Management of Noise from Aircraft Overflying Sensitive Environments

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Päremata

PO Box 10-241, Wellington
www.pce.govt.nz

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1. INTRODUCTION

The aim of this investigation was to report to the relevant authorities on the results of enquiries carried out into a citizen's concern regarding the management of noise from aircraft overflying sensitive environments.

2. BACKGROUND

Origination

The Parliamentary Commissioner for the Environment (PCE) received a letter earlier this year expressing concern about the lack of legislative controls of noise from aircraft overflying areas valued for their tranquillity and privacy. The PCE has the functions of: investigating the effectiveness of environmental planning and management carried out by public authorities; encouraging the dissemination of information relating to the environment; and encouraging preventative measures and remedial actions for the protection of the environment (ss 16(b), (f) and (g) Environment Act 1986). In carrying out his functions, the PCE is required to have regard to areas and landscapes of aesthetic, cultural, historical, recreational, scenic and scientific value (s 17(b) Environment Act). Thus, it was decided that this issue was worthy of further investigation in the wider context of management by public authorities of aircraft noise in sensitive areas. The investigation was also to address the question of whether environmental effects from low-flying aircraft are best dealt with under the Resource Management Act 1991(RMA) or the Civil Aviation Act 1990 (CA Act).

PCE's Strategic Plan

One of the significant management system topics identified in the PCE's 1997-2001 strategic plan was *public participation in resource management.* This investigation examined whether there were adequate opportunities for the public to participate in the environmental management systems for controlling nuisance noise from overflying aircraft.

Findings from Previous PCE Investigations

The management of tourist air traffic, particularly over natural areas, was an issue raised by many of those consulted for the PCE's 1997 Tourism report. The main concern related to the noise of flights and the effect this has on other users.

The investigation found that there is little management of flight paths in relation to the effect of aircraft on people on the ground. However, it also found that section 29A of the Civil Aviation Act 1990 provides that the Minister of Civil Aviation may make ordinary rules in relation to the use of airspace in the interests of safety or security within the civil aviation system, national security, **and for any other reason in the public interest.**

The PCE report noted:
"… the public interest criterion …..was included in the Bill at the select committee stage specifically to address general public interest matters such as noise. It was intended that the purpose of the Civil Aviation Act 1990, namely to promote safety, would not restrict those public interest matters for which rules could be made."

The PCE concluded that CAA has the authority to regulate flight paths for purposes other than safety. The Commissioner also concluded that it is appropriate that CAA retain control over flight paths, since safety must remain paramount.

3. INVESTIGATION METHODOLOGY

The following organisations and individuals were consulted in the course of this investigation:

Civil Aviation Authority
Department of Conservation
Ministry for the Environment
New Zealand Conservation Authority
Office of Tourism and Sport, Ministry of Economic Development
Local Government New Zealand
TRC (Tourism Resource Consultants)
Aviation Industry Association of New Zealand
Nelson Helicopters
James Higham, Otago University
Kay Booth, Lincoln University

4. REGULATION OF AIRCRAFT NOISE

Current Law

The legislation remains unchanged since the publication of the 1997 PCE Tourism report. The RMA does not have any jurisdiction over noise from overflying aircraft. The ability of territorial authorities to control noise emissions from overflying aircraft is limited to any noise emission controls that may be prescribed in relation to the use of airports (s 9(8) RMA).

In a recent case, *Aviation Activities Ltd v Mackenzie DC*[1], Jackson J made the comment that "the absence from the RMA of such a power to control noise from tourism flights is an issue that, in our view, deserves legislative attention." This highlights the fact that control of nuisance noise from overflying aircraft is seen as a problem.

