From: Rhys Harrison <rhys.harrison@me.com>
Subject: Re: Application for variation to Resource Consent 15 Cremorne St
Date: 15 August 2020 at 20:40:10 NZST
To: Dirk Hudig <dirkhudig@gmail.com>
Cc: don@mit.co.nz

Dear Dirk,

1

I have now had an opportunity to carefully review the Herberts' application to vary the resource consent granted by the Auckland Council in 2015 to the previous owners of 15 Cremorne Street, Herne Bay to operate helicopter flights to and from the property.

It is important to record from the outset that the consent is not for 104 flights a year. The consent is for one flight (two movements) daily, with a maximum of two flights (four movements) weekly.

The Herberts want to increase the limit to a maximum of three flights (six movements) daily and ten flights (20) movements weekly.

2

The issue of immediate concern is whether Council's planner's proposed recommendation not to notify the application is correct.

The current legal test for notification is well settled. The question is whether the activity will have or is likely to have adverse effects on the environment that are more than minor or whether special circumstances exist.

I must note that landing a helicopter in a residential area of Auckland is a non-complying activity.

It is the fifth in the descending hierarchy of six defined classes of activities for which resource consents are required, immediately above a prohibited activity.

This ranking is a legislative reflection of the principle that activities within this class are not compatible with the acceptable uses of the land within a residential area.

The status of a non-complying activity is elevated to that of a discretionary activity once a consent is granted and an application is later made to vary it.

Nevertheless, a consenting authority should not lose sight of the fact that using a property within a residential area to operate an aircraft is not a complying activity.

3

There are a number of reasons why landing a helicopter on a property in a residential area is a non-complying use.

It is not simply a matter of noise pollution, which seems to be the almost exclusive focus of the Herberts' planning consultants' application and Council's planner's inquiry.

On that point, however, the both planners appear to have limited their attention to whether noise levels generated by the helicopter comply with certain technical acoustic standards, as confirmed by internal communications between members of Council staff. Those standards are directed towards protecting physical health.

The planners do not appear to take any account of wider and obviously relevant factors.

4

First, the volume of sudden and not infrequent onsets of noise from nearby flight movements interferes significantly with the amenity value of the neighbourhood, not just the immediately affected neighbours.

The noise of helicopter movements in the neighbourhood detracts from its pleasantness for residents and recreational users alike. On this measure the adverse effects of the activity on the receiving environment are considerably more than minor.

5

Second, there are public safety factors.

Helicopters are inherently dangerous machines especially when required to manoeuvre in confined landing spaces. There is the associated risk of accidents caused by engine failure, adverse weather and pilot error.

The consequences are lessened where the flight paths are across open water. But the planners do not appear to take any account of the recreational users of the reserve adjoining 15 Cremorne Street, the nearby public beach and the inner harbour precincts near the flight path.

These considerations only compound the adverse effects to which I have referred.

6

The underlying fallacy in the Herberts' planner's submissions is repeated throughout the application.
It is that the variation does not seek to expand the the effects of the activity beyond the existing consent, on the premise that the existing consent is for 104 flights yearly. That is not the existing consent.

The consent is for one flight daily to a maximum of two flights weekly; the planner actually acknowledges that the reason for the application is that the Herberts find the existing daily and weekly restrictions unduly restrictive.

Later he contradicts this rationale by submitting that the application will not have an adverse effect on the environment because it will restrict flights. The planner also submits that the application is in keeping with what has already been consented to as an appropriate scale and intensity of development.

7

However, there is a materially significant difference between a consent which limits flights to daily and weekly maximums on the one hand, and a theoretical annual entitlement on the other.

The stipulated restriction which is now unsatisfactory to the Herberts is the express limitation on daily and weekly use, reflecting the scale and intensity of flights which is acceptable to Council within strictly defined periods of time.

The Herberts want to expand that scale and intensity substantially, to increase the daily flights from one to three, and weekly flights from two to ten. It is reasonable to assume from the terms of the existing consent that its purpose was to enable the previous owner to use a helicopter to leave and return to the property once weekly for business purposes, not for daily recreational purposes.

Motor vehicular access is available for that purpose, and a heliport is available at Mechanics Bay less than 15 minutes drive from the property. Convenience, or suitability to a new owner, is not a reason for changing the essence of the consented use and imposing a considerably greater burden on the receiving environment.

8

It is of concern that you advise that Council's planner intends to recommend approval of the Herberts application.

The evidence available from Council's internal communications leads to the inevitable inference that its inquiry has been of a narrow, mechanical nature, dictated by the terms of the Herberts planner's application and without any critical independent evaluation.

There is no evidence that the wider and obviously relevant environmental factors to which I have referred have been carefully assessed, let alone taken into account.

An approval justified by an omnibus statement from the planner to the effect that they have been considered will not be sufficient to withstand challenge.

9

In my opinion, the adverse effects of the proposed activity are considerably more than minor, and justify public notification of the Herberts application.

Kind regards

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