Quiet Sky Waiheke
quietskywaiheke@outlook.com

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Brad Allen
Team Leader Resource Consents (Hauraki Gulf Islands)
Central Resource Consenting, Auckland Council
brad.allen@aucklandcouncil.govt.nz

Re: Opposition to helipad application of Craig Greenwood for 48 Korora Road, Oneroa, Waiheke Island (Ref: LUC60387741)

Dear Mr. Allen:

Quiet Sky Waiheke urges denial of the aforesaid application for the following general reasons that we have raised with you on many previous occasions, namely:

1. Helipads are a non-complying land use, not restricted discretionary

The unprecedented proliferation of helipads on Waiheke Island resulted from the helicopter industry's success in 2012 in persuading Auckland Council to insert Section 13.8 into the Hauraki Gulf Islands District Plan. This Section, if read in isolation from the remainder of the plan, appears to make helipad approvals a (very) restricted discretionary decision. The only significant restriction is claimed to be the absurdly lax limit of 50 dBA of noise averaged over a 72-hour period, with no limit on the noise of individual helicopter movements.
A close study of the HGI District Plan contradicts this assumption of restricted discretion. As we have pointed out repeatedly:

A. <u>Non-complying activity</u>

"According to the structure of the HGI District Plan, helipads and helicopter landing and take-off should be assessed as a Non-Complying Activity in all Land Units where this is not specified in the activity table (including Rural 1 and 2 land units)."

This is a summary statement in the memorandum of 3 August 2021 from Nicole Bremner of Planorama Consulting Ltd. The memorandum also:
(a) itemizes facts that should be considered in judging an application for a non-complying helipad application,
(b) explains in detail why the past practice of making a 50 dbBA average noise as a sole performance standard is incorrect,
and (c) points out that the HGI District Plan requires a layering approach whereby an activity is to be assessed under multiple relevant parts of the plan. The memorandum is attached.

We are aware of Council's response to the Planorama memorandum in Appendix B of Council's memorandum to the Planning Committee, however we disagree.

Annex B of the Planners memo makes the following points (to which we have responded below):

- "There is no *policy* reason that 13.8 should not be considered the applicable provisions to apply when determining activity status for helicopter activity" (our emphasis).
    - *Quiet Sky Waiheke response: it is a matter of opinion whether there should be a policy reason, but the question is whether there could be a legal reason.*

- If the activity was interpreted to be non-complying, the provisions at rule 13.8 would be made redundant, which council planners consider to be an absurd outcome

    - *Quiet Sky Waiheke response: if 13.8 were to trump the other relevant and applicable rules, it would render Policy Objectives 13.3.2(6) and 13.4.3 of the HGIDP redundant, which is an equally or more absurd outcome.*

- It is stated that: “Given a plain interpretation of the regulatory framework, the specificity of Rule 13.8 avoids the application of Rule 4.2” and also stated that the more specific nature of Rule 13.8.2 and an intention to consolidate all transport related provisions into one chapter (as identified by the planners during a review of the background to the plan change) are considered to demonstrate a clear intent that the provisions in 13.8 are the relevant provisions to apply.
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    - *Quiet Sky Waiheke response: Invoking both a plain meaning interpretation and a legislative intent interpretation is tenuous and conflicted to the point of absurdity, especially when there are examples of other analogous activities (stated in the Planorama memorandum) which are treated differently, but which evolved from the same process; and especially when the final version of Rule 13.8.2 was decided by consent order and was not therefore the intended legislation.*

    - *It is the background of the intentions which council has researched for its opinion. As the consent order was in fact against the intentions of the process (rather by definition, as it amounts to a change agreed privately between council and the helicopter companies who were suing to change the outcome of the process) this is at best irrelevant and misleading, and at worst evidence in the other direction, of a lack of clear intent for 13.8.2 to have superiority.*

    - *We also ask the question: Can both a plain meaning and a legislative intent interpretation be applied simultaneously? Sullivan (2005) noted that “if there is a conflict between what the text appears to say and what the legislature seems to have intended, the text wins” (Sullivan, R. 2005 “The Plain Meaning Rule and Other Ways to Cheat at Statutory Interpretation”). The plainest meaning has to be that all provisions in the plan apply.*

Quiet Sky Waiheke believes that the correct course of action is for Council to seek an Environment Court declaration, to determine how the existing rules should be applied.

We note that a great number of the findings of Auckland Council vs London Pacify Family Trust Decision No. [2017] NZEnvC 209 – a highly analogous situation – are clearly in favour of QSW and not in favour of Auckland Council. As with that case, Council should seek endorsement for the interpretation it has been applying to date; certainty and direction from the Environment Court; and guidance on what, if any, plan change might be required. It should do this urgently, rather than continuing to apply only some of the HGI District Plan rules, under what we strongly believe to be an incorrect understanding or application of the law.

