

Application No. DA21/15298

Helipad Penrith Lakes.

Background.

Sydney Helicopters Pty. Ltd. has proposed to develop a new helicopter airbase to house their operations following the acquisition of their existing site at Clyde by Transport NSW. The NSW government has offered a piece of land at 100 Old Castlereagh Road, Castlereagh as an alternative location. The said land is part of the Penrith Lakes Scheme (PLS) controlled by the Penrith Lakes Development Corporation (PLDC). This scheme was to put this land aside for the use as parkland for the local community.

Current Application.

On November 5, 2021, The Department of Planning advertised a DA for Helipad at Penrith Lakes. This follows swiftly behind a submission to rezone the same area of land to allow the building of a Heliport. The rezoning application was strongly opposed for multiple reasons and the results have not yet been released. Since the original application closed (a period of 6 weeks) a total of 21 documents have been produced supporting the construction of a helipad. This land is zoned as "tourism" which allows the construction of a helipad.

Objection.

1. **Zoning.** The zoning on this land allows the building of a helipad however the whole point of this application is to relocate the entire business of Sydney Helicopters including hardstand for multiple helicopters, service and maintenance hangers, inground fuel storage, management and communication facilities. The Penrith Local Environmental Plan dictionary defines:
 - a. *A HELIPAD is. A place, not open to the public that is used for the taking off and landing of helicopters.*
 - b. *A HELIPORT is. A place open to the public that is used for taking off and landing of helicopters. Whether or not it includes a terminal building or facilities for the parking storage or repair of Helicopters.*

Clearly this application fails on zoning!

2. **Noise.** The professional acoustic report by Acoustic Logic is based on two failed assumptions:
 - a. The closest Industrial/commercial land is some 800 meters away, when the land directly across the road (approx. 50 meters) is currently under development for industrial/commercial use. No noise readings were done on that land.
 - b. The flightpath drawings show the height when passing residential land is 1500 feet but there does not appear to be anything in CASA rules which enforces that. Therefore the figures must be questioned.

The exhibition says that the morning starting time is 05:30 but the earliest time allowed under this zoning (as mentioned in one of the application documents) is 07:00.

This application must be suspect on that basis.

3. **Long term use.** Looking at a Google satellite view of the existing Clyde site, the new site is somewhat smaller. Is the business able to perform acceptably on the smaller site in the medium to long term? Or are they expecting to enlarge the site, in the near future, once they are entrenched. The original rezoning application showed a much larger installation. Is this still the actual plan?

This application must also be suspect on that basis.

Conclusion.

There are three major reasons above why this application must be refused.

This application has again been rushed to meet Transport NSW requirements. There has been no reason given why this is the only place to put this business. There is no obvious advantage to the local community. They only employ 10 people and most of those will be transferred from Clyde.

I believe that the majority of flights will be east towards Sydney which will add flying miles, also harming the environment.

The “feel good” statements about helping the RFS seem stretched as they are very good at using ovals which are closer to the fire sites and water. The size of this installation makes limited room for the large firefighting machines. A simple helipad (as defined) would be just as useful.

I have great sympathy for the owners of Sydney Helicopters having to work under the existing planning masters, but I must put the community first.

Why could land at Walgrove or Eastern Creek not be allocated for this business, it makes far more sense?

17 November 2021

Minister for Planning and Public Spaces / Independent Planning Commission

Dear Minister,

Re: Helipad Penrith Lakes DA21/15298

On behalf of the Penrith Valley Chamber of Commerce (“the Chamber”), I write in regard to the above DA.

The Chamber is supportive of those projects that contribute to our local community insofar as they:

- create and sustain local employment,
- directly and/or indirectly stimulate investment in the local economy,
- enhance the development and maintenance of necessary local infrastructure, AND
- do not adversely impact the social and environmental needs and expectations of the business and broader community.

With this in mind, this letter is acknowledgment and support of the construction and operation of a Helipad within the Penrith Lakes Scheme, by Sydney Helicopters.

Penrith Lakes has critical environmental, landscape, cultural and economic values and is a key asset for not only Penrith but the broader Western Parkland City.

Through its close contacts with the key stakeholders, Penrith Lakes Development Corporation, Penrith City Council and the NSW Government, the Penrith Valley Chamber has followed the evolution of Penrith Lakes with great interest. Recently, the Chamber has been working with Destination Sydney Surrounds North and Penrith City Council to establish a Tourism and Visitor Economy Taskforce in anticipation of the opening of the Western Sydney International Airport and significant growth in visitor numbers.

With this expansion in mind, the relocation of Sydney Helicopters to the Lakes site could provide a wide range of tourism experiences and act as an enabler for the growth of Penrith Valley region's tourism and visitor economy. Their previous involvement with Destination NSW and Tourism Australia, solidifies their ability to work with these entities, and open new markets to the region.

We also note that a significant proportion of Sydney Helicopters business will be conducted as an essential service and that the location of Sydney Helicopters at the Lakes will act as a critical support partner in serving the needs of bushfire and flood agencies in the region.

Finally, we understand that the location of Sydney Helicopters at the Lakes will see them developing educational and environmental programs that will bring visitors closer to understanding and appreciating the region's significant cultural history.

The Chamber is therefore pleased to support the relocation of Sydney Helicopters to Penrith Lakes. Please do not hesitate to contact me should you wish discuss this matter further.

Yours sincerely,



**Kate Rafton
Chamber President**

To Whom it May Concern

As the owners of Peats Bite Restaurant on the Hawkesbury River, we have known Mark Harrold for over 10 years. We have also dealt with him, and Sydney Helicopters, in a professional capacity for the last 3-4 years. During this time Mark & his team have always been efficient, professional and accommodating. Our Reservations Manager (who has been in the tourism industry for over 28 years) has always been impressed with all her dealings with them on our behalf. They are professional, reliable, easy to contact & very accommodating.

Also - the feedback we get from all their clients, who visit us at Peats Bite as part of their tour with Sydney Helicopters, is always outstanding.

They have been non-invasive to our business, and the operation of Peats Bite - far from it. They have been great ambassadors for our business, and very pro-active in supporting other venues & encouraging visitors to the Hawkesbury & it's surrounds.

It's great to see a long-established tourism operator of this calibre base itself at Penrith - especially with their critical fire-fighting and emergency services. It will also allow a fantastic connection between regions and towns like the Hawkesbury, Bathurst, Mudgee, Hunter Valley and Sydney.

Now - more than ever - Tourism is vitally important for the recovery of our regions after Covid. Travel & tourism was one of the hardest hit during lock-down, and it is a great opportunity for Penrith, and the employment opportunities that it will then offer, especially for people also interested in aviation.

We support them in their application & hope they will be successful in their future endeavours.

Best regards,
Geoff Milner & Tanya Miljoen

PEATS BITE
Boutique Accommodation & Restaurant



02 9985 9040 / 0425 210 001
tanya@peatsbite.com.au
Sunny Corner, Berowra Creek, Hawkesbury River NSW
PO Box 400 Berowra Heights NSW 2082
www.peatsbite.com.au

Thursday, 25 November 2021

The Secretary
NSW Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta 2124

Lodged via Website: <https://www.planningportal.nsw.gov.au/daex/exhibition/helipad-penrith-lakes>

To whom it may concern,

RE: HELIPAD PENRITH LAKES DA21/15298

LETTER OF SUPPORT

I am writing in support of Helipad Penrith Lakes DA21/15298.

As a community, we want local jobs for Penrith residents to reduce commuting times, improve health, wellbeing and lifestyle and improve the environment by removing cars from the roads.

Approval of the Helipad at Penrith Lakes development application is a critical step in realising the continued growth of economic activity, which will provide a crucial boost to the community. We request this application is fast tracked for approval to ensure these jobs are delivered and that small business is supported.

Sincerely,



Brian Fletcher
Chief Executive Officer



a 123 Mulgoa Road, Penrith NSW 2750
Locked Bag 8322, Penrith NSW 2751
t +61 2 4720 5555
f +61 2 4731 2665
e info@panthersgroup.com.au
w panthers.com.au
Penrith Rugby League Club Ltd
ABN 57 000 578 398





BUSHCARE GROUPS

Bushcare groups help to care for particular sites and are involved in removing weeds and planting native plants.

A local bushcare group has been working at Mountain View Reserve over the past three years.

GET INVOLVED!

If you are interested in volunteering call our Bushland Management Officer on 4732 8088 or visit our website for details.

✉ Penrith City Council,
601 High Street,
P.O. Box 60
PENRITH NSW 2750

☎ 4732 8055

W penrithcity.nsw.gov.au

RESTORATION PROJECT

Council secured \$1.8 million in funding from the Australian Government's *Caring for Our Country* program to undertake environmental restoration works in Cranebrook.

Over the past four years we have restored a Regionally Significant Wetland near the corner of Castlereagh Road and Nepean Street and an adjoining area of Critically Endangered Cumberland Plain Woodland.

