



New South Wales Government  
Independent Planning Commission

# Penrith Lakes Helipad DA21/15298

## Statement of Reasons for Decision

Chris Wilson (Chair)  
Dr Sheridan Coakes

3 August 2022

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State of New South Wales through the Independent Planning Commission 2022

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## EXECUTIVE SUMMARY

Heliports Developers Pty Ltd has sought consent for the construction and operation of the Penrith Lakes Helipad located in the Penrith Local Government Area.

The proposed development comprises use of the helipad by small to medium turbine engine helicopters for charter, utility and emergency services operations. The proposed development also includes demolition works, tree removal, new lighting for take-off and landing and the installation of a fuel storage tank. The development is proposed to be limited to an area of approximately 2-hectares within the 11-hectare site.

The proposal seeks approval for a maximum of 25 flights per day to operate between 5:30am and 10:00pm. The helipad is also proposed to facilitate emergency service operations when required.

A whole-of-government assessment by the Department of Planning and Environment in June 2022 found the impacts of the proposal can be appropriately managed and the project is approvable subject to conditions of consent.

The Independent Planning Commission is the consent authority for this application, under the delegation of the Minister for Planning, because the application is on land zoned Tourism under section 5.7(a) of *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* with more than 50 submissions objecting to the application received.

Commissioners Chris Wilson (Chair) and Dr Sheridan Coakes were appointed to constitute the Commission Panel in making the final decision.

As part of the determination process, the Panel met with the Department of Planning and Environment, the Applicant and the Applicant's representatives, Penrith City Council and the Blue Mountains City Council. The Panel conducted an inspection of the site and surrounding locality and held an electronic public meeting on 30 June 2022, where 14 members of the community made submissions. The Commission also accepted written submissions until 7 July 2022.

Concerns raised in submissions received by the Commission centred around the permissibility of the application; noise and vibration impacts; numbers of flights per day and operational hours; site selection; traffic; biodiversity; heritage; hazards; flooding and social and economic impacts.

After careful consideration of all the material before it, including the community's views as documented and presented in submissions, the Commission has granted development consent for the application, subject to conditions. The conditions recommended by the Department have been strengthened to reduce the hours of operation, set an annual limit for the total number of helicopter flights, limit take-off and landing activities over sensitive receivers, and provide for additional acoustic mitigation measures at the closest residential properties upon request. The conditions also include a requirement for the preparation of a Consultation Strategy to facilitate effective communication between the Applicant and key stakeholders for the life of the development. The conditions are designed to prevent, minimise and/or offset adverse social and environmental impacts, and ensure ongoing monitoring and appropriate environmental management of the development.

The Commission's reasons for approval of the application are set out in this Statement of Reasons for Decision.

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## DEFINED TERMS

TERM	DEFINITION
<b>ACHAR</b>	Aboriginal Cultural Heritage Assessment Report
<b>ANEF</b>	Australian Noise Exposure Forecast
<b>AQIA</b>	Air Quality Impact Assessment
<b>Applicant</b>	Heliports Developers Pty Ltd
<b>Application</b>	Penrith Lakes Helipad DA21/15298
<b>AR</b>	Department's Assessment Report (dated June 2022)
<b>AR para</b>	AR paragraph
<b>BDAR</b>	Biodiversity Development Assessment Report
<b>CASA</b>	Civil Aviation Safety Authority
<b>CBD</b>	Central Business District
<b>Commission</b>	NSW Independent Planning Commission
<b>Department</b>	Department of Planning and Environment
<b>DSI</b>	Detailed Site Investigation
<b>EHG</b>	Environment, Energy and Science Group, now known as the Environment and Heritage Group
<b>EIS</b>	Environmental Impact Statement
<b>Emergency services operations</b>	Operations carried out in circumstances of an emergency, as emergency is defined in section 4(1) of the <i>State Emergency and Rescue Management Act 1989</i>
<b>EPA</b>	Environmental Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	<i>Environmental Planning and Assessment Regulation 2021</i>
<b>EPI</b>	Environmental Planning Instrument
<b>ESD</b>	Ecologically Sustainable Development
<b>GTAs</b>	General Terms of Approval
<b>Mandatory Considerations</b>	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
<b>Material</b>	The material set out in section 3.3
<b>Minister</b>	Minister for Planning
<b>NIA</b>	Noise Impact Assessment revision 2 prepared by Acoustic Logic and dated 13 April 2022
<b>Penrith Lakes DCP</b>	<i>Penrith Lakes Development Control Plan Stage 1</i>
<b>Project</b>	Penrith Lakes Helipad
<b>PSI</b>	Preliminary Site Investigation
<b>R1, R2</b>	R1 and R2 as the closest residential receivers defined in the NIA
<b>RtS</b>	Response to Submissions
<b>Ryan</b>	NSW Court of Appeal case: <i>Ryan v Nominal Defendant</i> [2005] NSWCA 59; (2005) 62 NSWLR 192
<b>SELs</b>	Sound Exposure Levels
<b>Site</b>	100 Old Castlereagh Road, Castlereagh (also known as 89-151 Old Castlereagh Road, Castlereagh) (Lot 2 DP 1013504)
<b>Standard Instrument</b>	<i>Standard Instrument (Local Environmental Plans) Order 2006</i>
<b>Western Parkland City SEPP</b>	<i>State Environmental Planning Policy (Precincts – Western Parkland City) 2021</i>

## 1 INTRODUCTION

1. On 7 June 2022, the Department of Planning and Environment (**Department**) referred development application DA21/15298 (**Application**) made by Heliports Developers Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination. The Application sought approval for the Penrith Lakes Helipad (**Project**) located in the Penrith Local Government Area under section 4.16 of the Environmental Planning and Assessment Act 1979 (**EP&A Act**).
2. The Minister for Planning (**Minister**) is the consent authority for Part 4 applications on land zoned Tourism under clause 5.7(a) of *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* (**Western Parkland City SEPP**). The Commission has been delegated the Minister's functions as the consent authority for the Application because more than 50 unique submissions objecting to the Project were received.
3. The Application is designated development under Schedule 3 of the *Environmental Planning and Assessment Regulation 2021* (**EP&A Regulation**) and integrated development under section 4.46 of the EP&A Act.
4. Professor Mary O'Kane AC, Chair of the Commission, nominated Chris Wilson (Chair) and Dr Sheridan Coakes to constitute the Commission Panel determining the Application.

