



Helipad at Dyke Point, Carrington

Development Application Assessment DA21/17874

April 2022



Published by the NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Helipad at Dyke Point, Carrington

Cover image: Port of Newcastle (Source: Port of Newcastle)

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Glossary

| Abbreviation | Definition |
|----------------------------|---|
| Applicant | Newcastle Port Corporation |
| CASA | Civil Aviation Safety Authority |
| Council | City of Newcastle Council |
| Department | Department of Planning and Environment |
| Development Consent | The development consent (see Appendix A) for the use of the existing helipad at Dyke Point for marine pilot transfers by twin engine helicopters |
| EPA | NSW Environment Protection Authority |
| EP&A Act | <i>Environmental Planning and Assessment Act 1979</i> |
| EP&A Regulation | Environmental Planning and Assessment Regulation 2020 |
| EPI | Environmental Planning Instrument |
| EPL | Environment Protection Licence |
| ESD | Ecologically Sustainable Development |
| LEP | Local Environmental Plan |
| Minister | Minister for Planning |
| Planning Secretary | Secretary of the Department |
| RTS | Response to Submissions titled <i>Helipad at Dyke Point, Carrington: Development Application (DA-21-17874) Response to Submissions Report</i> prepared by the Applicant and dated February 2022 |
| SEE | Statement of Environmental Effects titled <i>Development Application – Change to helicopter type permitted to be used at Dyke Point Helipad</i> prepared by ADW Johnson Pty Ltd and dated November 2021 |
| SEPP | State Environmental Planning Policy |
| Three Ports SEPP | <i>State Environmental Planning Policy (Three Ports) 2013</i> |

Executive Summary

This report details the Department of Planning and Environment's (the Department) assessment of a development application (DA21/17874) relating to a helipad in the Port of Newcastle lease area within the Newcastle local government area. The Applicant, Newcastle Port Corporation (the Applicant), proposes to use the existing helipad for marine pilot transfer operations, to support the operations of the Port of Newcastle, with twin engine helicopters (the proposal).

The Applicant has advised that the purpose of the proposal is to comply with amended Civil Aviation Safety Authority regulations, to cease using single engine helicopters on safety grounds. The proposal does not seek to change the existing total number of helicopter movements in any 24-hour period; maximum number of helicopter movements (take-off and landing); or the existing approved helicopter flight paths.

The site is located north of the Honeysuckle foreshore area of the Newcastle central business district, and west of the residential suburb of Stockton. The site comprises 4,459 square metres of land which is zoned SP1 Special Activities under *State Environmental Planning Policy (Three Ports) 2013* (Three Ports SEPP).

The Port of Newcastle is the largest port on the eastern seaboard of Australia with over 2,200 trade vessels annually and is a significant export location for bulk commodities such as coal, ore and grain. Up to 164 million tonnes of cargo pass through the port annually.

Statutory Context

The Minister for Planning is the consent authority for the development under clause 8(a) of the Three Ports SEPP as the development is located on land within the Port of Newcastle Lease Area. This development application will facilitate the modification of City of Newcastle Council (Council) development consent DA98/1262 under section 4.17(1)(b) of *Environmental Planning and Assessment Act 1979* (EP&A Act) and clause 97 of Environmental Planning and Assessment Regulation 2020 (EP&A Regulation).

Engagement

The Department exhibited the development application and supporting documents from Friday 3 December 2021 until Friday 24 December 2021. During the exhibition period, the Department received four submissions from the public (comprising three letters of support and one letter of objection), a submission from the Council, and government agency advice from the NSW Environment Protection Authority (EPA) who sought clarification on several issues including noise.

The Department requested the Applicant address the matters raised by Council, the EPA, the objecting member of the community in a Response to Submissions report.

Assessment

The Department's assessment of the development has fully considered all relevant matters under section 4.15 of the EP&A Act, the objects of the EP&A Act and the principles of ecologically sustainable development. The Department has identified the key issue for assessment as operational noise.

Operational Noise

Operational noise impact to residents and other sensitive land uses are expected, particularly near and along the existing approved flight paths. The Department has recommended conditions to manage the impact of operational noise including noise monitoring and regular compliance reporting. To improve communication and facilitate meaningful engagement with the community, the Department has recommended conditions for a community communication strategy and the establishment of a community consultative committee. Implementation of a review has also been recommended to ensure that noise levels generated comply with specific noise limits once operation commences.

Summary

The Department's assessment concludes the impacts of the proposal can be mitigated and / or managed to ensure an acceptable level of environmental performance, subject to the recommended conditions of consent. Consequently, the Department considers the development is in the public interest and is approvable, subject to conditions.

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1 Introduction

1.1 The Department's Assessment

This report details the Department of Planning and Environment's (the Department) assessment of development application DA21/17874 (the development application), lodged by the Port of Authority of NSW (the Applicant). The Applicant seeks approval for the use of twin engine helicopters for marine pilot transfer (MPT) operations, to support the operations of the Port of Newcastle (the proposal).

The subject helipad is located on land legally described as Lot 110 DP 1191911, 106 Bourke Street, Carrington (the site), in the Port of Newcastle Lease Area, which is located within the Newcastle local government area (LGA) (see Error! Reference source not found.).

The Applicant has advised that the purpose of the proposal is to comply with amended Civil Aviation Safety Authority (CASA) regulations, which requires the replacement of single engine helicopters with double-engine types, on safety grounds.

The Department's assessment has considered documentation submitted by the Applicant, including the Statement of Environmental Effects (SEE), Response to Submissions report (RTS) and advice from the NSW Environment Protection Authority (EPA) and City of Newcastle Council (Council). The Department's assessment also considered the legislation and environmental planning instruments (EPIs) relevant to the site and the development.

This report describes the development, surrounding environment, relevant strategic and statutory planning provisions and the issues raised by Council, EPA and the Department. The report evaluates the key issues associated with the development and provides recommendations for managing any impacts.