Other works include:

- » development of a Vegetation Management Plan for the Wetland and Cumberland Plain Woodland
- » construction of a 3,100m² stormwater treatment wetland
- » community engagement including the establishment of a bushcare group, and
- » improvements to tracks and signage to enable better community access to the Reserve.



PROJECT PARTNERS

- » Penrith City Council
- » Australian Government
- » NSW Department of Planning and Environment
- » Cranebrook community

This project is supported by Penrith City Council, through funding from the Australian Government.

PENRITH
CITY COUNCIL



PENRITH
CITY COUNCIL



SUSTAINABLE
PENRITH

MOUNTAIN VIEW RESERVE, CRANEBROOK

PENRITH

Mountain View Reserve bushland and wetland are home to some rare and unique plants and animals

This reserve is a valuable source of biological diversity (biodiversity) in our City, including approximately 13 hectares of bushland and 8 hectares of wetland. It faces a range of threats, so Council and the community are working to restore and protect the site.

VEGETATION

CUMBERLAND PLAIN WOODLAND

The bushland within this reserve is Cumberland Plain Woodland, a Critically Endangered Ecological Community under state and federal law. Cumberland Plain Woodland is only found on clay soils of the Cumberland Plain in Western Sydney. Most of it has been cleared since European settlement.

The most commonly found trees in the woodland are Grey Box Eucalypts (*Eucalyptus moluccana*) and Forest Red Gums (*Eucalyptus tereticornis*). Other common plants include kangaroo grass (*Themeda australis*) and box-thorn (*Bursaria spinosa*).

The very rare Spiked Rice-flower (*Pimelea spicata*) is found in the bushland at Mountain View Reserve. This delicate flower is endangered under state and federal law.

FRESHWATER WETLAND

The freshwater wetland is an Endangered Ecological Community under state law. The wetland is subject to periodic flooding and is located on low-lying parts of the floodplain. As the wetland lacks standing water most of the time, it is dominated by dense grassland and sedgeland vegetation such as tussock sedge (*Carex appressa*). Paperbark trees (*melaleuca* sp.) are also scattered throughout the wetland.



ANIMALS

The variety of habitats in Mountain View Reserve mean that lots of different native animals call it home. Some animals you may see include:

WETLAND

- » Chestnut-breasted munnikin
- » Zebra Finch
- » White-faced Heron
- » Superb Fairy-wren
- » Common Easter Frog
- » Eastern Banjo Frog
- » Eastern Water Dragon

BUSHLAND

- » Pied Currawong
- » Bell Miner
- » Red Wattlebird
- » Kookaburra
- » Brush-tailed Possum
- » Red-bellied Black Snake
- » Dark-flecked Garden Sunskink

A number of threatened animals have been found within Mountain View Reserve:

Cumberland Plain Land Snail ***(Meridolum corneovirens)***

Lives in the grasses and leaf litter of the bushland and is important for breaking down leaf litter.

Diamond Firetail ***(Stagonopleura guttata)***

Forages in the grasses and sedges of the wetland.

Little Eagle ***(Hieraetus morphnoides)***

Has been sighted above the wetland.



THREATS TO BIODIVERSITY

There are many threats to the bushland and wetland of Mountain View Reserve, including:

- » **Weeds:** Mostly through escaping from surrounding gardens, from dumping of garden waste or from washing through in stormwater. Weeds are considered a primary threat to the survival of 341 endangered plant and animal species in NSW.
- » **Stormwater pollution:** Anything that is on our roads or streets when it rains ends up in stormwater. Much of this flows into bushland and creeks causing pollution and erosion.
- » **Pest animals:** Cats (mainly pets) are the biggest threat to animals in this reserve.
- » **Human impacts:** Clearing, trail bike riding and rubbish dumping.

WHAT YOU CAN DO

Help protect the special plants and animals of Mountain View Reserve and other areas:

- » prevent garden plants from spreading into bushland
- » don't dump garden waste
- » don't pour any waste liquids down the stormwater drain
- » wash your car on the grass
- » put litter in the bin
- » keep cats indoors between dusk and dawn
- » join the local Bushcare Group and
- » report any issues to Council.

I wish to object to DA21/15298 in respect of 100 Old Castlereagh Road, Penrith.

The documentation provided for public examination is inadequate for the proposal to be properly assessed:

- There is no actual application, no covering submission by the applicant and no direct description by the applicant of what is proposed. Although there is a secondary summary prepared by the Department and various brief descriptions provided as background in some of the appendices, the internal inconsistencies of these documents render them inadequate to support a reliable appreciation of what is proposed.
- The Secretary's Environmental Assessment Requirements are not provided. This means that it is not possible to assess whether those requirements are adequate or whether the proponent has adequately satisfied the requirements.¹
- Some of the appendices are significantly flawed.²
- Even the inadequate documentation that is provided was not entirely provided on time. For instance Appendix P, which provides a key legal opinion, was not made available to the public until halfway through the public consultation period.

The applicant has stated that the site has been acquired for the purpose of relocating the existing heliport. On 25 June 2020 the applicant provided to the Department a proposal involving the clearing of most of the site and the erection of aircraft hangers, maintenance facilities, office space, taxiways, a substantial apron and 11 hard stand helicopter pads. This is the only proposal available to the public.

The documentation provided in support of the current application includes numerous appendices, but there is no proposal to which they are appended. Many of the appendices are obviously in support of the proposal of 25 June 2020:

- Appendix O states that "the operations of the Sydney Helicopter Facility at the new facility are expected to be similar to the old location at Clyde"³
- Appendix E states that the assessment is of the "proposed site for the relocation of the current operations of Sydney Helicopters"⁴
- Appendix D states that "the site would become the new home of Sydney Helicopters"⁵
- Appendix N states that the proposal is "to develop a new helicopter airbase to house their operations following the acquisition of their existing site"⁶ and that the assessment "has been based on data taken from existing site operations"⁷

¹ For instance the SEAR for the Orange East Heliport required that the applicant "include a detailed justification of the proposal considering alternatives and including the need for the project as well as the impacts if the project were not to be carried out". The current documentation includes no such justification. The lack of documentation means that it is not known if the SEAR failed to include such a requirement, if the applicant failed to satisfy the SEAR or if the Department decided to not make the relevant document available to the public.

² For instance the Noise Impact Assessment does not apply the *Noise Policy for Industry*, even though that standard is required by the NSW EPA.

³ Appendix O Page 5

⁴ Appendix E Page 1

⁵ Appendix D Page 5

⁶ Appendix N Page 1

⁷ Appendix N Page 7

Despite these statements, and many others, the site plan provided as part of Appendix B illustrates a more modest development which is characterized as a helipad, rather than a heliport. But those works would be unlikely to house the applicant's current fleet and operations. If it is a modest helipad that is now proposed it is not apparent what purpose it would serve, particularly as it is in a "remote area"⁸. It is also not clear why a helipad would have the same hours of operation or could have the same flight numbers as the existing heliport, or why ten staff would be employed there.⁹ The conflicts in the documentation means that it cannot be said with any certainty what is being proposed.

The legal opinion at Appendix P is obviously in support of a proposal to transfer the existing heliport. It correctly identifies that the difference between a helipad and a heliport is that the latter is "open to the public". It advances the view that a facility cannot be considered to be open to the public unless it has scheduled flights and accommodates other operators. It further states that as scheduled flights and other operators are not envisaged the proposed facility is not open to the public and is therefore a helipad rather than a heliport. This opinion purports to rely on *Nessdee*¹⁰ however the judgment in that case contradicts the applicant's contentions. In *Nessdee* a proposed facility which was to have no scheduled flights and accommodate no other operators and with far fewer flights than what is proposed in the current application was found by the Court to be a heliport and not a helipad.¹¹ Despite having none of the attributes that the legal opinion claims would be required to constitute a heliport, the Court explicitly stated that the facility was, in fact, a heliport.

In seeking to establish a favourable definition of the phrase "open to the public" Appendix P purports to draw on the judgment of Santow JA in *Ryan*.¹² In the passage relied upon His Honour states that "*the place will be considered to be 'open to the public' only if the owner is in fact making it available to the public.*"¹³ The applicant, through its website, extends an unqualified invitation to the public. According to the Full Bench of the High Court "*an invitation made to the public generally*"¹⁴ is the very essence of making something available to the public and as a result, the conclusion that the facility is open to the public, and is therefore a heliport, is unavoidable.