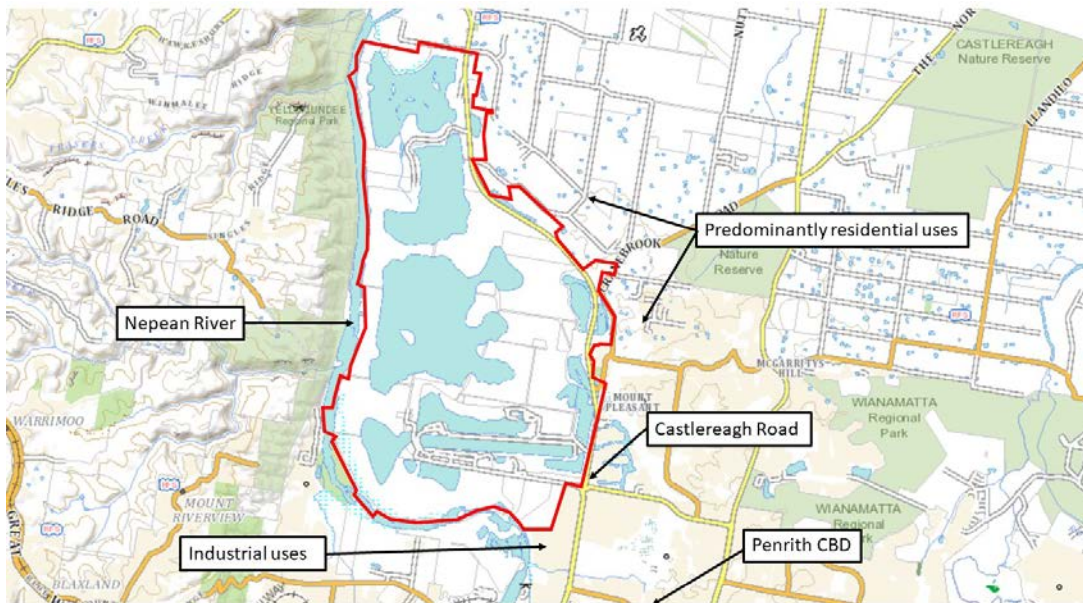
## 2 THE APPLICATION

### 2.1 Site and Locality

5. The Department's Assessment Report, dated June 2022 (**AR**), identifies the site as being located at 100 Old Castlereagh Road, Castlereagh (also known as 89-151 Old Castlereagh Road, Castlereagh) (Lot 2 DP 1013504) (**Site**) (AR paragraph (**AR para**) 3).
6. The Site is located within the 'Penrith Lakes Scheme', which is a rehabilitation project transforming a sand and gravel quarry into a water-oriented recreation park, with land suitable for rural, tourism and employment uses. The Penrith Lakes Scheme comprises approximately 80 hectares of waterways, 110 hectares of parklands, 118 hectares of environmental area, 33 hectares of employment area and 52 hectares of tourism area. An additional 1,330 hectares of land is unzoned and subject to future land use planning.
7. The Site is located approximately 60 kilometres north-west of the Sydney Central Business District (**CBD**), 30 kilometres north-west of the Parramatta CBD and 3 kilometres north of the Penrith CBD. It is surrounded by two rural residential properties to the east, the Sydney International Regatta Centre and the Penrith Whitewater Stadium to the north, employment zoned land to the south (which has been approved for subdivision and earthworks for the future Nepean Business Park), and the Penrith Motorcycle Rider Training Centre to the west. A frontage of approximately 630 metres along Old Castlereagh Road provides access to the Site.
8. The boundary of the Penrith Lakes Scheme is illustrated in **Figure 1** and the Site boundary is illustrated in **Figure 2** (both below).



**Figure 1** Penrith Lakes Scheme boundary (base source: SIX Maps, 2022)



**Figure 2** Site boundary (source: SIX Maps, 2022)



## 2.2 The Application

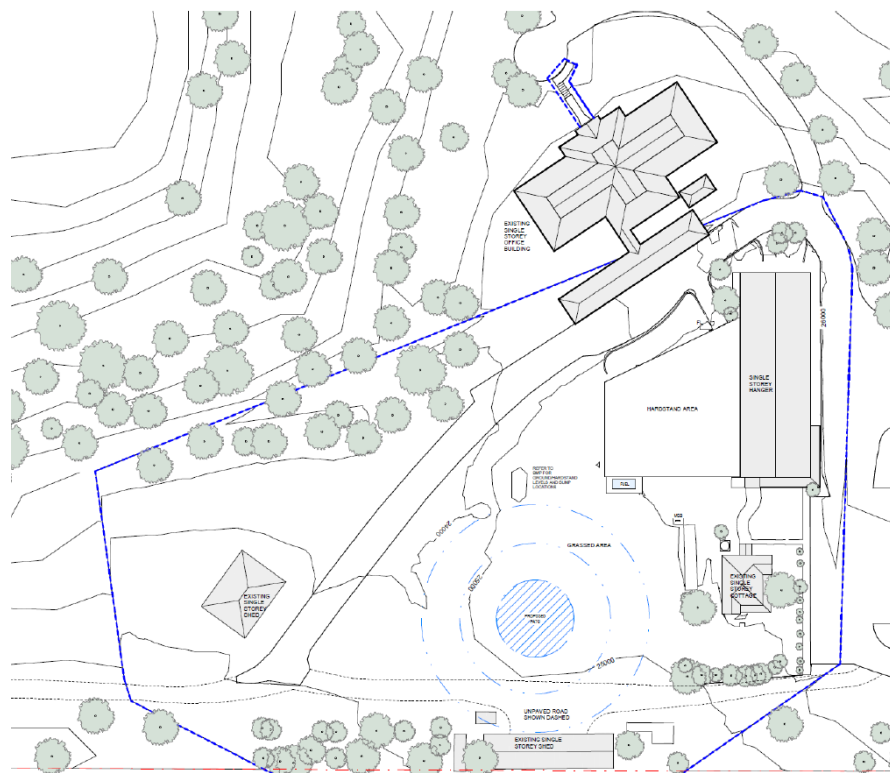
9. The Application sought approval for the construction and operation of a helipad facility at the Site.
10. The proposed Site plan is included as **Figure 3** below. The components of the Application are set out in full at section 2 of the Department's AR. In summary, the Application sought approval for:
  - demolition of two single storey sheds and associated hardstand area;
  - removal of 12 trees;
  - new lighting as required for final approach and take-off;
  - the installation of a small Jet A1 (Avtur) fuel storage tank; and

- use by small to medium turbine engine helicopters for a maximum of 25 flights per day between 5:30am and 10:00pm, and if required, additional flights outside these hours for emergency services operations.

*Note:* The Commission defines **Emergency Services Operations** as those carried out in circumstances of an emergency, as emergency is defined in section 4(1) of the *State Emergency and Rescue Management Act 1989*

11. A large shed on the Site previously used by the Penrith Lakes Development Corporation for machinery storage is proposed to be reused as a hangar (AR para 10).
12. The Project is proposed to be limited to an area of approximately 2.02 hectares within the total 11.26 hectare area of the Site (AR para 11).

**Figure 3 Site Plan (source: AR Figure 3)**



## 2.3 Amended Application

13. On 21 April 2022, the Applicant advised the Department that several of the initially proposed building works had been completed without development consent. The Applicant requested that the Application be amended to exclude those works, as consent cannot be provided retrospectively (AR para 13). The amendment request sought to delete the following components of the Application (AR para 14):
  - demolition of two single storey sheds and integrated hardstand extending beyond the footprint of the sheds;
  - demolition of one small single storey shed and associated pavement;
  - removal of one inground water tank;
  - removal of one flood light; and
  - construction of new concrete hard stand.



14. At AR para 15, the Department states the Applicant provided engineering certification confirming the unauthorised works were constructed in accordance with applicable engineering specifications.
15. The Department accepted the amendment request and has considered the ongoing use of the unauthorised works in its assessment (AR para 16) and concluded that the unauthorised building works have planning merit (AR para 214).
16. The unauthorised works are not a matter which the Commission is required to consider. Any regulatory compliance consideration in relation to the unauthorised works is a matter for the Department.

### 3 THE COMMISSION'S CONSIDERATION

#### 3.1 The Commission's Meetings

17. As part of its determination process, the Commission met with representatives of various parties as set out in **Table 1**. All meeting and site inspection notes have been made available on the Commission's website.

*Table 1 Commission's Meetings*

Meeting	Date of Meeting	Transcript/Notes Available on
Site Inspection	Wednesday, 15 June 2022	15 July 2022
Department	Monday, 20 June 2022	24 June 2022
Applicant	Monday, 20 June 2022	24 June 2022
Penrith City Council	Monday, 20 June 2022	24 June 2022
Blue Mountains City Council	Monday, 20 June 2022	24 June 2022
Public Meeting	Thursday, 30 June 2022	4 July 2022

#### 3.2 Site Inspection

18. On 15 June 2022, the Commission conducted an inspection of the Site, along with the Applicant and its town planner. Notes and a photographic log of the site inspection were made publicly available on the Commission's website on 15 July 2022.

#### 3.3 Material Considered by the Commission

19. In making its determination in relation to the Application, the Commission has carefully considered the following material (**Material**), along with other documents referred to in this Statement of Reasons:
  - the Applicant's EIS, dated 25 October 2021, and its accompanying appendices;
  - the Applicant's Response to Submissions (RtS) report, dated February 2022, and its accompanying appendices;
  - the Applicant's amended EIS, dated 21 April 2022, and its accompanying revised demolition plan, revised existing site plan and revised proposed site plan dated 28 April 2022;
  - the Applicant's Noise Impact Assessment revision 2 prepared by Acoustic Logic and dated 13 April 2022;

- all Agency advice to the Department;
- all submissions made to the Department in respect of the Application during the public exhibition of the EIS, from 5 November 2021 to 14 January 2022;
- the Department's referral letter, dated 7 June 2022;
- the Department's AR, dated June 2022, and its accompanying appendices, including an Independent Acoustic Report prepared by Rob Bullen Consulting;
- the Departments recommended conditions of consent, received by the Commission in June 2022;
- the notes and photographic log of the Site inspection held on 15 June 2022;
- the transcripts and presentation material from the stakeholder meetings listed in **Table 1**;
- all written submissions received by the Commission up until 5pm, 7 July 2022;
- The Applicant's response to questions taken on notice, dated 23 June 2022;
- The Department's responses to questions taken on notice, dated 27 June 2022 and 5 July 2022; and
- The Department's response to the Commission's suggested conditions (prior to determination of the Application), dated 29 July 2022.