B. <u>Section 10c.5.3 noise limit</u>

In addition to the noise standard in Section 13.8.2, the HGI District Plan sets an explicit noise limit in Section 10c.5.3 which applies to “all activity,” with certain exceptions among which Waiheke Island helipads are not listed (although Aotea Great Barrier helipads are). As noted in 13.8.2, "other land use consents may be required under part 10c." Section 10c.5.3 and the accompanying table 10c.1 specify noise limits which are significantly stricter than the acoustical standard of 13.8.2. For example, the limit isn’t averaged over a three-day period.

An analysis is required to determine whether the Craig Greenwood application can comply with 10c.5.3. If it does not, this aspect of the application would be discretionary, subject to assessment of the effect on amenity values of neighbouring properties, assessment of conformity with the intentions of the development controls, and assessment of whether there is sustainable management of the effects of the proposal, per 10c.2 and 10c.3. C. NZS 6807:1994 exception District Plan Section 13.8.2 states that NZS 6807:1994 shall be used for assessment of noise impact.

Helipad applicants have focused on the Ldn 50 dBA limit shown in table 1 of NZS 6807:1994 and they have alleged that an acoustical modelling which shows compliance with this limit is the only requirement to be met. Unfortunately, this allegation has often been accepted without scrutiny by planners. Yet the following paragraph of NZS 6807:1994 explicitly rejects the idea that Ldn 50 dBA is controlling: “4.1.1 The following criteria represent the minimum acceptable degree of protection for public health and the environment. In some cases, controls that provide for a greater degree of protection may be appropriate when taking into account community expectations, local conditions, or the maintenance and enhancement of amenity values.”

Aircraft noise in general is some of the most annoying types of transport noise, and probably worse for private helicopters. This is reflected in the acceptable levels in the WHO Environmental Noise Guidelines (2018) having much lower levels for aircraft noise than for road or other transport noise. The WHO Guideline levels are significantly lower than is currently accepted in the New Zealand Standard, NZS 6807:1994 Noise management and land use planning for helicopter landing areas.

The proposed helipad right on the edge of Oneroa village would violate the community expectations, existing conditions, and amenity values of neighbours, and of the general public using Oneroa Beach only metres away. This calls for the “greater degree of protection” suggested by NZS 6807:1994.

2. Council should exercise its discretion to deny the application

Since discretion is not restricted, there are many considerations which indicate that discretion should be exercised to deny the application:

A. The application would not meet Objective 13.3.2(6) of the HGI Plan to “not provide for helipads in locations that can adversely affect the amenity of surrounding residents” and would not meet Objective 13.4.3 which states that “the Plan restricts helipads in areas that are easily accessible by more conventional means of transport, and where there is the potential to adversely affect amenity value”.

B. The requests of the unanimous motion of the Waiheke Local Board on 21 July 2021 should be honoured. In the motion, the Board: “Asks Auckland Council’s planning committee to endorse a change in the assessment criteria for new helipad consents on Waiheke Island to:

“a. enable public consultation of all helipad consents so those directly affected in the vicinity and on projected flight paths can place submissions

“b. include the consideration of the cumulative effects of helicopter movements

“c. widen the assessment of the effects of helicopter flights, take offs and landings on the wider community and the amenity values of Waiheke and the rights of residents to the quiet enjoyment of their property.”

C. The motion of the Local Board was backed up by a petition signed by 1368 Waiheke residents asking Council to “stop permitting more helipads.”

D. With 49 existing helipads on Waiheke, the cumulative impacts on safety and noise are already intolerable. The addition of any helicopter traffic is therefore unacceptable.
This proposed helipad would be only metres away from the main Oneroa Beach and its supposed flightpath would overfly areas which are frequently full of moored boats in Oneroa Bay, and the learn to sail programmes with the Oneroa Boating Club.

In addition to these general points, which in themselves should be sufficient ground for a denial of consent, this helipad application by Craig Greenwood for 48 Korora Road, Oneroa has some particular aspects which make it wholly inappropriate.

3. Assessment of Noise Effects and a totally unrealistic ‘flightpath’

As you can see from the aerial view (below) that has been extracted from the applicants’ submission, they have assumed a very narrow single flightpath and have only assessed noise impacts to 500ft. The oft-cited Dome Valley judgment (Dome Valley District Residents Society Inc v Rodney District Council, Auckland High Court, Priestley J, CIV 2008-404-587) requires them to count it to 1000ft above the highest obstacle in a 600m radius.