The legal opinion misconstrues the judgment of Santow AJ by inserting the phrase "as of right". No such phrase is used by His Honour and neither the majority nor the dissenting judgment in *Ryan* uses that qualification to determine whether a place is open to the public. Relevantly, Santow AJ states:

"places may be entirely physically closed to the public. Then it would be wrong to view them as not open to the public if the landowner had by his or her actions effectively signaled that the public were invited to enter"¹⁵

⁸ Appendix D Page 22

⁹ Appendix M Page 10

¹⁰ *Nessdee Pty Ltd v Orange City Council* [2017] NSWLEC 158 (28 November 2017)

¹¹ *Nessdee Pty Ltd v Orange City Council* [2017] NSWLEC 158 (28 November 2017) Preston CJ describes the operations at paragraphs 101 – 106, having found the proposed facility to be a heliport at paragraph 16.

¹² *Ryan v Nominal Defendant* [2005] NSWCA 59 (14 March 2005)

¹³ *Ryan v Nominal Defendant* [2005] NSWCA 59 (14 March 2005) at paragraph 82

¹⁴ *Corporate Affairs Commission (SA) v Australian Central Credit Union* [1985] HCA 64 citing the judgment in *Lee v Evans* [1964] HCA 65

¹⁵ *Ryan v Nominal Defendant* [2005] NSWCA 59 (14 March 2005) at paragraph 76

In promoting his business the applicant is signaling to the public that they are invited to enter. Of course the applicant may refuse entry to particular individuals, and only persons wishing to fly in helicopters will accept the applicant's invitation, but that in no way prevents the facility from being open to the public.¹⁶ The legal opinion at Appendix P provides no legal authority for the contrary view it advances. *Nessdee* and other cases leave no doubt that if the applicant is proposing to transfer its existing operations to Penrith Lakes it is proposing to establish a heliport there. As that is a prohibited usage under the *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* the application must be refused.

The Department's adoption of the role of advocate for the heliport,¹⁷ the fact that the Department has not prevented the applicant from developing and using the site for helicopters in advance of consideration of the application and the Department's failure to provide key documents until halfway through the consultation period all throw into doubt the partiality of the Department and the validity of the process. It is not asking too much to insist on a clear proposal supported by documentation consistent with that proposal. Nor is it asking too much that the Department not signal consent prior to considering the application.

However, if despite these flaws the application were to be approved the approval should incorporate strict restrictions. Those restrictions should reflect the approval of no more than a small helipad. Restrictions akin to (but more strict than) those recently placed on the Orange East Heliport by the Land and Environment Court would be appropriate.¹⁸ Importantly, it should not be possible to expand the facility from a helipad to a heliport without honest, transparent and fully-informed public consultation.

In summary:

- The process is heavily flawed. Some documentation has been provided late, other relevant documentation has been withheld (or has not been prepared) and the documentation that has been provided is so contradictory that it is not possible to know what is being proposed. As a result it is not appropriate to proceed to a determination and the process should be suspended until full, clear and consistent documentation can be provided. If, nonetheless it is decided to proceed to a determination, then:
- Legal authority makes it clear that if the applicant is proposing to transfer its existing operations it is seeking to establish a heliport. As heliport is a prohibited usage the application must be refused. If, nonetheless it is decided to approve the application, then:
- The approval should be limited to the facility shown on the site plan at Appendix B. The hours of operation and the number of flights permitted should be severely limited, consistent with the operations of a mere helipad. A limitation of 7 flights per week is a relevant legally-recognised precedent for such a facility.¹⁹

30 November 2021

¹⁶ *Mercantile Mutual Insurance Co Ltd v W Turner Pty Ltd* (1982) 1 NSWLR 728 at 735

¹⁷ See the "Consultation Paper" prepared in respect of a proposed amendment to the governing legislation: Department of Planning, Industry and Environment *Consultation Paper* IRFD21/27964

¹⁸ *Nessdee Pty Ltd v Orange City Council* [2017] NSWLEC 158 (28 November 2017) at paragraphs 25 to 68

¹⁹ In *Nessdee* the Land and Environment Court noted that the Orange East helipad was limited to 7 flights per week.

23 November 2021



Director – Transport Assessments, Planning and Assessment
Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta, NSW 2124

Lodgement via NSW Planning Portal (<https://www.planningportal.nsw.gov.au/daex/exhibition/helipad-penrith-lakes>)

**Support for Development Application
Helipad Penrith Lakes (DA21/15298)
100 Old Castlereagh Road, Castlereagh
(also known as 89-151 Old Castlereagh Road, Castlereagh) (Lot 2 DP 1013504)**

Thank you for the opportunity to respond to Heliport Developers Pty Ltd Development Application for a Helipad at Penrith Lakes.

The relocation of Sydney Helicopters to the Penrith Lakes precinct strongly aligns with the zoning objectives and land use permissions. The site that Sydney Helicopters has purchased is suitably zoned for tourism and permits helipads as a use.

We, being the largest adjacent landowner Penrith Lakes Development Corporation support the Development Application and note there is also strong support from the Local Council, the NSW Rural Fire Service, the Penrith Valley Chamber of Commerce, The Regatta Centre (Office of Sport).

Sydney Helicopters has over a long period demonstrated the value of their tourism operations and associated services supporting events like Vivid, the Sydney New Year's Eve Fireworks display, the Sydney to Hobart Yacht race, The NAVY Fleet Review, Top Gear Festival and the Bathurst 1000 Supercars. They have contributed to Film NSW, Film Australia and Destination NSW.

The essential service capability with regards to aerial firefighting and flood relief are a significant win for Penrith, Western Sydney and the Blue Mountains.

If you have any questions about this submission or would like to discuss in more detail, please feel free to contact the undersigned a [REDACTED].

Yours faithfully,

[REDACTED]
Chief Executive Officer
Penrith Lakes Development Corporation Limited

Penrith Lakes Development Corporation Ltd

Old Castlereagh Road,
Castlereagh NSW 2749

PO Box 457,
Cranebrook NSW 2749

T: 02 4729 0044
F: 02 4730 1462

E: info@pldc.com.au
W: www.penrithlakes.com.au

ACN 000 133 951
ABN 46 000 133 951

Introduction

I wish to register my strong objection to this noisy commercial heliport located about a kilometre from our home.

Our estate (Waterside) is a pre-existing noise sensitive residential area with great tranquility and beauty. There are large noise barriers at its boundaries, and also internally, integral to the development. These are designed to cut road and industrial noise emitted at ground level. These will be ineffective against helicopters as they fly much higher than the barriers. The barriers work by reflecting noise. This could double the noise for the unlucky residents living on the wrong side.

Summary of concerns

I am concerned about the following aspects of the development -

1) Long hours of operation.

The DA proposal is for flights between 5:30am and 10pm, seven days per week. This is an excessively large proportion of every day of the year. It also runs into morning and evening sleeping times.

2) Too many helicopter movements per day.

Such a large number of movements, up to 50 per day, in such a noise sensitive residential area is excessive.

3) No details as to flight approaches and corridors.

EPA licence conditions need to require that takeoffs and landings are to the western side of the heliport only. Flight corridors should be restricted to the north, south and west only, over the industrial, river and forested areas, and nowhere near Waterside and greater Cranebrook.

4) No noise management plan.

The aim of such a plan would be to ensure good relations with local communities and compliance with noise limits, flight corridors and any licence conditions.

5) Inadequate noise study.

The noise report prepared by Acoustic Logic Consultancy (ALC) has a number of glaring technical deficiencies. It greatly understates and under reports the real impact of the helicopter noise. It also does not appear to follow the EPA's guidelines and policy. Of concern are -

- The Lmax noise limits are not obtained from where Acoustic Logic Consultancy say they got them from, so it is unclear if these limits are valid.
- Noise measurements were not obtained at the nearest residential property or at Waterside.
- No night time noise study was conducted to assess sleep disturbance as required under NSW Noise Policy for Industry 2017 Section 2.5 (detailed below).
- Noise measurements were not adjusted upwards by up to 10 db for the "tonality" of helicopter noise. Such an adjustment would see Lmax levels exceeded at the golf course and possibly at the nearest residence.

My more detailed assessment of the noise report follows -

=====

Noise impact assessment prepared by Acoustic Logic Consultancy (ALC)

After examination of the ALC helicopter noise report, it is very clear to me that it is seriously deficient. It greatly understates and under reports the real impact of the helicopter noise. It also does not appear to follow the EPA's guidelines and policy. Technical issues with the Acoustic Report prepared by Acoustic Logic Consultancy are elaborated below.

Applicable noise policy:

The ALC report section 5 "NOISE EMISSION GOALS" says the following -

"The EPA Noise Control Manual has been used to establish requirements for helicopters in the absence of any specific acoustic criteria in relation to the operation of helipads within the Penrith City Council Development Control Plan and the EPA Noise Policy for Industry." Table 1. of

the report gives Lmax noise limits of 82 dbA (at nearest residential) and 85 dbA (at nearest commercial).

ALC appear to be referring to the NSW EPA Environmental Noise Control Manual which was superseded by NSW Noise Policy for Industry 2017. When you search and open Environmental Noise Control Manual it is actually titled Noise Guide for Local Government. In reading through this, a table is provided at "Part 1.18" where helicopter noise should be assessed by "*Offensive noise test (2.1.4) or assessment against any relevant council policy.*" However, this only applies to helicopters when on the ground.