### **3.4 Strategic Context**

#### **3.4.1 Greater Sydney Region Plan – A Metropolis of Three Cities, 2018**

20. The Greater Sydney Region Plan, *A Metropolis of Three Cities*, provides a vision and strategy to manage the city's growth over the next 15 years. The Project is consistent with the various objectives of the Greater Sydney Region Plan because it will strengthen Sydney's tourism sector, contribute to job creation and a competitive economy and provide an additional form of transport infrastructure for tourism, utility and emergency services operations.

#### **3.4.2 Our Greater Sydney 2056: Western City District Plan**

21. The Western City District Plan builds on the objectives set by the Region Plan, adapting them to the district. The Western City District Plan identifies the need to support the growth of industries, including the tourism industry. The Project will provide economic and social benefits for Western City District residents by providing aircraft services in a location that can support the tourism and utility industries, as well as provide emergency service operations as needed.

### **3.5 Statutory Context**

#### **3.5.1 Permissibility**

22. The Site is zoned 'Tourism' under Chapter 5 – Penrith Lakes Scheme of the Western Parkland City SEPP. Within the Tourism zone, 'helipads' are permissible with consent and 'heliports' are prohibited.
23. The Commission has received numerous written and oral submissions objecting to the Application on the basis that it should be characterised as a 'heliport', rather than a helipad, and is therefore prohibited (refer to paragraph 48 below). The Commission has carefully considered permissibility given its implications for the consideration and determination of the Application.

24. The Commission notes the Applicant's view, as expressed in its EIS, that the Project should be characterised as a helipad. The Applicant put to the Commission that it had operated a heliport business out of a site at Granville for the past 27 years, until that site was compulsorily acquired to accommodate Sydney Metro works. The Applicant notes the Penrith Lakes site does not have the same land use flexibility as the prior operation, which resulted in operational changes to the current proposal, including limiting public access and preventing access and maintenance services for third party aircraft. Therefore, the Applicant is of the view that the current proposal constitutes a helipad, not a heliport.
25. The terms 'helipad' and 'heliport' are defined in the *Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument)* as follows:
- helipad** means a place not open to the public used for the taking off and landing of helicopters.
- heliport** means 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
26. The Commission has considered the Material before it in determining whether the proposed development is characterised as a helipad (being permissible with consent), rather than a heliport (being prohibited).
27. The Commission finds that the determinative question for whether the proposed development is a helipad or a heliport is whether the development is 'open to the public'. This is consistent with the findings of Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 at [15]-[16]. The Commission does not find that factors such as the size of the operation and whether hangar, storage or maintenance facilities are provided are determinative of the proposed development's characterisation.
28. In determining whether the proposed development would be 'open to the public' the Commission considered the description of the proposed development provided in the Applicant's Environmental Impact Statement (**EIS**), which sets out the following matters to demonstrate the proposed development is *not* open to the public (EIS page 44):
- the proposed development is only for the business operations of Sydney Helicopters;
  - security measures on the Site, including locked access which can only be opened by the operators, prevent unauthorised access to the Site;
  - 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 are proposed to take-off and land on the Site (excluding emergency services operations);
  - 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; and
  - the proposed operation of the site does not involve:
    - the provision of facilities for the hire of helicopters by others;
    - the provision of facilities for the landing, refuelling and take-off of helicopters by others (excluding emergency services operations); and

- general access by the public to the facility for the use and enjoyment by the public.
29. The Commission was also assisted by the findings in the NSW Court of Appeal case *Ryan v Nominal Defendant* [2005] NSWCA 59; (2005) 62 NSWLR 192 (**Ryan**), where Santow JA held that whether a place is 'open to the public' depends on two things – the potential for physical use, and the potential for lawful use. Based on the matters described in the EIS (paragraph 28 above), the Commission agrees with the Applicant and the Department that there will be sufficient restrictions on the physical use of the proposed development by the public such that it will not be open to the public.
  30. Based on description of the proposed development in the EIS (paragraph 28), the Commission also finds the proposed development is *not* open to the public because the public do not have an entitlement to use the proposed development and the public can only enter the Site if invited to do so by the Applicant on a direct or individual basis.
  31. Accordingly, the Commission agrees with the characterisation of the proposed development as a helipad, which is permitted with consent.
  32. While the Commission did not rely on conditions to satisfy itself on the characterisation of the proposed development as a helipad, it has imposed conditions to ensure the operations of the development will be maintained in accordance with what is proposed in the EIS (paragraph 28), thereby restricting public access to the Site.

### 3.6 Designated Development

33. The proposed helipad is designated development under Schedule 3 of the EP&A Regulation because it proposes an aircraft facility for helicopters within 1000 metres of a dwelling not associated with the facility and has an intended use of more than seven flights per week. Consequently, the development application was accompanied by an EIS.
34. Section 56 of the EP&A Regulation provides notification and engagement requirements for designated development, including to relevant public authorities and adjoining landowners. The Commission is satisfied the Department has notified the relevant landowners and public authorities in accordance with the EP&A Regulation.

### 3.7 Integrated Development

35. The proposed helipad is integrated development under section 4.46 of the EP&A Act as the proposal requires an Environment Protection Licence under the *Protection of the Environment Operations Act 1997* from the Environmental Protection Authority (**EPA**).
36. Under section 4.47(2) of the EP&A Act, before granting consent to an integrated development application, the consent authority must obtain General Terms of Approval (**GTAs**) from the relevant approval body. Section 4.47(3) requires any consent issued by the consent authority to be consistent with the GTAs. The EPA provided its GTAs to the Department on 30 March 2022 (Appendix F of the Department's AR). The GTAs are attached to the consent, and the conditions imposed are consistent with the GTAs.

### 3.8 Mandatory Considerations

37. In determining this application, the Commission has taken into consideration the matters under section 4.15 (1) of the EP&A Act (**Mandatory Considerations**) that are relevant to the Application.
38. The Department addressed the Mandatory Considerations at section 3.5 of the AR, and the Commission is satisfied with this assessment conducted on its behalf.

39. The Commission has summarised its consideration of the relevant Mandatory Considerations in **Table 2** and elsewhere in this Statement of Reasons, noting the Mandatory Considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that the Panel has considered matters other than the Mandatory Considerations, the Commission has considered those matters having regard to the subject matter, scope and purpose of the EP&A Act.

**Table 2 Mandatory Considerations**

<b>Mandatory Considerations</b>	<b>Commission's Comments</b>
<b>Relevant Environmental Planning Instruments</b>	<p>Appendix C of the Department's AR identifies Environmental Planning Instrument's (EPI) for consideration. The key EPIs include:</p> <ul style="list-style-type: none"> <li>• <i>Western Parkland City SEPP</i></li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>• <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i></li> </ul> <p>The Commission is satisfied with the Department's assessment with respect to the EPIs that are of relevance to the Application as set out in Appendix C of the AR.</p>
<b>Relevant proposed EPIs</b>	None applicable.
<b>Relevant Development Control Plans</b>	<p>The <i>Penrith Lakes Development Control Plan Stage 1 (Penrith Lakes DCP)</i> was made in November 2021 and has been considered by the Commission.</p> <p>The Department considered the Penrith Lakes DCP in section 5.2 and at Appendix D of the AR. The Department's assessment concludes the proposal generally complies with the relevant controls, and where variations are sought the variations are reasonable and well justified.</p> <p>Chapter 5 of the Penrith Lakes DCP requires the preparation of a masterplan prior to a development application being made in the Tourism South precinct, in which the Site is located. The Department did not require a masterplan for this proposal because it does not include subdivision, public access or intensification of the existing built form. The Department noted a masterplan would not result in an improved planning outcome and would be an unreasonable requirement in this case (AR para 91).</p> <p>The Commission notes the objectives for requiring a masterplan for development in the Tourism South precinct are to ensure development occurs in an orderly manner, ensure that infrastructure, services and amenities are sufficient to support growth in the precinct and to ensure high quality design.</p> <p>The Tourism South precinct consists of five parcels of land with a combined area of approximately 15.5 hectares, of which the Site is the largest with an area of 11.25 hectares. Of the total site area, the proposed development will occupy approximately 2 hectares. Given the proportion of land the proposed development will occupy and the minimal land or built form changes proposed, the Commission agrees that it is unreasonable to require a master plan for the proposed development. The proposal comprises orderly development of the land and achieves the objectives of development in the zone. Therefore, the Commission agrees to waive the requirement for a masterplan and is satisfied the proposed development is reasonable and generally consistent with the Penrith Lakes DCP.</p>



