



<b>15.2.</b>	<b>Planning Permit Application 2022/044 at 6 McDonald Road Queenscliff</b>
<b>Author:</b>	Senior Planner
<b>Portfolio:</b>	Heritage, Planning & Infrastructure
<b>Councillor:</b>	Cr Grout

### **Purpose**

The purpose of this report is to present an updated assessment and recommendation for the use of the land at 6 McDonald Road, Queenscliff for a helicopter landing site.

### **Executive Summary**

*Portfolio 2: Environment*

Strategic Objective: *To protect our environment and address climate change issues*

Priority 3: *Protect our coastal and public areas including their ecosystems and biodiversity*

*Portfolio 4: Heritage, planning and infrastructure*

Strategic Objective: *To protect our distinctive coastal, cultural and built environment, and provide sustainable, suitable infrastructure*

Priority 2: *Enhance planning controls to protect neighbourhood character and promote environmentally sustainable design*

The subject site is located on the south side of McDonald Road, mid-way along Burnt Point. The site has an area of approximately 3.6 hectares. The site is developed with an existing dwelling and associated outbuildings. One of the outbuildings received planning permission in 2016 as a storage shed and this is currently used to store the helicopter that is the subject of the current application.

The application seeks to use the land for the landing of a helicopter associated with the personal use of the resident of the dwelling on the site.



The proposal seeks to undertake a maximum of 8 flights a month (being 16 movements with each take off and each landing being a movement). The information supplied with the application shows that most take offs occur over the water to the south and east and landing generally occurs from the north-west. Take offs see the helicopter at 1,000 feet in approximately 1.5 minutes.

The subject land has the following zones and overlays:

- Rural Conservation Zone (RCZ)
- Environmental Significance Overlay, Schedule 1 Coastal and Foreshore Areas (ESO1)
- Environmental Significance Overlay, Schedule 2 Swan Bay and Marine and Terrestrial Habitats (ESO2)
- Significant Landscape Overlay, Schedule 1 Swan Bay Landscape Area (SLO1)

A planning permit is triggered for the proposal under the following controls:

- Clause 52.15 Heliport and Helicopter landing site. This clause provides requirements which if met allow helicopter landings to occur without a permit such as the landing point being beyond 500 metres from sensitive uses (such as dwellings) and limitations on the number of flights. These cannot be met in this instance and therefore a permit is triggered.

The zone and overlays do not trigger a permit for the activity because no development is proposed. This means those controls are not relevant to the specific assessment of the application but provide an important context of the environmental significance of the area. The core decision making criteria relate to Clause 52.15, however, issues of environmental impacts and orderly planning outcomes are still relevant under the general decision criteria at Clause 65 of the Queenscliffe Planning Scheme.

The application was subject of a Planning review Meeting on the 7 December 2022 and was presented to the 14 December 2022 Council meeting for a decision. Council determined to defer consideration of the application.

Post the Council meeting of 14 December 2022 the following has occurred:

- Ecology and Heritage Partners were engaged by Council to review environmental information and issues submitted with the application and raised by objectors. Ecology and Heritage Partners has provided a final



report, included in Attachment 1, which has been shared with the applicant, the Department of Energy, Environment and Climate Action (DEECA) and objectors.

- The permit applicant has undertaken a self-assessment process against the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) and confirmed no referral under the EPBC Act 1999 is required. The self-assessment has been discussed by the applicant with officers of the federal Department of Climate Change, Energy, the Environment and Water (DCCEEW).

Having reviewed the proposal against the relevant criteria in the Queenscliffe Planning Scheme, updated information, the original objections and any additional comments it is recommended the proposal be supported with appropriate conditions limiting the use as listed in the recommendation.

## **RECOMMENDATION**

That Council:

Having caused notice of Planning Application No. 2022/044 to be given under Section 52 of the Planning and Environment Act 1987; the Queenscliffe Planning Scheme and having considered objections and all the matters required under Section 60 of the Planning and Environment Act 1987, resolves to issue a Notice of Decision to Grant a Planning Permit under the provisions of Clause 52.15 for use of the land for a helicopter landing site in respect of the land known and described as 6 McDonald Road Queenscliff subject to the following conditions:

1. The helicopter landing and take off shall only be associated with the helicopter model Enstrom 280 FX to the satisfaction of the Responsible Authority.
2. Helicopter flights (a flight being a take off and landing) shall only occur a maximum of six (6) times per month to the satisfaction of the Responsible Authority.
3. Helicopter flights (a flight being a take off and landing) shall only occur between the hours of 7am to 7pm at any given time to the satisfaction of the Responsible Authority.