There seems to be no specific Penrith Council policy, so the "Offensive Noise" test appears to be the default. Offensive noise is defined in the POEO Act, expressed in my simple words as: a harmful or disturbing sound which interferes with one's comfort. There is no measurement or maximum noise level given.

However, in NSW Noise Policy for Industry 2017 Section 2.5 Maximum noise level event assessment, it sets out:

"Where the subject development/premises night-time noise levels at a residential location exceed:

- *LAeq,15min 40 dB(A) or the prevailing RBL plus 5 dB, whichever is the greater, and/or*
- *LAFmax 52 dB(A) or the prevailing RBL plus 15 dB, whichever is the greater,*

- a detailed maximum noise level event assessment should be undertaken."

In summary,

- 1) The Lmax noise limits of 82 dbA and 85 dbA appear not to be where ALC say they got them from, so it is unclear if these limits are valid.
- 2) A night-time noise study appears to be required if flights are as late as 10pm.

Analysis of the noise measurement methodology:

The noise measurements were obtained at 4 locations near the heliport site during real helicopter flybys using portable sound level meters using an "A" weighted filter and slow response setting. The report finds the highest noise level was 73 db at the proposed golf course. This is 9 db below the maximum level of 82 db.

On the face of this, it all seems clear cut. However, there was no measurement taken at the nearest residential premises as required. I also have some concerns that the testing did not take into account that helicopters emit a sound, which due to its tonal and throbbing low frequency qualities, is more noticeable, obvious and annoying than general noise.

According to USACERL Technical Report N-91/13 Nov 1991, "A" weighted helicopter noise readings need to be adjusted upwards by between 8 and 10 db! The following is an extract from the introduction –

"Overall, the data indicate that the A-weighted DNL is inadequate for assessment of helicopter noise..... Helicopter noise measurement by either scale must be corrected to assess the noise in a way that correctly corresponds to human perceptions. For indoor situations, use of A weighting to assess helicopter noise requires an offset that varies with helicopter A-weighted sound exposure level (ASEL). For two-bladed helicopters, a correction factor of approximately 10 dB should be added to the measured ASEL of the helicopter sound. An 8 dB correction factor should be added to the measured ASEL of a multi-blade helicopter".

Further to this issue, the NSW EPA Document :- Noise Guide for Local Government Part 2. Noise Assessment, seems to support this. It says the following:

"12. Use of correction factors. The particular characteristics of a noise, such as an audible impulsive or tonal component, may result in a higher level of disturbance and annoyance than would be suggested by the measured sound pressure level alone. In this situation, a positive correction factor should be applied to the measured noise level. For more information on the use of correction factors see Section 4 of the NSW Industrial Noise Policy (EPA 2000) available at www.epa.nsw.gov.au/your-environment/noise/industrial-noise/nsw-industrial-noise-policy"

I then looked up NSW Noise Guide for Local Government Noise Policy (Part:5) and found in "Section 9. What is tonality?", that 5 db correction should be added if the noise is tonal.

I examined The NSW Noise Policy for Industry 2017 (which supersedes NSW Industrial Noise Policy (EPA 2000). In Fact Sheet C: "Corrections for annoying noise characteristics". Table C1 shows additive corrections of 5db for tonal and 5db for low frequency noise. i.e a possible total of up to an additional 10db.

In summary, the ALC report did not even add 5db to account for the basic noise tonality! They should have in fact added 8 to 10 db as a correction factor because they were measuring highly intrusive and annoying helicopter noise. Had they added 10db then the golf course (Location 3) would have just exceeded the limit at 83db. The nearby residence could have also been over the limit, but measurements were not obtained.

Conclusion:

It is very clear that ALC helicopter noise report is seriously deficient. It greatly understates and under reports the real impact of the helicopter noise. It also does not appear to follow the EPA's guidelines and policy. In summary,

- 1) The Lmax noise limits are not obtained from where ALC say they got them from, so it is unclear if these limits are valid. If they are based on a precedent or historical values used by the EPA, then is this appropriate for 2021, particularly now that so many of us are both living and working from home?
- 2) Noise measurements were not obtained at the nearest residential property or at Waterside.
- 3) No night time noise study was conducted to assess sleep disturbance.
- 4) Noise measurements were not adjusted upwards by up to 10 db for the "tonality" of helicopter noise. Such an adjustment would see Lmax levels exceeded at the golf course and possibly at the nearest residence.

Robert Pearson
B.Sc, M.Sc

3 Wader St
Cranebrook

Wednesday, December 1, 2021

The Honourable Robert Gordon Stokes MP
Minister for Planning and Public Spaces
Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta NSW 2124.

RE: Helipad construction, Penrith Lakes Project

Dear Minister Stokes,

Rowing NSW strongly objects to the construction and operation of a Helipad within the Penrith Lakes Scheme as per PAN-155484 currently on DA exhibition.

The construction of this helipad and daily usage of this facility for up to 25 aircraft vehicle movements per day between the hours of 5:30am and 10:00pm will create immense impact to the usage of the Sydney International Regatta Centre (SIRC) for Rowing NSW and our related events. Rowing NSW governs the sport of rowing in NSW representing 5000 active members using the SIRC facility for events at minimum 25 times per season, with over 35,000 participants in a calendar year. The regatta centre also plays host to the Rowing Australia Australian Rowing Championships and National Team selection trials.

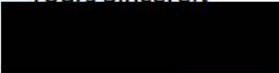
The regatta course sits within 300m of the proposed helipad and its construction and associated operations will cause significant impediment to safety and racing on the SIRC rowing course for our Members and visiting athletes. Our athletes range from 13 years of age to 80+ and need to be provided safe conditions in which to compete.

Rotor wash from landing and take-off procedures will be a significant and persistent safety issue, particularly for single sculls, pairs and double sculls when racing and training occurs. Wash that occurs across the course when training or racing is occurring will cause athletes to capsize, reduce readiness of safety craft to assist these athletes and create unfair conditions during regattas. The SIRC Course plays host to championship regattas for schools and clubs throughout the year and it is imperative that we provide conditions that are safe to compete and are fair in nature.

Additionally noise and visual distraction will also adversely affect rowing and racing in the lake in particular the management of safety on event days.

Rowing NSW urges you to reconsider the construction and location of the proposed Helipad as part of the Penrith Lakes project.

Yours Sincerely



Chief Executive Officer
Rowing NSW

Application No. DA21/15298

Helipad Penrith Lakes.

Background.

Sydney Helicopters Pty. Ltd. has proposed to develop a new helicopter airbase to house their operations following the acquisition of their existing site at Clyde by Transport NSW. The NSW government has offered a piece of land at 100 Old Castlereagh Road, Castlereagh as an alternative location. The said land is part of the Penrith Lakes Scheme (PLS) controlled by the Penrith Lakes Development Corporation (PLDC). This scheme was to put this land aside for the use as parkland for the local community.

Current Application.

On November 5, 2021, The Department of Planning advertised a DA for Helipad at Penrith Lakes. This follows swiftly behind a submission to rezone the same area of land to allow the building of a Heliport. The rezoning application was strongly opposed for multiple reasons and the results have not yet been released. Since the original application closed (a period of 6 weeks) a total of 21 documents have been produced supporting the construction of a helipad. This land is zoned as "tourism" which allows the construction of a helipad.

Objection.

1. **Zoning.** The zoning on this land allows the building of a helipad however the whole point of this application is to relocate the entire business of Sydney Helicopters including hardstand for multiple helicopters, service and maintenance hangers, inground fuel storage, management and communication facilities. The Penrith Local Environmental Plan dictionary defines:
 - a. *A HELIPAD is. A place, not open to the public that is used for the taking off and landing of helicopters.*
 - b. *A HELIPORT is. A place open to the public that is used for taking off and landing of helicopters. Whether or not it includes a terminal building or facilities for the parking storage or repair of Helicopters.*

Clearly this application fails on zoning!

2. **Noise.** The professional acoustic report by Acoustic Logic is based on two failed assumptions:
 - a. The closest Industrial/commercial land is some 800 meters away, when the land directly across the road (approx. 50 meters) is currently under development for industrial/commercial use. No noise readings were done on that land.
 - b. The flightpath drawings show the height when passing residential land is 1500 feet but there does not appear to be anything in CASA rules which enforces that. Therefore the figures must be questioned.

The exhibition says that the morning starting time is 05:30 but the earliest time allowed under this zoning (as mentioned in one of the application documents) is 07:00.

This application must be suspect on that basis.

3. **Long term use.** Looking at a Google satellite view of the existing Clyde site, the new site is somewhat smaller. Is the business able to perform acceptably on the smaller site in the medium to long term? Or are they expecting to enlarge the site, in the near future, once they are entrenched. The original rezoning application showed a much larger installation. Is this still the actual plan?

