

APPLICATION TO CHANGE CONDITIONS OF CONSENT

15 CREMORNE STREET HERNE BAY

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Table of Contents

1. BACKGROUND AND SITE	3
2. THE PROPOSAL	5
3. ENVIRONMENTAL EFFECTS ASSESSMENT	6
3.1 Introduction.....	6
3.2 Noise	6
4. STATUTORY ASSESSMENT (Section 104 RMA)	7
4.1 Actual and Potential Effects on the Environment (Section 104(1)(b))	7
4.2 National Policy Documents (Section 104(1)(b))	7
4.3 Auckland Unitary Plan (Section 104(1)(b)).....	7
5. NOTIFICATION	8
6. CONCLUSION	9

Appendices

Appendix 1: Existing Consent

Appendix 2: Acoustic Assessment – Hegley Acoustic Consultants

1. BACKGROUND AND SITE

In March 2015 the property owner at 15 Cremorne Street in Herne Bay applied for and was granted land use consent (R/LUC/2015/940) to construct a helicopter pad and operate a domestic helicopter within the residential zone of Auckland City. A copy of the consent is attached at Appendix 1 to this report. The property has since changed hands and is now owned by the applicant to this application.

By way of background, the main effects considered in 2015 in assessing the proposal were effects on neighbourhood character, noise, safety, physical effects, neighbouring sites and cumulative effects. Overall, the effects were considered to be less than minor and consent was granted, with conditions the grantee needed to comply with applied to the consent.

In particular, a detailed assessment of potential noise was undertaken by Hegley Acoustics. In particular the report *“recommended that the use of helicopters be controlled with a daily noise exposure level (L_{dn}) rather than controlling the number of movements which on its own will not control the noise exposure and hence the effects for neighbours”*.

The report found, with appropriate controls such as imposing a noise limit, requiring compliance with the Fly Neighbourly Guide, using a direct flight path directly to and from the Harbour, restricting the hours of flights, using the landing pad at the front of the premises and restricting the type of helicopter to one which did not create noise effects greater than a Eurocopter 130, then consent could be granted. The conditions reflecting these controls are as follows (see Appendix 1 for a full list of all conditions):

7. The consent holder shall ensure that the use of the landing area on the site to which the 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).
8. All flights shall be restricted to the hours of 7:00am – 10:00pm each day or between Morning Civil Twilight and Evening Civil Twilight whichever is the more restrictive;
9. All arrivals and departures shall take place on the flight path outlined in Figure 1. "Proposed Helipad Site" of the Hegley Acoustic Consultants report dated March 2014;
10. The number of flights per week shall not exceed two (four movements) with no more than one flight (two movements) on any one day.
11. Measurements of helicopter noise shall be carried out in accordance with the requirements of NZS6801: 1991 Measurement of Sound;
12. The helipad shall not be used for any helicopter creating noise effects greater than a 'Eurocopter 130' unless it has been demonstrated that the noise will comply with conditions 7. above;
13. The consent holder shall require that all pilots using the site, plan routes and fly in accordance with the recommendations of the Helicopter Association International 'Fly Neighbourly' Guide;

In respect of the number of flights, Hegley Acoustics determined in its report which informed the 2015 application that one flight per day (2 movements) could occur – or seven per week – which will comply with the requirements. However, the applicant proposed to operate a lesser number of flights per week than the maximum calculated - two flights (four movements) per

week with no more than one flight on any one day. It is for this reason that condition 10 restricted the number of movements to this number, not to further reduce noise levels.

At the time of assessing the application, Council determined the actual and potential adverse effects from the proposal will be less than minor, and that the proposal is generally consistent with the relevant policy statements and plans or proposed plans.

The site itself is located adjacent to the Waitemata Harbour at 15 Cremorne Street Herne Bay – see Figure 1 below. The landing pad for the helicopter has not changed – it is at the front of the existing house, and the approach and departure from the landing pad is directly from and to the Waitemata Harbour, thus there is no need to fly in the direction of adjacent houses.

