

From: [Hernebay1011](#)
To: [Patrick Moss](#)
Cc: [Craig Hobbs](#)
Subject: 15 Cremorne St Heliport Application
Date: Tuesday, 22 September 2020 12:24:01 PM
Attachments: [HBRAI Sentinel Beach Court Judgement 2018.pdf](#)

Hello Patrick,

As agreed herewith is our additional comment on the above.

The application should be notified for the reasons set out by Rhys Harrison QC. Incidentally Mr Harrison prepared the claim and submissions for the High Court appeal relating to the proposed heliport atop a boatshed at 75 Sarsfield St.

We note the Applicant has a history of deliberately offending against the existing consent. There have been two complaints upheld by Council investigations over the last year. The first of the two complaints unearthed more than one instance of consent breaches.

The commentary below highlights some matters (from the High Court decision in relation to the Auckland Council consent issued for 75 Sarsfield St Herne Bay) highly relevant to this application. That decision highlights public land and reserve users' rights to be consulted.

APPLICATION

The current Consent permits 1 flight per day and no more than 2 per week.

The Applicant has applied to vary the consent to a maximum of 11 flights per week and no more than 3 per day and there is to be a limit of 104 flights per annum.

It is noted that Craig Shearer Consultants (in the same document) initially applied for 11 flights (22 movements) per week and then proposed the current conditions be changed to 10 flights per week.

LEGAL POSITION FOR VARIATION APPLICATION

Our legal advisors confirm that any application for variation must comply with the applicable provisions currently in force. The original consent was granted under the Auckland Regional Council rules. Currently the Auckland Unitary Plan (AUP) applies and a variation of the consent must comply with the provisions of the AUP. Please advise if you do not agree with this assessment and we will get a written opinion from experienced Counsel.

NOISE CONSIDERATIONS

The relevant objectives and provisions in the AUP are:

1. "**People** are protected from unreasonable levels of noise and vibration".
2. "The amenity values of residential zones are protected from unreasonable noise and vibration particularly at night".

Specific requirements in the UP are:

- E25.6.2.1. Noise levels in residential zones are limited to 50dB LAeq during hours of 7am to 10pm except on Sunday when the hours are reduced to 9am to 6pm. A lower standard applies at all other hours including a 75dB LAFmax.

- We note the above can be temporarily exceeded by normal household activity. Helicopter noise (as a non-compliant activity in residential zones) is **not a normal household activity**.
- E25.6.32. "Take off or landing of a helicopter at any site except for emergency services must not exceed Ldn 50dB or 85dB LAF max measured within the boundary or notional boundary of any adjacent site containing activities sensitive to noise and Ldn60dBA within the boundary of any other site".

We note there is no proposal in the application to adjust the Sunday flight hours for the above. As per the AUP provisions there should have been.

Applicant's Noise assessment.

The applicant has provided an acoustic report prepared by Nevil Hegley of Hegley Acoustic Consultants. We have the following comments on that report:

- The report comments only on noise from 15 Cremorne St and the use of the heliport there. Mr Hegley on pg 5 of his 22 May 2020 response to questions for the Council investigating planner (Patrick Moss) advises that there is no cumulative effect from background noise. We note there is another heliport (at 12 Cremorne St) quite close by (within some 120 metres) which has a consent for a larger and louder helicopter than that proposed by the Applicant. There is also a consent for 10 flights per week at 64 Sentinel road some 260 meters away. Another acoustic consultant has a different view. Mr Jon Styles of Stylesgroup in a report prepared for Auckland Council (Regulatory Dept) in relation to the 75 Sarsfield St heliport litigation reports an Lmax level of up to 100 dB for a fully loaded and fueled Airbus H130T2 (para 133 judgement of Justice Christine Gordon). In para 134 Mr Styles estimated the high noise above LAFmax 85 would last to some 80 meters from the landing site. Therefore being only 120 meters away the excessive (above LAFmax 85) noise "shadow" from 12 Cremorne St helicopter activity would overlap with the noise "shadow" from the applicant's heliport.
- The maximum noise levels quoted in the AUP must include noise from **ALL** sources and not just noise from any specific applicant/site. The Hegley acoustic reports used in this application have not taken into account any noise from any other source even though the high noise "shadow" overlaps the 12 Cremorne St heliport close by. Indeed the number of properties affected by excessive noise is likely to increase if all noise is taken into account. The effects for owners of these properties will also be more than permitted. This is underscored by the meaning of "effect" in s3 of the RMA. Given that ALL noise should be taken into account and the proximity of the two heliports this must affect the averaging of noise process.

Therefore a full calculation of all noise should be scientifically assessed and the affected properties advised.

CREMORNE RESERVE

The heliport is immediately adjacent to the Cremorne Reserve. This reserve consists of a beach, and a bush walk beach access to the road. The reserve stretches immediately along the western boundary of the Applicant's land. There is no mention of the Cremorne Reserve in the original and existing 2015 Consent (and in the commentary of Council's decision making process signed off on 9 and 10 July 2015) so it was not then considered an affected party.

