

Unmanned Aircraft: Fact Sheet 1

Consent Rule 101.207(a): for Regional Councils & Territorial Authorities

This guidance is for regional councils and territorial authorities, that own, lease, or manage land over which unmanned aircraft users may wish to operate

Key take-outs

- Consent can be given with or without limitations
- Consent can take a variety of forms
- Giving consent does not create any liability for local authorities
- Councils do not have to enforce civil aviation rules
- Using agency websites is a practical way to give or withhold consent to operate RPAS in public spaces

New Rules came into force 1 August 2015

The Civil Aviation Authority (CAA) has updated its rules around the use of unmanned aircraft, (known by other names such as, remotely piloted aircraft (RPA), remotely pilot aircraft system (RPAS), unmanned aerial vehicle (UAV), and drones).

The new rules separate unmanned aircraft use into two broad categories:

- Non-certificated operations, which are covered by **Part 101**; and
- Certificated operations, which require an operating certificate issued by the CAA, governed by **Part 102**.

The rules do not make a distinction between the use of unmanned aircraft for commercial or recreational purposes.

Rule Part 101 places restrictions around the use of unmanned aircraft, and as long as operators stay within these parameters, they do not need to

get any further authorisation or certification from the CAA.

A full list of the requirements is detailed at - <http://www.caa.govt.nz/rpas/index.html>

Any operator wanting to operate an unmanned aircraft outside any of the standard Part 101 rules must apply to the CAA to become a certificated operator under Part 102.

Part 101 is written in a way that provides obvious triggers for operators to know when they are undertaking an operation that poses hazards to other airspace users and/or the public, and should therefore seek certification from the CAA under Part 102.

The new consent rule

A key new requirement is contained in Civil Aviation Rule 101.207, which relates to Airspace use.

This rule states that an unmanned aircraft operator cannot fly over any person without their consent. Operators must also obtain consent from the property owner or occupier of the area(s) over which they intend to operate.

The rule assumes that if an operator does not have, or cannot obtain, permission from those whom they are flying over or the property owner, or if getting this permission is likely to be too onerous, then it is highly likely they are conducting an operation that could be hazardous to others. The operator should therefore be coming to the CAA for certification under Part 102, although

Unmanned Aircraft: Fact Sheet 1

Consent Rule 101.207(a): for Regional Councils & Territorial Authorities

even under a Part 102 certificate consent may still be required, including council approval.

It is also designed to facilitate awareness of unmanned aircraft operations and a transfer of knowledge of the risks in a given location between the property owner or people on the ground and the operator involved. For example, a property owner is most likely to know about hazards such as low hanging/unmarked wires or the presence of low level aviation activities, or other temporary or permanent activities that might be incompatible with unmanned aircraft activities.

The assumption is that no consent has been given unless otherwise specified or advertised. Operators will not be able to fly their unmanned aircraft, including in public spaces, without consent.

The consent rule relates to flight above the property, and is primarily targeted at flight activity conducted at a height of 400ft or less. The aircraft does not need to be taking off, landing or hovering low above the property concerned for the consent rule to apply.

The rule refers to 'property' owners or occupiers. This obviously includes the legal property owner or occupier, but in the case of public spaces, is being interpreted to include the agency responsible for managing, controlling or otherwise administering property.

'Property' includes the land, and any public facilities, buildings and structures, and other spaces such as roads, parks, and beaches.

What does this mean for councils who own, occupy or manage property?

Councils and authorities will need to think about unmanned aircraft use in their communities.

Many councils already have policies and plans that include rules around activities on reserves and roads, and the use of aircraft/flying machines.

For most, the Part 101 consent rule provides an opportunity to review, revisit and update existing policies and bylaws. In other cases, local authorities may wish to develop a new approach to deal with the increasing uptake of unmanned aircraft technology.

Councils' role in providing consent

The rules require operators to obtain consent from councils before they may operate above council property. The CAA envisages that local government will provide guidance to operators and their communities as to which public spaces within their jurisdiction they give consent for people to fly in. Where a council has given consent for operators to fly over their land and property, it will likely mean that Part 101 operators will be free to fly their unmanned aircraft as long as they operate within the other parameters of Part 101, including taking all practicable steps to minimize hazards associated with their unmanned aircraft operation.

Councils better understand local conditions

The rule is designed to allow for councils to issue consent in a variety of ways that suit their local circumstances.

The consent rule is deliberately flexible. It enables councils to change their approach

Unmanned Aircraft: Fact Sheet 1

Consent Rule 101.207(a): for Regional Councils & Territorial Authorities

depending on their requirements at a particular time. For example, blanket consent could be given for a particular reserve for year-round unmanned aircraft operations, but withdrawn for a particular period if the facility is to be used for a public gathering (i.e. for a fireworks event) where unmanned aircraft may be unwanted for safety reasons. Equally, many authorities deal with seasonal fire risk, and may wish to prohibit the use of unmanned aircraft in spaces where a temporary fire risk may exist.

CAA encourages councils to advertise their approach via their websites, or in more sensitive public areas by posting signs at the entry to those spaces.

Local authorities may simply like to take a 'watch and see' approach to assess the amount of unmanned aircraft activity taking place in communities and the number of requests for consent that are being received, so that they can determine an approach that works best.

Giving consent

CAA is happy to provide support and guidance to councils, but how local authorities give consent will be a matter for them.

Some of the options for giving consent that councils might like to consider are:

- **case by case:** a transactional approach where people are expected to come to the council to seek consent for a particular flight or series of flights. An example is the online form available on the Christchurch City Council website.