1.2 Development Background

The port in Newcastle Harbour is the largest export port on the eastern seaboard of Australia, with over 2,200 trade vessels visiting the port every year and is a significant export location for bulk commodities such as coal, ore and grain, with up to 164 million tonnes of cargo passing through the port annually.

MPT services by single engine helicopter, in support of the Port of Newcastle, currently operate from a helipad facility at the site.

Development Consent DA98/1262 (the Council development consent) was granted by City of Newcastle Council (Council) on 3 May 1999 for the subject helipad facilities at Dyke Point, Carrington. The Council development consent approved MPT operations from the helipad by single engine Hughes 500E helicopters. Two nominated flight paths are included in the consent – the main approved flight path, identified as Flight Path B, which runs north of the helipad; and a secondary, alternate flight path used when Flight Path B cannot be used due to weather conditions, identified as Flight Path A. This flight path runs southeast of the helipad before heading east along the main channel of Newcastle Harbour.

Condition 4.4 of the Council development consent restricts the use of the helipad to “the nominated aircraft type (Hughes 500E)” single engine helicopter type.

Condition 4.5 of the Council development consent details the approval process for helicopter models other than the Hughes 500E. Certification of the new aircraft type by a suitably qualified acoustic consultant must be submitted to Council. The certificate must demonstrate that such aircraft can meet the noise limits specified in the Council development consent while operating within the designed flight path.

Condition 4.10 of the Council development consent has the following noise limits:

| Location | Lmax 24 hours | Leq 7.00am to 10.00pm | Leq 1.00 [sic] pm to 7.00am |
|---|---------------|--------------------------|-----------------------------------|
| At any residential or commercial premises | 74 dB(A) | 60.5 dB(A) | 56 dB(A) |

Existing MPT services involve specialist marine pilots either boarding an incoming commercial vessel (approximately three to eight nautical miles off the Newcastle coast) and navigating that vessel to its berth in the port, or conversely navigating a vessel from its berth to a release point (approximately one to two nautical miles offshore). At this point the marine pilot is either returned to base or transferred to another incoming vessel.

The MPT services are currently utilised by approximately 95 per cent of coal vessels and 35 per cent of general cargo vessels, which equates to approximately 73 per cent of all transfers of marine pilots between the port and offshore vessels and between vessels offshore.

1.3 Site Description

The site is located at 106 Bourke Street, Carrington, and is approximately 4,459 square metres in size.

The site is located to the north of the Honeysuckle foreshore area of the Newcastle central business district, and to the west of the residential suburb of Stockton. The site is zoned SP1 Special Activities under the Three Ports SEPP and is located within the Port of Newcastle Lease Area as identified on the Lease Area Map in the Three Ports SEPP.

The irregular shaped site is generally level. Due to the historical disturbance of the site there are no notable natural features or vegetation present on the site.

1.4 Surrounding Land Uses

The site is bound to the west, south and north by port operational land and berths tug base and storage facilities. To the east the site is bound by the Hunter River.



Figure 1 | Local context map (Source: SEE)



Figure 2 | Aerial photo of site (Source: SEE)

2 Proposed Development

2.1 Description of the Development

The proposal seeks to obtain approval for the use of twin engine helicopters for MPT operations from the existing helipad, in accordance with changes to the CASA regulations. The proposal is described in full in the SEE and RTS report included in **Appendix A** and **Appendix F**.

Further, the application seeks to modify certain conditions in the Council development consent, being:

- deletion of condition 4.4 relating to helicopter types
- deletion of condition 4.5 relating to approval of new helicopter types
- changes to condition 4.10 relating to noise limits as follows:

| Location | L _{AEmax} 7.00am to 10.00pm | L _{AEmax} 10.00pm to 7.00am | L _{Aeq} 7.00am to 10.00pm | L _{Aeq} 10.00pm to 7.00am |
|-----------------------------------|--|---|--|--|
| At any residential premises | 82 dB(A) | 77 dB(A) | 60.5 dB(A) | 56 dB(A) |
| At any commercial premises | 85 dB(A) | 85 dB(A) | 65 dB(A) | 65 dB(A) |

The application also seeks to obtain clarification that the Council development consent permits aircraft maintenance activities that are regularly and routinely carried out to ensure the safe and continued operation of the helicopter.

The application does not seek to change the following operational details approved under the Council development consent:

- maximum number of helicopter movements (take-off and landings) of 40 in any 24-hour period
- maximum number of helicopter movements (take-off and landings) of 16 between 10.00pm and 7.00am the following day
- helipad operating hours of 24 hours per day, 365 days per year
- existing flight paths.

2.2 Applicant's Need and Justification for the Development

The CASA Civil Aviation Safety Regulations (CASA regulations) are aviation regulations for helicopters in Australia. The CASA regulations have been updated, requiring MPT services via helicopters to use twin engine helicopters instead of single engine helicopters. The changes to the CASA regulations are designed to improve operational safety.

The Applicant proposes to transition to a twin engine helicopter type in response to the change to CASA regulations. The CASA regulation changes limit the type of helicopters able to perform MPT, effectively prohibiting the use of existing Hughes 500E helicopters. To ensure that ongoing operations are compliant with CASA regulations, MPT services from the helipad will switch to twin engine helicopters.



Figure 3 | Site Layout (Source: SEE)

3 Strategic context

3.1 Hunter Regional Strategy 2036

The Hunter Regional Plan 2036 (HRP) is a 20-year blueprint for the future of the Hunter region by providing an overarching framework to guide future detailed land use plans, development proposals and funding decisions.

The HRP identifies the Port of Newcastle as being a vital hub for exporting agricultural produce and coal to external markets. The HRP expresses the importance of improving connectivity between freight routes and the Port of Newcastle, which in turn will improve freight movements to global markets and drive regional economic growth. The HRP identifies a need for the Port of Newcastle's facilities and services to remain responsive to changes in markets and demands.