1. The Cremorne Reserve is the closest neighbour. The effects will be worse than any other neighbour. The interests and effects on the users of the Reserve have not been assessed. Being the closest neighbour the effects on the Reserve in Mr

Hegley's 16/4/20 report were ignored. Up to this point there is no mention of the Reserve at all. In a 22/5/20 written response to questions from Council (Mr Moss) Mr Hegley on pg 5 notes the noise will exceed the maximum noise permitted (under the AUP). He comments that because of the short duration this is "reasonable". We disagree. **In our view when the express limitations in UP are to be exceeded the effects are therefore more than minor. There is no allowance for reasonable periods of excessive noise in the AUP, only a limit of 85dB.**

2. The question arises - is the Reserve (and its users) an interested party and are there effects which need to be considered? The AUP stated objective is that "people" are protected from unreasonable levels of noise and vibration. In this case "people" use the Reserve and in our view are therefore interested parties.
3. Previously Council granted a heliport consent for the 75 Sarsfield St based on the belief it was not required to consider the interests of reserve users (in this case a beach) at all. It had considered only residential sites for noise effects. That decision was overturned by the 19 October 2018 High Court judgement by Justice Christine Gordon.
4. We note in the judgement by Justice Gordon (see para 117 and 118) on the rights of reserve users. Their interests must be taken into account for both amenity and safety (para 118) and again emphasised later in the judgement (para 151). Also see (para 143) which comments that even a very temporary effect (considered "reasonable" by Mr Hegley) is not necessarily AUP compliant or minor.

The Council must take into account the noise and safety factors for the Cremorne Reserve.

SAFETY

Under s5 of the RMA Council as the consenting authority must ensure that any consent granted is safe for use (health and safety requirement).

There have been major changes to the heliport since the original consent was granted. The original consent application (undated) but signed off by (Auckland Council planners Lauren Hawken on 9/7/15 and Hester Gerber on 10/7/15) on a non-notified basis. The landing area was stated to be 630 sqM. An assessment (via Google maps) suggests the landing area is in fact now only 150-200 sqM. In addition to the now smaller landing area there is building work going on at the swimming pool which may further cramp the landing area or reduce the margin of error for the helicopter main rotor.

There has been no mention of these changed circumstances and its potential effect on safety (and amenity) especially to people using the reserve, beach, boaters, fishers and swimmers. Mishaps (if rarely) do happen and it is essential that public safety is taken into account. See also Justice Christine Gordon's judgment (para 118)

Given the circumstances and the heliport proximity to the Reserve Council must consider and report on public safety as an important matter in relation to this consent.

AUP RULES DISPUTE

There is a dispute between Council and the acoustic consultant Mr Hegley. Mr Hegley in his reports claims the AUP description for noise is (Ldn) is meaningless (16 April 2020 report pg 4). There is an email chain dated 4 June, 17 June, and 24 June between Patrick Moss (investigating planner) and Andrew Gordon (Council acoustics expert). Those emails state that the AUP formula is valid (email 17 June 2020 11.07am). The essential difference

is whether the total movements should comply with the NZS rules which measure weekly noise and average over 7 days and the AUP which requires a daily assessment averaged over 24 hours.

Why is the NZS proposed to be permitted when the AUP states otherwise?

We believe the UP formula should be used.

IMPERMISSIBLE BALANCING EXERCISE

Without the full facts we are unable to comment. However Council should consider the clauses in the Justice Christine Gordon judgement relating to impermissible balancing exercise (paras 140-142).

OTHER MATTERS

COMPLIANCE

Council does not do any compliance checks for existing heliport consents. It relies on a complaint process and then checks on the allegations.

The application seeks a maximum of 104 movements per annum. It has been difficult for neighbours/members of the public to keep track of helicopter movements. Council advises that it does not check compliance with its resource consents but rather leaves this to complaints from the public. If this application is granted it will be impossible for the public to check on total flight number compliance. Accordingly we believe as a minimum the Applicant should be required to provide the logbook every year so Council can verify compliance including cross-checking with the helicopter hire companies.

Given the history of this applicant there should be serious consequences for ANY non-compliance.

All Council compliance activity should be at the Applicant's expense.

ADDITIONAL CLAUSES FOR CONSENT IF CONSENT ISSUED NON-NOTIFIED.

Herne Bay Residents Association (HBRAI) believes:

- there should be an immediate non-compliance penalty of three months (December, January and February) non use for any non-compliance. In addition there should be a clause stating the consent can be revoked for non-compliance.
- mandatory requirement for the helicopter engine to be turned off if passengers are not immediately ready to embark.
- mandatory requirement for the helicopter engine to be turned off immediately after landing during the disembarking procedure.
- any additional structures proposed to be introduced at the landing area must be approved by heliport safety experts.
- The additional clauses proposed by Andrew Gordon in his email of 16 June 2020 at [4.53pm](#) do not go far enough. The clauses must be modified to include noise from **ALL** sources (including all other heliports in the area). This is to comply with the AUP provisions. (This is because the requested changes to the existing current consent may cause an increase in the noise levels above the maximum LAFmax permitted by the current AUP).

FINAL COMMENT

HBRAI believes given all the issues relating to this consent variation application it must be publicly notified.

HBRAI would be pleased to supply further information if this would be helpful.

Attached is a copy of the judgement by Justice Christine Gordon.

Yours sincerely,

Dirk Hudig - Co-chair Herne Bay Residents Association Inc.

Don Mathieson - Co-chair Herne Bay Residents Association Inc.