



6 July 2021

The General Manager
Port Stephens Council

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Objection – DA 16-2021-387-1 - 4136 Nelson Bay Rd, Anna Bay - Proposed Aircraft facility – helipad, dual occupancy and associated infrastructure including hangars, offices, carparking and civil works

Introduction

The Tomaree Ratepayers and Residents Association Inc (TRRA) represents the community on a range of issues which affects the Tomaree Peninsula in Port Stephens LGA, including planning and development, economic development, cultural infrastructure and resources, the built and natural environment, tourism and other grass roots issues.

TRRA objects to this proposal on a number of grounds, particularly the noise impact on the adjacent cemetery, residences and wildlife and because the zoning of the land does not permit this scale of helicopter activity.

We draw Council's attention to detailed consideration of planning implications of helicopter operations by Tweed Shire Council and attach two of their 2019 publications which we submit are highly relevant to this DA. Other NSW Councils may have similar documents and we encourage Council staff to research widely when considering this very significant proposal.

We have no objection to this submission being published in full, without redaction.

Zoning – heliports prohibited on RU2 zoned land, and inconsistent with zone objectives

The site is zoned RU2 – Rural Landscape. We understand that the existing service station and car wash between the proposed site and Nelson Bay Road, which normally would be prohibited on RU2 land, were approved on the basis of an 'existing use rights' exception.



Permitted uses

On RU2 zoned land, helipads are permitted with consent under subclause 3, while heliports are, by omission from subclause 3, prohibited under subclause 4.

We contest the assertion by the applicant that the proposed facility can reasonably be characterised as a helipad, and we submit that it is clearly more in the nature of a heliport.

The EIS argues that the difference between the two is that heliports are open to the public, while a helipad is a place for the taking off and landing of helicopters and 'not open to the public'.

There appears to be no legal definition of 'open to public'.

The EIS states that:

'The proposed development aims to compliment the private business operations of Soldiers Point and Nelson Bay Marina, and associated members, guests and staff. Upon arrival at either Marina, members or guests will be escorted to the helipad site and taken on flights throughout the Port Stephens and Hunter Valley Region for tourism, business or recreational purposes. Likewise, guests or family members may arrive at the helipad site via helicopter and driven to the Marina sites to meet their family / friends / members, who are moored at the Marina for a short or long period of time.

To this extent, the proposed development is not 'open to the public' in that the operation of the site will not allow public persons to attend the site without being strictly in relation to the existing patrons, customers, and users of the private business operations (Marina's (sic)).

It is implicit in this description that passengers would be transported to and from the helicopter facility in courtesy vehicles, and the DA does not provide for any public parking. However, there is significant informal parking freely available adjacent to the cemetery and more formal parking on the site of the service station/convenience store and car wash, and it is difficult to envisage how intending passengers could be prevented from driving themselves to the site and parking adjacent to it.

TRRA cannot see how the operation could be conditioned and controlled to ensure it remained a truly 'private' operation. The proposed limitation of use to 'members, guests and family/friends' is open to interpretation and we cannot see that there would be any restriction on either of the marinas effectively offering flights to the general public, perhaps by requiring them to pay a token daily membership to the marina (which could be included in the tour price) and/or by allowing them to wait for a courtesy vehicle in a waiting room at the marina.

We submit that the intent of the EPA Act and Standard LEP in allowing helipads with consent but prohibiting heliports on RU2 land is to allow private rural landowners to be able to operate a helicopter on a limited basis to assist in farming operations, or allow owners to commute to and from their rural land.

A reasonable person would assume that this would involve at most a few flights a week.

This proposal provides for four separate landing pads, and is for up to 70 helicopter movements a day.

We submit that the proposal is clearly more in the nature of a **heliport** (air transport facility with hangars, refuelling etc) than a private **helipad**. As such it is a prohibited land use in the RU2 zone and must be refused.

Zone objectives

The objectives for RU2 zoned land are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.

Even if the facility was a permitted use, at the scale of operations foreshadowed, it could not reasonably be considered to '*...maintain the rural landscape character of the land*' or be a '*...compatible land use...*'. Since it is clearly not a primary industry, it fails to meet any of the 3 zone objectives.

In relation to the 'rural character' criterion, it is significant that the site is adjacent to the Worimi National Park to the east, south and west and close to the Tilligerry Nature Reserve to the north, with immediate neighbours being mostly rural land holdings.

