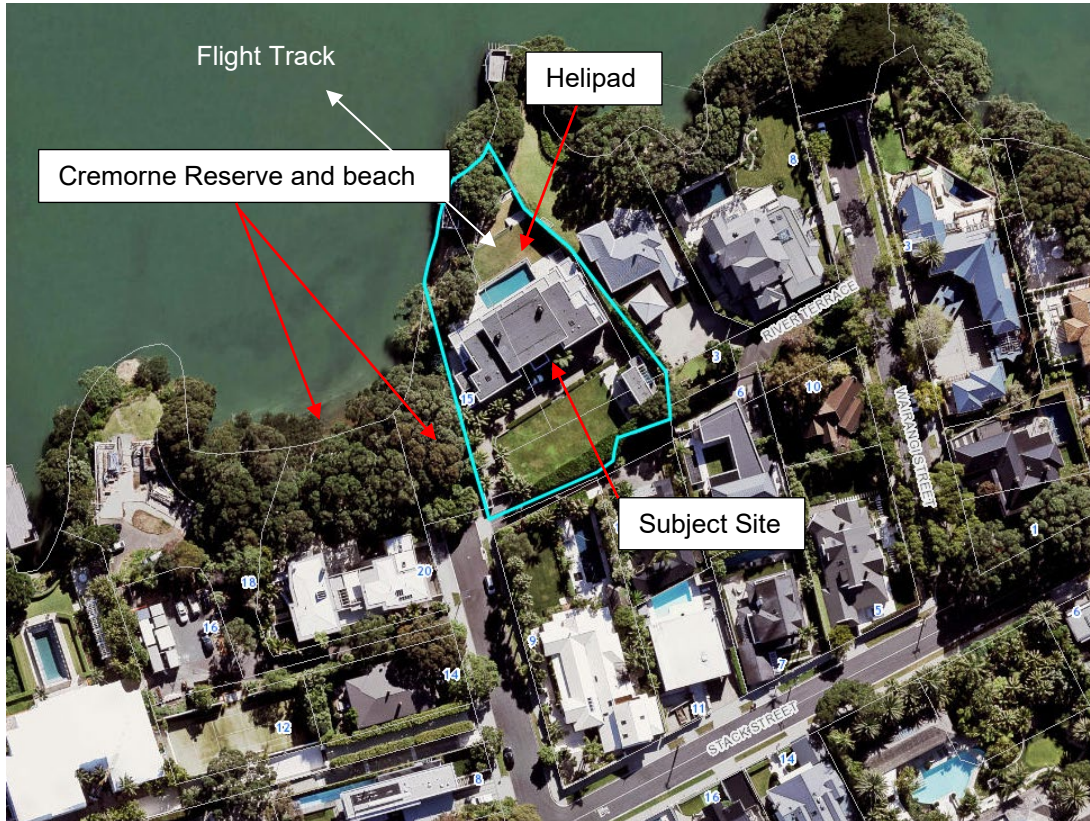
Discretionary activity under section 127(3)

1. Application description

Application number:	LUC60134603-A
Applicant:	Simon and Paula Herbert
Original consent number:	LUC60134603 (s9 land use consent)
Site address:	15 Cremorne Street, Herne Bay, Auckland 1011
Legal description:	Lot 1 DP 208893, Lot 39 DP 2746, Lot 1-2 DP 212064
Site area:	2810m ²
Auckland Unitary Plan (Operative in part)	
Zoning and precinct:	Residential - Single House Zone Coastal – General Coastal Marine Zone
Overlays, controls, special features, designations, etc:	Coastal Inundation 1 per cent AEP Plus 1m Control - 1m sea level rise Macroinvertebrate Community Index - Urban

Note: For the avoidance of doubt, any reference in this report to 'vary' or 'variation application' shall be taken to mean an application to change or cancel consent conditions under s127 of the RMA.

2. Locality Plan



Source: Auckland Council GIS

3. The proposal, site and locality description

Proposal

The proposal is set out on page 5 of the AEE that accompanies this application and amended as per the subsequent notification assessment “Re: 15 Cremorne Street - s127 Application” (attachment 1) by Craig Shearer, dated 11/05/2021. The proposal is set out briefly below:

Resource consent LUC60134603 (legacy reference R/LUC/2015/940), granted consent under delegated authority on 10/07/2015 to construct a helicopter landing pad and with take-off / landing thereafter.