	The Commission has also considered the DCP requirements with respect to flooding, detailed in section 5.5 below.
<b>Applicable Regulations</b>	The Commission agrees that the application satisfactorily meets the relevant requirements of the EP&A Regulation.
<b>Likely Impacts of the Development</b>	The likely impacts of the Project have been considered in section 5 of this Statement of Reasons.
<b>Suitability of the Site for Development</b>	<p>The Commission has considered the suitability of the Site. The Commission finds that the Site is suitable for the following reasons:</p> <ul style="list-style-type: none"> <li>• the Site is located on land zoned 'Tourism' and the Application is permissible with consent under Chapter 5 Penrith Lakes Scheme Land Use Table of the Western Parkland City SEPP;</li> <li>• the proposed site is situated in a location that avoids prescribed airspace, reduces downwash impacts and avoids significant impacts on residential areas;</li> <li>• the Application provides an orderly and economic use of the Site, and does not propose significant building works;</li> <li>• the proposed use comprises a small portion of the overall Site area and is sufficiently separated from surrounding properties so as not to impact the future development potential of the remaining land in the Tourism South precinct; and</li> <li>• impacts on surrounding land uses have been minimised and can be further managed and mitigated through conditions of consent.</li> </ul>
<b>Objectives of the EP&amp;A Act</b>	<p>In this determination, the Commission has carefully considered the Objects of the EP&amp;A Act. The Commission agrees with the Department's assessment of the Application against the objects of the EP&amp;A Act provided in Table 2 of the AR, which finds that the Project is consistent with those objects.</p> <p>The Commission finds the Application has been assessed against relevant EPIs and, subject to the conditions imposed, is consistent with the objects of the EP&amp;A Act.</p>
<b>Ecologically Sustainable Development (ESD)</b>	<p>In terms of ESD considerations, the Department concludes potential impacts from the use of the Site can be appropriately managed so as to pose no threats or serious environmental damage to the surrounding area.</p> <p>The Commission is satisfied with the Department's assessment of the Application under ESD principles and finds that the Project does not constitute major physical works and that potential impacts from the use of the site can be managed to avoid threats or environmental damage. The proposal would promote a range of social and economic benefits through supporting a growing tourism focus within the Penrith Lakes Scheme. The proposal would not impact threatened flora and fauna species and will not compromise biological diversity and ecological integrity of the area. The Commission finds the Project to be consistent with the objects of the EP&amp;A Act.</p>
<b>The Public Interest</b>	The Commission has considered whether the Project is in the public interest in making its determination. The Commission has weighed the benefits of the project against its impacts, noting the proposed mitigation measures.

	<p>The Commission finds that the Project will:</p> <ul style="list-style-type: none"> <li>• subject to conditions, not result in any unacceptable amenity, environmental or land use safety impacts;</li> <li>• provide for a tourism use in a tourism zoned area;</li> <li>• enable the operator to support emergency responses as required, and thereby appropriately service the community; and</li> <li>• generate jobs for approximately 20 full time employees.</li> </ul> <p>For the reasons above, the Commission finds the Application to be in the public interest.</p>
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### 3.9 Additional Considerations

40. In addition to the documents listed in Table 2 above, in determining this application, the Commission has also considered:
- Greater Sydney Region Plan – A Metropolis of Three Cities, 2018;
  - Our Greater Sydney 2056: Western City District Plan;
  - Noise Policy for Industry;
  - *Australian Noise Exposure Forecast (ANEF)* with respect to acceptable aircraft noise levels for residential development in the vicinity of airports;
  - Penrith Water Sensitive Urban Design Policy 2013;
  - Civil Aviation Regulations administered by the Civil Aviation Safety Authority (**CASA**);
  - AirServices Australia Guidelines; and
  - Helicopter Association International’s *Fly Neighborly Guide*.

## 4 COMMUNITY PARTICIPATION & PUBLIC SUBMISSIONS

### 4.1 Public Meeting

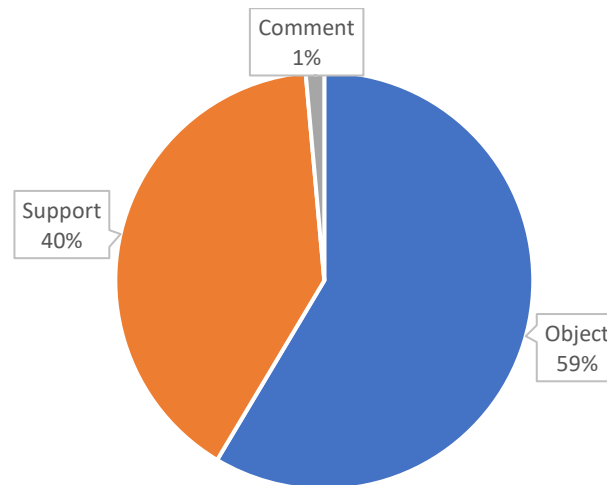
41. The Commission conducted a Public Meeting on 30 June 2022. The Public Meeting was held electronically with registered speakers presenting to the Commission Panel via telephone or video conference. The Public Meeting was streamed live on the Commission’s website.
42. The Commission heard from the Department, the Applicant, Blue Mountains City Council and individual community members. In total, 11 speakers presented to the Commission during the Public Meeting.
43. Presentations made at the Public Meeting have been considered by the Commission as submissions and are referenced below in section 4.2.

### 4.2 Public Submissions

44. As part of the Commission’s consideration of the Project, all interested parties were offered the opportunity to make written submissions to the Commission until 5pm on Thursday 7 July 2022.
45. The Commission received a total of 79 written submissions, made by 70 individual submitters. The submissions made to the Commission comprised the following:
- 28 submissions in support;
  - 41 objections; and
  - 1 comment, neither in support nor objecting to the Application.
46. Comments made in submissions are summarised in section 4.2.1.

47. A summary of type of submissions received is illustrated in **Figure 4** below.

**Figure 4** Summary of Submissions received by the Commission



#### 4.2.1 Key Issues Raised in Submissions

##### *Permissibility*

48. The Commission received a number of submissions objecting to the Application on the basis of concerns about the categorisation of the Project as a heliport, rather than a heliport, and therefore questioning whether the Project is a permitted use. The Commission received submissions that included legal advice suggesting that the proposed heliport should be characterised as a heliport, as it is consistent with the applicant's previous operations at the Granville site, which is a commercial operation open to the public.
49. In support, the Commission received submissions from the Applicant and representatives advising that the Site does not have the same flexibility as the prior operation, which has resulted in operational changes to the current proposal, including limiting public access, excluding other aircraft use and preventing maintenance services for third party aircraft. The Commission's consideration of permissibility is detailed in Section 3.5.1.

##### *Noise and Vibration Impacts*

50. The Commission received several submissions objecting to the Project on the potential for noise amenity and vibration impacts. The concerns were primarily in relation to the cumulative impact of helicopter activity in the area, sleep disturbance and noise amenity impacts.
51. Submissions also raised concerns about vibration impacts resulting from take-off and landing activity and rotor vibration.
52. The Commission also received submissions raising concerns about the discrepancy in various reports on the measured noise levels and questioned the manner in which the monitoring was undertaken.
53. Submissions in support to the Commission stated noise was not an issue, and that there may be confusion with this development and other helicopters in the area, attributing negative impacts to other helicopters.

### *Operation*

54. The Commission also received submissions objecting to the proposed hours of operation (5:30am to 10pm), the maximum number of flights per day (25), and exceedances of these flight numbers during emergency operations. Objections also stated that the proposed flight paths were directly over residences in the area and would result in impacts to privacy. Submissions also stated concerns about regulation of flight paths and operations and requested additional capping to flight numbers with emergency activities to be included in the annual cap.
55. Submissions both in support of and objecting to the Project recognised the importance of the emergency operations associated with the Application.
56. Supporting submissions commented on the established operations of the Applicant and positive operational record. Submissions in support also state the flight routes and movements of the Project are small when compared to other similar aircraft in the area and that the development offers new commercial services to the region and provides important emergency services, including firefighting, evacuation and search and rescue operations.