Noise – unacceptable impact - particularly on the Anna Bay Lawn Cemetery

Considerable concern has been expressed throughout the community about the noise impact of a busy helicopter base on funerals and people privately visiting the Anna Bay Lawn Cemetery, which is within 100 metres of the proposed helicopter facility.

TRRA share the view that a cemetery is a special location where people regularly go for remembrance and solemn reflection at any time. No helicopter noise would be acceptable to the public so close to a cemetery. It should be noted that the cemetery has received DA approval to extend the grave sites further to the south. It is concerning that no measurements of noise were recorded within the cemetery, nor any commentary about the impact offered in the EIS.

The EIS states that 'Setting of noise impact criteria in NSW is not well defined under existing noise policies and guideline'. This being the case we believe that a precautionary approach should always be taken, particularly for new developments.

The Acoustic Assessment report demonstrates that the proposed flight path (1) directly southward towards the coast has a lower noise impact on the local community and in particular to the closest residence (R1) 230m to the west.

Results from tests for flight path (2) along Nelson Bay Road clearly demonstrate that noise would be unacceptable, showing how critical the location of the actual flight path will be.

However, it is not clear that the proposed flight path (1) would always be followed, or that the consent authority could even seek to condition flight paths.

We submit that the noise report is totally inadequate, and if Council does not rule the proposal out on zoning grounds, then a new report should be prepared to include assessments of:

- The noise impact of different types of single and twin-engine helicopters
- The noise impact of multiple helicopter movements at the one time (reasonably predictable given the provision of four landing pads)
- The likely variation of flight paths in response to different wind directions and surface inversions
- The specific noise impact on residents to the north of Nelson Bay Road (it is not sufficient to state that the buildings 'shield' them, particularly in a southerly wind).
- The specific noise impact at various points within the nearby cemetery.
- The impact of noise from helicopter operations on wildlife

The Assessment states that the subject site is within the ANEF maps for Salt Ash Weapons Range. From our reading of the 2025 Australian Noise Exposure map in the Port Stephens DCP 2014, we believe this is not true, with the 20-25 ANEF area well to the west of the site and north of Nelson Bay Road.

Together with the fact that this is a new development on RU-2 (Rural Landscape) zoned land which has an objective to 'maintain the rural landscape character of the land' we submit that the ANEF20 value should not be used as an acceptable benchmark.

We submit that the value of less than 13 ANEF for new flight paths suggested in the Tweed Shire Council guidelines should be used. The 19 ANEF value calculated from the noise measurements from the trial flight is we believe far too high for this site.

The Tweed Shire Council *Helipads and Heliports Design and Assessment Guide* (attached) includes the following advice:

*Increasing the distance between the noise source and noise sensitive receivers is the **most effective** means of noise reduction.*

Suitable separation distance (both laterally and vertically) between the helicopter and noise sensitive receivers should be demonstrated.

A recommended minimum separation of 250m laterally ... or greater from dwellings and noise sensitive receivers is recommended.

The cemetery – clearly a sensitive site – is within 100m of the landing site and flight path, and the residence to the west is 230m away, so on these grounds alone the proposed site is clearly NOT in a suitable location.

Airspace and Flight Paths

Correspondence from CASA in the Community consultation response document states that the Department of Defence should be consulted about the proposal as the site is approximately 19.5km from the RAAF Williamstown/Newcastle airport.

We have not been able to locate any reference to Defence comment which we submit should have been obtained prior to lodgement of the DA, particularly as the site appears to be just within the restricted R596, R578A and R578B flying zones.

As R596 is controlled from the surface to 5000ft the actual landing site may be severely restricted in operations, although we note that coastal route corridor and the area to the east of the proposed site including Soldiers Point and Nelson Bay are outside the restricted areas below 5000ft.

We submit that the location of the proposed facility is totally unsuitable for a high usage commercial helicopter landing site due to its close proximity to the R596 flying zone.

No professional report appears to have been prepared about the suitability of the flight path approach from the south, with particular consideration to strong winds from the south and west, and the need for adequate clearance of the high voltage Ausgrid power lines and the sand dunes just to the south of the landing site.

It is not clear if the proposed vegetation clearing and APZ will provide a safe clearance for landing and take-offs, or if the location of the fuel storage or public activity at the service station and cemetery raise safety issues.