4. Helicopter take offs and landings shall occur to and from a westerly direction at all times to the satisfaction of the Responsible Authority.
5. The permit holder/owner will maintain a logbook of the use of the helicopter landing site and the logbook will be made available for inspection by the Responsible Authority on request.
6. The use as shown on the endorsed plans must not be altered without the written consent of the responsible authority.
7. The permit for use will expire if one of the following circumstances applies:
  - a. The use does not start within two years after the issue of a permit.
  - b. The use is discontinued for a period of two years.

In accordance with Section 69 of the Planning and Environment Act 1987, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.



## REPORT

### Background

The application was received in June 2022 and, after further information was provided, the application was placed on public notice and generated substantial interest and objection. The application was the subject of a Planning Review Meeting on 7 December 2022 and was presented to the 14 December 2022 Council meeting for a decision. Council determined to defer consideration of the application.

### Discussion

Planning permits for the take off and landing of a helicopter on private land is controlled by Clause 52.15 in the Queenscliffe Planning Scheme. The provision is state-wide provision that is present in all planning schemes. The purpose of Clause 52.15 is as follows:

- *To ensure the amenity impacts of a heliport and a helicopter landing site on surrounding areas is considered.*

There is a Planning Practice Note 75 produced by the former Department of Environment, Land, Water and Planning (DELWP) that explains the planning requirements related to heliports and helicopter landing sites. This publication makes reference to the above provisions and makes it clear that once a helicopter is in the air, it is beyond planning control. This has been reinforced in recent VCAT decisions on helicopter landing sites such as *Metcalf v Surf Coast SC [2018] VCAT 1863*.

The issue of where a take off and landing transitions to flight is not defined. In a practical sense it is considered that the action of the helicopter moving up and away from its take off point or descending to a landing point reasonably includes the concept of take off and landing. Information submitted in the application suggests the helicopter climbs at 700 feet (213 metres) per minute at take off and descends at 500 feet (150 metres) per minute at landing. This information supports a concept that take offs and landings involve distances of approximately 200 metres from the site and can reasonably be controlled by the permit process.

A key focus of the control at Clause 52.15 is understanding noise impacts to surrounding properties and amenity concerns associated with that. The application has been supported by an acoustic report prepared by Clarity Acoustics dated 26 August 2022. The report details the EPA Publication Noise Control Guidelines 1254.2



May 2021 as providing relevant guidance for noise levels for helicopter use. The report confirms measurements of potential noise from the helicopter take off and landing were conducted on 9 August 2022 and that the proposed helicopter activity met the required full day equivalent average noise levels and maximum noise levels as detailed in the EPA publication at the nearest residential uses.

The noise assessment evidence provided suggests no unreasonable noise outcomes for the proposed helicopter activities are anticipated.

The other key issue relevant to the proposal is the impact on the environmental values of the location. The General Provisions for assessment of applications at Clause 65 (referred to in the decision guidelines for Clause 52.15) include consideration of environmental impacts. The broader area of Burnt Point is located in areas of intertidal wetlands and shallow waters which provide habitat for a range of flora and fauna and provide a focus for migratory shorebirds which is reflected in the Ramsar listing present on Swan Bay. The area also provides habitat for the migratory Orange Bellied Parrot.

The application is supported by a biodiversity impact assessment by Nature Advisory dated 1 September 2022 which supported the helicopter take off and landings subject to requirements.

The deferment of consideration of the application in December 2022 has allowed for a further review of environmental issues associated with the application to be completed by Ecology and Heritage Partners. The following elements have been investigated in the report:

- The original report submitted with the application prepared by Nature Advisory.
- Reviewing data sources on significant flora and fauna in the area.
- Literature on impacts of flights on migratory birds.
- Acceptable flight elevation and distances from migratory birds.
- Bird strike risk with aircraft.
- Impacts to the Orange-Bellied Parrot and White-Bellied Sea Eagle.

The Ecology and Heritage Partners reports provides conclusion as follows:

- Agrees with the Nature Advisory report that flights should be directed to the west.



- Given the low frequency of flights and that the take off/landing area is sufficiently removed from roosting/foraging sites the proposal is not expected to have significant impacts to migratory birds in the area.
- Risk to the Orange-Bellied Parrot has been mitigated to an acceptable level.
- If there are known White-Bellied Sea Eagle nesting sites a 2 km buffer to that should be in place during the breeding seas (mid May to mid September).