### *Site selection*

57. Submitters objected to the Site selection, raising concerns about the proximity to the public recreation area of Penrith Lakes and to residential areas including Waterside Estate, Cranebrook and the Blue Mountains. Objections were raised about the lack of community consultation in preparing the EIS. It was noted the Western Sydney Airport would be a more appropriate location for this operation, or that other existing helicopter operators in the area could be accessed for emergency services.

### *Traffic*

58. Some submissions raised concerns about increased traffic in the area and a lack of abatement of traffic exhaust pollution and its contribution to poor air quality in the area.

### *Hazards*

59. Concerns were also raised in relation to the management of both natural (bushfire, flood) and operational hazards (fuel spills, potential for aircraft collision).

### *Heritage Impacts and Biodiversity*

60. The Commission received objections in relation to the potential impacts on the Blue Mountains World Heritage Area, Penrith Lakes recreational open space, waterways and flora and fauna. In this regard, objectors raised concerns that helicopter noise would be exacerbated in the cliffs and valleys in the Blue Mountains area, creating amenity impacts for tourism activities and adversely affecting wildlife in both the Penrith Lakes and Blue Mountains area.
61. Submissions made in support of the Project stated helicopter flights over the Blue Mountains are undertaken by many companies with minimal negative environmental impacts. Submissions in support also note the Project will provide support to National Parks and Wildlife Services and NSW Forestry in the construction and maintenance of walking tracks in the Blue Mountains area and NSW National Parks.

### *Flooding*

62. The Commission also received submissions objecting to the Application based on its location in a flood affected zone and access issues in and out of the Site in the event of flooding. Penrith City Council also raised concerns about emergency operations being located on a flood affected Site.

### *Economic impacts*

63. Submissions objecting to the Project raised concerns that the proposed operations would adversely impact property prices and hinder future residential development in the area.
64. However, submissions made in support of the Project viewed this commercial investment as a benefit to Penrith and the Penrith Lakes area suggesting that it would provide support for tourism and other businesses through improved connection to regional areas in NSW.

### *Social impacts*

65. A number of submissions raised concerns regarding the Project's impact on the way of life of residents in proximity to the Site, their wellbeing and social amenity. Objections noted the Project will impact on the recreational use of the Penrith Lakes area, which will adversely impact on health and social factors.

## **5 KEY ISSUES**

### **5.1 Flights and Flight Paths**

66. The proposed development sought approval for a maximum of 25 flights per day, with hours of operation between 5.30am to 10.00pm, seven days a week (as detailed in paragraph 10). The proposed flight paths are broadly oriented east-west to be parallel to the Sydney International Regatta Centre rowing course to the north, and the boundaries of the RAAF Richmond prescribed airspace to the north and the Western Sydney Airport prescribed airspace to the south (AR para 97).
67. The Commission received several submissions objecting to the operational details of the Project, such as hours of operation, flight paths and frequency of flights, air space operations and the potential adverse impacts on public and residential amenity. The Commission also received submissions stating that Western Sydney Airport would be a more appropriate location for the proposed development. However, the Commission notes the Western Sydney Airport is prescribed airspace and accepts the Applicant's comments that the proposed operations need to avoid prescribed airspace so it does not impact on airport operations.
68. The Commission's consideration of the hours of operation and the proposed flight paths are detailed under section 5.2 below with respect to how they relate to noise impacts.

### *Flight paths*

69. The Commission notes the flight paths have been designed to avoid the controlled airspaces for the RAAF Richmond Airfield and the Western Sydney Airport. The flight paths have also been designed to avoid heavily populated residential areas, such as the Waterside Estate, during take-off and landing (**Figure 5** below) and to run generally parallel to the Sydney International Regatta Centre event space to avoid downwash impacts and event disruptions (**Figure 6** below). The Commission notes the proposed eastern flight path traverses residential receivers R1 and R2 and across the industrial area south of Old Castlereagh and Andrews Roads. The western flight path traverses south of the Sydney International Regatta Centre building across currently vacant land.



Figure 5 Typical Flight Paths (Source: Applicant's NIA)



Figure 6 Proposed approach/departure paths (Source: Applicant's EIS)



70. The Commission is satisfied that the proposed flight paths are suitable, subject to conditions that restrict take-off and landing procedures to the western flight path where possible to reduce noise impacts on the closest residential receivers (discussed further in Section 5.2 below).
71. To further mitigate disruptions, the Commission has imposed a condition requiring the Applicant to engage with key stakeholders (such as Sydney International Regatta Centre) and use best endeavours to develop and implement fly neighbourly advice agreements. These agreements are a voluntary code of practice established between aircraft operators and communities to negotiate a reduction of disturbance or adverse amenity impacts in an area. For example, with the Sydney International Regatta Centre this may include consideration of operational scheduling around key events.
72. Also relevant to the proposed flight paths are concerns received by the Commission about privacy impacts should aircraft fly directly over residences. The Commission is satisfied that the flight paths have been designed to avoid residential areas and that the height of aircraft above residences is sufficient to minimise privacy impacts.

### *Frequency of Flights and Airspace operations*

73. At its meeting with the Commission on 20 June 2022, the Applicant sought to justify the frequency of flights. The Applicant noted, while a maximum of 25 flights per day is proposed, this is to accommodate peak periods only and is not necessary for most days of the year. The Applicant acknowledged its previous licence with the EPA restricted operations to a maximum of 1,500 movements per year, which averages approximately 4 movements (or 2 flights) per day. This is significantly less than if 25 flights were operated every day, equating to 9,125 flights or 18,250 movements per year.
74. In its correspondence dated 23 June 2022, the Applicant provided a summary of actual flight numbers logged over three, pre-Covid years - 2017, 2018 and 2019. This data has been summarised in **Table 3** below.

**Table 3** Summary of flight numbers

*(Data source: Applicant's response to questions on notice dated 23 June 2022)*

Year	Arrivals	Departures	Total Helicopter Movements *	Charter/ Scenic Flights (departures)	Utility work (departures)
2019	438	452	890	262	190
2018	506	547	1053	362	185
2017	439	504	943	315	189

\* excludes emergency service operations

75. The Applicant also provided a breakdown of flights by type and regional destination (for departure movements only). These are summarised for each year in **Table 4** below. From the data provided by the Applicant, the Commission notes Sydney Metro trips comprise the majority of the charter/tourism flights operated by the Applicant each year, followed by those to the Central Coast/Hunter region. Flights to southern NSW and the Blue Mountains region comprise proportionately low flight numbers.

**Table 4** Charter/Scenic Flights by regional destination

(Data source: Applicant's response to questions on notice dated 23 June 2022)

Year	Regional Destination	Departure Movements
2019	Sydney Metro	154
	Central Coast/ Hunter	59
	Blue Mountains	5
	West	11
	South	8
Year	Regional Destination	Departure Movements
2018	Sydney Metro	221
	Central Coast/ Hunter	65
	Blue Mountains	3
	West	29
	South	5
Year	Regional Destination	Departure Movements
2017	Sydney Metro	169
	Central Coast/ Hunter	59
	Blue Mountains	9
	West	45
	South	5

76. During its meeting with the Commission on 20 June 2022, Blue Mountains Council raised concerns that the Project will pose opportunities for the Applicant to intensify operations over the Blue Mountains area, given the site location. Blue Mountains Council also raised concerns that aircraft noise would disrupt the tranquillity and the sense of wilderness that is offered in the Blue Mountains recreational and tourism areas. Blue Mountains Council views the Project as posing a fundamental risk to the local economy and to local and international tourism industries in the area.
77. The Commission understands the Applicant is not seeking to expand its previous operations in terms of flight types, numbers or destinations. From Table 4 above, the Commission notes the proportion of flights over the Blue Mountains region comprise a relatively low proportion of the total number of flights, ranging from three to nine over a 12 month period.
78. Further to this, the Commission notes, once in the air, flights are regulated by CASA requirements and Air Services Australia, including flying altitudes and flights over sensitive areas such as populated areas or World Heritage areas. The Applicant must at all times comply with CASA regulations for helicopter operations.
79. In terms of potential disruptions to the Blue Mountains Heritage area, as raised by Blue Mountains Council in its submissions, the Commission is satisfied that the proposed operations do not pose an intensification of flights over the Blue Mountains area. Blue Mountains Council did not identify any specific complaints with respect to the Applicant's previous operations over this area, and the Commission has not been provided with sufficient evidence to warrant concerns that this particular development will result in unreasonable impacts on cultural heritage or ecological or biodiversity values of the Blue Mountains World Heritage area.