The applicants' dwelling is extensive – it is a large two storey dwelling and spreads across the width of the section, thus acting as a barrier to sound behind the dwelling. A tennis court is located behind the house.

Figure 1: 15 Cremorne Street location plan



The property is zoned Residential – Single House Zone in the Auckland Unitary Plan.

2. THE PROPOSAL

Since the consent was granted, the property has changed ownership. The new owners have found some of the consent conditions restrictive, specifically the daily and weekly flights permitted, as they do not provide for their helicopter to land, collect them and leave (one flight), and then return them later in the day – this would constitute two flights, and thus would contravene condition 10.

An updated assessment has been undertaken by Hegley Acoustics (see Appendix 2). The assessment was based on the applicant's new Air Bus H130T2 helicopter (which has replaced the consented Eurocopter 130 helicopter) to determine if the consented flight movements can be rearranged (condition 10) whilst still complying with the noise and other conditions of the consent.

Hegley Acoustics has carried out field testing of the Air Bus H130T2 and found the noise exposure at the boundary of the closer houses will comply with the 50dBA L_{dn} limit based on 11 flights a week (11 daytime arrivals and 11 daytime departures). This equates to an average of 1.5 flights a day with an upper limit of 3 flights (3 daytime arrivals and 3 daytime departures) a day providing the weekly average does not exceed 11 flights.

Based on this information, the proposal is to rearrange the number of flights permitted to provide a greater degree of flexibility to the owners of the property, whilst still complying with the 50dBA L_{dn} limit noise requirements set out in condition 10 of the consent. The applicant wishes to extend the number of flights per week to 11 (11 arrivals and 11 departures) with an upper limit of 3 flights (3 arrivals and 3 departures) per day provided the weekly average does not exceed 11 flights. The maximum number of yearly flights would remain at 104.

This application therefore seeks to amend the conditions of the existing consent under section 127 of the RMA. The application does not seek to expand the effects of the activity beyond that provided for in the existing consent – the effects will still be able to comply in particular with the noise limit of L_{dn} 50dBA.

It is therefore proposed to change conditions 10 and 12. The proposed changes are set out below.

10. The number of flights per week shall not exceed ten (twenty movements) with no more than three flights (six 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 an 'Air Bus H130T2' unless it has been demonstrated that the level of noise will comply with condition 7 above;

Conditions 7 – 9, 11, 13 and 14 would remain unchanged.

A new condition is also suggested to refer to NZS6807:1994 *Noise Management and Land Use Planning for Helicopter Landing Areas* as there is no reference on how helicopter noise should be assessed in the current conditions or in the Auckland Unitary Plan. L_{dn} is not defined in the AUP-OP so has no meaning without reference to a specific document and cannot be effectively enforced. A new condition should be added as set out below.

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.

3. ENVIRONMENTAL EFFECTS ASSESSMENT

3.1 Introduction

When considering an application for a section 127 change of conditions of a resource consent, sections 88 to 121 of the Act apply as if the application were an application for a resource consent for a discretionary activity, and the references to a resource consent and to the activity were references only to the change of condition(s) and the effects of the change(s).

When considering an application for a discretionary activity the Council as consent authority must, subject to Part 2 of the RMA, have regard to any actual and potential effects on the environment and any provisions of relevant policy documents.

A full assessment of effects of the effects of the proposal was undertaken by John Childs Planning prior to the consent being granted in 2015. As the current application is to update conditions 10 and 12 of the current resource consent to allow for greater flexibility of flight movement, then only the actual or potential effects of this flexibility is to be assessed in this application. For all other matters the assessment of effects from the original application process remain valid and are not assessed here.

The following actual or potential effect has been assessed:

3.2 Noise

Hegley Acoustic Consultants have carried out a detailed assessment of the proposal and in particular to determine if the proposal meets the 50dBA Ldn requirement of condition 7.

