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By Email

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Dear Stephen

Proposed district plan advice – RMA controls over aircraft noise

1. You have sought advice on the scope of district plan controls to control aircraft flying in low-level flights. This has arisen through submissions on hearing stream #7 of the PDP, and particularly the matters raised in the submissions filed on behalf of the New Zealand Agricultural Aviation Association and the Helicopter Association (**helicopter submission**). While the helicopter submission is seeking a number of specific changes to the PDP provisions, this advice does not address the details of those amendments sought. You have instead sought a general summary of the situations that a district plan can and cannot control noise emissions from aircraft.
2. I set out below a summary of the relevant RMA provisions and caselaw, before providing comments on the matters raised in the helicopter submission and section 42A officer's report.
3. The control over aircraft noise through a district plan under the RMA is limited. Section 9(5) of the RMA specifically provides that aircraft noise emanating from overflying aircraft is exempt from the general restrictions on land use, subject to noise controls for airports. This express reference to aircraft is a variation from the normal control that a district plan has over noise sources associated with land uses.
4. Case law has provided clarity regarding this statutory limitation. *Dome Valley District Residents Society Inc v Rodney District Council* (2008) 14 ELRNZ 237 related to a resource consent application to operate a commercial helicopter base. Resource consent was granted by the Council. On appeal, the Environment Court supported the grant of resource consent. A residents' society then appealed that decision to the High Court. The key aspects of the High Court decision are:
 - a. Paragraph 42 – *'The Resource Management Act does not empower local bodies to attempt to regulate the noise emitted by aircraft flying between two points within*

New Zealand or aircraft flying on international routes through New Zealand's air space.'

- b. Paragraph 43 – *'...for all practical purposes, an overflying aircraft has absolutely nothing to do with land use. Nor has a land owner or occupier any control over the random and momentary intrusion of an aircraft into his or her air space.'*
- c. Paragraphs 58-64 confirm:
 - i. The discrete activity of overflying aircraft does not fit easily inside the section 5 purpose of the RMA.
 - ii. The entire field of overflying aircraft, its regulation and control, is properly the subject of the Civil Aviation Act 1990 and related regulations and rules.
 - iii. *'Once airborne and lawfully flying above land owned by a person or under a territorial authority's jurisdiction, it is a nonsense to suggest the aircraft is somehow engaged in a s 9(1) 'use of land'.* In particular, the action of an overflying aircraft is clearly not caught by the definition of 'use' which is terrestrially based.
 - iv. This approach is consistent with the manner in which the law has, for many years, regarded overflying aircraft. The technical trespass to land which might flow from an intrusion into the airspace of an individual owner is long gone so far as overflying aircraft are concerned.
 - v. Despite its somewhat odd placement in Pt 3 of the RMA, there is a clear expression of Parliamentary intention in section 9(5) of the RMA.
 - vi. Even though the section 2 definition of 'land' includes the air space above land, the ambit of this definition for RMA purposes does not extend to air space into which an overflying aircraft intrudes.
- d. Paragraph 66 – *'The issue of whether land can be used for an airport, aerodrome, or heliport is a resource consent issue. So too, clearly in terms of s 9(5) and other provisions, is the issue of control of noise emission generated by an airport. But after take off or landing, and in particular where an aircraft is operating above 500 feet over a rural area or above a thousand feet over a congested area, such aircraft and its effects, in my judgment lie outside the ambit of the Act and the resource consent process.'*
- e. Paragraph 70 – *'Different considerations, of course, obviously apply to the noise generated by aircraft approaching and departing from the heliport under the 500-foot restriction. ... On the basis of evidence before it, the Court was satisfied that NZS6807 provided appropriate and acceptable mitigation of the effects of noise. On the permitted baseline issue the Court turned its mind to other permitted activities under both RDC's operative District Plan and proposed District Plan, including forestry, farm activities, farm airstrips, and child care. It found that the effect of helicopter engine noise at the heliport would be generally similar to permitted noises of forestry harvesting and air strips.'*