- **blanket consent:** the council advises people that they are free to operate anywhere they like, with or without exceptions (within all other Part 101 rules).
- **blanket prohibition:** the council decides that no public spaces may be used for unmanned aircraft operations, with or without exceptions which could include things such as size of the aircraft, type of activity being performed.

We believe the best model is likely to be one that incorporates a number of the above approaches for different areas within an authority's jurisdiction that takes account of local conditions.

Councils are likely to be aware of existing uses of public spaces and facilities that may be incompatible with unmanned aircraft activities. Hybrid approaches are entirely acceptable. The consent given by a council can be subject to conditions, and can be verbal or written.

As an example, this could include stating on your website that, unless otherwise advertised by council, operators can fly over all public land, except for cemeteries and the botanic gardens, and must comply with Part 101 requirements.

Deciding what risk is acceptable

In deciding whether an area is suitable for the safe operation of an unmanned aircraft councils may like to consider:

- the area, and existing uses of that space;
- how frequently the space is used;
- the proposed use of the aircraft;
- proximity to people and buildings/structures where people may be present;

Unmanned Aircraft: Fact Sheet 1

Consent Rule 101.207(a): for Regional Councils & Territorial Authorities

- whether there are trees or features that might shield the operation from other aircraft or activities.

Using your website

We encourage local authorities to include information on their websites about unmanned aircraft use. Using your website to confirm areas where is acceptable to operate is likely to result in people being less inclined to approach the council for consent.

It would be beneficial for council website content to cover things such as reserves and parks, local roads, as well as any waterways, or beach areas that might be vested with or managed by the council or authority.

In its public communications CAA will be encouraging operators to check local authority websites for information about using unmanned aircraft in public spaces.

Does giving consent create liability?

It is important to emphasize that providing consent does not mean that local authorities assume any responsibility for an unmanned aircraft operation. The consent provision simply facilitates awareness of the operation proposed and allows the land owner to advise the operator of any known hazards. The extent of information that is needed and reasonably transferred in a particular case will depend on the local conditions and the type of activity being performed.

If an accident or incident involving an unmanned aircraft occurs in a public space, councils will carry no responsibility for the actions of the operator.

Who will enforce the new rules?

The CAA will enforce the new rules. The CAA can prosecute or issue infringement notices for breaches of the rules. Initially, where breaches are detected and offenders identified, the CAA will be taking an educational approach to help people to comply rather than using enforcement tools. However, where deliberate or repeat breaches are identified the CAA may consider using its enforcement tools.

Councils are not expected or required to enforce civil aviation rules. CAA will monitor how the rules are working and whether alternative enforcement strategies are required.

We expect that councils will continue, as already happens, to receive some complaints about unmanned aircraft use. Councils are encouraged to refer complaints to the CAA for follow-up, particularly if it involves unsafe flying. You can refer matters to the CAA by contacting us at 0508 4SAFETY or isi@caa.govt.nz

In most cases CAA won't have people on the ground to react straight away to complaints while an activity is taking place. If an unmanned aircraft operation poses an imminent threat to people or property the Police should be involved.

If an unmanned aircraft operation occurs without consent or in an area that council has restricted unmanned aircraft use, councils may however choose to enforce any relevant bylaws itself rather than refer the matter to CAA. Where this occurs CAA would still like councils to advise the CAA of the incident so that it can help to build a better

Unmanned Aircraft: Fact Sheet 1

Consent Rule 101.207(a): for Regional Councils & Territorial Authorities

understanding of the risks and compliance picture around unmanned aircraft.

What about Part 102 operators who are certificated and don't need consent?

Part 102 operators are issued with a certificate and may not require consent and instead will be subject to operating conditions. The CAA's decision-making is focused on the safety of the operation.

As part of the CAA's decision-making on Part 102 applications we may contact local authorities to seek their views on proposed activities or ask operators to provide evidence that they have consulted with, or where appropriate obtained the approval of, the relevant local body.

Section 28(8) of the Civil Aviation Act provides that "[s]o far as the bylaws of any local authority are inconsistent with or repugnant to any ordinary rule made under this Act in force in the same locality, the bylaws shall be construed subject to the rules." This means that civil aviation rules do trump local bylaws if they are inconsistent or directly in conflict.

However, Part 102 certificates issued under the Rules will not 'trump' local authority requirements – operators will need to comply both with their certificate and any relevant bylaws, regional plans, and/or district plans. CAA will remind operators of this obligation when issuing any certificate.

How does this relate to rules around controlled airspace and operations within 4km of an aerodrome?

Operators are still required to comply with all airspace restrictions regardless of whether

consent has been granted. Controlled airspace covers large amounts of urban areas in New Zealand and there are restrictions on RPAS use within these zones. This is outlined in 101.11. Similarly, operations within many New Zealand urban areas are likely to be within 4km of an aerodrome. These operations are subject to restrictions outlined in 101.205.

However Part 101 allows for what are called 'shielded operations' within controlled airspace or within 4km of an aerodrome boundary. A shielded operation is one in which the RPAS is protected from the path of potential oncoming manned aircraft by an object. It is defined in the rules as:

"[...] an operation of an aircraft within 100 m of, and below the top of, a natural or man-made object."

This rule is designed to allow low risk recreational use in urban areas. For example, it is still possible to use an RPAS in a park within 4km of Wellington Airport and within Wellington controlled airspace so long as the operation is protected by a 'shield' such as trees or buildings surrounding the park. Therefore councils do not need to impose restrictions on the use of unmanned aircraft solely because of their proximity to an aerodrome.

How does the consent rule impact council's ability to use unmanned aircraft as part of its activities?

As the property owner or occupier, use of an RPAS on council property by a council for their own purposes, will likely mean that consent is implied. RPAS can be used by council for their purposes as long they comply with all other rules.