This application must also be suspect on that basis.

Conclusion.

There are three major reasons above why this application must be refused.

This application has again been rushed to meet Transport NSW requirements. There has been no reason given why this is the only place to put this business. There is no obvious advantage to the local community. They only employ 10 people and most of those will be transferred from Clyde.

I believe that the majority of flights will be east towards Sydney which will add flying miles, also harming the environment.

The “feel good” statements about helping the RFS seem stretched as they are very good at using ovals which are closer to the fire sites and water. The size of this installation makes limited room for the large firefighting machines. A simple helipad (as defined) would be just as useful.

I have great sympathy for the owners of Sydney Helicopters having to work under the existing planning masters, but I must put the community first.

Why could land at Walgrove or Eastern Creek not be allocated for this business, it makes far more sense?



Blue Mountains Conservation Society Inc

ABN 38 686 119 087

PO Box 29 Wentworth Falls NSW 2782

Phone: (02) 4757 1872

E-Mail: bmcs@bluemountains.org.au Web Site: www.bluemountains.org.au

Nature Conservation Saves for Tomorrow

Department of Planning, Industry and Environment

Online submission at <https://www.planningportal.nsw.gov.au/daex/exhibition/helipad-penrith-lakes>

2 December 2021

Helipad development DA21/15298 100 Old Castlereagh Road, Castlereagh

The Blue Mountains Conservation Society (the Society) is a community-based volunteer organisation with 900 members. Our mission is to help protect, conserve and advocate for the natural environment of the Greater Blue Mountains. In fulfilling its mission the Society advocates protection of the Greater Blue Mountains World Heritage Area (GBMWA).

We note the proposal is for the construction and operation of a helipad which will operate 7 days a week, up to 25 flights a day with the hours of operation from first light to 10pm. According to the Environmental Impact Statement (EIS p10) the proponent Sydney Helicopters is a commercial helicopter operator who has been providing chartered flights, tours and emergency services around the Sydney Metropolitan Area and greater NSW since 1985 operating out of their current site located at 25 Wentworth Street, Clyde. Both large and small helicopters will be taking off and landing (p35). The proposal “accommodates the relocation of the long-standing Sydney Helicopters” business and “re-establishment of the business operation” (p10).

We note Sydney Helicopters provides a range of services (p16) including

- Provision of emergency services including flood and emergency relief.
- Provision of fire support services including waterbombing and hazard reduction.
- Provision of other services to customers such as transport, aerial photography and survey, joy flights, tourism flights and other services.

It is the last aspect of the proposal which is of particular concern to the Society, especially given the frequency of flights and range of operational hours which the proponent is seeking.

The Society has a number of concerns in regard to the environmental assessment of the proposed helipad development at Penrith Lakes as outlined below.

Biodiversity impact

The biodiversity impact assessment was limited to assessment of impacts at the site itself (eg removal of trees for construction purposes) and does not assess broader biodiversity impacts of the operations of the helipad. This is a serious concern.

The site is surrounded by the Penrith Lakes Scheme. The lakes will provide long term important habitat for water birds and other wildlife including bats and flying foxes. An existing flying fox colony exists not far from the site along the Nepean River. The environmental assessment does not assess any impacts (such as noise or bird strike) on birdlife or bats or flying foxes, noting night operations are proposed and despite the impacts potentially being significant.

Community or stakeholder engagement

The community and stakeholder has been limited to stakeholder engagement (eg local, state and Commonwealth government agencies) rather than community. No local community groups, such as local conservation groups or local neighbourhood associations, were engaged as part of the EIS. The Society has had meetings with the proponent post the EIS to gain information in regard to the proposal.

Impacts on the Greater Blue Mountains World Heritage Area

The proposed location of the helipad at Penrith is almost directly adjacent to the Greater Blue Mountains World Heritage Area (GBMWH). The GBMWH is internationally recognised for its world heritage values, however the EIS fails to adequately assess the impacts of the helipad or its operations on the GBMWH. The assessment of impacts is limited to an assessment of scenic values in terms of the built form on site on the Blue Mountains escarpment (p113). The GBMWH Strategic Plan (2009) identifies inappropriate tourism as a substantial threat to the GBMWH world heritage values. The GBMWH's wilderness qualities have particular aesthetic value to local communities and park visitors alike, and the undisturbed natural environment is one of the important qualities that attracts residents to live in areas adjoining the GBMWH. The Plan specifically identifies potential threats to the appreciation of the GBMWH aesthetic values include overflights by helicopters and other low-flying aircraft (p33). Management action promoted under the plan include that "recreational and tourist overflights do not interfere with the natural quiet, biodiversity and GBMWH aesthetic values" (p33).

The Blue Mountains City Council study (link below) particularly pages 4, 6, 8 and 12 outlines the issues of aircraft over the GBMWH (noting this study was commissioned in relation to Badgerys Creek Airport - <https://www.bmcc.nsw.gov.au/sites/default/files/docs/GuidelinesForMinimisingAircraftOverflightImpacts.pdf>) The study and literature review clearly establishes "the importance of preserving natural soundscapes in high value wilderness settings, such as would be expected in the GBMWH. Importantly, the potential significance of impacts that can occur as a result of relatively low levels of noise intrusion in wilderness areas is evident."

Other impacts of helicopter and other low flying joy aircraft on the GBMWHA include impacts on fauna including noise, vibrations and bird and bat strike; impacts on wilderness and recreational values, including negative visitor experience; and visual impacts.

The Society believes the failure to consider or assess the impacts on the GBMWHA of the helipad and its operations is a major deficient of the EIS. The EIS clearly states that Sydney Helicopters business operations include joy flights and tourism flights. Their website also indicates this is an aspect of their business. The Society has had a meeting with Sydney Helicopters in regard to the development and they have indicated that joy flights and tourist flights are only a small portion of their business currently. However, tourist flights clearly are part of their business model, and this aspect of their business model may increase (or may decrease) in the future especially with the opening of the Western Sydney Airport and increased tourists to the area.

The Society recognises a number of Sydney based helicopter and other aircraft companies already offer scenic flight over the Blue Mountains. However, these flights are limited given the time and expense to fly from Sydney to the Blue Mountains. The Society is concerned however that the establishment of the helipad and relocation of Sydney Helicopters to Penrith may result in an increase in joy flights and helicopter related tourism in and over the GBMWHA, due its close location and its significant scenic values from the air and the ground.

In conversations between the proponent and the Society, the proponent has indicated that an increase in tourist flights is not planned. The Society is aware of the existence of the Fly Neighbourly Agreement, previously established over parts of the GBMWHA to minimise impacts of aircraft. Fly Neighbourly Agreements are described by the Civil Aviation Authority as “voluntary codes of practice”, which recognise that the operation of aircraft of any type at low levels has the potential to disturb communities and the values of recreational and conservation areas. When these aircraft operations occur in uncontrolled airspace, there are few controls to protect areas on the ground from exposure to aircraft noise. In the absence of enforceable controls, fly neighbourly agreements are established between local operators, both civil and military, and the administering authority of an environmentally sensitive area (eg, national park or wilderness area).

Currently a Fly Neighbourly Agreement is in place over parts of the Blue Mountains National Park which seeks to limit the height of low flying aircraft, and the consequential impacts on the biodiversity, scenic and recreational values of the park. In the Society’s experience, the Fly Neighbourly Agreement, given its voluntary nature and the lack of enforceability, has been inadequate in preventing inappropriate low flying tourism joy flight. It did not for instance prevent a commercial helicopter business conducting inappropriate low flying joy flight over the Three Sisters from Katoomba Airfield in the 1990s (this operation only ceased when the Environmental Protection Authority placed regulated noise limits at the landing/takeoff site under an Environmental Protection license).

Helipad or heliport?

Under the current zoning of the site a helipad is permissible with consent but a heliport is not. The proponent argues that the development is a helipad as defined under the planning instrument covering the site. The definition states that a *Helipad means a place not open to the public used for the taking off and landing of helicopters*). The proponent provides legal advice to support the argument that the site is a helipad and not open to the public because

- Operations from the site do not include regular helicopter flights to or from a set destination which any member of the public can seek to enter the premises, purchase a ticket or board a flight.
- Only helicopters operated by Sydney Helicopters will be taking off and landing on the site.
- The public is not allowed or entitled to enter the site without being invited to do so by Sydney Helicopters.
- No other helicopter operator is permitted to access the site unless in an emergency. The proposed operation of the site does not involve (i) the provision of facilities for the hire of helicopters by others, (ii) the provision of facilities for the landing, refuelling and take off of helicopters by others, and (iii) general access by the public to the facility for the use and enjoyment by the public.

The Society notes that there is a current proposal to amend the planning instrument over the site to allow heliports to occur but this has been delayed forcing the proponent to lodge a development application for a helipad. Heliports are defined as a place open to the public that is used for the taking off and landing of helicopters, whether or not it includes (a) a terminal building, or (b) facilities for the parking, storage or repair of helicopters.