80. In summary, the Commission is satisfied that the Project's operational details, such as the flight paths and frequency and air space operations are acceptable, subject to the conditions as imposed, which:
- limit the hours of general operation;
  - restrict take-off and landing to the western flight path where possible;
  - cap the number of flight movements annually;
  - limit the number of night-time movements; and
  - provide for engagement with key stakeholders regarding fly neighbourly advice agreements.

## 5.2 Noise and Vibration

81. The Site is surrounded by a mixture of land uses, including recreational/sporting facilities, commercial and industrial uses, and residences. The closest residential receivers are two properties to the east of the Site on Old Castlereagh Road. **R1** is approximately 450 metres from the Site and **R2** is approximately 600 metres from the Site. Further to the east is the Waterside Estate and the suburb of Cranebrook.
82. As noted in section 4.2.1 above, the Commission received a number of submissions objecting to the Project on the basis of noise and vibration impacts, sleep disturbance and night-time operations generally. Objections noted that a maximum of 25 flights per day, as proposed, is a large number and will frequently compromise acoustic amenity for sensitive receivers.

### *Vibration Impacts*

83. The Applicant's EIS includes an operational vibration assessment to assess human discomfort caused by vibration generated by the operation of the proposed helicopters. The Department notes all predicted vibration levels associated with the helicopter movements comply with the Department of Environment and Conservation's *Assessing Vibration: a technical guideline* recommended vibration criteria (AR para 152).
84. The Commission accepts the Applicant's predicted vibration levels during operation of the proposed helipad comply with the relevant guidelines and has imposed the Department's recommended conditions to include a complaints management and communication protocol within the Helicopter Operations Management Plan. This would cover complaints about vibration impacts.

### *Noise Impacts*

85. To address noise impacts, the Applicant submitted a Noise Impact Assessment, which was revised at the Department's request to clarify matters such as the location of sensitive receivers and inclusion of revised noise modelling (Revised Noise Impact Assessment (**NIA**)).
86. The NIA identified five sensitive receivers, as described at AR para 133, including the two residences to the east (R1 and R2), the Waterside Estate, the Sydney International Regatta Centre to the northwest, and the site of a proposed golf course to the southwest. The NIA included on-site noise monitoring at the closest residential receiver and considered noise modelling software and Sound Exposure Levels (**SELs**) for all proposed helicopter types. The Department engaged an independent acoustic consultant to review the Applicant's NIA.

87. Both the Department and Applicant acknowledge that there are no applicable guidelines to specifically regulate helicopter noise in NSW. In the absence of such guidelines, the Department's independent acoustic consultant recommended an appropriate criterion to measure noise from the Project.
88. In determining this criterion, consideration was given to acceptable aircraft noise levels for residential development in the vicinity of airports, which is Australian Noise Exposure Forecast (**ANEF**) 20. ANEF 20 equates to 55dB(A) LAeq(24 hour) (ANEF plus 35). However, given there is currently limited aircraft noise experienced by receivers in proximity to the Site, ANEF 20 was reduced to ANEF 13, which equates to 48dB(A) LAeq(24 hour). Hence a noise limit of 48dB(A) LAeq(24 hour) was applied for residential receivers (AR para 128), meaning an average noise level of 48dB(A) over a 24-hour period. This recommendation is consistent with noise criteria accepted by the Land and Environment Court in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 and *Larry Karlos v Tweed Shire Council; Matthew Karlos v Tweed Shire Council* [2019] NSWLEC 1418 (AR para 129).
89. Similar to residential receivers, there is no applicable noise criterion for active recreational or commercial receivers. The Department's independent acoustic consultant and the Applicant's acoustic consultant established a noise criterion of 55dB(A) LAeq(24 hour) to measure the acceptability of noise impacts for the Sydney Regatta Centre and a proposed golf course to the southwest of the Site (AR para 130).
90. The results of the noise model from the Applicant's NIA are summarised in **Table 5** below.

**Table 5** Summary of predicted noise levels

(Source: the Applicant's Noise Impact Assessment revision 2 prepared by Acoustic Logic and dated 13 April 2022)

Receiver	Criteria dB(A) LAeq(24 hour)	Predicted dB(A) LAeq(24 hour)		Complies	
		Bell 407, 429, 206 & AS350	Bell 412	Bell 407, 429, 206 & AS350	Bell 412
R1	48dB(A)	46dB(A)	48dB(A)	Yes	Yes
R2	48dB(A)	45dB(A)	46dB(A)	Yes	Yes
SIRC	55dB(A)	37dB(A)	40dB(A)	Yes	Yes
Waterside	48dB(A)	40dB(A)	44dB(A)	Yes	Yes

R1 = 47-65 Old Castlereagh Road

R2 = 39-45 Old Castlereagh Road

SIRC = Sydney International Regatta Centre

Waterside = Waterside Estate, Cranebrook

91. The Applicant's NIA concludes that in all scenarios the 48dB(A) LAeq(24 hour) is met at all receivers. However, the NIA recommends that to achieve compliance, the maximum number of flights must be as follows:
- 23 flights in the eastern or western take-off direction within a 24 hour period for the use of the Bell 206, 407, 429 and AS350 helicopters; and
  - 16 flights within the 24 hour period with the use of the Bell 412 helicopter (primarily used for emergency services related work).
92. The Applicant's NIA also includes typical flight paths (**Figure 5** in section 5.1 above) that shows the flight paths have been designed to avoid populated residential areas for take-off and landing operations.



93. The Department's independent acoustic consultant reviewed the NIA, considered the SELs, noise modelling conducted by the Applicant and compliance with the set noise criteria for residential, recreational and commercial receivers and advised the findings of the NIA are adequate for the proposed development (AR para 147). The Commission is satisfied that the measurement and modelling of predicted noise levels are fit for the purpose of this assessment.
94. In response to the Commission's enquiries about the number of flights proposed, at its meeting with the Commission on 20 June 2022, the Applicant clarified that although it is seeking a maximum of 25 flights per day, it is unlikely to be flying at that rate for many days of the year. As described at paragraph 73, the Applicant confirmed that its previous operations were licenced by the EPA via a Helicopter Activities Licence for a maximum of 1,500 movements per year, which equates to approximately 3.5 movements per day if the operator flies each day. In response to the concerns raised by the public about the number of flights, the Commission has also imposed a condition limiting flights to 750 per year, or 1,500 movements.
95. The Commission notes the Department's recommended conditions permit 25 flights per day, with a maximum of 23 able to use either the western or eastern approach. Based on the NIA findings and in consideration of the submissions received by the Commission, conditions have been imposed to further reduce the maximum number of flights to 23 per day to reduce impacts on sensitive receivers. However, when the Bell 412 aircraft is used, which is a larger aircraft with greater noise impacts than the other aircraft, the maximum number of flights per day is 16.
96. The Commission has also imposed a condition requiring all flights to take-off and land using the western flight path unless meteorological conditions require the use of the eastern flight path. This is to reduce the noise impacts on the closest residential receivers (R1 and R2) to the east of the Site.
97. In terms of sleep disturbance issues, the Commission notes the Applicant sought approval for hours of operation starting at 5.30am, and the Department has recommended hours of operation from 6.00am to 10.00pm. However, at the Public Meeting on 30 June 2022, the Department confirmed that the acoustic impacts of the Project were only considered between the hours of 7.00am to 10.00pm. A sleep disturbance assessment of night-time activities between 10.00pm and 7.00am was not undertaken. Therefore, the Commission has imposed a condition limiting general operating hours from 7.00am to 10.00pm.
98. Notwithstanding this, the Commission understands that some level of night-time activity is necessary to accommodate late returning flights and to enable the Applicant's pilots to retain night-time flight accreditation with the relevant regulatory authority. In recognition of this, the Department has recommended a condition limiting flights between sunset and 10.00pm to a maximum of five flights per week. However, noting concerns of surrounding residents about potential amenity impacts from night-time flying, the Commission has strengthened the recommended condition to allow a maximum of six movements (rather than flights) per week to take-off or land between sunset and 10.00pm. This condition does not apply to helicopter movements associated with emergency service operations.
99. As described at paragraph 36, the Application is Integrated Development, and therefore the Consent Authority must obtain approval from the EPA prior to granting consent. The EPA provided its GTAs to the Department on 30 March 2022, which included on-ground noise limits to apply to grounded aircraft maintenance or operational activities.