After carrying out field testing of the Air Bus H130T2 the report concludes that by adopting the currently approved flight path (see Figure 2 Hegley Report) and adopting the “Fly Neighbourly” program, the noise exposure at the boundary of the closer houses will comply with the 50dBA Ldn limit based on 11 flights a week (11 daytime arrivals and 11 daytime departures). This equates to an average of 1.5 flights a day with an upper limit of 3 flights (3 daytime arrivals and 3 daytime departures) a day providing the weekly average does not exceed 11 flights.

The report also notes that the motor on the Air Bus H130T2 can be closed down 30 seconds after landing and can take off 30 seconds after starting up. This is compared to the Eurocopter 130 referenced in the original consent where the time is up to 4 minutes, and makes a significant difference to the potential noise. The pilot will shut the engines down and wait until passengers are ready to fly before starting the engines up again – with the older Eurocopter 130 the engines were kept running so the noise effects are potentially greater.

The applicant has volunteered to maintain the number of flights per year to 104, the same number as currently permitted in the existing consent.

The Acoustic report has noted that Ldn is not defined in the AUP-OP so has no meaning without reference to a specific document. Some clarity is needed as the conditions cannot be effectively enforced as currently written. The report recommends the proposed activity should be related to NZS6807 in the conditions of consent, which was prepared specifically for such use and reflects what is believed to be the aim of the conditions and Rule E25.6.32 in the Auckland Unitary Plan.

Rule E25.6.32 in the AUP relates to Helicopter noise, and requires noise levels for helicopters at take-off or landing on any site except for emergency services must not exceed Ldn 50dB or

85dB LAFmax measured within the boundary or the notional boundary of any adjacent site containing activities sensitive to noise.

In summary, subject to suggested conditions being imposed the adverse effects on the environment resulting from the proposed amended conditions will be less than minor.

4. STATUTORY ASSESSMENT (Section 104 RMA)

The following assessment is restricted to objectives and policies relevant to the change of conditions of resource consent.

4.1 Actual and Potential Effects on the Environment (Section 104(1)(b))

These have been discussed in section 3 above and have been assessed as less than minor.

4.2 National Policy Documents (Section 104(1)(b))

There are no national environmental standards or policy statements or other regulations relevant to the application.

4.3 Auckland Unitary Plan (Section 104(1)(b))

The Residential – Single House Zone Objectives and Policies have been reviewed to ensure the change of conditions is consistent with them. The proposal is consistent with Objectives (1), and (3) in that the amenity values of the neighbourhood will not be adversely affected as noise levels will continue to be below the maximum permitted noise levels provided for in the existing consent. All flights will need to follow the consented flight path and the Helicopter Association International 'Fly Neighbourly' Guide.

The Policies generally reflect the Objectives with Policy (7) being the most relevant – providing for non-residential activities that support the social and economic well-being of the community; are in keeping with the scale and intensity of development anticipated within the zone; and avoid, remedy or mitigate adverse effects on residential amenity.

The proposed changes of conditions are in keeping with what has been consented in the past as an appropriate scale and intensity of development, and use, and the use will avoid adverse effects on residential amenity by restricting flights, specifying the type of helicopter or equivalent to be used, and provides a reference to how helicopter noise should be assessed against the AUP provisions.

The Objectives and Policies in E25, Noise and Vibration, are reasonably straight forward. The relevant Objectives 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.