The Civil Aviation Authority (CAA) has authority, through rules made by the Minister of Transport, to control flight paths and designations of airspace. Civil Aviation Rules Part 71 (Designation of Airspace) and Part 73 (Special Use Airspace) provide for the Director of Civil Aviation to designate, amongst other things, areas of airspace as "restricted areas" within the territorial limits of New Zealand. Although these Rule Parts are currently under review, this is an editorial review to amalgamate the Parts, rather than a substantive review of the content of these rules.

Any person may petition the Director of Civil Aviation for a designation to restrict airspace in the public interest. For example, as regards the recent citizen's concern, the Mackenzie District Council could petition CAA for a designation to restrict the airspace around Lake Tekapo's Church of the Good Shepherd in order to protect the peace and tranquillity of the area if it were considered in the public interest. CAA advises that it would require any such petition for airspace designation to be accompanied by a fully consulted submission that included input from aircraft operators. However, this process is currently informal only.

[1] *Aviation Activities Ltd v Mackenzie DC* (Unreported, Environment Court C72/00, 31 March 2000, Jackson J.)

As stated in the PCE's 1997 Tourism report, section 29A was included in the CA Act specifically to allow the Director of Civil Aviation to protect wildlife reserves and national parks from "excessive aircraft intrusion" .[2] However, the procedure for the creation of designations for this purpose is currently only contained in CAA's internal procedures.

CA Act Procedures for Making Rules

Currently Parts 71 and 73 require the Director of Civil Aviation to consult such persons as the Director considers necessary in the circumstances before designating an area of airspace. There are currently no regulatory requirements for the applicant to consult or assess environmental impacts when they apply for an airspace designation.

The Civil Aviation Rules system includes Rules Part 11 that deals with the procedures for making ordinary rules and granting exemptions. Part 11 includes a Subpart C (Ordinary Rules for Airspace Assignment and Use) but currently there is no detail about the procedures to be followed. The CAA's rule development contract programme with Ministry of Transport for 2000-2001 includes a review of Part 11 that will also include the development of rules for airspace assignment and use under Subpart C. It is anticipated that this rule project will begin early in 2001.

CAA anticipates that Part 11 Subpart C will require any application sent to the CAA for a designation of airspace in the public interest to be accompanied by a detailed consultation summary and any necessary environmental assessment. It will be the responsibility of the applicant to ensure that all relevant interested parties are consulted and any environmental assessments carried out. CAA will then assess the application for any potential effects on aviation safety. A Code of Practice may be developed with the Ministry for the Environment (MFE) to assist in determining whether the consultation and any environmental assessment conducted by the applicant is adequate. This MFE function is provided for by s 31(c)(ii) Environment Act 1986.

It is expected that CAA will draft an Advisory Circular to accompany the new rules that will cover the consultation and environmental assessment that the applicant will be required to complete before applying for a designation of airspace in the public interest. Advisory Circulars provide explanatory information and examples of how to comply with the rules.

CAA does not actively monitor compliance with airspace designations such as restricted areas. That is up to the designated controlling authority for the restricted area (eg DOC - if associated with conservation land). However, CAA advises that it does follow up complaints about non-compliance.

Civil Aviation Rule 91.129(a) prohibits a pilot from operating an aircraft within a restricted area unless that pilot has the approval of the controlling authority designated for that area. The Civil Aviation (Offences) Regulations 1997 includes both an infringement fee and a maximum penalty on summary conviction for a breach of Rule 91.129.[3]

[2] Hon Maurice Williamson, 31 July 1996 NZPD 557,14052.

[3] The maximum penalty on summary conviction for breach of rule 91.129 for an individual person is $5000, for a body corporate the maximum penalty is $30,000. The maximum infringement fee for an individual is $2000 while for a body corporate it is $12, 000.

Department of Conservation Management

The Department of Conservation (DOC) has no control over flight paths. Where aircraft want to land on the conservation estate, a concession is required but DOC cannot control the flight path of the aircraft.

