



25 January 2021

The General Manager
Port Stephens Council

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Objection: Anna Bay Heliport proposal:DA 2021-387

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.

We made a detailed submission on the original DA in July 2021. This submission comments on additional material provided by the applicant in November 2021 – on exhibition until 26 January 2022

The applicant's consultants (Perception Planning) have provided a response to 18 issues/questions raised by Council including a response to issues raised in the more than 80 submissions received on the original DA.

The consultants' report concludes that:

'The proposed development is compliant with the legislative controls applicable to the subject Site', and that
'... the proposal will have no significant impacts on the surrounding properties...'
(p26, letter dated 23 November 2021)

TRRA strongly disagrees, and urges Council to reject this conclusion and refuse the DA.

On two 'threshold' issues alone the proposal is unacceptable:

- The overwhelming community opposition to regular helicopter operations so close to the Anna Bay Lawn Cemetery should in itself be grounds for



refusal. We draw attention to the 80+ objections to the original DA, to the public rally on 23 January attended by more than 140 concerned locals, and the 75 signatories to a petition already lodged with Council. Many more objections will no doubt have been submitted during the current exhibition period. The local community appears united in a strong view that the two land uses – cemetery and regular helicopter operations - are simply incompatible in such close proximity.

- The volume of proposed flights clearly indicates that this will be in practice a 'Heliport' in regular use by a wide range of members of the public (however they are 'disguised' as members or clients of the two marinas), and NOT a private 'Helipad'. Heliports are a prohibited use on RU2 land. Council should make a common sense judgement about the nature of the proposed operation and refuse the DA on the zoning grounds.

In addition to these two 'threshold' grounds for refusal, Council and other public authorities and the more than 80 original submissions have raised a wide range of additional concerns most of which the applicant has failed to address adequately.

In some cases the consultants' response to the concerns raised is dismissive and arrogant – presuming to know better than the expert authorities. These inadequate responses provide additional grounds for refusal, if any are needed. We set out below our reasons for these conclusions

Responses to Council further information requests (Table 1 (11pp) attached to letter from Perception Planning dated 23 November 2021 with subject line 'Response to FIR and Submissions...')

1. Impact on cemetery users

The response relies on a Social Impact Assessment (SIA) (Att 7) and 4 proposed mitigation measures.

The proposed 'mitigation' measures (five recommendations in the SIA) are wholly inadequate to address the major concerns expressed by the community, by at least one funeral service provider and by the relevant section of Council – in particular they would do little to alleviate the disturbance that would be caused to those visiting the cemetery for 'quiet reflection'. The major concern of cemetery users about noise is further addressed under issue 2 below.

2. EPA concerns about noise, hazard and contamination

Three new reports have been provided to address these concerns (Atts 8, 10 & 4 respectively). See comments on separate issues 15 & 16 below on the hazard and contamination issues.

Noise is one of the principal causes of concern with this development proposal, not only to the EPA but to cemetery users and to local residents. The revised Noise Assessment (Att 8) does not satisfy these concerns. The Noise Assessment notes that *“There are no noise standards or guidelines covering noise at cemeteries.”* The lack of a specific standard for cemeteries does not mean that Council should abandon common sense about the likely noise implications where the primary use of an adjacent property is outdoors, with a cemetery being a particularly sensitive use, and regular helicopter operations one of the most intrusive activities for noise impact.

The Assessment’s reliance on the ANEF20 noise threshold is inappropriate for at least the following reasons:

- ANEF relates to sound levels inside nearby buildings, whereas the major concern in this instance is for the noise impact on persons in the open air of the cemetery, where the received noise level will obviously be much greater and with frequent intense peak noise events.
- ANEF relates to differences from background noise levels. We dispute the assertion that this locality already experiences significant aircraft noise – RAAF flight movements over this area are infrequent, distant and only for brief periods of time, and DoD records show an average of only 9 civilian helicopter flights a week for the region managed by Williamstown RAAF Base¹.

We refer again to the Tweed Shire Council Guidelines² which recommend a standard of less than 13 ANEF for new flight paths and a minimum separation distance from dwellings (let alone open air cemetery users) of 250m.

We submit that the SIA wrongly assesses the social impact as ‘medium’ on the basis that the disruption from helicopter noise and downdraft only had a likelihood rating of ‘possible’. We submit that the likelihood rating must be considered ‘almost certain’ or at least ‘likely’ rather than ‘possible’, which would increase the impact level from ‘medium’ to ‘high’.

Given the high volume of flights proposed (an arrival or departure every ten minutes on average on peak days), the noise impact is wholly unacceptable.

3. DoD objections to flight movements in restricted airspace

The DoD objection dated 1 July 2021 (made available only recently) is very strong:

The restricted airspace is a high traffic area and Air Traffic Control would be unable to safely manage the proposed volume of helicopters due to terrain shielding at the location resulting in poor radar and communications. Due to these reasons, the Department of Defence strongly objects to this proposal.