Direction 2 acknowledges that the Port of Newcastle has the capacity to generate associated industries with subsequent employment benefits and promotes the diversification of operations at the Port of Newcastle and enhanced connectivity.

MPT services are critical to the safe and efficient operation of the Port of Newcastle and its state-significant infrastructure, which is critical to both the NSW and National economies and to the enhancement of connections to the Asia-Pacific.

The Department has considered the strategic context of the development against the objectives of the HRP and is satisfied that the proposal is consistent with the relevant directions and actions within the HRP.

3.2 Greater Hunter Metropolitan Plan 2036

The Greater Hunter Metropolitan Plan 2036 (GHMP) is intended to support the overarching strategic planning framework established by the HRP.

One of the key outcomes of the GHMP is the creation of a workforce which is skilled and ready for the new economy. This outcome is to be supported by increasing domestic and global trade capabilities at the Port of Newcastle.

The Department has considered the strategic context of the development against the objectives of the GHMP and is satisfied that the proposal is consistent with the intended outcomes of the GHMP. The development provides a particular focus on supporting potential freight-oriented operations without constraining existing and future land uses within the Port of Newcastle.

4 Statutory Context

4.1 Part 4 Development

The development application seeks consent for ‘development’ (as defined under section 1.5 of the EP&A Act). The subject helipad is located in the Port of Newcastle Lease Area, as identified under the Three Ports SEPP, and the proposal:

- is permissible with development consent under the Three Ports SEPP
- has a capital investment value (CIV) of less than \$100 million
- is not designated development under Schedule 3 of the EP&A Regulation.

Accordingly, the proposal does not meet the criteria for State significant development as outlined in clause 27 of the Three Ports SEPP and is subsequently classified as a Part 4 development under the EP&A Act.

Designated development

The application does not trigger “designated development” under Schedule 3 of the EP&A Regulation as the existing helipad is an “aircraft facility” approved under the Council development consent. The proposal involves alterations to an existing approved development only. As detailed in Section 6 of this report, it will not result in a significant increase in the environmental impacts of the total development. As such, the proposal is not considered to be designated development.

Integrated development

In *Muscat Developments Pty Ltd trading as Muscat Developments v Wollondilly Shire Council* [2021] NSWLEC 1758 the Court confirmed that it is a matter for the applicant to decide whether its DA is assessed as integrated development. The Applicant has not nominated the application to be integrated development. Accordingly, the application has not been considered integrated development under section 4.46 of the EP&A Act.

Modification of development consent DA98/1262

The application will facilitate the modification of Council development consent DA98/1262 under section 4.17(1)(b) of the EPA&A Act and section 97 of the EP&A Regulation. The modification will update DA98/1262 to remove inconsistencies between the two development consents.

4.2 Consent authority

Under clause 8 of the Three Ports SEPP, the Minister for Planning is the consent authority for development on land within the Port of Newcastle Lease Area or land that is unzoned under the Three Ports SEPP. As the site is located in the Port of Newcastle Lease Area, the Minister for Planning is the consent authority for the proposal.

4.3 Delegated authority

On 26 April 2021, the Minister for Planning delegated responsibility for determination of Part 4 development applications under section 4.16 of the EP&A Act to Directors who report directly to an Executive Director (who in turn reports directly to the Group Deputy Secretary Planning and Assessment) where:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are less than 15 public submissions in the nature of objection.

The City of Newcastle Council (Council) did not object to the proposal, no reportable political donation disclosure was made, and there were less than 15 public submissions in the nature of objection. Accordingly, the development application can be determined by the Director, Transport Assessments, under delegation.

4.4 Permissibility

The site is zoned SP1 Special Activities under the Three Ports SEPP. The proposal involves the use of the existing helipad to facilitate marine pilot transfers in support of activities undertaken at the Port of Newcastle. The proposed use is best characterised as helipad and / or a use associated with “port facilities”.

Under the Three Ports SEPP, **port facilities** means *facilities on land in the Lease Area used in connection with the carrying of freight and persons by water from one port to another for business or commercial purposes*. Further, helipads is a use not permitted without consent or prohibited in the SP1 Special Activities zone.

Accordingly, the development is permissible with consent in the SP1 Special Activities zone.

The development meets the objectives of the subject zone in that it seeks:

- to facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land
- to maximise the use of waterfront areas to accommodate port facilities and industrial, maritime industrial, freight and bulk storage premises that benefit from being located close to port facilities
- to enable the efficient movement and operation of commercial shipping and to provide for the efficient handling and distribution of freight from port areas through the provision of transport infrastructure
- to provide for port related facilities and development that support the operations of the Port of Newcastle
- to encourage employment opportunities.

4.5 Exhibition and Notification

In accordance with section 2.22 and Schedule 1 to the EP&A Act, the development application and any accompanying information of a development application (which is not designated development,

nominated integrated development, threatened species development or State significant development) are required to be publicly exhibited for at least 14 days.

The application was on public exhibition from Friday 3 December 2021 until Friday 24 December 2021.

4.6 Consideration under section 4.15 of the EP&A Act

Under section 4.15 of the EP&A Act, in determining a development application, a consent authority is required to take a number of matters into consideration in relation to the proposed development. The Department has given due consideration to the matters prescribed by section 4.15.

The Department's detailed consideration of the proposed development against the provisions of section 4.15 of the EP&A Act is contained in **Section 6** and within **Appendix B** of this report.

4.7 Mandatory Matters for Consideration

Under section 4.15 of the EP&A Act, the consent authority, when determining a development application, must take into consideration the provisions of any environmental planning instrument (EPI), draft EPI (that has been subject to public consultation and notified under the EP&A Act) and development control plan(s) (DCP) that apply to the proposal.