100. In consideration of the noise impacts from the Project, the Commission accepts the noise assessment modelling and criteria in the NIA and as reviewed by the Department's independent acoustic consultant. The Commission has imposed a condition requiring ongoing noise monitoring post commencement to verify and ensure the noise criteria continue to be met.
101. The Commission notes ongoing community concerns about noise, particularly with respect to the proposed hours of operation and sleep disturbance. The Commission notes the conclusions of the NIA, as summarised at **Table 5**, which shows in all scenarios the 48dB(A) LAeq (24 hour) is met at all receivers. The Commission also notes the typical flight paths have been designed to avoid directly flying over residential areas, including the Waterside Estate and Cranebrook (**Figure 5**).
102. However, while the Commission is satisfied that the applicable noise criteria is likely to be achieved at R1 and R2, the predicted operational noise levels are at the upper levels of acceptability (unlike at residential areas further afield) and would require close regulatory scrutiny. Consequently, the Commission deems it reasonable to provide a mechanism by which the closest impacted residences (R1 and R2) may make a written request to the Applicant seeking additional noise mitigation measures at or in the vicinity of the respective residence. These measures must be reasonable and feasible and directed towards reducing the noise impacts of the development. The Applicant must also be responsible for the reasonable costs of implementing any ongoing maintenance of these additional mitigation measures for the duration of the development.
103. In summary, while the Commission is satisfied the predicted noise measurements and modelling are fit for the purpose of this assessment, the Commission recognises the increased vulnerability of the closest sensitive receivers to noise impacts arising from this development. Therefore, the Commission has imposed conditions to further reduce impacts, which include limiting the hours of operation and the daily flight limits, providing an annual cap to the number of flight movements, and limiting night-time operations. The Commission also notes the noise limits in the GTAs will apply to on-ground activities and will assist with noise mitigation at the closest receivers. On this basis, the Commission is satisfied that any residual noise impact issues can be addressed through the imposed conditions.

### 5.3 Contamination

104. Clause 4.6 of *State Environmental Planning Policy (Resilience and Hazards)* states contamination and remediation must be considered before determining a development application. If land is contaminated, the consent authority must be satisfied the land is suitable for the proposed land use in its contaminated state or will be suitable after remediation.
105. The Applicant prepared a Preliminary Site Investigation (**PSI**) to look at the potential for contamination at the Site and the need for further studies. The PSI identified potential sources of contamination that include fill, former agricultural and quarrying land uses, hazardous building materials from buildings and structures on the Site and dangerous goods currently stored on the Site (i.e. flammable liquids, potential for 3 underground tanks to be present, and chemical storage).
106. Both Penrith City Council and the EPA raised concerns with the Department about contamination, particularly in relation to the potential for contamination to migrate off site.

107. The Department accepts that the results of the PSI do not indicate widespread contamination (AR table 9) but does identify potential contaminants. Therefore, the Department has recommended a condition requiring a Detailed Site Investigation (**DSI**) be carried out to determine whether any remediation is required to ensure that the Site is suitable for the Project. If the DSI determines that the levels of contamination on the Site need to be reduced for the site to be suitable for the proposed land use, a Remediation Action Plan and Site Audit Statements will be required.
108. The Commission acknowledges the PSI identified the potential for contamination. The Commission has imposed conditions to ensure the necessary investigations are undertaken to determine the site's suitability for the proposed use, prior to the commencement of any works. The imposed conditions also include the necessary steps to be undertaken in the event remediation works are required for the Site to be suitable for the proposed land use.

#### 5.4 Aboriginal Cultural Heritage

109. The Applicant's EIS included an Aboriginal Heritage Due Diligence Assessment in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, in order to determine whether an Aboriginal Cultural Heritage Assessment Report (**ACHAR**) is required.
110. The Due Diligence Assessment confirmed:
  - there are no known Aboriginal objects or places within the Site;
  - past quarrying of parts of the Site has eliminated any archaeological potential; and
  - works on the remainder of the Site, which has a low-moderate archaeological potential, would not involve ground disturbance beyond the topsoil.
111. The Department consulted the Environment, Energy and Science Group, now known as the Environment and Heritage Group (**EHG**), on Aboriginal cultural heritage assessment requirements. The Department accepts the Applicant's conclusion that the development site has nil to low potential for Aboriginal objects and is unlikely to harm Aboriginal objects (AR para 187). The Department is satisfied this development does not require further archaeological investigation through an ACHAR but has recommended conditions of consent requiring an unexpected finds procedure to be implemented in the event that Aboriginal objects are found.
112. At its meeting with the Commission on 20 June 2022, Blue Mountains City Council raised concerns relating to potential impacts to Aboriginal cultural heritage based on flight paths over the Greater Blue Mountains National Park. The Commission notes the Applicant's assessment does not consider impacts on Aboriginal cultural values relating to the Blue Mountains World Heritage Area. However, the proposal does not include any works within this area that would directly impact any Aboriginal sites. The Commission agrees with the Department's conclusions that evidence has not been provided to suggest the proposal would have an unacceptable impact on cultural sites and values. Further to this, as described in paragraphs 77 and 79, the proportion of flights over the Blue Mountains region comprise a relatively low proportion of the total number of flights and there are no unreasonable impacts expected with respect to Aboriginal cultural heritage.
113. The Commission agrees that the Applicant's Due Diligence Assessment is consistent with the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales and is satisfied an ACHAR is not required in this case. The Commission supports the Applicant's approach to mitigation and has imposed conditions relating to the unexpected archaeological finds procedure and unexpected human remains procedure.

## 5.5 Flooding

114. The Site is identified as being flood affected and is located adjacent to the Hawkesbury-Nepean river system. Section 5.6 of the Western Parkland City SEPP defines the flood planning level as the 1:100 flood level plus 1 metre freeboard.
115. The Applicant's EIS provided a flood impact assessment of the Project that considered flooding for a range of flood events up to and including the Probable Maximum Flood. The EIS concludes the Site will only be subject to flooding in very rare to extreme events. Access to the Site may be affected in more frequent flood events, but this can be managed by the existing evacuation procedures for this area.
116. The Applicant's EIS notes the 1:100 flood level is approximately 22m AHD and the *Penrith City Council Nepean River Flood Study (2018)* suggests the flood level is approximately 22.5m AHD. In its letter to the Commission dated 27 June 2022, the Department noted the level of the Site proposed for this Project is 25m AHD or higher. However, the existing carpark that will be utilised for this development is below the flood planning level as defined by the Western Parkland City SEPP and may be subject to flooding in a 1:100 year event.
117. The Department was satisfied that the Applicant's Floodplain Risk Assessment contains sufficient information to demonstrate the Project is above the flood planning level. The Department assessed the Application against the relevant flood related development controls, including the Western Parkland City SEPP and the Penrith Lakes DCP (AR Appendix D).
118. The Department accepted the Site will require evacuation prior to and in the event of very rare to extreme flooding (AR para 206). Conditions are recommended requiring flood evacuation procedures to be developed in consultation with a flood expert and in accordance with SES requirements (AR para 207) prior to operations commencing.
119. During its meeting with the Commission, on 20 June 2022, Penrith City Council questioned the flood planning level that had been applied by the Department and whether the SES was consulted on the suitability of the Site, given the Project includes a significant component for emergency services operations.
120. The Department responded to these questions in its letter dated 27 June 2022, providing confirmation that the proposed development is above the flood planning level, except for the carpark area. The Department also confirmed it did not specifically seek comment from the SES as to the site's suitability because it is satisfied that the proposal is a permissible use and is suitable when assessed against relevant section 4.15 considerations, including those relating to flooding. The suitability of the site as an emergency hub is a matter for the SES and the Applicant to consider as part of their contractual arrangements.
121. The Department has recommended conditions requiring the preparation of Flood Evacuation and Flood Emergency Management Plans, in consultation with Infrastructure NSW, the SES and TfNSW, and approved by the Planning Secretary.
122. The Commission is satisfied the Site is located above the flood planning level and agrees with the Department's conclusion that the Project would result in negligible change to flood behaviour. However, the Site will require evacuation prior to and in the event of very rare to extreme flooding. The Commission has therefore imposed the Department's recommended conditions with respect to Flood Evacuation and Flood Emergency Management Plans.