¹ See <https://defence.gov.au/AircraftNoise/interactive/Update/wlm.html>

² See our July 2021 submission on the original proposal

The Response to Council's FIR attempts to defer this issue to later 'operational' detail to be handled by the pilots. We submit that this is wholly inadequate. Neither the applicant nor their consultants appear to have even consulted directly with DoD (see also issue 17 below).

On the face of it, the DoD objection alone should effectively veto the proposal.

4. Council concerns about flora and fauna impact

5. Council specific concern about aircraft strike risk to fauna species

An additional Flora and Fauna Assessment report has been provided (Att 3). We note that only the Study Area was surveyed for habitat impacts and no ground-truthing or consultation with local rangers and managers of the adjacent Worimi Conservation Lands, notwithstanding the significant number of database records of threatened fauna within 5 km of the proposed site. We question the conclusion that no important foraging habitat will be impacted in the vicinity given the number of observation records.

Also there is no comment in the Assessment about the cumulative effect of sound and motion impacts from regular helicopters movements, or habitat fragmentation of fauna habitat by a high-usage flight path cutting across the WCL. No mitigation or remediation actions are mentioned in the event that it is subsequently found that fauna are abandoning the area altogether.

We understand that koalas in the Sanctuary at One Mile Beach (only 6km from this site) are routinely observed to be disturbed by aircraft noise. The main remaining wildlife corridor between the Tomaree and Tilligerry reserves passes just to the north of this site, on the northern side of Nelson Bay Road. Even if helicopter movements can be restricted to southerly approaches and departures, we submit that there could be significant disturbance to koalas and other native wildlife in this corridor.

The proponent's revised Flora and Fauna Assessment recommends 'mitigation' measures which are completely impractical and unrealistic, such as pausing operations when fauna are observed. It is even suggested that the helicopter engines be 'idled' to warn wildlife away (which would of course prolong the noise impact).

Many National Parks have 'Fly Neighbourly Agreements' in place to limit helicopter flight impacts on fauna and park users – given the proposed scale of operation compared with the current number of civilian helicopter flights (refer issues 2 & 8), NPWS/WCL could expect a substantial increase in tour flights over the lands for which they are responsible, and we question whether any 'Agreement' could satisfactorily manage this issue.

6. Permissibility of proposed use in RU2 zone

Council appears to have provisionally accepted that the proposal can be characterised as a 'Helipad' for private use. While the Applicant obviously welcomes this indication of Council's position, we submit that it is untenable – the volume of flights sought clearly makes it a 'Heliport'. There is an obvious discrepancy between the projected volume of flights and the likely demand for flights solely from the limited number of berth holders present at any one time at the two marinas.

The distinction between private helipads and public heliports in legal cases seems to hinge on the 'marketing' of flights. Council does not appear to have specifically requested operational details about how flights would be marketed to help assess the true nature of this proposal.

Council's proposed condition relating to 'private' use would be easily circumvented and also unenforceable in practice. The consultants have not addressed this issue in their response to submissions. We do not see how Council could realistically prevent the facility, once approved, becoming a more generally available public Heliport.

There is land on the Tomaree peninsula the zoning of which would allow a Heliport.

Council should rule that this proposal is clearly for a 'Heliport', which is a prohibited use on land with this zoning, and refuse it on that ground alone.

7. Failure to address strategic plans

Two specific strategic plans are now addressed in the Social Impact Assessment (SIA - Att 7)

8. Further acoustic information required

This is addressed in revised Noise Assessment report (Att 8). We comment on this under Issue 2 above.

9. Council requests detailed assessment against CASA Guidelines

The Consultants assert that these Guidelines are not strictly applicable, but provide some limited additional information.

We submit that this response is wholly inadequate. The consultants have not even addressed the point we raised in our July submission about the need for 'air charter' operations to have an alternative flight path. Any alternative to the southerly approach/departure track preferred (which may not always be available due to wind direction etc.) would have a greater impact on the surrounding area.

10. Council considers the sewage management plan to be inadequate

A revised Wastewater management report (Att 9) is provided. We are not qualified to judge the adequacy of this report but assume Council will do so.

11. Council queries access and impact on service station parking

12. Council requests information on staging to inform the traffic assessment

A Staging plan is now provided (Att 2) – this shows 2 of the pads and one of the hangars in a second Stage, but no indication of timing is provided, and the original traffic assessment has not been revised, still showing all of the parking in Stage 1.

13. Requires air quality and odour assessment (not included in Noise report as asserted in EIS)

A separate Air Quality and odour assessment is now provided (Att 6).

14. Requires better Aboriginal Heritage Assessment

An additional Due Diligence (DD) Report is now provided (Att 5), but concludes that no consultation or detailed site investigation is required. This does not appear to meet Council's requirements.