The Department has considered the development against the relevant provisions of EPIs including:

- *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP)
- *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP)
- *State Environmental Planning Policy (Three Ports) 2013* (Three Ports SEPP)
- *State Environmental Planning Policy (Coastal Management) 2018* (Coastal Management SEPP)
- *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development* (SEPP 33)
- *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55)
- draft *State Environmental Planning Policy (Remediation of Land)* (Draft Remediation SEPP).

The Newcastle Local Environmental Plan 2021 and Newcastle Development Control Plan 2012 do not apply to the site under the Three Ports SEPP.

Detailed consideration of the provisions of all EPIs that apply to the development is provided in **Appendix C** of this report. The Department is satisfied the development complies with the relevant provisions of these EPIs.

4.8 Objects of the EP&A Act

In determining the application, the consent authority should consider whether the development is consistent with the relevant objects of the EP&A Act. These objects are detailed in section 1.3 of the EP&A Act.

The Department has fully considered the relevant objects of the EP&A Act, including the encouragement of Ecologically Sustainable Development (ESD), in its assessment of the application (see **Table 1**).

Table 1 | Considerations Against the Objects of the EP&A Act

| Object | Consideration |
|--|--|
| (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources, | The development will promote: <ul style="list-style-type: none"> the proper management and development of suitably identified land improved social and economic welfare of the State through the maintenance of operational jobs at the helipad a suitable environment through appropriate environmental management during operation. |
| (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment, | The Department has considered ecologically sustainable development in its assessment of the development (see Section 4.9). The Department is satisfied the development can be carried out in a manner that is consistent with the principles of ESD. |
| (c) to promote the orderly and economic use and development of land, | The proposal will promote the economic use of land and be consistent with the industrial character of the land which is compatible with the overall character of the locality as a working port facility. |
| (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities, | The site has been subject to historical disturbance along with the broader locality with no existing vegetation located within the site. No biodiversity values will be impacted due to the proposal. |
| (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage), | No impacts to built and cultural heritage have been identified due to the historical disturbance of the site and locality. |
| (g) to promote good design and amenity of the built environment, | The Department considers that the development promotes acceptable design and amenity in a locality that has been historically and currently dominated by heavy industrial and general industrial land uses. |
| (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, | The Department has recommended a number of conditions of consent to ensure maintenance of the development is undertaken in accordance with the relevant legislation, guidelines, policies and procedures. |
| (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, | The Department referred the development to relevant government agencies and Council during the exhibition period and invited them to comment. The Department has given due consideration to their advice. |
| (j) to provide increased opportunity for community participation in environmental planning and assessment. | The Department publicly exhibited the development application as outlined in Section 4.5 . |

4.9 Ecologically Sustainable Development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) the precautionary principle*
- (b) inter-generational equity*
- (c) conservation of biological diversity and ecological integrity*
- (d) improved valuation, pricing and incentive mechanisms.*

The potential environmental impacts of the proposal have been assessed and, where potential impacts have been identified, mitigation measures and environmental safeguards have been recommended.

Given that the development application is confined to the use of a helipad, no increase in maximum number of flights and no change in the flight paths are proposed, and no construction works are proposed, the proposal is not anticipated to have adverse impacts on native flora or fauna, including threatened species, populations and ecological communities, and their habitats. As such, the Department considers that the proposed development would not adversely impact on the environment and is consistent with the objectives of the EP&A Act and the principles of ESD.

5 Engagement

5.1 Consultation by the Department

The Department undertook consultation with relevant local and State authorities as well as affected landowners during the exhibition of the development application and SEE and throughout the assessment of the development. These consultation activities included:

- making the application and SEE publicly available from Friday 3 December 2021 until Friday 24 December 2021 on the NSW Planning Portal
- notifying selected landowners in the vicinity of the flight paths about the public exhibition by letter
- notifying selected community groups around Newcastle Harbour about the public exhibition
- notifying and inviting comment from relevant State government authorities and Council.

5.2 Submissions and Agency Advice

Community Submissions

During the exhibition period, the Department received a total of four submissions on the proposal from the community. The submissions comprised the following:

- one community submission objected to the potential increase in noise; questioned why the proposal was not considered designated development; and challenged the noise modelling
- three letters of support from Port of Newcastle Operations Pty Ltd, Newcastle Coal Infrastructure Group and Port Waratah Coal Services.

Council Submission

City of Newcastle Council provided a submission. The submission raised the following:

- it is more appropriate to not amend the existing Council development consent conditions for the maximum acceptable noise impacts as proposed and instead amend the existing conditions to only allow for the minor additional noise generated by the proposed twin engine helicopters
- potential noise impacts on future residential receivers in areas of North Stockton and Fort Wallace should be considered given these areas are planned for residential growth under existing strategy and development control plan
- maintenance works were not included in the original acoustic tests provided in support of DA98/1262; it is recommended that, before the Minister considers including maintenance activities in the development consent, acoustic assessment should be undertaken to demonstrate that the proposed maintenance activities will not cause a significant increase in environmental impacts.

A link to the full copy of the submissions is provided in **Appendix E**.

Agency Advice

The Department requested advice from the EPA, the Commonwealth Department of Defence (Defence), Airservices Australia, Westpac Rescue Helicopter Service (WRHS), Newcastle Airport and the Civil Aviation Safety Authority (CASA).

EPA advised that the agency was responsible for regulating noise from ground-based activities and identified the pathway required to modify the existing environment protection licence. The EPA provided the Department advice on the assessment of aircraft noise and recommended the Department appoint an independent noise specialist.

CASA confirmed that the agency does not regulate helicopter landing sites or aircraft noise.

Airservices Australia requested that the development application be forwarded to Defence, WRHS and Newcastle Airport for their review.

Defence identified no impact to Defence.

No response was provided by WRHS or Newcastle Airport.

A link to the full copy of the agency advice is provided in **Appendix E**.