The Ecology and Heritage Partners report has been shared with the applicant, objectors and Department of Energy, Environment and Climate Action (DEECA). All the original objections remain and no objections have been withdrawn. Eight objectors have restated their concerns and the issues with the Ecology and Heritage Partners report as follows:

- Concerns about what level of detail has informed the report.
- Concerns about the lack of field testing.
- General lack of definitive information about as to what level of noise impact and movement of a helicopter can have on different species of bird.

DEECA have also provided feedback suggesting that should any permission be granted, helicopter movements should only be to the west and suggested in the absence of such being available precautionary principles be applied. This advice suggests that if movements cannot be limited to the west then DEECA have concerns with the proposal.

It is noted the original DEECA response dated 8 December 2022 referenced the potential use of a Fly Neighbourly Agreement. It is understood this a voluntary based agreement that seeks to confirm flight details and movements primarily targeted to minimising noise impacts for airports and the like. While the planning permit can control landing and take offs as previously detailed in the report, it is understood that the Fly Neighbourly Agreement was suggested by DEECA as means to achieve control of the broader flight paths. It is considered the recommendation and draft conditions included in this report would provide the most effective means to control the helicopter landings and take offs, activities that are the key consideration under Clause 52.15. A Fly Neighbourly Agreement is not considered necessary in that regard and would have limited additional benefit beyond the recommended permit conditions. As such is not recommended for inclusion as planning permit condition. Despite that, such an outcome is available to Council beyond the planning permit



process and the approach of a Fly Neighbourly Agreement has been raised with the applicant with no opposition received.

Council is required to form a view on the application associated with the provision of Clause 52.19 of the Queenscliffe Planning Scheme related to helicopter landing sites. Other legislation such as the EPBC Act is not a requirement of Council to form a view on and is administered by federal government agency who the applicant has been in contact with.

Based on the information above, it is considered the issues associated with the proposed helicopter flights can be controlled at a level to mitigate any impacts to migratory birds in the area through limiting the number of movements further and requiring the movement to only occur to the west.

### **Options**

Option 1 – That Council adopt the officer recommendation.

Option 2 – That Council modify the officer recommendation.

Option 3 – That Council reject the officer recommendation.

### **Communications and Engagement**

The application has been advertised in accordance with the requirements of the *Planning & Environment Act 1987*. Specifically, the applicant:

- Directly notified, via Registered Post, all landowners on Burnt Point and landowners within 500 metres of the site on the south side of Lakers Cutting.
- Displayed signs on the property.

Council has received 28 objections to the proposal. The key issues raised in the objections have focused on the likely impacts the proposal will have on the environmental values of the location primarily associated with the RAMSAR context of the area and the migratory bird species present in the location.

No objections have been withdrawn as a result of the information in the Ecology and Heritage Partners report.

It is noted the Wadawurrung Traditional owners were consulted on the application and confirm that the proposal would have minimal detriment to Wadawurrung living cultural heritage via a letter dated 26 July 2022.





## **Governance Context**

### Relevant Law

Planning and Environment Act 1987

### Charter of Human Rights

This report has had consideration to, and complies with, the *Charter of Human Rights and Responsibilities Act 2006*.

### Gender Equality Act 2020

The *Gender Equality Act 2020* requires a Gender Impact Assessment to be undertaken when the Council develops or reviews any Council policy, program or service that has a direct and significant impact on the public.

The assessment of the planning application does not require a Gender Impact Assessment.

### Regional, State and National Plans and Policies

Queenscliffe Planning Scheme

### Legal and Risk Implications

Not applicable.

### Related Documents

Not applicable.

### Disclosure of Interest

No officer involved in the preparation of this report has any conflicts of interest.

## **Considerations**

### Environmental Sustainability

Impacts on the environment have been considered as part of the assessment of the proposal.

### Financial and Resource Implications



There are no financial or recourse implications associated with this report. There may be a financial implication to Council if any rights of appeal to VCAT are exercised.

#### Innovation and Continuous Improvement

No specific issues of innovation and continuous improvement are relevant to the consideration of the planning permit.

### **Implementation**

#### Operational Impacts

This project will be delivered with existing operational resources.

#### Implementation Process

This project will be delivered by existing staff and resources. Any decision will be conveyed to all parties and depending on the decision different parties will have rights of appeal to VCAT.

### **Attachments**

1. Peer Review of Biodiversity Impact Assessment at 6 McDonald Road [**15.2.1** - 28 pages]