



Greg O'Connor
Chair, Transport and Infrastructure Committee
Parliament Buildings
Private Bag 18041
Wellington 6160

17 December 2021

Dear Mr O'Connor

As Parliamentary Commissioner for the Environment my role is to draw to Parliament's attention issues that affect New Zealand's environment and environmental management system.

The Transport and Infrastructure Committee is currently considering the Civil Aviation Bill. I'm conscious that submissions on the Bill closed earlier this month, but I have just become aware of a potential issue with the new Bill.

In my report *Not 100% - but four steps closed to sustainable tourism*, released in February this year, I looked at the issue of protecting wilderness and natural quiet on public conservation land, including the impact of aviation noise. One of my recommendations in the report was:

The Government should seek amendments to the Civil Aviation Act 1990 so as to ensure that DOC's requests for better controls on scenic overflight activity above conservation lands and waters are properly considered.

It seems to me that the proposed Civil Aviation Bill would actually take us further away from that recommendation, rather than closer to it.

The current Civil Aviation Act 1990 allows the Minister to make rules for the purposes of noise abatement in the vicinity of aerodromes. But it deals with the issue of aircraft noise elsewhere (i.e., over conservation land) at best obliquely. Section 28 allows the Minister of Transport to make rules for (among other purposes) "protecting and promoting public health" or "ensuring environmental sustainability". Section 29A allows the Minister to make rules "providing for ... prohibition and restriction of airspace" for any reason in the public interest, and section 72(3)(b) requires the Director of Civil Aviation to "take such action as may be appropriate in the public interest to enforce the provisions of this Act and of regulations and rules made under this Act".

To date, these powers have not been used to address noise from scenic overflights above public conservation lands and waters. Instead, DOC has worked informally with the Civil Aviation Authority and aircraft operators to try to restrict overflight activity to particular areas within the national parks, through voluntary codes of conduct. The effectiveness of the advocacy-based approach that DOC has used to date is unclear. Some stakeholders are of the view that little improvement has been achieved, particularly in popular tourist destinations like Piopiotahi/Milford Sound, Kā Roimata ō Hine Hukatere/Franz Josef Glacier,

and Aoraki/Mount Cook. Noise in these places, and in other conservation areas, is an environmental sustainability issue.

Because the Minister's ability to make rules to address noise from scenic overflights above conservation lands is unclear, my recent report recommended that the Civil Aviation Act should be amended to remove any doubt. I also recommended that provision be made for greater engagement with DOC on where such rules might be necessary.

The new Bill no longer contains the "public interest" provision in the relevant proposed rulemaking provisions (clauses 52, 57 and 58). While it was a weak 'hook', it provided some statutory basis for managing wider effects of aviation. I am hoping that this exclusion was inadvertent. As it stands, the bill is a step backwards and represents a missed opportunity to provide more and better tools to manage the environmental effects of aviation.

I would like the Committee to consider ways to amend the Bill to require the Minister of Transport to consider and respond to recommendations made in this regard by the Conservation Authority, a Conservation Board or the Director-General of Conservation. That would give DOC a clearer basis for advocating better controls over scenic overflight activity. At the same time, clarifying in legislation that the impacts of aircraft noise on conservation lands, including on visitor experience, is a valid reason for the Minister of Transport to make such rules would help DOC to make its case for greater controls.

I am not tied to any particular drafting to address the issue. I understand the Federated Mountain Club has provided wording in its submission that could provide a basis for considering the issue.

I am happy to work with the Committee and its officials to find a solution that adequately addresses the issue.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'Simon Upton', with a stylized, fluid script.

Simon Upton

Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata

CC

Hon Eugenie Sage, Chairperson, Environment Committee