5.3 Response to Submissions

On 7 February 2021, the Applicant provided a Response to Submissions report (RTS) on the issues raised in the community submission objecting to the proposal, and matters raised by EPA and Council (see **Appendix F**).

The RTS was provided to EPA to consider whether it adequately addressed the issues raised by them.

The Department has considered the issues raised in the submissions and advice from the government agencies and the RTS in its assessment of the development application.

6 Assessment

The Department has considered the relevant matters for consideration under section 4.15 of the EP&A Act, the SEE, the issues raised in the submissions and agency advice, and the RTS in its assessment of the development.

The Department considers the key assessment issue to be operational noise and, more specifically, potential noise from the use of the new twin engine helicopters travelling along existing flight paths approved under Council development consent on residential receivers along and adjacent to such flight paths.

6.1 Operational noise

The development will see the replacement of single engine helicopters with twin engine ones for MPT services, but no increase in number of approved helicopter movements, no change to approved helipad operating hours nor changes in the approved flight paths.

However, the development will likely result in increased operational noise impacts to sensitive receivers along the existing helicopter flight paths, particularly residential uses located in Stockton and Honeysuckle. Further, there may be potential changes to noise impacts associated with the routine maintenance of the twin engine helicopters at the helipad.

Submissions and Agency Advice

One community submission was received. This submission objected to the potential increase in noise and was critical of the suitability and accuracy of the noise modelling and assessment in the SEE.

City of Newcastle Council raised the following:

- the new noise limits proposed by the Applicant are not appropriate; the Department should consider modifying the existing noise limits in the Council development consent only to the extent necessary to allow for twin engine helicopters to operate
- potential noise impacts on future residential receivers in areas of North Stockton and Fort Wallace should be considered
- for maintenance activities, an acoustic assessment should be conducted to confirm noise impacts.

EPA advised that they were responsible for regulating noise from ground-based activities. The EPA recommended the Department appoint an independent noise specialist to assist in the review of the SEE and accompanying technical paper.

Consideration

The noise modelling used to assess operational noise is considered acceptable

The Department and its independent acoustic specialist have reviewed the noise modelling undertaken as part of the application and confirm that it is acceptable for the purposes of assessing operational noise, including inflight helicopter noise, for this application.

There are no standard noise criteria for helicopters in flight

The Department recognises that there are no clear guidelines currently for noise criteria for helicopters in flight. The Australian Standard AS 2363-1990 and the State Pollution Control Commission Guidelines in the EPA's *Environmental Noise Control Manual* have been retired and no regulatory criteria or guidance have replaced them.

The Department acknowledges that the application does not propose a new helipad and therefore the application of operational aircraft noise criteria set for new aircraft facilities is not appropriate for the assessment of this application. As a result, the Department is required to formulate noise criteria based on what is reasonable under the circumstances. As the application relates to a change in noise exposure rather than a new noise source, the Department and its acoustic advisor consider it appropriate to assess (i) the development's compliance with the noise limits set out in the Council's development consent, and (ii) the change in noise level between the existing circumstances with the proposed development, to determine whether the development is acceptable from an operational noise perspective.

The development complies with the existing noise limits condition of the Council development consent, except for the L_{AFmax} criterion

According to the Applicant's noise modelling, the development is predicted to comply with the noise limits set in condition 4.10 of the Council development consent at all representative locations with the exception of the L_{AFmax} criterion of 74 dBA at the Crowne Plaza representative location in Honeysuckle. The operation of new twin engine helicopters will result in no more than 2 dBA exceedances at this location during night-time procedures taking off from Flight Path B and both daytime and night-time procedures taking off using Flight Path A. Under the circumstances, the Department and its acoustic advisor consider that the proposed increase in L_{AFmax} noise of no more than 2 dB will not result in significant noise impacts on affected sensitive receivers and is acceptable.

Noise limits can be set based upon existing noise limits condition in the Council development consent and the acceptable minor increase in L_{AFmax} noise

The Department has recommended the setting of noise limits broadly consistent with the limits set out in the Council development consent. However, with the predicted change in L_{AFmax} noise (which the Department considers is acceptable – see above), the Department recommends that the L_{AFmax} noise limit be set at 77 dBA.

To ensure the effective management of the development and the restriction of operational noise to a compliant level, the Department has also recommended the following conditions:

- notification to the Department of any incident or any non-compliances in relation to the development
- regular compliance reporting
- preparation of a helipad operations management plan for the development, endorsed by an independent and appropriately qualified aviation expert
- register of operations
- noise monitoring to be conducted at locations representative of the most-affected noise-sensitive receivers to ensure that predicted noise levels are achieved in practice.

Other noise limits proposed by the Applicant are not supported under the circumstances

The Applicant has sought to set noise limits for the proposed twin engine helicopters as set out in **Section 2.1** of this report. With the exception of the L_{AFmax} noise limit considered above, the Applicant has failed to provide sufficient justification to the Department for the other substantial increases in noise limits. Accordingly, the Department considers that the noise limits proposed by the Applicant are unreasonable under the circumstances and are not supported.

Existing means of community communication must improve, and can be facilitated by conditions

Only one objection was received as a result of the application's exhibition. Despite the lack of objections, several residents, with apartments located along the shoreline in Honeysuckle, contacted the Department outside of the exhibition period with concerns with the operations compliance with the Council development consent, and providing advice that residents have made numerous complaints to the Port of Newcastle and Council.

The Department recognises the importance of having effective communication between the Applicant, Council and the community. To ensure that appropriate mechanisms to facilitate community engagement and interaction are available, the Department has recommended the following conditions:

- a community communication strategy be prepared and approved by the Planning Secretary to facilitate communication between the Applicant, Council and the community
- establishment of a community consultative committee to facilitate engagement with and meaningful involvement of the community.