The original application was processed on a non-notified basis with no persons adversely affected. The application was supported by the written approvals of persons at:

- 3 River Terrace
- 11 Cremorne Street
- 12, 14, 16 and 18 Cremorne Street (all one owner)
- 20 Cremorne Street

As part of this, conditions were attached that defined the frequency of flights. No more than two flights were to occur within a one-week period, each flight consisting of two helicopter trips –

one landing and one take-off. No more than one flight was to occur in any given day (24-hour period). These was described in condition 10 of this consent, and along with other conditions forms the 'consented envelope'.

I note that whilst a total number of flights were not explicitly stated, extrapolating the weekly figure would mean 104 flights could occur within a one-year period subject to meeting all other conditions.

The proposal centres on changing the frequency of helicopter flights within any given week. The consent holder therefore wishes to vary the conditions of resource consent LUC60134603 as follows:

10. The number of flights per week shall not exceed ~~two (four movements)~~ **four (eight movements)** with no more than ~~one flight (two movements)~~ **two flights (four movements)** on any one day **and 104 flights (208 movements) in any year.**
12. The helipad shall not be used for any helicopter creating noise effects greater than a 'Eurocopter 130' **'Airbus H130 T2'** unless it has been demonstrated that the noise will comply with condition 7 above.

For reference condition 7 states:

7. The consent holder shall ensure that the use of the landing area on the site to which this consent applies for helicopter operations shall not exceed a noise limit of L_{dn} 50dBA when measured at or within the boundary of any adjacent dwelling (excluding any dwelling where written approval has been provided).

The applicant has also offered an additional condition (which would be condition 15) stating that the noise from helicopters using the site shall comply with the requirements of NZS6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas.

Some of the documentation to be read in conjunction with this application may still refer to the original proposal of a maximum of 3 flights / day and 10 flights / week. The proposal is as outlined above with a maximum of 2 flights a day and 4 flights / week.

Site and surrounding environment description

The site is situated at the end of cul-de-sac and sits atop a cliff, adjoining the Waitemata Harbour to the north.

The site is relative flat, extensively landscaped and contains numerous mature trees.

The helicopter pad is in front a large two-storey architecturally designed dwelling which spans the breadth of the site on an east-west axis.

Cremorne Reserve consists of a beach and bush walk beach access from the road. The beach adjoins the western boundary of the subject site, being situated below the cliff-top (see locality plan and figure 2 below).

Relevant Consenting Environment (beyond subject site in terms of helicopter flights)

Consent was granted (R/REG/2015/1185) under delegated authority on 18 September 2015 to establish a helipad on the roof of boatshed in the coastal marine area adjacent to 12 Cremorne

Street. The consent was also for the operation of 6 domestic helicopter flights in any 7-day period with a maximum of 2 flights in any one day. For reference, helicopter noise was predicted to comply with noise levels at neighbouring sites using *NZS6807:1994*, that being the standard referred to under the relevant regional plan. However, it was noted that helicopter noise did not comply with the L_{AFmax} descriptor.

Consent was granted (R/LUC/2011/1114) under delegated authority on 23 May 2011 for a helicopter landing pad at 64 Sentinel Road and operation of helicopter flights with a limit of 10 per week. The relevant clause relating to helicopter noise of the then District Plan did not impose a standard but there were standards relating to noise limits at the boundaries of residential zoned properties (using the L_{10} descriptor). In assessing the application *NZS6807:1994* was used because it was seen as more relevant to helicopter noise, the L_{10} descriptor producing greater compliance. Noise levels at neighbouring sites (excluding those who had provided written approval) were predicted to comply with *NZS6807:1994*.



Figure 1 - Beach (view west)



Figure 2- Beach (view east) with dwelling on subject site visible through the tree

4. Background

Local Board

The Local Board were briefed on 27 May 2020. Ms Alexandra Bonham replied on behalf of the Local Board on 28 May 2020, urging 'full notification' of the application. The Local Board comments can be found in attachment 2.

Specialist Input

The proposal has been reviewed and assessed by the following specialist:

- Andrew Gordon (noise)

Noise Descriptors

Hegley Acoustic Consultants (HAC) has relied on *NZS 6807:1994 Noise Management and Landing Use Planning for Helicopter Landing Areas* to assess the noise effects of the proposal, and I note that this standard was also referred to in the expert reporting for the original consent. NZS 6807:1994 allows for averaging over a 7-day period. It is noted however that this NZS is not incorporated by reference into the AUP, nor is it referenced in any conditions on the existing consent. It is considered that noise measurements for the purposes of this application must be measured in accordance with the New Zealand Standard NZS 6801:1991 Measurement of sound, per condition 11 on the consent (which has not been proposed to be changed):

11. Measurements of helicopter noise shall be carried out in accordance with the requirements of NZS6801:1991 Measurement of Sound;

It is noted that this NZS is a precursor to the to the now New Zealand Standard NZS 6801:2008 Measurement of environmental sound, which is the NZS referenced at standard E25.6.1(1) of the AUP and is now the relevant NZS that all noise for helicopters must be measured against (at least initially to determine compliance or not with AUP standard E25.6.32. Noise levels for helicopters take-off or landing).