When referring to cumulative effects, i.e. on the other side of the ledger, they note other helicopters will be overflying above 1000ft (see the last paragraph of p11) which is an admission that they know it isn’t a rural area. Yet the AEE refers to the noise calculations using a “500ft ceiling for RMA application to aircraft effects over rural areas”. Certainly, they can’t have it both ways. As we know, and they know, Oneroa is clearly a congested area and not a rural area, in CAA parlance, which renders the provided noise calculations invalid.

The Dome Valley judgement cited the cut-off point for noise calculations needing to be assessed by council under the RMA as being anything below the minimum overflight height under CAA rules. The judgement put jurisdiction for noise below this height with council, and above this height with the CAA. It's very clear. CAA Part 91 General Operating and Flight Rules, Subpart D Visual Flight Rule states:

> *91.311 - Minimum heights for VFR flights*
>
> *(a) A pilot-in-command of an aircraft must not operate the aircraft under VFR—*
>
> *(1) over any congested area of a city, town, or settlement, or over any open air assembly of persons at a height of less than 1000 feet above the surface or any obstacle that is within a horizontal radius of 600 metres from the point immediately below the aircraft*

The applicant should be asked to re-do the noise calculations based on this, the correct, noise ceiling.

The noise effects are also calculated based on the assumed flightpath (also shown in the image above). This is an impossible fabrication. No helipad can ever be safely approached and departed on the same, narrow route every time. This particular helipad is subject to unpredictable and changeable winds coming off the sea and over the cliff, and constraints on safe approaches due to the location of nearby buildings (including the applicant's own dwelling).

For council to assess the feasibility of the proposed flightpath, you must consult the CAA, who have stated that they are ready and willing to provide assistance with such matters. Primarily, there are real safety risks associated with a cliff-top location in such a congested area, that should be referred to them for consultation.

Secondarily, the assessment of noise effects in the application is predicated on an obviously unrealistic route. This cannot be the basis of an assessment, when the reality, should consent be granted, is that the real flightpaths will create greater noise effects for the neighbours.

The applicant's consultants know this and have carefully constructed a proposed 'get-out clause':

5. The consent holder is to ensure that all arriving and departing helicopters follow the arrival and departure vector where practicable (as shown in the Acoustic Assessment by Marshall Day Acoustics [Report 20210745]) when flying at altitudes of less than 500 feet, unless required to deviate for safety or to meet Civil Aviation Authority requirements. If manoeuvring outside the consented vectors is required to operate the helicopter safely near the landing pad in certain wind conditions, this shall not be considered a breach of the conditions provided the consent holder demonstrates the consented vectors were flown to the maximum extent possible.

This is an *a priori* admission that the flightpath is unrealistic, and council should seek clarification of the facts of the matter from the relevant authority (the CAA). It is strongly suggested that direct contact is made with the CAA, when processing this and *all* helipad applications, and we cannot understand why this has not been done previously as a matter of routine. We have also attached a relevant existing CAA publication. Pages 4 and 15-18 addresses aspects of take-offs and landings and wind directions. Even for a non-aviation specialist, this is more than sufficient to understand why the proposed noise contour route could hardly ever be followed. It should be evident then that a noise assessment based on this route cannot be considered valid evidence of the potential impacts on neighbours. We would suggest that a worst-case route, not a best-case route, should be used as the basis of the noise assessment.

4. Earthworks

In the application it also states that the existing contours will be used and no earthworks will be required. They therefore suggest that visual effects will not need to be considered and nor will potential impacts on nearby archaeological sites. However as may be clearly seen from the plan above the helipad is located on or partly over the crest of the ridge. The claims that no earthworks will be required should be considered only after a site visit to confirm this, again after consultation with the CAA to ensure that the requirements for construction of a compliant (with CAA rules) helipad will be met, without earthworks. Included in that discussion should be consideration of the proximity of the helipad to both the building and the cliff edge. These are both potential aviation safety concerns and as pilots must follow CAA rules, and are not bound by consent conditions, the processing planner will need to consider these aspects, to ensure that any consent is granted on a realistic basis and may be adequately monitored.

5. Archaeological Sites

There are the four known archaeological sites of significance to Mana Whenua on the property, including a pa site that is near to the proposed helipad site. Given the strong opposition recently expressed by the iwi in Aotea Great Barrier we feel that at the very least there should be a Mana Whenua consultation as part of the deliberations on this application.

In conclusion we feel that for the many reasons outlined above this application should be rejected as totally inappropriate and inaccurate.

Ngā mini

Kim Whitaker

For: Quiet Sky Waiheke