15. Inadequate hazard assessment (SEPP33)

A further SEPP33 report (Att 10) is now provided – we are not qualified to judge the adequacy of this report but assume Council will do so.

16. Requires further contamination investigations (SEPP 55)

The consultants assert that a further Preliminary Site Investigation (PSI) report (Att 4) covers these requirements. It offers more detailed investigation but requests that it only be required at a later stage after approval. This seems an inadequate response – detailed site investigation must be completed before any decision to approve.

17. Requires consultation with Worimi LALC, National Parks and DoD

The consultants assert that none of these is strictly required but notes some action taken on all three. We submit that this is a wholly inadequate response, particularly in relation to the DoD and Worimi LALC (see issues 3 & 14 above).

Responses to submissions (Council Q18) (Table 2 (10pp) attached to letter from Perception Planning dated 23 November 2021 with subject line 'Response to FIR and Submissions...')

The Applicant's consultants, Perception Planning, respond to 'key points' they have chosen to identify from the 70 'standard' (=unique?) and 11 pro-forma submissions (of 4 different types) received in response to the initial exhibition period.

Council should not necessarily accept the characterisation of the submissions and objections provided by the applicant's consultants. How the consultants choose to describe the objections obviously affects how they then respond. In assessing the DA, Council needs to independently review the submissions and decide if the characterisation is fair and the response adequate.

Most of the issues covered in these responses have already been addressed by us above. A few issues warrant further comment.

Noise and cemetery

The response shows no real understanding or empathy. The proposed mitigation – a minor reduction in weekly flight numbers (though not in daily peak volume), a Joint Planning Agreement with Council to restrict flight movement during funerals, and (presumably) advance notice to the Cemetery managers and funeral businesses do not come close to addressing the problem, and do not even mention the disturbance of 'quiet reflection' by the relatives of those interred at the cemetery. It is difficult to see how 280 movements per week with a daily cap of 65 could possibly peacefully co-exist with the cemetery which is less than 100 metres from the nearest landing pads.

It is unreasonable and offensive to suggest that cemetery users could schedule their visits around notified helicopter flight times.

TRRA is keenly aware of the level of distress that even the prospect of helicopter operations near the cemetery has already caused many in the community. We have had members and others with loved ones buried there approach us 'in tears'. We continue to receive comments through our website, such as:

"How can a service be conducted at the Cemetery with helicopters landing and taking off? the noise pollution alone would put a stop to services each time one approached and landed and then took off. To even contemplate this proposal based on this alone is astounding.";

"Words escape me as to what reasonable persons would request this be built next to a Cemetery. I am sure when I have my grave side service the loud humming of the rotors would be soothing in a time of grief and if you could even hear the service. Not to mention for family visiting loved ones

for a quiet moment of reflection and to mourn their loved ones in peace. I find the fact that I even have to object disturbing. That the lack of thought and compassion has not even been considered.” And

“They can’t be serious! A Helipad right there beside the Cemetery is totally insensitive and disrespectful.”

Location

The response only mentions (and dismisses) the use of Newcastle airport and does not consider other locations, including those specifically suggested by objectors.

Permissible use

The response avoids the issue of whether with operations at the scale proposed the facility can credibly be described as a ‘helipad’. It also seems to at least partially acknowledge this by falling back on an ‘alternative’ argument based on existing commercial use rights.

Zone objectives

The response is not credible when it suggests that the proposal ‘protects the rural character’ of the site. Less than half of the site area would remain undisturbed with the majority of the area becoming dedicated to intensive commercial use.

Noise and flight path

The response asserts that there will be no flight movements to the west or over Nelson Bay Road. Even if this proves to be true in practice (and is enforceable) the concerns about flight movements and noise extend to the impact of flights arriving and departing to seaward on the cemetery and surrounding area, including several large residential estates. This is not addressed at all in the response, or adequately in the updated noise report

Consultation

The response confirms that only 7 neighbouring properties were directly notified. Copies of letters are referenced as Attachment 11 but do not appear to have been put online – Attachment 11 on the DA Tracker is the National Parks response. The response is dismissive of the need for wider notification on the grounds that ‘*Wider impacts are limited due to the proposed flightpath seaward.*’ This ignores the clear impact on and interest in the proposal from residents in the wider locality.

CASA and RAAF

There is no response in the table on this issue, although we note that CASA and RAAF concerns have been addressed, albeit inadequately, in the Response to Council’s FIR in Table 1 (see above).

Restrictions

The response relies on the single offered concession of a reduction of weekly flight volumes to 280 movements per week (provided they are still allowed up to 65 per day at peak periods). Concerns about hours of operation are not addressed at all in the response.

Conclusion

TRRA submits that there are multiple grounds for refusal of this DA. Primary objections are that any helicopter operations so close to a major cemetery are inappropriate, and the high volume of flights proposed totally unacceptable, and that the proposal is clearly for a Heliport, which is a prohibited use on this land.

We have no objection to this submission being published in full and unredacted.

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