The Society does not support the proponent's arguments that the development is a helipad. The proponent as part of its business model will be running helicopter tours and scenic flights and which means the site will be "open to the public" to enter and exit. The helipads cited in the EIS as operating in the Blue Mountains (the helipad at the Katoomba Hospital, the National Parks helipads at Blackheath and Glenbrook, and the helipad at the RFS site at Valley Heights) are used for defined non-commercial purposes. The general public cannot enter these helipad sites or access aircraft from these sites and scenic flights open to the public do not operate from these sites.

If the proponents proposed operations at Penrith are considered a helipad and not a heliport this would provide a very dangerous precedent in terms of existing helipads approved under existing statutory planning controls. In theory any existing helipad could increase their operations to a scale similar to what the proponent is seeking in this instance (ie a 7 days week operation with up to 25 flights a day including a wide range of commercial operations) by mounting the same arguments as the proponent and therefore not require any environmental assessment or development approval.

The Society strong view is that if the department approves this development application that it is considered a heliport and thus requires an amendment to the

statutory planning instrument.

Thank you for the opportunity to provide a submission to this development.

Yours sincerely



Tara Cameron
President
Blue Mountains Conservation Society
mobile [REDACTED] or email [REDACTED]

CC Blue Mountains City Council
Trish Doyle, MP Blue Mountains



Blue Mountains Conservation Society Inc

ABN 38 686 119 087

PO Box 29 Wentworth Falls NSW 2782

Phone: (02) 4757 1872

E-Mail: bmcs@bluemountains.org.au Web Site: www.bluemountains.org.au

Nature Conservation Saves for Tomorrow

Department of Planning, Industry and Environment

Online submission:

<https://www.planningportal.nsw.gov.au/daex/exhibition/helipad-penrith-lakes>

13 December 2021

Supplementary submission

Helipad development DA21/15298 100 Old Castlereagh Road, Castlereagh

The Blue Mountains Conservation Society made an on-line submission on DA21/15298 on 2 December 2021.

We request that consideration be given to one further point we wish to make in this supplementary submission.

The issues outlined in our submission about the impact on the Greater Blue Mountains World Heritage Area could be dealt with by a condition of consent.

The Society therefore requests that a condition of consent be imposed to prohibit tourist flights over the Greater Blue Mountains World Heritage Area.

Thank you for the opportunity to provide a submission to this development.

Yours sincerely

[Redacted signature]

Tara Cameron
President
Blue Mountains Conservation Society

T: [Redacted]
E: [Redacted]

Cc: Blue Mountains City Council
Trish Doyle, MP Blue Mountains

DEVELOPMENT APPLICATION HELIPAD PENRITH LAKES

Submission from **The No Heliport Group Penrith Lakes**.

We object to DA21/15298 in respect of the property known as 100 Old Castlereagh Road, Penrith.

As a group of concerned Penrith residents "**The No Heliport Group Penrith Lakes**" believes that the above is significantly flawed and should therefore be completely rejected.

The land under consideration is zoned as "tourism" which allows for a Helipad, which to us is obviously to allow access to tourists by use of a helicopter to land and take off and enjoy the attractions of the area.

For some 32 years residents of this state have been seeing multiple press releases talking about parkland, lakes for fishing and boating, "A Beach to Rival Bondi" walking and cycling paths etc.

In August this year an extraordinary SEPP was released for changes to the Penrith Lakes Scheme Environmental Plan. These included a list of major construction projects such as an 18 hole golf course and a major film studio. Included at the bottom of that list is a Heliport.

We are not aware of any person who provided comment on that SEPP that has been contacted. Also there has been no public comment about any further confirmation of the SEPP.

About five weeks after that SEPP closed for comment, this DA was released on the new State Planning Portal for a **Helipad** to be built on that same land, for Sydney Helicopters. This application was supported by some 25 documents, mostly dated within that 5 week period.

The dictionary built into the Penrith LEP document is clear about the differentiation between a **Helipad** and **Heliport** mainly that only a heliport may contain a terminal building or facilities for the parking storage or repair of helicopters. This definition seems to be followed throughout NSW and in fact by Sydney Helicopters at their Granville Heliport. Appendix "P" of the application is a document, which we believe at best should be considered as mischievous, trying to disprove this. In a public statement in the Western Weekender (17/12/21) Mr. Mark Harrold wishes to open a coffee shop, which can only be done on a **Heliport**. This would also alter the quoted traffic movement of 10 vehicles per day.

This one issue of an unsuitable zoning should be enough to reject the application.

The Secretary's Environmental Assessment Requirements (SEARs) require extensive consultation with the community (see page 25 of the EIS) but as far as we are aware the applicant has not contacted any groups or individuals. If that is the case then he has not satisfied the SEARs and the application should be rejected. The EIS says both that "extensive pre-lodgment community consultation" has been carried out (page 121) but also that community consultation will only be carried out if the application is approved (page 59). Despite conducting no consultation the applicant has claimed that the community has raised no issues (page 14). We think that this lack of community consultation grounds subsequent concerns about the noise

In that same press release above, Mr. Harold assured everyone that his license allowed him to only fly significantly less operations than the DA allows. This raises significant concerns that if the land is sold on to another operator, further changes will be allowed. What other reason could there be for the variation?

It also concerns the group as to why the **authority** seems intent on “bending” the rules to advantage a commercial operator without offering an alternate commercial location such as Wallgrove. The operator seems so confident that his DA will proceed that he purchased the land earlier in 2021, prior to lodging the DA.

There are several other reasons for objection that have been raised independently yet the operator is already using the land.

We also have other concerns with the manner of how the DA has been carried out, with many questions that have not been adequately addressed as follows:

* Sydney Helicopters actually runs as three companies from its Granville site including Alpine Helicopters and Aerotech Sydney P/L. Aerotech is a land based helicopter maintenance facility which is entirely unsuitable for operation in a Tourism area. We are unsure how these companies operation affects the application. Recently Coastal Helicopters also operated from the same site until they lost access to the Central Coast helipad.

* The acoustic report noise criteria limits are untraceable to where they come from as per the reference used in the DA.

* According to the acoustic report, monitoring occurred on one day, during daytime, on the smallest of the helicopters fleet. They also compare the sound levels to “ambient” at only the busiest time of day which is hardly relevant considering the applied for operating hours.

* Did the sound recordings made take into account Weighted/Tonal measurements?

* The number of helicopter movements and hours of operation in the DA conflict with Sydney Helicopters license.

* There does not appear to be any formal monitoring process of either noise or flightpaths.

We firmly believe that the Authority should not accept that report as relevant in the circumstances.

An independent noise assessment should be carried out, in consultation with the No Heliport Group Penrith Lakes, to determine the noise levels of overflight above the residential areas of Cranebrook and more specifically the Waterside Estate. This study should, as a minimum, compare the disturbing and intrusive “tonality” generated by each of the helicopters in the fleet, along a range of flight paths and varying heights, across the full range of proposed operating hours, amongst other things.

Mr Harold frequently quotes his work for the RFS but we are sure he could do this from anywhere, as he would be fully compensated for his costs. As other respondents have pointed out, under fire emergencies the RFS regularly takes over local (to the fire) playing fields and car parks to move in heavy vehicles for re-supply of large helicopters that would be unable to use this proposed development.

In Summary:

- The operator is in fact applying to operate a Heliport which is not only not allowed in that “Tourism” zoning, but entirely unsuitable in the environment.
- The legal and noise documents within the application are seriously flawed and should be ignored. The operator seems to be under the impression that the DA is a “fait accompli” and is

already operating a “Heliport” on Tourism zoned land that he has purchased. Under who’s authority?

- We can see no evidence of the Secretary's Environmental Assessment Requirements for community consultation being followed.

The No Heliport Group Penrith Lakes group objects to this application in any form.

I object to DA21/15298 in respect of 100 Old Castlereagh Road, Penrith. The grounds on which I object are that (1) the use is prohibited under the *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* and (2) the Secretary's Environmental Assessment Requirements have not been satisfied.

(1) The use is prohibited under the *State Environmental Planning Policy (Penrith Lakes Scheme) 1989*

The Environmental Impact Statement (EIS) states that "the application accommodates the relocation of the long-standing Sydney Helicopters operation".¹ The proposed facility would have the same hours of operation and the same flight numbers as the existing heliport,² and apparently the same number of staff.³ The EIS states that "Sydney Helicopters and its related entity Aerotech Sydney is now seeking to relocate their operation to the site within the Penrith Lakes Scheme Locality."⁴

Acknowledging that heliport is a prohibited use under the *State Environmental Planning Policy (Penrith Lakes Scheme) 1989*, the applicant suggests that by minimizing the initial construction and making use of existing infrastructure the facility would become a helipad rather than a heliport.⁵ The applicant apparently relies on the mistaken view that the difference between a helipad and a heliport lies in the size of the new building works rather than in the nature of the operations conducted there. Irrespective of the building works, the proposal is for the transfer of the applicant's helicopter hire and transport business from its current "modern commercial heliport"⁶ to Penrith Lakes.

