

ASSESSMENT REPORT

Section 75W Modification

Emirates One&Only Resort, Wolgan Valley [05_0079 (Concept Plan) MOD 2 and 06_0310 (Project Approval) MOD 2]

1. INTRODUCTION

This report is an assessment of a request to modify the Concept Plan (05_0079) and Project Approval (06_0310) for the Emirates One&Only Resort, located at Wolgan Valley (the Site). The requests have been lodged pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The requests seek to relocate the existing helipad, increase the number of helicopter trips and construct and operate six bee hives at the Site.

2. BACKGROUND

The Emirates Hotels (Australia) Pty Ltd (the Proponent) operates Emirates One&Only Resort at 2600 Wolgan Road, Wolgan Valley in the Lithgow local government area (see **Figure 1**).

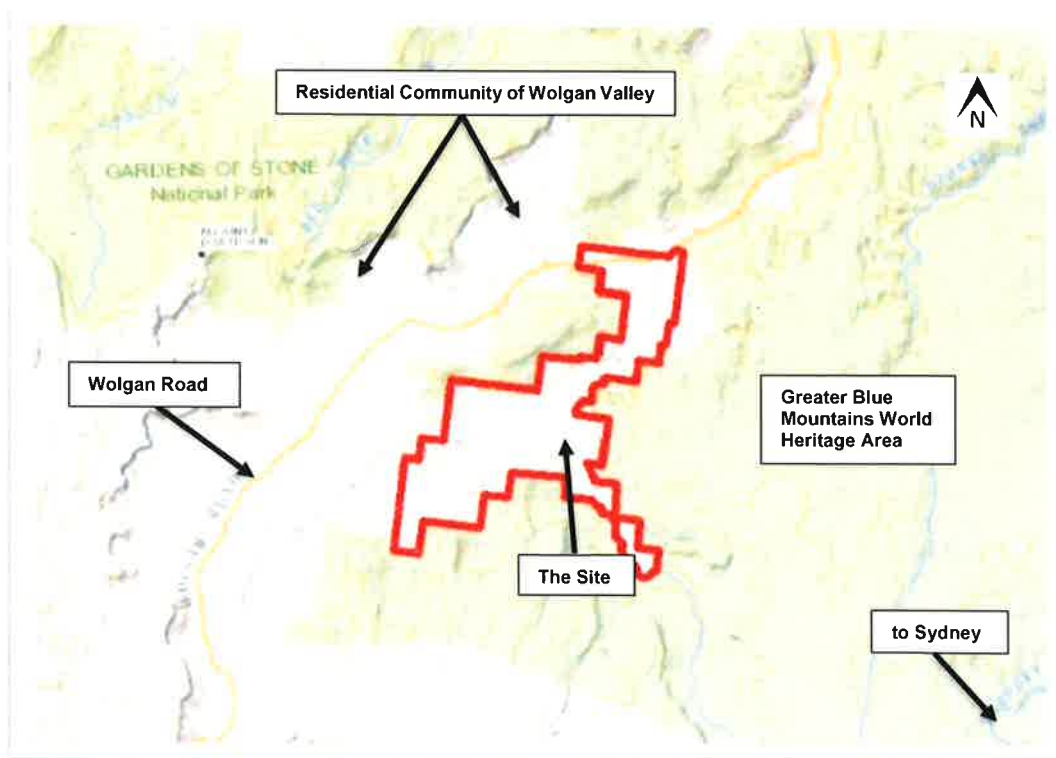


Figure 1: Site Location

2.1 Locality

Emirates One&Only Resort is located within Wolgan Valley which is approximately 190 kilometres (km) north-west of Sydney. Wolgan Valley is approximately 13,700 ha in size extending from Newnes in the north-east to Wolgan Gap in the south-west. Wollemi National Park in the Greater Blue Mountains World Heritage Area (GBMWA) bounds the Site to the east. The operational area of the Site (approximately

a 7000-acre reserve) includes a portion of GBMWA land subject to a lease agreement with NSW National Parks and Wildlife Services (NPWS).

Gardens of Stone National Park is located to the north, Wolgan State Forest further to the west and Newnes State Forest further to the south. In addition, other GBMWA tourism attractions such as the Glow Worm Tunnel, Newnes Industrial Ruins, Deep Pass, Blackfellows Hand Rock and Baal Bone Gap are located within the vicinity of the Site. Donkey Mountain bounds the north-western boundary of the site and Wolgan River flows through the Site from the north-east to the west.

The residential community of Wolgan Valley is located north of the Site and on the north-western side of Donkey Mountain which is approximately 4 km from the main operational area (see **Figure 2**). The nearest residential property is approximately 200 m from the northern boundary of the Site.