The relevant Policies aimed at giving effect to these Objectives are:

- 1. Set appropriate noise and vibration standards to reflect each zone's function and permitted activities, while ensuring that the potential adverse effects of noise and vibration are avoided, remedied or mitigated.*

2. *Minimise, where practicable, noise and vibration at its source or on the site from which it is generated to mitigate adverse effects on adjacent sites.*
4. *Use area or activity specific rules where the particular functional or operational needs of the area or activity make such rules appropriate.*
5. *Prevent significant noise-generating activities other than roads and railway lines from establishing in or immediately adjoining residential zones*

The proposal has been evaluated against these Objectives and Policies. The proposal does not increase noise levels over and above what is already provided for in the existing consent conditions, so people will be protected from unreasonable levels of noise. The noise level is set at Ldn 50dB as required in Policy (1) to protect the residential area. The requirement to not use a helicopter at night (after 10pm) is preserved and the flight path and flight movements in accordance with the 'Fly Neighbourly' Guide will assist in minimising noise and restricting it to the large and generally enclosed site from which it is generated.

Policies 4 and 5 are not relevant to the proposed change as the use has already been established in the zone.

Overall, the change in conditions proposed is not contrary to the relevant objectives and policies of the Auckland Unitary Plan.

5. NOTIFICATION

In determining whether public notification is needed, the applicant is not asking for public notification and no further information or report has yet been requested (s95A(3)).

Under section 95A(8)(b) of the RMA a consent authority must decide, in accordance with section 95D, whether or not the proposal is likely to have effects on the environment that are more than minor. The assessment undertaken in this application concludes that the effects of the proposed changes of conditions of consents will be less than minor, and therefore no public notification is required. No special circumstances exist in relations to the application that warrant the application being publicly notified (s95A(9)). The proposal is to amend the conditions of consent for the use of a helipad which has been consented for some years. The amended applications will not create any unexpected or special circumstances.

If a consent authority does not publicly notify an application for a resource consent for an activity, it must decide whether there is any affected person in relation to the activity who should be limited notified. Section 95B sets out the criteria for determining limited notification. There are no affected protected customary rights groups (s95B(2)(a)), and no known statutory acknowledgements (s95(3)(a) and (b)). Otherwise potentially affected persons are to be assessed in accordance with s95E. It is noted that s127(4) is relevant in this assessment, as follows:

As this is a section 127 application to change the conditions of an existing consent, then the RMA under section 127(4) states:

For the purposes of determining who is adversely affected by the change or cancellation, the consent authority must consider, in particular, every person who—

(a) made a submission on the original application; and

(b) may be affected by the change or cancellation.

Under s95E, a person is an affected person if the consent authority decides that the activity's adverse effects are minor or more than minor (but are not less than minor).

The assessment of effects undertaken in this application has shown that the effects of the application are less than minor. The proposal has no greater, if as many, adverse environment effects than the existing consented proposal. Thus, there is no person who can be assessed as being affected by the effects of the application in a minor or more than minor way, and there is no reason for the application to be limited notified as the effects are assessed as being less than minor.

It is recommended the application proceed on a non-notified basis.

6. CONCLUSION

This application proposes to change the conditions of consent number R/LUC/2015/940 under Section 127 of the RMA. The existing consent conditions, specifically the number of daily and weekly flights permitted, are overly restrictive when assessed against the noise levels permitted in the existing resource consent.

The proposal is to rearrange the number of flights permitted so that 104 flights per year were still provided for, and providing up to 11 flights a week (11 daytime arrivals and 11 daytime departures) with an upper limit of 3 flights per day whilst still complying with the 50dBA Ldn limit set out in the AUP.

A technical assessment has been undertaken that shows the effects will be less than minor, and that the proposal complies with the relevant provisions of the AUP.

It is proposed to update conditions 10 and 12. The proposed changes are set out as follows.

10. The number of flights per week shall not exceed ten (twenty movements) with no more than three flights (six 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 an 'Air Bus H130T2' unless it has been demonstrated that the level of noise will comply with condition 7 above;

A new condition is also suggested as follows to refer to NZS6807:1994 *Noise Management and Land Use Planning for Helicopter Landing Areas*. Ldn is not defined in the AUP-OP so has no meaning without reference to a specific document and cannot be effectively enforced.

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