A helipad is typically adjacent to a home, hospital or resort and is intended to do no more than facilitate visits to the adjacent property. A heliport, on the other hand accommodates a business that typically provides joy flights, charters, excursions and general transport. The EIS states that the Sydney Helicopters business currently provides:

flood and emergency relief . . . waterbombing and hazard reduction . . . and other services to customers such as transport, aerial photography and survey, joy flights, tourism and other services.⁷

The EIS states that the development will immediately accommodate "most aspects of the Sydney Helicopters operation" and that approval will result in "the re-establishment of the business operation."⁸ It characterizes the application as "seeking operational activities consistent with the existing EPA license held by Sydney Helicopters for their Granville facility."⁹ The activities conducted there and described in the EIS are typical of a heliport and are not conducted from helipads.

The legal opinion at Appendix P accepts that it is the nature of the business that determines whether a facility is a helipad. It asserts that in legal terms the difference between a heliport and a helipad is that

¹ Urbis *Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 10

² Urbis *Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 10

³ Ten staff when the applicant assesses the impact on traffic (Appendix M Page 10) but 50 staff when the applicant assesses the impact on employment (letter Urbis/DPIE dated 25 June 2020). At page 33 the EIS states that there will be 20 staff.

⁴ Urbis *Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 11

⁵ Urbis *Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 17

⁶ www.sydneyhelicopters.com.au/facilities Accessed on 14 December 2021

⁷ Urbis *Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 16

⁸ Urbis *Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 17

⁹ Urbis *Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 32

the former is “open to the public”.¹⁰ Although the applicant has already stated that its “principle purpose . . . is a commercial facility open to the public”¹¹ the legal opinion claims that the facility is actually not open to the public. It arrives at this position by identifying some attributes that the proposed facility does not have and claiming that those particular attributes are what is required for a facility to be considered open to the public. As authority for this view it purports to rely on *Nessdee*¹² however the judgment in that case completely contradicts the applicant’s contentions. In *Nessdee* a proposed facility which was to have none of the identified attributes was found by the Court to be a heliport and not a helipad. The EIS provides a list of seven characteristics that it claims would make the facility a helipad and not a heliport.¹³ The heliport that figures in *Nessdee* has all seven of those characteristics. Thus, the heliport in *Nessdee* has none of the attributes that the applicant claims would be required to make it a heliport and has all of the characteristics that the applicant claims would make it a helipad. The Court explicitly states that such a facility is, in fact and in law, a heliport.¹⁴

Searching for a more favourable definition of the phrase “open to the public”, the legal opinion refers to the judgment of Santow JA in *Ryan*.¹⁵ In the passage relied upon His Honour states that “*the place will be considered to be ‘open to the public’ only if the owner is in fact making it available to the public.*”¹⁶ The applicant, through its website, extends an unqualified invitation to the public. According to the Full Bench of the High Court “*an invitation made to the public generally*” is the very essence of making something available to the public and as a result, the conclusion that the facility is open to the public, and is therefore a heliport, is unavoidable.¹⁷

The legal opinion misrepresents the judgment in *Ryan* by inserting into its interpretation of His Honour’s words the phrase “as of right”. Neither the majority nor the dissenting judgment in *Ryan* uses that or any similar qualification to determine whether a place is open to the public. The applicant may refuse entry to particular individuals, and only persons wishing to fly in helicopters will accept the applicant’s invitation, but the Court of Appeal of the Supreme Court of NSW has established that facilities with those restrictions¹⁸ are still considered to be “open to the public”.¹⁹

Relevantly, in his judgment in *Ryan* Santow JA states:

places may be entirely physically closed to the public. Then it would be wrong to view them as not open to the public if the landowner had by his or her actions effectively signaled that the public were invited to enter²⁰

¹⁰ Relying on the Dictionary found in *Standard Instrument – Principal Local Environmental Plan (2006 EPI 155a)*.

¹¹ Letter Urbis/DPIE 11 May 2020

¹² *Nessdee Pty Ltd v Orange City Council* [2017] NSWLEC 158 (28 November 2017)

¹³ *Urbis Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 35.

¹⁴ *Nessdee Pty Ltd v Orange City Council* [2017] NSWLEC 158 (28 November 2017) Preston CJ describes the operations at paragraphs 101 – 106, having found the proposed facility to be a heliport at paragraph 16.

¹⁵ *Ryan v Nominal Defendant* [2005] NSWCA 59 (14 March 2005)

¹⁶ *Ryan v Nominal Defendant* [2005] NSWCA 59 (14 March 2005) at paragraph 82

¹⁷ *Corporate Affairs Commission (SA) v Australian Central Credit Union* [1985] HCA 64 citing the judgment in *Lee v Evans* [1964] HCA 65

¹⁸ The legal opinion acknowledges that such restrictions are “much the same as any private business.”

¹⁹ *Mercantile Mutual Insurance Co Ltd v W Turner Pty Ltd* (1982) 1 NSWLR 728 at 735

²⁰ *Ryan v Nominal Defendant* [2005] NSWCA 59 (14 March 2005) at paragraph 76

In promoting the business the applicant is signaling to the public that they are invited to enter. The legal opinion provides no authority for the contrary view it advances and the authorities it purports to rely upon arrive at the exact opposite conclusions. It should be emphasized that it is the nature of the facility's operations that is determinative. When the case law is applied to the facts of this application, there is no doubt that the application is for the establishment of a heliport. As that is a prohibited use under the *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* the application must be rejected. There is no discretion in the legislation.

(2) The Secretary's Environmental Assessment Requirements (SEARs) have not been satisfied.

The SEARs require the applicant to consult with the community and also to properly assess the noise generated by the development. The applicant has done neither.

The SEARs require that the applicant consult with "special interest groups, including local Aboriginal land councils and Registered Aboriginal Parties" and with "surrounding landowners and occupiers that are likely to be impacted by the proposal." Table 10 of the EIS lists the "community and stakeholder engagement" undertaken by the applicant. This Table shows that consultation has been limited to government agencies. No special interest groups, no Aboriginal Parties and no surrounding landowners or occupiers have been consulted. Although claiming that "the project has been informed by extensive pre-lodgment consultation and engagement with the community"²¹ the applicant has in fact avoided all contact with the community. The EIS acknowledges this omission, stating that "community engagement will be carried out if the project is approved."²² The applicant's failure to undertake any community consultation means that a key requirement for approval has not been met.

The SEARs require an assessment of operational noise impacts "in accordance with . . . the Noise Policy for Industry (EPA, 2017)." As "helicopter-related activities" is a scheduled activity under the *Protection of the Environment Operations Act 1997*, an assessment using the methodology found in the *Noise Policy for Industry*²³ is also a legal requirement, independent of the SEARs.²⁴ The applicant acknowledges that no such assessment has been made, appearing to claim that the applicant is exempt from the legislation and may ignore the SEARs because the *Policy* sets no unique standards for helicopters.²⁵ The raw data suggests that had the applicant undertaken the required assessment he would have to, at the very least, propose very significant mitigation measures. In fact the applicant has proposed no mitigation measures. The EIS demonstrates a striking failure to abide by the law and means that a key requirement for approval has not been met.

Each of the omissions detailed above is sufficient to require the rejection of the application.

In summary:

²¹ Urbis *Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 121

²² The EIS states that Table 10 describes the "community engagement which will be carried out if the project is approved" but the Table makes no mention of community or community groups.

²³ Environment Protection Authority *Noise Policy for Industry 2017* EPA2016/0524. At section 3.2 the Policy recommends that proponents consult closely with the community in preparing proposals and mitigation measures. In this case there has been no community consultation and the EIS proposes no operational noise mitigation.

²⁴ The applicant states that they have relied upon the discarded *Environmental Noise Control Manual*. The EPA warns "the *Environmental Noise Control Manual* previously published by the EPA does not contain current information on noise management and should not be used or relied upon."

²⁵ Urbis *Proposed Helipad, Environmental Impact Statement* 25 October 2021 Page 64

- The documentation makes clear that the proposed facility will be open to the public.
 - Legal authority makes clear that, as a result, the facility is a heliport.
 - As heliport is a prohibited use the application must be rejected.
- If it is decided to ignore the law, the application still must be rejected because the SEARs have not been satisfied.
- If the failure to satisfy the SEARs is also ignored and it is decided to approve the application, then the hours of operation and flight numbers must be heavily restricted, consistent with the operations of a helipad.²⁶ In order to not be “open to the public” the applicant must cease marketing itself to the public²⁷ and must cease providing all of the services described in the EIS, including private tours, charters, scenic flights, lunch destination flights, overnight experiences, joy flights and photography flights. These prohibitions must be a condition of consent.