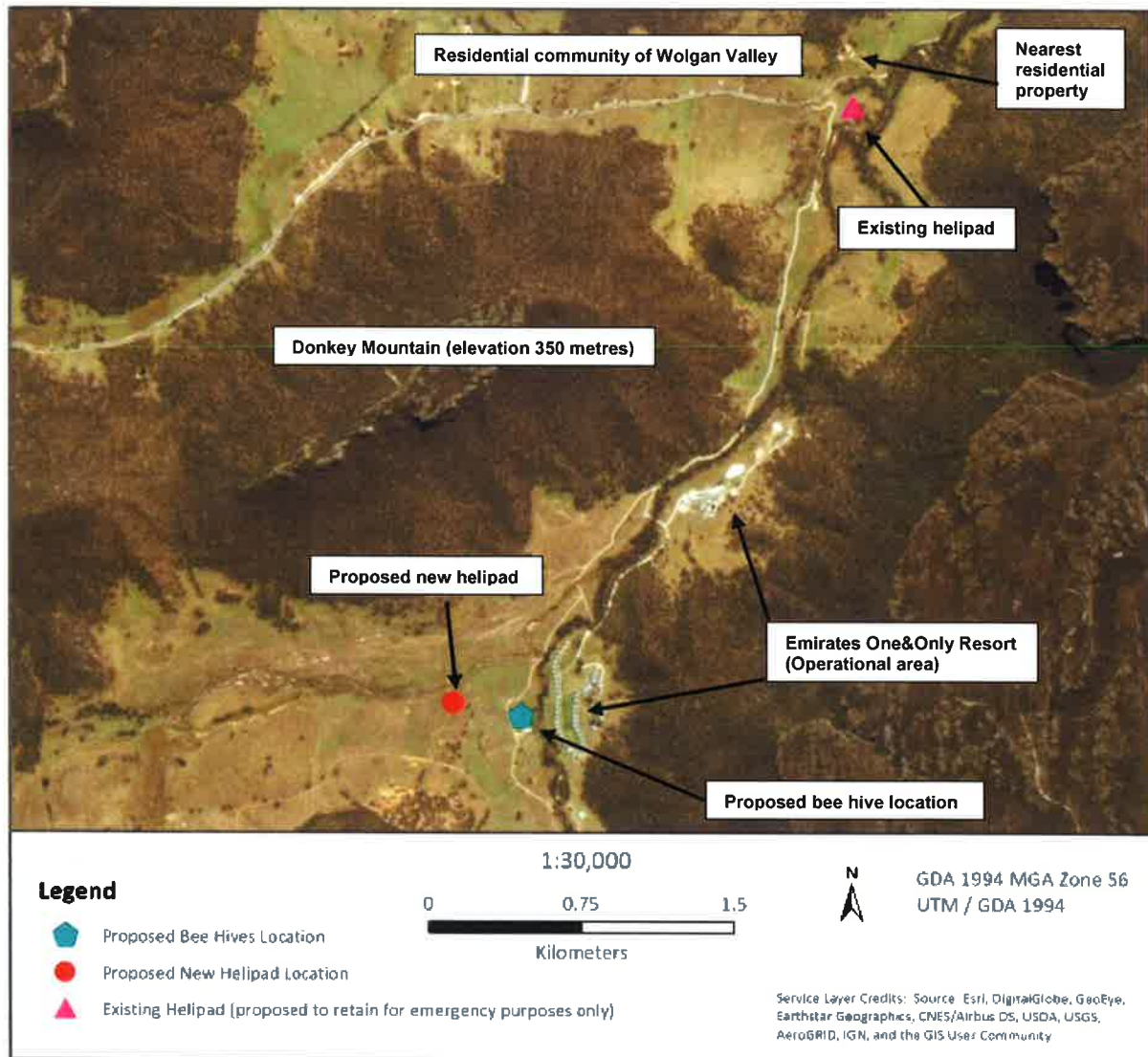


Figure 2: Existing and proposed helipad locations and proposed bee hives location

2.2 Tourism Resort

The Proponent operates a luxury tourism resort which provides high-end villa accommodation, on-site restaurants, spa treatment amenities, conference facilities and numerous recreational activities. In addition, the Site employs and provides on-site accommodation to approximately 100 staff.

Guests of the Resort either travel by road which is approximately a three-hour drive from Sydney Airport via Wolgan Road or by helicopter, which takes 45 minutes from Sydney Airport. The Department understands the majority of guests would continue to travel via road to the Site, however in recent years

there has been an increase in the number of guests requesting helicopter transport to and from the resort.

Under the existing Project Approval, the Proponent is able to operate up to four helicopter trips (i.e. eight helicopter movements) per week. The existing helipad is currently located near the entry to the Resort adjacent to Wolgan Road on the western side of the Wolgan River, which is approximately 200 m from the nearest residential property (see **Figure 2**).

As the demand for helicopter transport increases, the Proponent is now seeking to increase the weekly number of helicopter trips from four up to 36 per week during peak holiday periods and tourism events. To accommodate for the potential noise impact associated with this increase, the Proponent is proposing to relocate the helipad to a pasture field near the operational area of the Site further away from residential properties (see **Figure 2**). Flight paths would be altered to account for the new location of the helipad and to allow for further distance from the nearby residential community.

The Department notes the Proponent was fined \$15,000 for breaching the approved four helicopter trips per week (i.e. eight helicopter movements per week). The compliance investigation found the Proponent breached this limit numerous times between January 2014 and September 2016.