6.2 Other matters

With respect to the other matters identified in the development application, these are addressed as follows:

| Matter | Department Response |
|---|--|
| <p>Request to modify conditions set out in the Council development consent as follows:</p> <ul style="list-style-type: none">• delete condition 4.4 relating to helicopter types• delete condition 4.5 relating to approval of new helicopter types• change noise limits and correct typographic error set out in condition 4.10. | <p>The Department considers that the operation of twin engine helicopters acceptable and will not cause unreasonable noise impacts subject to recommended condition. The conditions recommended by the Department in Appendix A allow the use of twin engine helicopters for MPT services at the helipad subject to noise limits. The recommended conditions will facilitate the modification of Council development consent DA98/1262 in relation to:</p> <ul style="list-style-type: none">• deletion of condition 4.4• deletion of condition 4.5• correction of typographic error in condition 4.10. <p>As discussed above, the change in noise limits as proposed by the Applicant are not supported. It is recommended that words be inserted into condition 4.10 to clarify that such</p> |

condition only relates to single engine helicopters.

The application seeks to obtain clarification that the Council development consent permits aircraft maintenance activities that are regularly and routinely carried out to ensure the safe and continued operation of the helicopter.

Maintenance activities, that are regularly and routinely carried out to ensure the safe and continued operation of the helicopters, can be adequately undertaken without excessive noise, subject to recommended conditions. Maintenance activities are required to achieve the noise criteria outlined in the *NSW Industrial Noise Policy* (EPA, 2000).

7 Evaluation

The Department has assessed the development application and supporting information in accordance with the matters for consideration under Part 4 and section 4.15 of the EP&A Act, and all relevant environmental planning instruments, and is considered to comply with all relevant items.

The Department concludes the development would be managed to an acceptable level of environmental performance and has recommended a range of conditions to support this. The development is in the public interest.

According to the Applicant, MPT services critical to the safe and efficient function of the Port of Newcastle and its state-significant infrastructure, which in turn is critical to both the NSW and National economies.

Given the change in CASA regulation, the proposal will allow for the efficient ongoing use of the existing helipad for marine pilot transfers to facilitate the routine operations of the Port of Newcastle without unreasonable environmental impacts subject to recommended conditions.

The Department is satisfied that any increase in operational noise associated with the proposal would be acceptable subject to recommended conditions, including provisions to prepare an operational plan of management and undertake operational noise monitoring.

It is recommended that the development application be approved on the basis of its planning merit, subject to conditions, as recommended by the Department.

8 Recommendation

It is recommended that the Director, Transport Assessments, as delegate of the Minister:

- **consider** all relevant matters prescribed under section 4.15 of the EP&A Act, including the findings and recommendations of this report
- **approve** the development application, subject to conditions, under section 4.16(1)(a) of the EP&A Act by signing the instrument of consent at **Appendix A**.

Recommended by:

A handwritten signature in black ink, appearing to read 'Mick Fallon', with a stylized, wavy line extending from the end.

Mick Fallon

Team Leader

Transport Assessments

9 Determination

The recommendation is **Adopted** / ~~Not adopted~~ by:



1 April 2022

Glenn Snow

Director

Transport Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – Development Consent

A copy of the development consent is available on the Department's website as follows:

<https://www.planningportal.nsw.gov.au/development-assessment/state-significant-applications/projects/state-development-applications>

Appendix B – Considerations under Section 4.15 EP&A Act

Section 4.15 of the EP&A Act requires that the consent authority, when determining a development application, must take into consideration the following matters:

| Matter | Consideration |
|---|--|
| a) the provisions of: | The Department has considered the relevant environmental planning instruments in its assessment of the development. Details of the assessment is provided in Appendix C . |
| i.) any environmental planning instrument, and | |
| ii.) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and | The Department has considered the relevant draft environmental planning instruments in its assessment of the development. Details of the assessment is provided in Appendix C . |
| iii.) any development control plan, and | The Newcastle Development Control Plan 2012 (Newcastle DCP) does not apply to the site in accordance with Section 1.00 of the Newcastle DCP as the site is located within the Port of Newcastle lease area. |
| iii.) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and | The Applicant has not entered into a planning agreement under section 7.4 of the EP&A Act. |
| iv.) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates, | The Department has assessed the development in accordance with all relevant matters prescribed by the regulations, the findings of which are contained in this report. |
| b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, | The Department has considered the likely impacts of the development in detail in Section 6 of this report. The Department is satisfied that all environmental impacts can be appropriately managed and mitigated through recommended conditions of consent. |
| c) the suitability of the site for the development, | Sections 1 to 3 and Appendix C of this report provide details on the suitability of the site for the proposed development. The site is located within the lease area of the Port of Newcastle, is zoned SP1 for special activities and is permissible with development consent. |
| d) any submissions made in accordance with this Act or the regulations, | All matters raised in submissions have been summarised in Section 5 of this report and given |

| Matter | Consideration |
|--------------------------------|---|
| | <p>due consideration as part of the assessment of the development in Section 6 of this report.</p> |
| <p>e) the public interest.</p> | <p>The Port of Newcastle is considered to be a significant resource that provides substantial direct and indirect economic benefits to the State of NSW and the national economy. The proposed development will make a positive economic contribution by allowing the greater utilisation, orderly and economic use of land in the Port of Newcastle.</p> <p>As such the proposal is considered to be in the public interest.</p> |

Appendix C – Consideration of Environmental Planning Instruments

To satisfy the requirements of section 4.15(1) of the EP&A Act, the following EPIs were considered as part of the Department's assessment:

- *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP)
- *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP)
- *State Environmental Planning Policy (Three Ports) 2013* (Three Ports SEPP)
- *State Environmental Planning Policy (Coastal Management) 2018* (Coastal Management SEPP)
- *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development* (SEPP 33)
- *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55)
- draft *State Environmental Planning Policy (Remediation of Land)* (Draft Remediation SEPP)

Infrastructure SEPP

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to certain types of infrastructure development, and providing for consultation with relevant public authorities about certain types of development during the assessment process.

