



THE CONTROL OF NOISE, WITH PARTICULAR REFERENCE TO AIRPORT NOISE

SUMMARY OF FINDINGS

Over recent years the noise emitted by aircraft at airports or on taking off or landing has given rise to a number of complaints to the Commissioner from residents in the vicinity of airports in Wellington, Auckland, Queenstown and Nelson. It is a matter of concern to identify how or whether the adverse effects of noise on existing land uses can be prevented or mitigated, particularly where the airport is on land designated for airport use by a requiring authority under the Resource Management Act 1991 (the RMA).

The Commissioner decided to undertake this investigation to clarify who can do what to control noise which emanates from airports. This report attempts to clarify the legal position relating to the control of airport noise.

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

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SUMMARY OF FINDINGS

Airport noise is a special problem as air transportation is inherently noisy and is a public utility of national importance. This importance is recognised in the granting of network utility operator status to airport authorities by the Resource Management Act 1991 (s 166). A network utility operator may be approved as a requiring authority and issue a requirement for a designation.

Territorial authorities and the Civil Aviation Authority, under the Resource Management Act 1991 and the Civil Aviation Act 1990 (and the Civil Aviation Regulations 1953) respectively, are responsible for different aspects of the control of noise emanating from airports. There is also a New Zealand Standard promulgated under the Standards Act 1988 which sets out a suggested method for territorial authorities to deal with airport noise.

Resource Management Act 1991 (RMA)

A local authority may make rules in its district plan for the control of noise; however such rules are ineffective against a requiring authority in respect of land the subject of a designation (ie an airport authority and an airport). In addition, the RMA imposes a duty on every occupier of land to adopt the best practicable option (BPO) to ensure that emissions of noise do not exceed a reasonable level (s 16). This duty binds requiring authorities notwithstanding the existence of a designation¹ and is enforceable by means of an abatement notice provided the BPO can be specified in sufficient detail (s 322(1)(c)). Enforcement orders are not suitable as a mechanism for enforcing the s 16 duty in respect of noise, because members of the public are unlikely to be in a position to be able to identify the BPO to be adopted.

However, it is appropriate that the applicant should specify the BPO to be adopted because the noise generator may be fined up to \$10,000 (and \$1000 per day for a continuing offence) for failure to comply with an abatement notice under s 322(1)(c).

The RMA also provides for the making of national environmental standards relating to noise, which have the status of regulations and are therefore binding on requiring authorities. No standards have been made to date. The BPO is a technique best used only where standards are not appropriate as it requires the local authority to have technical and financial knowledge about the noise and the noise generator in order to specify the BPO.²

¹ *Ngataranga Bay 2000 Inc v Attorney-General* A16/94 Judge Sheppard.

² Refer to the definition of "best practicable option" in s 2 RMA.

The s 16 duty is difficult to enforce in respect of airport noise as it may not always be clear who is responsible for the unreasonable emission of noise. If the airport operator is made responsible regardless of who generates the noise, it would need the means to enforce noise controls on its customers. The BPO is not an effective technique where the noise generator is a requiring authority which is providing a service of national importance, such as air services, as there are no practical means of enforcement.

Where an airport operator is not a requiring authority and the airport is not covered by a designation, the rules in the district plan will apply and may be enforced against the airport operator or the aircraft operator.

At present the Civil Aviation Act 1990 and Civil Aviation Regulations 1953 control airport noise, although it is unclear whether or not the Civil Aviation Regulations completely oust the application of the RMA noise provisions.³ Requiring authorities are required to comply with the Civil Aviation Regulations, as are aircraft operators.

Civil Aviation Authority's role

Although the Civil Aviation Authority (CAA) is reducing its involvement in the control of noise, as it sees its role as regulating for the safety and security of the civil aviation system, it will continue to administer airspace-based noise abatement controls as local authorities are not able to impose noise controls which affect aircraft in flight (s 9(8) RMA). The CAA will also provide for the noise certification of aircraft. The Authority intends to promulgate a rule that will require all sub-sonic turbo jet and turbo fan aircraft to meet the standards of Chapter 3 by 2002; however Boeing 737-200s with hushkits already meet the requirements of Chapter 3.

The standard does not have legal effect, but is designed as a guide which may be (and has been) adapted by territorial authorities for their districts and included in their district plans. The standard is based on the concept of a permissible bucket of noise which may be emitted during a 24-hour period as measured at an Airnoise Boundary. A lesser

New Zealand Standard 6805:1992

³ *Eagle Air Maintenance Ltd v Waipa District Council* [1993] DCR 533 where the District Court found that the Civil Aviation Act noise provisions, as special legislation, precluded the operation of the Noise Control Act and s 29(ka) of the Health Act as general legislation. Compare the decision of the Planning Tribunal in *Glentanner Park (Mount Cook) Ltd v Mackenzie District Council* W50/94, Judge Treadwell, Christchurch, where matters of aircraft safety were able to be considered in the determination of an application for resource consent, even though there was an Authority set up to deal with aircraft safety.

level of noise is then permissible at an Outer Control Boundary. The standard envisages that territorial authorities would restrict the activities which may take place within the boundaries. It does not deal with single event noise. The standard is not appropriate for imposition on the whole country as it was not designed to be other than a guide. Instead, a national environmental standard should be developed following the procedure set out in the RMA.

Options for affected residents

Affected residents have the opportunity to make submissions on proposed district plans as to the measures territorial authorities should put in place, but the requiring authority (the airport operator) effectively has the final say on what will apply to the designated area. Those unhappy with that result may appeal to the Planning Tribunal. It is appropriate that, where called upon to do so, the Planning Tribunal should make the final decision where a matter of national importance is involved.⁴

Until the appeal in the *Christchurch International Airport*⁵ case has been decided, it is unclear whether or not local authorities may make rules as to acoustic insulation in houses. Regardless of the outcome of that case, local authorities and the Building Industry Authority should adopt a co-operative approach to the development of complementary rules to apply to buildings in the vicinity of airports throughout the country.

It would be beneficial to adopt the approach favoured in the New Zealand Standard of setting up a noise management committee representative of all affected groups to try to resolve the issue by consensus, rather than relying on legal means. Such committees have been established in a number of centres, eg Auckland and Wellington.

National environmental standards under the RMA are appropriate as air transport is a nationally important service and the problem should be dealt with consistently around the country. The Commissioner is drawing the attention of the Minister for the Environment to the need for such a standard to be promulgated.

These findings are taken from the report *The Control of Noise, with Particular Reference to Airport Noise* available from Bennetts Government Bookshop.

⁴ The *Fast Ferries* case [1995] NZRMA 357.

⁵ [1995] NZRMA 1.