5. The *Dome Valley* case was subsequently endorsed in *Saville v Queenstown Lakes District Council* [2019] NZEnvC 94. That case also related to a resource consent to establish and operate a helipad. The decision considered whether the effect of noise from a helicopter flying overhead above 500 feet is amenable to control under the district plan. Paragraph 28 confirms that the reference to 500 feet arises from the Civil Aviation Rules, which provide the minimum heights for aircraft operating under visual flight rules. The Court could not distinguish *Dome Valley* on its facts, and applied it accordingly.
6. Another more recent Environment Court case *Quiet Sky Waitemata Inc v Auckland Council* [2026] NZENVC 111 also considered the issue in the context of a resource consent application for a proposed helicopter landing pad in a residential zone. The particular issue addressed was whether the taking off and landing of a helicopter is inherently part of a residential activity. The case made reference to the specified noise levels in a rule in the Auckland Unitary Plan that applied to the taking off and landing of a helicopter on any site. Despite that general rule, the Court reached a conclusion that those helicopter noise controls only applied where the landing pad for a helicopter was otherwise permitted by the relevant residential zone rules or consented. It found that the taking off and landing of helicopters is not inherently related or associated with a residential use, and accordingly would become a non-complying activity in the residential zone. That decision is currently subject to appeal to the High Court.
7. While not directly related to the setting of rules in a district plan, I note for completeness that the enforcement of excessive noise directions under the RMA also excludes noise from aircraft in flight and vehicles being driven on a road. This is a further limitation on the ability of the RMA to comprehensively regulate in-flight aircraft noise.
8. The RMA constraints do not mean that noise from aircraft is uncontrolled. The regulation of overflying aircraft noise is generally governed by the Civil Aviation Act. Section 44 of the Civil Aviation Act 2023 confirms that no action for nuisance or trespass can be pursued solely on the basis of aircraft flight noise, provided the aircraft complies with the Act and aviation rules.
9. Essentially, the legislation and caselaw confirms that while the RMA enables controls on noise related to activities on the ground, including airports and helicopter landing pads (eg. take-off and landing activities), the regulation of noise from overflying aircraft lies predominantly with aviation law under the Civil Aviation Act and its regulations.
10. Against this background of the relevant statutory provisions and caselaw, I turn to consider the s42A report and the helicopter submission. Paragraphs 116-121 of the section 42A report address the topic of noise from aircraft, and conclude that the relief sought in the helicopter submission to amend the note regarding the operation of the rules is rejected. In reference to the evidence of Malcolm Hunt, reference is made to the Civil Aviation Authority Rules regulating aircraft in flight, except for taking off and landing or requirements for low flying. The report outlines that the note in the plan is intended to clarify when the rules are applicable.

11. The helicopter submission provides a general background to flight operations and seeks a range of changes to the PDP to provide for temporary commercial helicopter activities, with a distinction made between ad hoc or infrequent activities versus regular activities. As noted above, I do not address the specific amendments to the PDP sought by the helicopter submission, but note that the justification for the changes as sought in the submission includes:

- a. Reference and reliance on the *Dome Valley* case as summarised above.
- b. Clarification of the relevant Civil Aviation Rules, noting that there are exceptions to the need to operate above 500 feet (in open areas) and 1000 feet (in congested areas) for a bona fide purpose, including:
 - i. Low level survey flights (CAR Part 135.85 and 135.93).
 - ii. Agricultural aircraft operations (CAR 137.61 and 137.63).
 - iii. Helicopter external load operations (CAR 133.51 and 133.69)
- c. Some of these low level flights are not necessarily connected to a use of land (eg. chemical discharges that may be regulated by the regional council).

12. It is understood that these clarifications and exceptions are why the note in the plan is sought to be deleted by the helicopter submission.

Conclusion

13. In my view, the caselaw is clear and consistent on the limits of control that the PDP can have over aircraft (including helicopter) operations. The PDP focus must be on the land use controls that arise from aircraft taking off and landing activities. Noise from aircraft in flight is not a matter that the PDP will control. Generally that will exclude control from aircraft when above 500 feet (in open areas) and 1000 feet (in congested areas).

14. The helicopter submission has raised some other exceptions that involve potential operations below those height levels that are not associated with landing and taking off activities. The merits and need for PDP noise control over those activities are matters for the Panel to consider - if connected to a land use activity then they can be subject to the PDP noise controls. It would likewise be possible to refine the provisions to clarify which of those operations are not caught by the noise provisions of the PDP.

Yours sincerely



Stephen Quinn

Barrister