10 January 2022

I observe that the documents provided by the applicant suggest a degree of contempt for the SEARs, the legislation and the community. Although the SEARs require extensive community consultation the applicant has contacted no community organizations or individuals, stating that they will only be consulted if the application is approved. The EIS states that it details the community consultation that will take place if the application is approved, but it does not even do that.²⁸ Having conducted no community consultation the applicant states that “no issues were raised . . . during the pre-lodgment consultation with community . . .”.²⁹

The applicant has not turned its mind to the impact on the community at all. This dismissive attitude is demonstrated by the acoustic assessment. The EIS uses a methodology radically different to that required by the SEARs and the legislation. The vibration assessment, consisting of a single sentence, is evocative of the attitude. Given the applicant’s willingness to manipulate the methodology it is perhaps not unreasonable to speculate as to the reliability of the results. A casually prepared EIS with many false, misleading or contradictory statements does not engender trust in the technical details it contains.

The site selection “process” demonstrates a troublingly casual approach. The EIS states that “an extensive review over many months” was conducted before selecting the Penrith site. The zoning in five of the six sites “considered” does not allow heliports, so consideration of those sites should not have taken more than a few minutes. The sixth site (Bankstown Airport) was rejected because it would cost the applicant more.³⁰

The attitude towards the DA requirements evidenced by the EIS suggests that the applicant feels confident as to the outcome. It is as though the applicant expects officials to not even read the documentation fully let alone conduct a rigorous assessment. It is as though he has been assured that his conclusions will be accepted and passed on to the Minister with a favourable recommendation. It is not difficult to imagine the applicant being asked to provide words for the Ministerial Submission. The fact that the applicant has been allowed to undertake building works and to commence operations in advance of the decision suggests that he may have reason for confidence as to the outcome.

²⁶ In *Nessdee* the Court notes at paragraph 30 that the existing helipad is permitted 7 flights per week.

²⁷ The legal opinion concedes this point, stating that helipads involve no invitation “to the public at large”.

²⁸ *Urbis Proposed Helipad, Environmental Impact Statement 25 October 2021* Page 59

²⁹ *Urbis Proposed Helipad, Environmental Impact Statement 25 October 2021* Page 14

³⁰ *Urbis Proposed Helipad, Environmental Impact Statement 25 October 2021* Pages 18 - 19

Geoff Brown
20 – 22 Forest Glen Drive
CRANEBROOK, NSW, 2749

Thursday, 13 January 2022

RE: Helipad Penrith Lakes DA 21/15298

To whom it may concern,

In the mid 2000's I was part of the Penrith Lakes Community Advisory Group which was established to guide the future use of the Penrith Lakes. At that time the local papers ran front page stories that the Penrith Lakes, once mining finished, would be transformed into a recreation area for public use. The local State member of the time, Karyn Paluzzano, who publicly hailed the lakes would become a world class public recreation facility, was also part of the Community Advisory Group.

The public was convinced the Lakes would be for recreation only. Still to this day there is overwhelming public support for recreation to be the main use of the Penrith Lakes. There is little to no support for urban or industrial development or for a heliport/helipad.

Helipad

The helipad DA is opposed. Let's be honest this DA is for a heliport not a helipad. It's a con that the Planning Dept. appears willing to entertain. A helipad is a place for helicopters to take off and land. They are off limits to the public. Yet the proponent's website is largely about tourism, flying tourists around out of his heliports. How can this DA therefore be about tourism when the DA says the development of a helipad will be off limits to his tourist customers? The EIS is full of contradictions about the helipad being necessary for creating local tourism. Segments of it argue it's a helipad that is off limits to the public and others talk about delivering tourism and jobs to the Penrith area. Which only a heliport could possibly do. The proponent went public in the Western Weekender and said that this DA is necessary for him to deliver his emergency services contracts, that joy flights (tourism] is a small part of his business. It's complete nonsense.

The helipad is incompatible with the future use of the Penrith Lakes as a passive public recreation area. It creates no new jobs will subject local residents at Waterside and Cranebrook and attendees at community events at the regatta centre to loud and persistent aircraft noise. It is not a vital location for firefighting or emergency services. That can be done from any location around Sydney. Any new heliport in western Sydney should be located within the Badgerys Creek airport aerotropolis. This will consolidate aircraft movements and aircraft noise in the one area.

Jobs

There are no employment benefits from this proposal. Sydney Helicopters has existing employees that will simply relocate to the Lakes site from Granville. The only jobs created will be a small number of temporary construction jobs. So it doesn't meet any of the Director Generals criteria for jobs and economic growth.

Noise

The nearby residential communities of Waterside and Cranebrook will be impacted by noise generated by a helicopter airport that could run 24/7.

Several people with expertise and knowledge about acoustic and noise impacts have reviewed the Sydney Helicopters Acoustic report and labelled it as flawed.

There needs to be a thorough and independent study of noise impacts on local residents, businesses and the environment before this DA is determined. Any licence issued by the EPA to Sydney Helicopters needs to have strict conditions attached to it. The licence needs to clearly address:

- The hours of operation need to be reduced and there should be no flying outside of normal business hours.
- Take offs, landings and flight corridors need to be from the west to minimise noise impacts to local residents
- A noise management plan needs to be in place and provided to local residents with provisions for them to make complaints to the proponent and authorities responsible for helicopter movements and noise impacts.

The noise report prepared by Acoustic Logic Consultancy appears flawed. It omits the real impact of the helicopter noise. It also does not appear to follow the EPA's guidelines and policy. Of concern are:

- The Lmax noise limits are not obtained from where Acoustic Logic Consultancy say they got them from, so it is unclear if these maximum noise limits are valid.
- Noise measurements were not obtained at the nearest residential property or at Waterside.
- No night time noise study was conducted to assess sleep disturbance as required under NSW Noise Policy for Industry 2017 Section 2.5.
- Noise measurements were not adjusted upwards by up to 10 db for the "tonality" of helicopter noise as per NSW Noise Policy for Industry 2017, NSW Noise Guide for Local Government Noise Policy (Part:5), and USACERL Technical Report N-91/13 Nov 1991. Such an adjustment would see Lmax levels exceeded at the proposed golf course and at the nearest residence
- According to the acoustic report, monitoring occurred on one day, during daytime, on the smallest of the helicopters fleet. They also compare the sound levels to "ambient" at only the busiest time of day which is hardly relevant considering the applied for operating hours.
- Did the sound recordings made take into account Weighted/Tonal measurements?

The adjacent international regatta centre is where Penrith hosts its major community events. Having a potential 24/7 airport for helicopters right next door will severely impact the experience of the thousands of people that attend these events. It will be painful and upsetting and this will translate into opposition that will need to be dealt with at a political level.

Sydney Helicopters currently operate out of a <1 hectare site at Granville. They are proposing an 11.26 ha heliport. That means they have ten times the area to expand their operations. That would result in a much larger noise impact to local residents and regatta centre users.

The heliport noise will also impact the future use of the rest of the Penrith Lakes as a passive recreation destination. It will impact any environmental values that future ecological restoration of the Lakes recreation area may achieve. Many people want the Lakes turned back into bushland.

The Lakes location is not the right location for a noisy heliport. Any new aircraft facilities should be consolidated within the proposed Badgerys Creek Airport site.

Emergency services and tourism

Sydney Helicopters is saying that the location of the heliport at Penrith Lakes is crucial to the Rural Fire Service fighting fires. They have a support letter from Rob Rogers of the RFS saying the Lakes site is ideally located for firefighting. This is ridiculous and unscientific. It implies bushfire only happens locally to the Lakes site.

Sydney Helicopters could adequately assist the RFS with firefighting from any heliport location in the Sydney area. Just because Rob Rogers of the RFS writes a supporting letter for his mate at Sydney Helicopters doesn't mean DPIE should impose a noisy and unnecessary heliport on the residents of Penrith. Such a letter should be referred to ICAC for perusal.

Locating a heliport at Penrith Lakes will not result in a tourism or economic boom for Penrith. This type of tourism is in the niche category available only to a select few rich people. The biggest tourism attraction for the Penrith Lakes would be a world class recreational area that didn't have noisy helicopters flying over it all hours of the day.

I doubt that there will be a symbiotic economic and employment relationship between the heliport and the proposed movie studio. The movie studio will likely have its own helipad.

Conclusion

This DA is not in the public interest and should be refused. It is incompatible with the future use of the Penrith Lakes for public recreation and nature conservation, uses that thousands of local residents support and expect to be delivered by the NSW Government. There are no employment or economic benefits for local residents. It only benefits Sydney Helicopters. There will be unacceptable noise impacts as a result of the development that will impact residents for many kilometres. There will be complaints and political angst against the NSW Government.

Yours truly,



Geoff Brown