The proposed development does not involve a new premises or an enlargement or extension of an existing premises (airport or heliport) pursuant to clause 104 (Traffic-generating development) of the Infrastructure SEPP and referral to Transport of NSW was not required.

SRD SEPP

The aims of the SRD SEPP are to identify development that is State significant Development (SSD), State significant Infrastructure (SSI), critical SSI and regionally significant development.

The proposed development does not trigger SSD, SSI, Critical SSI or regionally significant development status.

Three Ports SEPP

The Three Ports SEPP aims to provide a consistent and effective planning regime for development, re-development and protection of lands within the ports of Botany, Port Kembla and Newcastle. The Three Ports SEPP also specifies matters to be considered in determining to grant development consent and to ensure the land around the lease areas is maintained for port-relation and industrial land-uses.

The shed is located in the Port of Newcastle Lease Area and the Three Ports SEPP applies to the proposed development.

The proposed development is consistent with key aims of the Three Ports SEPP which are to allow the efficient development, re-development and protection of land for port purposes and to ensure that land around the Lease Area is maintained for port-related and industrial uses.

The site is zoned SP1 Special Activities under the Three Ports SEPP and the proposed development is permissible with consent. As identified in Section 4.2 of this report the Department is satisfied the proposed development is consistent with the zone objectives.

The proposed development would facilitate the continued efficient operation of commercial shipping to and from the Port of Newcastle through ongoing marine pilot transfers, with negligible additional environmental impact. The Port of Newcastle provides substantial direct and indirect economic benefits to the State of New South Wales. The proposed development would therefore indirectly make a positive contribution to the NSW economy by supporting the existing port related activities in the area.

The Department is satisfied that the proposed development is consistent with relevant provisions of the Three Ports SEPP.

Coastal Management SEPP

The aim of the Coastal Management SEPP is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*. The SEPP seeks to manage development in the coastal zone and the environmental assets of the coast by employing different management techniques to areas within the coastal zone.

The proposed development does not involve physical works and will not result in changes to the existing helipad. The Department is satisfied that the proposed changes to helipad operations will have a negligible ecological impact and the proposal will not adversely impact the integrity and resilience of the biophysical environment. The existing stormwater management systems will remain in place, as well as ongoing avifauna monitoring as conditioned under development consent (DA/98/1262).

The Department is satisfied that the proposed development will (i) have no adverse impact on the coastal environment area pursuant to clauses 13 and 14 or (i) not cause any increased risk of coastal hazards pursuant to clause 15 of the SEPP.

SEPP 33

SEPP 33 aims to identify developments with the potential for significant off-site impacts, in terms of risk and / or offence. A development is defined as potentially hazardous and / or potentially offensive if, without mitigating measures in place, the development would have significant risk and / or adverse impact on off-site receptors.

The Department's guideline, *Applying SEPP 33* (January 2011), provides an approach to the identification of developments which must be assessed under SEPP 33, and explains the assessment requirements of the SEPP.

The proposed development does not entail any physical works and the proposed twin engine helicopter operations will not require any additional fuel storage requirements over and above those which are currently available and used at the existing helipad. The Department is satisfied that the proposed development is not considered to meet the definition of potentially hazardous industry or potentially offensive industry, as defined by SEPP 33, and described in the accompanying Department guideline.

SEPP 55

SEPP 55 aims to provide a State-wide approach to the remediation of contaminated land. In particular, SEPP 55 aims to promote the remediation of contaminated land to reduce the risk of harm to human health and the environment. Clause 7 of the SEPP requires the consent authority to consider contamination and remediation of the subject land before determination.

As the proposed development does not entail physical works and the use of the subject site as a helipad has been approved, the Department is satisfied that the proposed development does not require the subject site to be remediated.

Draft Remediation SEPP

The draft Remediation SEPP seeks to retain the key operational framework of the current SEPP 55, while also adding new provisions relating to changes in categorisation and introducing modern approaches to the management of contaminated land. The development has been assessed against SEPP 55 (see above), and the Department is satisfied the development would be consistent with the draft Remediation SEPP.

Appendix D – Development Application and accompanying documents

The supporting documents and supporting information to this assessment report can be found on the Department's website as follows:

<https://www.planningportal.nsw.gov.au/development-assessment/state-significant-applications/projects/state-development-applications>

Appendix E – Submissions

A copy of the submissions and agency advice is available on the Department's website as follows:

<https://www.planningportal.nsw.gov.au/development-assessment/state-significant-applications/projects/state-development-applications>

Appendix F – Response to Submissions Report

A copy of the response to submissions report is available on the Department's website as follows:

<https://www.planningportal.nsw.gov.au/development-assessment/state-significant-applications/projects/state-development-applications>

Appendix G – Independent Noise Review

Rob Bullen Consulting

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17 March 2022

Keith Ng

NSW Department of Planning, Industry and Environment

4PSQ 12 Darcy St

PARRAMATTA NSW 2124

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DYKE POINT HELIPAD UPGRADE ACOUSTIC ASSESSMENT: REVIEW

Dear Keith,

This letter report presents a summary of advice related to the acoustic assessment for the above project. It is based on information contained in the documents:

- “Acoustical Assessment: Twin-Engine Helicopter Upgrade: Port of Newcastle Helicopter Marine Pilot Transfer”, report 51.3698.R14:MSC by The Acoustic Group (“the TAG assessment report”); and
- “Acoustical Assessment: Test Flights of Eurocopter EC135P2+ Helicopter, Maitland Airport – 31 May 2021”, report 51.3698.R13:MSC by The Acoustic Group (“the TAG data report”)

as well as further information provided subsequently by the proponent.

Comments are restricted to the impact of noise from the upgraded project on residences and similar noise-sensitive receivers. Based on information in the TAG assessment report, impacts on other land uses will be less significant than those on residences.