DOC advises that aircraft operator groups have agreed to certain voluntary flight path restrictions in some areas of the conservation estate. CAA and DOC both consider that voluntary agreements on managing noise and other environmental effects are more effective than statutory regulations. Although they advise that the latter are difficult to enforce, DOC does recognise that in some instances statutory regulations are likely to be required.

Recreationists have advised PCE that the voluntary aircraft restrictions are not always complied with. For example, recreationists have observed that when there are too many aircraft in the Tasman Glacier Valley, aircraft go into the Hooker Valley where there is a voluntary prohibition. Voluntary height restrictions at Milford Track are evidently not always adhered to either.

DOC's Strategic Business Plan for 1998-2002 gave as one of the outcome targets for protecting wilderness values:

"Identify areas where restrictions are required to maintain natural quiet in Department-managed areas to ensure visitor enjoyment, minimise visitor conflict and protect wildlife. These areas will be identified by 1999."

In order to assess the impacts of noise on natural quiet in conservation areas, DOC has developed two monitors. The first is a site-specific survey that is used to assess visitor perceptions of aircraft activity. This has been used at sites such as Mt Cook and the Fox and Franz Josef Glaciers. The second monitor deals with external noise in a broader sense (which may include aircraft) where it impacts on conservation visitors and is used as an indicator to flag areas that may need further investigation. Implementation of this indicator monitor is currently in process.

DOC advises that it is aware it can also apply to CAA for legal aircraft restrictions. Current restrictions on the conservation estate are only to protect wildlife, eg aircraft height restrictions at Farewell Spit. However, there is a possibility of cases being put forward to CAA by DOC for airspace restrictions in areas where aircraft noise is a problem for tourists, eg Milford Track. It is therefore important that appropriate CAA procedures are in place before DOC needs to use them.

CAA has been working with DOC to have DOC representatives involved in local aviation user groups to establish "fly-friendly" activities in conservation and tourist areas. These groups have produced some very positive outcomes in terms of creating greater understanding between parties and in the establishment of practical voluntary controls. A draft CAA/DOC MOU (Memorandum of Understanding) was also being drafted to provide a framework for an effective professional relationship between DOC and CAA to permit management of the effects of aircraft operations on natural, historic, cultural and recreational values. However work stopped on the MOU approximately two and a half years ago when changes occurred in both organisations.

5. ENVIRONMENTAL MANAGEMENT ISSUES

We addressed the issue of whether the management of the environmental effects from overflying aircraft are best dealt with under the RMA or CA Act.

Control of Aircraft Flight Paths

Local authorities have expertise in dealing with environmental management issues and noise pollution. Under the RMA, territorial authorities can make rules to control noise emissions from airports, including takeoffs and landings. However, this is different from controlling noise from aircraft that are in flight[4]. There is the potential that, whilst in flight, an aircraft will cross several territorial and regional boundaries with differing rules or that tourist operators would have to apply for resource consents from several different authorities, increasing compliance costs.

It would be possible to amend the RMA to allow regional councils or territorial authorities to control overflying aircraft noise. National consistency could be achieved through a National Policy Statement or National Environmental Standard. CAA would need to be closely involved in this process.

CAA has specialist knowledge of aircraft and its main objective is safety. CAA could not guarantee safety where another organisation or court has designated flight paths to control the noise from overflying aircraft. If noise from overflying aircraft were controlled by the RMA, then councils would be expected to make decisions on flight paths and airspace assignment that could be appealed to the Environment Court. In *Glentanner Park (Mount Cook) Ltd v Mackenzie DC* the Planning Tribunal considered that "questions of safety are matters for the Director [of Civil Aviation] to determine", however, it was considered that the Tribunal was still competent to consider "whether a risk remains and whether any particular accident, even if improbable, would have environmental consequences which would warrant refusal of a resource consent". The Tribunal also stated that it would need a great deal of persuasion before holding that the CA Act overrides the matters of national and environmental importance set out in section 5 of the RMA.

