

25 July 2024

**Attn: Adonica Giborees**

Premium Resource Consents, Auckland Council  
Private Bag 92300  
Victoria Street West  
Auckland 1142

**BY EMAIL**

*adonica.giborees@aucklandcouncil.govt.nz*

**RESOURCE CONSENT APPLICATION IN RESPECT OF 38 RAWENE AVE, WESTMERE:  
NOTIFICATION – SPECIAL CIRCUMSTANCES**

**Introduction**

1. We act for Anna Mowbray and Ali Williams (the “Applicants”).
2. The Applicants have made an application to Auckland Council for resource consent for helicopter take-off and landing at 38 Rawene Avenue, Westmere (LUC60389929) (the “Application” or the “Proposal”).
3. We understand that the Council will shortly make a determination regarding notification of the Application. The issue of special circumstances has been raised by the Council in the context of the notification assessment.
4. The purpose of this letter is to confirm our opinion that the Application should proceed on a non-notified basis, including because special circumstances do not exist (as set out in the Assessment of Environmental Effects (“AEE”) supporting the Application).

**Notification summary**

5. As outlined in detail in the AEE, correctly applying the Resource Management Act’s (“RMA”) notification provisions,<sup>1</sup> namely the steps prescribed in s95A (public notification) and 95B (limited notification), leads to the conclusion that the Application should be **non-notified**. In summary, this is because:

---

<sup>1</sup> RMA s95A-95E, in this case.

- a. With respect to public notification, the Application will not have adverse effects on the environment that are more than minor.<sup>2</sup>
- b. With respect to limited notification, there are no affected persons (i.e. the Proposal will not have adverse effects on any person that are minor or more than minor).<sup>3</sup>
- c. The Applicants have not requested notification.
- d. For the reasons we detail below, based on the applicable case law there are no special circumstances warranting public or limited notification of the Application.

### Special Circumstances

6. An application may be notified if the consent authority considers special circumstances exist<sup>4</sup> which make notification desirable despite the RMA's notification provisions otherwise excluding the need for notification.<sup>5</sup>
7. With regards to what may constitute special circumstances, the Courts have held that special circumstances are those that are unusual or exceptional but may be less than extraordinary or unique.<sup>6</sup>
8. In our view, nothing about the Proposal raises anything approaching the threshold required for special circumstances. It cannot be said that the Application is unusual or

---

<sup>2</sup> The AEE and supporting technical assessments for the Application make it clear that the Application will not have adverse effects on the environment that are more than minor for purposes of sections 95A(8)(b) and 95D (relating to public notification). Refer to the decision in *Norman v Tūpuna Maunga o Tāmaki Authority* [2022] NZCA 30 for a decision addressing the "more than minor" test in the context of public notification.

<sup>3</sup> The AEE and supporting technical assessments for the Application make it clear that in terms of s95B(8) and s95E, the Application will not have adverse effects on any person that are minor or more than minor. In *Speargrass Holdings Ltd v Queenstown Lakes District Council* [2018] NZHC 1009 the Court held that there is no "absolute yardstick" for determining when an effect is "minor", "less than minor", or "more than minor", which are matters of fact and degree to be informed by context. The Court endorsed the decision in *Gabler v Queenstown Lakes District Council* [2017] NZHC 2086 which found that "less than minor" is "that which is insignificant in its effect, in the overall context, that which is so limited that it is objectively acceptable and reasonable in the receiving environment and to potentially affected persons". This has been followed in several decisions, for example in *Knowles v Queenstown Lakes District Council* [2019] NZHC 3227, and the recent decision in *Petersen v Kāpiti Coast District Council* [2023] NZHC 2994.

<sup>4</sup> Section 95A(9) (in relation to public notification) and 95B(10) (in relation to limited notification) of the Resource Management Act 1991. Refer for example *Colley v Auckland Council* [2021] NZHC 2365 and the recent decision in *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612.

<sup>5</sup> *Murray v Whakatane District Council* (1997) 3 ELRNZ 308.

<sup>6</sup> *Peninsula Watchdog Group Inc v Minister of Energy* [1996] 2 NZLR 529 (CA), at 536; and *Far North District Council v Te Rūnanga-Ā-Iwi O Ngāti Kahu* [2013] NZCA 221 at [36].

exceptional. Numerous resource consents for similar proposals have been granted in the Auckland Region, including in the locality of the Application (as outlined below).<sup>7</sup>

9. The Courts have further confirmed that public interest in a proposal does not in itself make a proposal unusual or exceptional. The mere fact that there are persons who may wish to make a submission on an application does not amount to special circumstances.<sup>8</sup> In *Urban Auckland*, the High Court noted that:<sup>9</sup>

*Concern on the part of an interested party could not of itself be said to give rise to special circumstances because if that was so every application would have to be advertised where there was any concern expressed by the people claiming to be affected.*

10. In our view, any interest expressed in the Application by members of the public, or public interest in the Application generally, does not constitute special circumstances justifying notification.

#### *Special circumstances in relation to applications for helipads*

11. The Council has previously considered other - non-complying - applications for helipads (i.e. helicopter take-offs and landings) in the Herne Bay area,<sup>10</sup> noting that the Application is for a restricted discretionary activity.<sup>11</sup> In each case the Council considered whether special circumstances existed and found that they did not, and the applications were processed on a non-notified basis.
12. While special circumstances were found to exist in relation to one recent application to reconstruct an existing boatshed and to establish and use a helipad on the replacement building, this is distinguishable on its facts from the Application.<sup>12</sup> In that case, the boatshed and proposed helipad were located on a small beach *within the coastal marine area*. The High Court found that the beach was frequently used by the public, and that helicopter activity did not have a functional or operational need to be undertaken in that location. Accordingly, it was, in particular, the location of the boatshed/helipad on a public beach which gave rise to special circumstances. Further, the Court expressly

---

<sup>7</sup> For example, application numbers R/REG/2015/1185 (12 Cremone Street); R/LUC/2015/940 (15 Cremone Street); and R/LUC/2011/1114 (64 Sentinel Road).

<sup>8</sup> *Murray v Whakatane District Council* (1997) 3 ELRNZ 308. *Housiaux v Kāpiti Coast District Council* (HC) Wellington CIV- 2003-485-2678 19 March 2004.

<sup>9</sup> *Urban Auckland v Auckland Council* [2015] NZHC 1382 at [137]

<sup>10</sup> Application numbers R/REG/2015/1185 (12 Cremone Street); R/LUC/2015/940 (15 Cremone Street); and R/LUC/2011/1114 (64 Sentinel Road).

<sup>11</sup> Refer to the AEE, at Section 6.

<sup>12</sup> *Kawau Island Action Incorporated Society v Auckland Council* [2018] NZHC 3306.

rejected the submissions that there would have been significant public interest in the application as being a supporting reason for its finding of special circumstances.<sup>13</sup>

13. In the Application, the proposed location for take-off/landing is within the Applicants' property. While it is very close to the coast (as with the other applications for helipads referenced above at paragraph 11), it is not on a public beach. Therefore, such special circumstances are not present here.

## **Conclusion**

14. For the reasons set out above, the Application does not raise any matter approaching the threshold for special circumstances. Therefore, our view is that there are no special circumstances warranting public or limited notification of the Application, and the Application should proceed on a non-notified basis.

Yours faithfully  
**ChanceryGreen**



Chris Simmons / Ebony Ellis  
Partner / Senior Associate  
DDI: 09 357 0600  
chris.simmons@chancerygreen.com

---

<sup>13</sup> At [169] – [170].