Correspondence Received

Correspondence has been received from the following persons:

- Greenwood Roche Project Lawyers acting on behalf of the owners of 12, 14, 16 and 18 Cremorne Street. Correspondence includes an acoustic assessment from Marshall Day Acoustics (MDA)
- Rhys Harrison QC, representing Herne Bay Residents Association
- Herne Bay Residents Association
- Harkness Henry, lawyers, representing the owners of 9 Cremorne Street
- Niksha Farac of 3 River Terrace

All correspondence is included as part of the file and I recognise they form part of my considerations.

Limited Notification

A decision to limited notify this application was made by Independent Commissioner Mr. Ian Munro on 9 March 2022. The application underwent notification to the following affected persons (being the owners/occupiers of these properties):

- 3 River Street
- 18 Cremorne Street
- 20 Cremorne Street
- 8 Wairangi Street

Subsequent that decision being made, and the application undergoing limited notification to identified affected persons, the applicant sought public notification under s95A(3)(a) via email on 7 July 2022 (via their counsel, Mr. Kitt Little-John).

The RMA does not preclude such a 'retrospective' request prior to a decision being made, and s104(3)(d) prohibits a consent authority from granting a resource consent if the application should have been notified and was not.

For the avoidance of doubt, there has been no decision to grant this consent.

As such, this report reflects this new request.

5. Status of the resource consents

Application to vary resource consent conditions – LUC60134603-A

I have had regard to the relevant legal tests for determining whether an application can be processed as a s127 variation. These are twofold:

- Would it result in a fundamentally different activity?
- Would it give rise to materially different adverse effects?

In light that helicopter flights can occur within defined perimeters, the change is not introducing a fundamentally different activity nor will it result in materially different adverse effects (associated with the take-off and landing of helicopters).

To this end, I have considered the following information.

- Helicopter flights will take place within the same daytime hours.
- The adverse effect being assessed remains noise and its associated effects.
- The helicopter will continue to take off and land in the same location.

Following on from this, I consider that the application is appropriately considered under section 127 of the Resource Management Act 1991 (RMA).

As an application for a variation to conditions under s127 of the RMA, it is treated as if it is a discretionary activity.

Sections 88 to 121 apply, though all references to resource consent and activity are replaced with reference to the change or cancellation of the condition, and the resultant effects.

6. Public notification assessment (sections 95A, 95C-95D)

Section 95A specifies the steps the council is to follow to determine whether an application is to be publicly notified. These steps are addressed in the statutory order below.

Step 1: mandatory public notification in certain circumstances

Mandatory notification is required as the applicant has requested that the application is publicly notified (s95A(3)(a)).

Step 2: if not required by step 1, public notification precluded in certain circumstances

As the application is required to be publicly notified under step 1, this step is not applicable.

Step 3: if not precluded by step 2, public notification required in certain circumstances

As the application is required to be publicly notified under step 1, this step is not applicable.

Step 4: public notification in special circumstances

As the application is required to be publicly notified under step 1, this step is not applicable.

Public notification conclusion

Having undertaken the s95A public notification tests, the following conclusions are reached:

- Under step 1, public notification is mandatory.
- Steps 2 through 4 are not applicable.

It is therefore recommended (and in fact required) that this application be processed with public notification.

7. Notification recommendation

Public notification

For the above reasons under section 95A, this application must be processed with public notification.

Accordingly, I recommend that this application is processed publicly notified.



Daniel Kinnoch
Consultant Planner
Resource Consents

Date: 11/07/2022

8. Notification determination

Acting under delegated authority, and for the reasons set out in the above assessment and recommendation, under sections 95A and 95C to 95D of the RMA this application shall be processed on a **PUBLICLY NOTIFIED** basis.

A handwritten signature in black ink, appearing to read 'M. White', enclosed within a large, loopy oval stroke.

Mark White
Manager
Resource Consents

Date: 11/07/2022