

Auckland Unitary Plan

Practice and Guidance Note

New Dwelling in the High Aircraft

Noise Area (HANA)

Council's approach to the rules regarding new dwellings in the High Aircraft Noise Area (HANA) in the following situations:

1. [A site has an existing dwelling. Can an applicant add an additional dwelling to the site?](#)
2. [There is no dwelling on-site. Can an applicant build a new dwelling on the site?](#)
3. [A site has an existing dwelling. Can an applicant increase the size of the existing dwelling?](#)
4. [A site has an existing dwelling. Can an applicant demolish the existing dwelling and build a new and bigger dwelling?](#)

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1 Introduction

An issue has arisen about the activity status of new dwellings, including new dwellings built to replace an existing dwelling that has been demolished, at sites that are located in the High Aircraft Noise Area (**HANA**) under the Aircraft Noise Overlay in the [Auckland Unitary Plan \(Operative in Part\) \(AUP \(OP\)\)](#). Sites in the HANA are exposed to noise levels above 65dB L_{dn} from the Auckland International Airport.

The AUP regulates dwellings in the [HANA overlay](#) in Activity table D24.4.3 *Activity table for Auckland International Airport*:

- (A29) New activities sensitive to aircraft noise¹ (excluding tertiary education facilities) are prohibited activities; and
- (A31) Additions or alterations to an existing dwelling are restricted discretionary activities.

This practice note explains council's approach to the rules regarding new dwellings in the HANA. It addresses the following situations:

1. A site has an existing dwelling. Can an applicant add an additional dwelling to the site?
2. There is no dwelling on-site. Can an applicant build a new dwelling on the site?
3. A site has an existing dwelling. Can an applicant increase the size of the existing dwelling?
4. A site has an existing dwelling. Can an applicant demolish the existing dwelling and build a new and bigger dwelling?

¹ The definition of 'activities sensitive to aircraft noise' in [Chapter J of the AUP](#) includes "any dwelling".

2 Background

As the name indicates, the HANA is a noisy place. It is not simply an amenity issue, however. It is a health and wellbeing issue, as repeated exposure to noise levels above 65dB Ldn is likely to cause annoyance, stress, loss of sleep, and cardiovascular and other adverse health effects. The high levels of aircraft noise experienced or anticipated in the HANA mean that the location of new activities sensitive to aircraft noise within this area has the potential to give rise to reverse sensitivity effects on operations at Auckland Airport.

The policy framework for the HANA discourages the establishment of new dwellings. The HANA's two objectives set out what the AUP seeks to achieve in terms of land use in this area. Objective D24.2(1) provides 'Airports and airfields are protected from reverse sensitivity effects'. Objective D24.2(2) provides 'The adverse effects of aircraft noise on residential and other activities sensitive to aircraft noise are avoided, remedied or mitigated'.

Policy D24.3(1) seeks to avoid the establishment of new activities sensitive to aircraft noise (which includes dwellings) within the HANA. This supports the prohibited activity status for new dwellings in (A29), which prevents resource consent being sought for new activities sensitive to aircraft noise (excluding tertiary education facilities) and cap the number of dwellings in the HANA.

Policy D24.3(2) seeks to avoid additions or alterations to existing activities sensitive to aircraft noise. However, the policy specifically does not apply to additions or alterations to existing dwellings.

3 Council's approach to certain situations

3.1 A site has an existing dwelling. Can an applicant add an additional dwelling to the site?

No - (A29) states that new activities sensitive to aircraft noise (excluding tertiary education facilities) are prohibited activities. A proposed new dwelling would be a new activity sensitive to aircraft noise. As a prohibited activity, resource consent cannot be applied for.

This is consistent with the policy approach, which seeks to avoid new dwellings within the HANA.

3.2 There is no dwelling on-site. Can an applicant build a new dwelling?

No - This is similar to 1 above. (A29) states that new activities sensitive to aircraft noise (excluding tertiary education facilities) are prohibited activities. A proposed new dwelling would be a new activity sensitive to aircraft noise. As a prohibited activity, resource consent cannot be applied for.

This is consistent with the policy approach, which seeks to avoid new dwellings within the HANA.

3.3 A site has an existing dwelling. Can an applicant increase the size of the existing dwelling?

Yes, with a resource consent - (A31) anticipates additions or alterations to an existing dwelling as a restricted discretionary activity. This is consistent with the policy approach as there are no new dwellings proposed (Policy D24.3(1)), and additions or alterations to dwellings are not subject to the 'avoid' policy approach (Policy D24.3(2)).

The matters of discretion under D24.8.3.2(1) relevant to such an application are as follows:

- the objectives and policies relating to activities sensitive to aircraft noise;
- the nature, size and scale of the proposed additions or alterations;
- measures for or relating to the mitigation of aircraft noise arising in connection with Auckland Airport; and
- the imposition of an obligation to ensure any required acoustic treatment measures are not removed without the Council's consent, including requiring the obligation to be registered as a covenant on the certificate of title.

Any additions or alterations to existing dwellings are also subject to a number of assessment criteria, under D24.8.3.2(1), including:

- the proposal should be consistent with the objectives and policies relating to the economic importance of Auckland Airport and the need to protect it from reverse sensitivity effects;
- the nature, size and scale of the proposed development should not be likely to lead to reverse sensitivity effects on Auckland Airport, taking into account (among other things) the number of people to be exposed to aircraft noise as a result of the proposal; and
- the proposed development should achieve an acceptable internal noise environment through appropriate acoustic mitigation.