Helicopter Noise Criteria at Residences

The existing heliport operates under consent conditions which include the following:

- 4.5 *Prior to the use of any aircraft type, other than the Hughes 500E, certification by a suitably qualified acoustic consultant being submitted demonstrating to Council’s satisfaction that the helicopter(s) concerned is able to meet the noise limits specified in the conditions of this consent while operating within the designed flight path.*

Schedule 1 to the Conditions includes the following:

4.10 *The measured Lmax contribution and contribution Leq from the operation of Dyke Point helipad (including takeoffs and landings) not exceeding the following limits at the location specified.*

| <i>Location</i> | <i>Lmax 24 Hours</i> | <i>Leq 7am to 10pm</i> | <i>Leq 1pm* to 7am</i> |
|--|----------------------|----------------------------|----------------------------|
| <i>At any residential or commercial premises</i> | <i>74dB(A)</i> | <i>60.5dB(A)</i> | <i>56dB(A)</i> |

* Presumed to be a misprint and should be 10pm

Based on measurement systems used in assessment at the time of the EIS, it is assumed that “Lmax” is more accurately described as L_{AFmax} and “Leq” as L_{Aeq} . Following standard practice, L_{AFmax} values are taken to represent arithmetic average values over a number of flights.

The values for these parameters in the above table appear to be taken (approximately) from the highest noise levels predicted for a Hughes 500E helicopter at any residence in the EIS assessment. The intention therefore appears to be that any new helicopter should create no more noise than the existing Hughes 500E.

The TAG assessment report argues that different limits should have been applied based on the EIS assessment and existing guidelines at the time of the assessment. Specifically, it argues that the Lmax noise level at residences should be 82 dBA for 7am-10pm and 77 dBA for 10pm-7am. However, the limits in the above table were clearly applied deliberately, and constitute the existing consent conditions. If a change is requested, this would require amendment to the existing condition, and any proposed change must be assessed under current guidelines for helicopter noise, not those applying in 1998.

Unfortunately, current guidelines are not clear. Both the documents referred to in the TAG assessment report and EIS assessment, namely Australian Standard 2363 and the EPA’s Environmental Noise Control Manual, have been withdrawn, and there is to my knowledge no document from any agency that definitively sets out current criteria for helicopter noise. Consideration of noise criteria for fixed-wing aircraft would lead to criteria based on L_{Aeq} . In my view, if the noise involved is totally new, a criterion level of at most 47 dBA L_{Aeq} would be appropriate, with lower values applying in some cases, and potentially a lower value at night.

However, this may not be relevant in this case, which involves a change in noise exposure rather than the introduction of completely new noise. In my view any assessment of this proposal should include an assessment of the change in noise level between the existing case and the proposal.

Noise Measurement Procedures and Results

The noise measurements reported in the TAG data report have been performed thoroughly, and represent a good estimate of likely noise levels from the proposal. Because of differences in topography and other factors between Dyke Point and the Maitland test area there will be differences in the actual noise levels, but these are expected to be small, and as it is apparently not possible to fly the test flights at Dyke Point, measurements at Maitland will suffice.

A small number of apparent discrepancies between the measured levels, as reported in Appendix E of the TAG data report, and the summarised levels which are quoted in the TAG assessment report have been explained in subsequent correspondence with TAG.

Assessment of Noise Levels

It is immediately apparent from Table 2 of the TAG assessment report that the most-affected residential locations are:

- Crowne Plaza apartments;
- Lee Wharf apartments; and
- Nautilus apartments

all of which lie to the south of Dyke Point on the southern side of Newcastle Harbour. (Note that Crowne Plaza Hotel has recently been renamed Rydges Newcastle. For consistency with the TAG report I will continue to use the name Crowne Plaza. In addition to hotel units there are permanent residential apartments adjacent.)

Existing Consent Conditions:

The L_{Aeq} criteria in the existing consent conditions are met at all assessment locations.

The L_{AFmax} criterion of 74 dBA is exceeded at Crowne Plaza (only) for:

- Take-off flight-path A, daytime procedures – 75 dBA
- Take-off flight-path B, night-time procedures – 75 dBA
- Take-off flight-path A, night-time procedures – 76 dBA

From the TAG assessment report, night-time take-offs on flight path A occur quite infrequently. However the current criterion of 74 dBA is also exceeded by other operations at this location. It must be concluded that unless mitigation measures can be taken, predicted noise levels at this location exceed those allowed under the current consent conditions.

Change in Noise Level

This is considered the most relevant metric in the current situation, and the most likely to predict community reaction to the proposal. There is insufficient data in the reports noted above to make a realistic comparison between current and predicted noise levels. However,

monitoring data provided subsequently by the proponent indicates that existing noise levels at the “Crown Plaza” location under worst-case operational conditions are comparable with those predicated for the proposed operations. N70 values, representing the average number of noise events per day exceeding 70 dBA, are also comparable.

Under these circumstances, and assuming that the quoted noise levels in the TAG assessment report will be achieved, I believe the noise impact of the proposal will be acceptable. Approval would require adjusting the existing L_{AFmax} noise limit of 74 dBA to 77 dBA.

Conclusion

Based on the above discussion, I believe that noise impact from the proposal will be acceptable, with the following changes recommended to the consent conditions:

- Maximum acceptable noise levels at any noise-sensitive receiver of
 - 77 dBA L_{AFax}
 - 60.5 dBA $L_{Aeq,7am-10pm}$
 - 56 dBA $L_{Aeq,10pm-7am}$
- Noise monitoring to be conducted at locations representative of the most-affected noise-sensitive receivers to ensure that predicted noise levels are achieved in practice. This should be conducted over at least one week, under normal operating conditions.

I trust this review is satisfactory. If you require further information or clarification, please do not hesitate to contact me.

Yours sincerely,

ROB BULLEN CONSULTING



Rob Bullen
Principal