CAA has no expertise in environmental management and noise pollution. However, this could be overcome with a Code of Practice that ensures CAA consults with MFE as well as other interested parties including tourist operators and public interest groups.

Enforcement may be a problem but if aircraft operators were sufficiently consulted during the airspace designation process then they would be more likely to adhere to the final result.

We consider that it would be appropriate to leave the control of flight paths with CAA under the CA Act.

CAA Consultation when Redrafting Procedures

MFE has expertise in the consultation and environmental assessment procedures under the RMA. MFE and CAA's combined expertise would therefore benefit the current development

[4] See discussion in *Glentanner Park (Mount Cook) Ltd v Mackenzie DC (*Unreported, Environment Court W50/94, 15 June 1994, Treadwell J).

of the revised procedures for airspace assignment and use in the public interest (special use airspace). CAA has not yet consulted MFE on this matter.

Public Interest
It is anticipated that there would be considerable opposition from aircraft operators if permanent designations restricting use of airspace in the public interest were proposed for any large areas of New Zealand, eg substantial areas of the conservation estate.

The aviation industry has had concerns in the past about excessive use of airspace designations (restrictions) "in the public interest". These are mainly temporary restrictions that pilots are not readily aware of without regular checks of the notifications (NOTAMS) and these restricted areas can restrict their free use of the airspace.

There is an issue of where designations in the public interest would stop – should they be limited to national parks or should such rules cover areas such as inner city reserves or even particular suburbs? This would depend on what the Minister of Civil Aviation classifies is "in the public interest".

CAA advises that the development of Part 11 Subpart C of the Civil Aviation Rules will probably include legal advice on the definition of "in the public interest".

The current permanent restricted areas for wildlife purposes are generally accepted because they cover only small areas and, apart from special periods such as breeding seasons, authorised access is given for legitimate purposes.

Suggestions for Management Changes
In the USA there have been recent similar developments concerning rules restricting airspace so as to control noise levels (and safety) in national parks. The Federal Aviation Administration has been developing rules to maintain and enhance "natural quiet" in Grand Canyon National Park. The rules were crafted with input from the National Park Service, Native American tribes and local businesses. The rules aim to restore "natural quiet" to the park by ensuring more than half of the park is free of aircraft noise 75-100% of the day. This is to be achieved by restricting flight paths, limiting hours of operation, making some aircraft fly higher, and limiting the number of flights per tourist operator through transferable allocations. There is no reason why CAA could not adopt similar policies. However, some research needs to be carried out into what are the most effective and appropriate means of controlling noise from overflying aircraft.

It has been suggested by recreationists that New Zealand could follow the USA example and set up a small commission to develop a natural quiet strategy for the next 20 years. Membership could comprise DOC, CAA, FMC or a similar group, aircraft industry plus an independent chairperson.

6 CONCLUSIONS

1. Overflying aircraft have the potential to adversely affect amenity values in National Parks and other areas that are highly valued for their natural character and tranquillity. However, the Resource Management Act 1991 (RMA) which empowers territorial authorities to regulate activities on land and water affecting amenity values, does not currently enable the authorities to control noise from overflying aircraft.

2. Amending the RMA to enable territorial authorities to control noise from overflying aircraft would have significant implications for the CAA and its responsibility for ensuring safe air transport operations.

3. Noise from overflying aircraft can be controlled through section 29A of the Civil Aviation Act 1990. However, the procedure for the creation of designations of airspace in the public interest is currently only contained in the Civil Aviation Authority's internal procedures. There are no regulatory requirements for applicants to assess environmental impacts when they apply for an airspace designation.

This investigation reinforces the finding of the PCE's 1997 investigation into the management of environmental effects from tourism, that CAA has the authority to regulate flight paths for public interest reasons such as nuisance noise from aircraft overflying scenic areas . However, there appears to be a need for clarification of the procedures that will apply when designating airspace and flight paths for this purpose.

Bob McClymont
Director Citizens' Concerns

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