In *Guidelines for the establishment and operation of onshore Helicopter Landing Sites (CAAP 92-2(2))* CASA recommends that a minimum of two approach and departure paths be assigned for charter and future air transport operations. We submit that the proposed operation should be considered 'air charter' and so another flight path separated by a minimum of 150 degrees would be needed. This would require a separate noise assessment, and further public consultation.

We submit that it is essential that the views of relevant authorities (including the RAAF, Newcastle airport, Airservices Australia and CASA) on the implications of the facility and its operations for airspace and flight path management be sought and received before any final determination of this DA.

Biodiversity

During the environmental study a total of 30 fauna species were detected, which included bats - 13 microchiropteran species and one megachiropteran. Six of these are listed as vulnerable under the NSW BC Act and one under the Commonwealth EPBC Act. A squirrel glider listed as vulnerable was also detected.

Within the Study Area, 1.9 ha of Supplementary Koala Habitat was mapped, with 0.02 ha occurring within the impacted area. Although no koala faecal pellets were identified the NSW BioNet Atlas shows a large number of records within a 5km radius.

The proposed removal of 218 m² of native vegetation in the form of Coastal Sand-Apple – Blackbutt Forest (Managed), may be small scale in relation to the overall 20ha site, but it is the overall cumulative effect of successive ‘small’ clearings throughout the Tomaree peninsula that is of concern to TRRA, and we know to other local environment groups. Already clearing in the area has occurred in recent years or been approved to extend the cemetery, for the service station and car wash, for a nearby sand mine and for the widening of Nelson Bay Road.

The assessment states that:

The construction of two office buildings, two hangars, four landing pads and associated parking has the potential to increase noise and light that may indirectly impact resident populations of fauna and disrupt their natural behaviour (i.e. movement and foraging activity).

Given that the Subject Site occurs directly to the south of a busy road and existing development, these impacts are unlikely to be novel and it is likely that resident fauna would be somewhat habituated to such impacts.

We submit that the noise and associated downdrafts from helicopter activity will be a total foreign experience to the fauna and not at all equivalent to road noise. As already noted above under the ‘Noise’ heading further study is required on the potential impact of flying operations on wildlife. We draw attention to relevant information in a paper ‘*The Impact of Helicopters on Blue Mountains Wildlife and other World Heritage Values*’ by the Blue Mountains Conservation Society, and in a related open letter from environment groups in the Sydney Morning Herald dated 21 June 2021 (attached)

Advertising signage

If, despite all the above objections (any single one of which should be enough to warrant refusal) Council is nevertheless inclined to approve the DA, we submit that at the very least a condition of consent be imposed that totally bans any form of public advertising or signage on the site or at the marinas. If the operation is truly ‘private’ it can be marketed internally to marina clients. If it is not to be ‘open to the public’, then there is no need for any public advertising.

Conclusion

The proposal will have an unacceptable noise impact on the cemetery, on local residents and on wildlife in the adjacent forested areas, National Park and Conservation Lands

TRRA submits that the proposed facility is clearly in the nature of a heliport which is a prohibited use on RU2 zoned land. Even if it were permissible with consent, the location is not suitable for helicopter operations because of its proximity to the cemetery. The proposal is also inconsistent with the RU2 zone objectives, meeting none of the 3 criteria. The DA should be refused.

If there is a need for a commercial helicopter operation on the Tomaree peninsula, Council should be proactive in the identification of suitable sites – on land which is zoned

to allow for 'public' heliports – such as IN1 – General Industry, IN2 – Light Industry, IN4 – Working Waterfront or RE1 – Public Recreation.

We have no objection to this submission being published in full, without redaction.

Nigel Waters
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Attachments:

'The Impact of Helicopters on Blue Mountains Wildlife and other World Heritage Values'
by the Blue Mountains Conservation Society
<https://www.bluemountains.org.au/documents/campaigns/katoomba-airfield/katoomba-airfield-impact-of-helicopters-on-bm-world-heritage-values-summary.pdf>

Open letter from environment groups in the Sydney Morning Herald dated 21 June 2021

Tweed Shire Council - *Management of Noise Associated with the Use of Helipads and Heliports Issues Paper*, April 2019, and *Helipads and heliports, Design and Assessment Guide*, November 2019
<https://www.tweed.nsw.gov.au/files/assets/public/documents/development-and-business/land-use-and-planning-controls/helipads-heliports-design-assessment-guide.pdf>