## 5.6 Biodiversity

123. The Commission received submissions raising concerns about biodiversity impacts caused by the Project. Submissions also raised concerns about flight impacts on biodiversity within the Blue Mountains National Park, which is a World Heritage Area.
124. The Site is primarily comprised of planted native vegetation and the groundcover is dominated by non-native plant species. Remnant vegetation has historically been cleared and the land has been modified through clearing and earthworks, resulting in highly modified soil profile and degraded habitat (AR para 164).
125. The Application proposes to clear approximately 0.55 hectares of vegetation to make way for the Project, of which 0.10 hectares is planted native vegetation (AR para 165). This includes the removal of 12 trees.
126. The Applicant prepared a Biodiversity Development Assessment Report (**BDAR**) for the Project in accordance with the *Biodiversity Conservation Act 2016* and the Biodiversity Assessment Method.
127. No threatened flora or fauna species were recorded during biodiversity field surveys at the Site, and no evidence was recorded of threatened species utilising habitat within the Site. As such, the BDAR identifies that species credits and ecosystem credits are not required under the Biodiversity Offsets Scheme (AR para 166). Additionally, the Project will not impact key fish habitat, and does not involve “harm to marine vegetation, dredging, reclamation or obstruction of fish passage”, and therefore a permit under the *Fisheries Management Act 1994* is not required (AR para 167).
128. DPI - Fisheries notes that the Project does not propose dredging or reclamation and has no objection to the Application (AR para 169).
129. The Department, at AR para 172, notes that the BDAR states impacts to nearby habitats during helicopter take-off and landing would be negligible based upon the limited number of proposed flights and the timeframe for a helicopter to ascend. The BDAR also states that during construction there may be some noise and dust impacts, however impacts are anticipated to be temporary and short-term as construction of the development will be limited to less than three weeks.
130. The Commission understands that the Applicant has made commitments to manage and reduce biodiversity impacts, including implementing an expected fauna finds protocol (AR para 174).
131. The Department is satisfied that the Project has been designed to avoid and minimise potential impacts on biodiversity. It is proposed to be located in an existing cleared area and the need for additional vegetation clearing has been minimised to reduce impacts on biodiversity values where possible (AR para 162).
132. With regard to impacts to biodiversity caused by flights over the BMNP, the Department notes that helicopter flights are regulated by civil aviation requirements and any development consent for the Application would have “limited ability to control where helicopters could fly upon reaching cruising altitude” (AR para 105). Nonetheless, based on the Applicant's acoustic report, and consideration of civil aviation regulations relating to minimum operational altitudes above ground level, the Department is satisfied that the flight paths as proposed would meet relevant noise criteria.
133. The Commission notes that the Environment and Heritage Group is satisfied that the Project will not adversely impact upon the BMNP or the nearby Yellomundee Regional Park. EHG notes that the Project would support aerial firefighting operations which will support rapid fire response in the Blue Mountains National Park and Yellomundee Regional Park and compliment park management operations (AR para 171).

134. The Commission agrees with the Department, DPI - Fisheries and EHG, and finds that impacts on biodiversity have been appropriately avoided and minimised and can be further mitigated through conditions of consent.
135. The Commission has imposed the Department's recommended condition that requires tree planting on the Site at a replacement ratio of 2:1 (i.e. the 12 trees to be removed will be replaced by 24 trees). The Commission has also imposed a condition, as recommended by the Department, that requires a suitably qualified ecologist to conduct an inspection of the vegetation proposed to be cleared immediately prior to clearing to identify any hollow bearing trees or other habitat features, and to identify any threatened fauna. If these features are found, management measures must be implemented to protect any threatened fauna during construction.

## 5.7 Air Quality

136. The Commission received objections raising concerns that the Proposal would negatively impact the air quality of the area.
137. The Applicant's EIS included an Air Quality Impact Assessment (**AQIA**) which considered the potential impacts on the environment from sources such as dust created by aircraft movements. The AQIA was prepared in accordance with the Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales (2016).
138. The AQIA found the Project presents a low risk to air quality and health. Limited mitigation measures are therefore proposed, with the most significant ones relating to construction.
139. The Department engaged with the EPA during its assessment of the Application, and following advice received from the EPA, requested information to confirm whether sensitive receivers at Old Castlereagh Road were considered in the AQIA and at what stage of the proposal they would be impacted (AR para 208). In response, the Applicant advised those sensitive receivers were included in the AQIA and that potential impacts could occur during construction and operational phases.
140. The Department has recommended a condition requiring all reasonable and practicable measures to be implemented to minimise the emission of dust and other air pollutants during construction.
141. The Commission agrees with the Department's view, and the views of the EPA, and finds that impacts on air quality have been appropriately minimised and can be further mitigated through conditions of consent. The Commission has therefore imposed the Department's recommended condition to minimise the emission of dust and other air pollutants during construction.

## 5.8 Traffic

142. Concerns were raised in public submissions regarding the traffic impacts of the development, including additional traffic generation.
143. The Department noted that the operation of the helipad would not disrupt the exiting road and transport network (AR para 48) and that the additional vehicle movements associated with this proposal would have negligible impact on Old Castlereagh Road's approximately 30,000 vehicle movements per day (AR para 208, table 9). The Commission notes that access to the site will be limited to staff and invited members of the public (paragraph 28), with the number of flights that can operate from the site also limited (paragraphs 94 and 95).



144. The Commission agrees with the Department's conclusion, that the Project would have a negligible impact on the surrounding road network and will not adversely impact traffic exhaust pollution.

## **5.9 Economic and Social Impacts**

145. The Commission notes concerns raised in submissions that the Project will adversely impact on property values and the way of life for residents in proximity to the Site. Objections also noted the Project will impact on the recreational use of the Penrith Lakes area, which will adversely impact on health and social factors.
146. As detailed in this Statement of Reasons, the Project is a permitted use and is consistent with relevant planning policies, guidelines, and regulations. The Commission has also imposed strict conditions with respect to impact mitigation to ensure the ongoing acceptability of the development. Consequently, the Commission finds the Project to be a reasonable development for the Site.
147. In terms of adverse impacts on health and wellbeing, the Commission has imposed strict conditions with respect to noise impacts, limiting the hours of operation and the number of flights and mitigation measures for the closest residential receivers. The Commission finds the Project will not have any unreasonable economic or social impacts.

## 6 THE COMMISSION'S FINDINGS AND DETERMINATION

148. The views of the community were expressed through public submissions received (as part of exhibition and as part of the Commission's determination process), as well as in presentations to the Commission at the Public Meeting. The Commission has carefully considered all these views in making its decision.
149. The Commission has carefully considered the Material before it as set out in section 3.3 of this report. Based on its consideration of the Material, the Commission finds that the Project should be approved subject to conditions of consent, for the following reasons:
- the Site is located on land zoned Tourism and the Project is permissible with consent under Chapter 5 – Penrith Lakes Scheme of the Western Parkland City SEPP;
  - the Project complies with the strategic planning directions of State and Local planning policies;
  - the project will facilitate economic and social benefits for Western City District residents by providing aircraft services in a location that supports the tourism and utility industries, as well as in providing emergency service operations as needed;
  - environmental impacts have been avoided and mitigated where possible; and
  - any residual impacts on surrounding land uses are capable of being managed through conditions of consent.
150. For the reasons set out in this Statement of Reasons, the Commission has determined that the consent should be granted subject to conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental and social impacts;
  - set standards and performance measures for acceptable environmental performance;
  - provide procedures and mechanisms for engagement with key stakeholders and further impact mitigation if necessary;
  - require regular monitoring and reporting; and
  - provide for the on-going environmental management of the development.
151. The reasons for the Decision are given in the Statement of Reasons for Decision dated 3 August 2022.



**Chris Wilson (Chair)**  
Member of the Commission



**Dr Sheridan Coakes**  
Member of the Commission