The matters of discretion and assessment criteria are directed towards protecting people from adverse health and wellbeing effects, and Auckland Airport from reverse sensitivity effects, associated with the development of activities sensitive to aircraft noise in the HANA. This is consistent with Objective D24.2(1).

The scale and extent of the additions or alterations will be a matter of judgement according to the matters of discretion and assessment criteria. When read together, the matters of discretion and assessment criteria indicate that a key consideration in determining the appropriate scale or extent for additions or alterations is the number of people that will be exposed to aircraft noise as a result. While an increase in the number of rooms will not necessarily mean an increase in the number of people that will be exposed, careful consideration of any change in intensity of the activity sensitive to aircraft noise is required.

The conventional approach in regard to additions or alterations is that as long as part of a building remains standing then the balance of the demolition and reconstruction can be considered as additions or alterations.

3.4 A site has an existing dwelling. Can an applicant demolish the existing dwelling and build a new and bigger dwelling?

Potentially - there are two ways to achieve this:

a) Demolish the existing dwelling and build a new one using existing use rights

[S10 of the Resource Management Act](#) allows lawfully established land uses that contravene a rule in a district plan to continue if the effects of the use are the same or similar in character, intensity and scale to those that existed before the rule became operative.

An existing dwelling in the HANA can therefore be demolished and a new dwelling built in its place, provided the new dwelling is the same or similar in character, intensity and scale. Caveats to this are:

- the use cannot have been discontinued for more than 12 months ([S10\(2\)](#)); and
- existing use rights will not apply if the new dwelling increases the degree to which the building fails to comply with any rule in the district plan ([S10\(3\)](#)). For example, if the new dwelling was slightly moved so that a yard infringement was increased, or a new infringement created, existing use rights would not apply.²

There are two aspects to a dwelling that need to be considered in relation to existing use rights – the dwelling use (the residential activity) and the dwelling structure (the building). The effects of both aspects need to satisfy the existing use rights test.

The effects of the dwelling use must be the same or similar in character, intensity and scale, meaning that the size of the proposed dwelling cannot change the use from its existing nature. For example, a family home could not become a boarding house using existing use rights.

The effects of the dwelling structure must also be the same or similar in character, intensity and scale. The effects that should be considered are those of the new dwelling on immediate neighbours. This is primarily in terms of bulk and location.³

If the building envelope of the proposed dwelling is the same size as the existing dwelling and increases the number of bedrooms this may be acceptable. However, once it is proposed to exceed the original building envelope (eg building in a different position to the existing dwelling on the site, or with greater site coverage or greater height) then this requires careful consideration of the existing use rights test in terms of the effects of that change. Frequently, when the envelope is pushed out in this respect, what is proposed is actually an addition or alteration that exceeds existing use rights protection.

² For background, see the Resource Consents Department's [Existing Use Rights](#) chapter in the Consents Procedure Manual - <https://acintranet.aklc.govt.nz/EN/departments/resourceconsents/Resource%20Consents%20Document%20Control%20Masters/RC%201.4.5%20Existing%20use%20rights.pdf>

³ [D24](#) seeks to avoid additional dwellings in the HANA, so as to avoid additional reverse sensitivity effects on the Auckland International Airport. This is the reason that the applicant may need to rely on existing use rights. Despite this, reverse sensitivity is irrelevant in considering whether existing use rights exist. To demonstrate existing use rights, the applicant must consider the effects of the use, and its character, intensity and scale. Existing use rights will not consider environmental changes outside the site which have no bearing on the character, intensity and scale of the building in question. This is because the purpose of existing use rights is to ensure that existing permitted or consented activities can continue, despite environmental changes outside the site resulting in more restrictive new rules being introduced.

b) Demolish the existing dwelling and build a new one using a combination of existing use rights and applying for consent for additions and alterations to an existing dwelling under (A31)

(A31) provides for 'additions or alterations to an existing dwelling' as a restricted discretionary activity. This approach recognises that an 'existing dwelling' can be either:

1. what physically exists on-site; or
2. a proposed new dwelling to be constructed in the place of the existing dwelling (which is to be demolished).

An applicant could demolish the existing dwelling on site as a permitted activity. It could then seek an existing use rights certificate for the construction of a new dwelling in its place and seek a (A31) resource consent for additions and alterations to the new dwelling, at the same time. Existing use rights will authorise part of the proposed dwelling (insofar as the effects are the same or similar in character, intensity and scale to the existing dwelling), and the resource consent if granted could authorise any additions or alterations under (A31) that extend the size of the proposed new dwelling beyond that authorised by existing use rights.

There are limits on the scale and extent of changes that can be authorised pursuant to (A31). As stated above in relation to [scenario 3](#), assessment of whether the nature, size and scale of any additions or alterations to existing dwellings in the HANA are appropriate is directly informed by consideration of whether such additions or alterations will lead to adverse health and wellbeing effects by exposing greater numbers of people to high levels of aircraft noise, as well as the potential reverse sensitivity effects on Auckland Airport arising from any such increase in the number of people exposed.

If the resource consent is granted, then a building consent can be sought and, once granted, construction can commence.

The applicant will be able to build a new dwelling on the site that is larger than the existing dwelling it is replacing, provided that the proposal is appropriate according to the (A31) matters of discretion and assessment criteria and existing use rights are appropriately and lawfully used.

These cases are unique and are likely to be very rare. When they do arise, careful attention is required to ensure that the proposal remains a dwelling and does not take on the characteristics of a boarding house or similar use.