As part of these requests, the Proponent is also seeking approval to construct and operate up to six bee hives for local production of honey, to enhance the culinary and cultural experience for guests and for use in food prepared at the Resort. The proposed location of the bee hives will be near the main operational area of the Site (see **Figure 2**).

3. APPROVAL HISTORY

On 12 May 2006, the then Acting Minister for Planning approved a Concept Plan (MP 05_0079) for the proposed Resort. The Concept Plan approval included the broader parameters of the project and as part of this approval, the Proponent was required to submit a project application for the detailed design, construction and operation of the resort.

On 20 November 2006, the Proponent lodged a section 75W modification request (MP 05_0079 MOD 1) seeking to modify the approved Concept Plan and an application for Project Approval (MP 06_0310) for the proposed development and operation of the resort.

On 13 April 2007, approval was granted by the then Minister for Planning for the modification to the Concept Plan (MP 05_0079 MOD 1) and the Project Approval (MP 06_0310). The approval permitted the following works:

- 40-villa Resort complex
- ancillary facilities such as reception building, a spa complex, staff accommodation, gatehouse, pool building and stables
- associated infrastructure (internal roads, utilities works, helipad, landscaping electricity line and fibre optic cable).

On 10 October 2007, approval was granted under section 75W (MP 06_0310 MOD 1) to modify the approved 14 single-storey accommodation buildings to five double-storey and four single storey buildings.

In May 2009, the Proponent wrote to the Department advising of the relocation of the helipad from its approved location opposite the Staff and Maintenance Precinct to a location adjacent to the resort entry point approximately four metres from the site boundary. It was the Proponent's opinion that the relocation of the helipad did not require further approval. The Department considered the proposed change of location was consistent with the Project Approval.

4. PROPOSED MODIFICATIONS

On 4 October 2017, the Proponent submitted two section 75W modification requests accompanied by an Environmental Assessment (EA). The modification requests seek to modify the Concept Plan (05_0079 MOD 2) and Project Approval (06_0310 MOD 2) to:

- relocate the existing helicopter landing pad
- increase the number of weekly helicopter trips from four to 18 per week, and up to 36 per week during peak holiday periods and tourism events

- construct and operate six bee hives.

The modifications are described in full in the EA included in **Appendix B**.

5. STATUTORY CONTEXT

5.1 Approval Authority

The Minister for Planning is the approval authority for the request. Under the Minister's delegation of 11 October 2017, the Executive Director, Key Sites and Industry Assessments, may determine the request under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are less than 10 public submissions in the nature of objections.

Of the 17 submissions received, five public submissions objected to the proposed modifications. Council did not object to the requested modifications. No reportable political donations were made by the Proponent in the last two years and no reportable political donations were made by any persons who lodged a submission.

Accordingly, the requested modification can be determined by the Executive Director, Key Sites and Industry Assessments, under delegation.

5.2 Section 75W

Under Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, the power to modify transitional Part 3A projects under former section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply.

The Department notes:

- the primary function and purpose of the approved project including the Concept Plan and Project Approval would not change as a result of the proposed modifications
- the Proponent has requested an increase in the limit of approved helicopter trips to 18 trips per week with the exception of the holiday and tourism peak periods where an increase of 36 trips per week has been requested
- any potential environmental impacts would be appropriately managed through the existing or modified conditions of approval.

The Department is satisfied the relocation of the helipad, increasing helicopter trips per week and the construction and operation of the bee hives is within the scope of section 75W of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the requests should be assessed and determined under section 75W of the EP&A Act. However, when assessing the modification requests, the Department will need to be satisfied the proposed number of helicopter trips per week will have limited environmental consequences in comparison to the approved Concept Plan and Project Approval.

6. CONSULTATION

Under section 75W of the EP&A Act, the Department is not required to notify or exhibit the modification requests. However, due to the potential for public interest in the proposal, the Department exhibited the requests from 11 October 2017 to 1 November 2017:

- on the Department's website
- at the Department's information centre
- at Lithgow City Council's offices.

The modification requests were advertised in the Lithgow Mercury. Neighbouring landowners/occupants and previous submitters were notified of the modification requests and invited to make a submission.

The modification requests were also referred to:

- Greater Blue Mountains World Heritage Area (GBMWA) Advisory Committee
- Heritage Council of NSW
- Lithgow City Council

- Local Member for Bathurst
- NSW Department of Industry (DPI)
- NSW Environment Protection Authority (EPA)
- NSW Fire and Rescue
- Office of Environment and Heritage (OEH).

AirServices Australia and Australian Government Civil Aviation Safety Authority (CASA) were not notified during the exhibition stage, as both agencies previously advised they had no comment regarding the proposed relocation of the helipad and increase in helicopter movements to the Site.

During the exhibition period, a total of 17 submissions were received, including seven from public authorities, three from organisations and seven from the public. Of the submissions received, five objected to the request.

6.1 Public Authorities

The **GBMWA Advisory Committee** provided a number of comments and recommendations to address the potential adverse impacts posed by the modifications to the GBMWA, including:

- an obligation for the Proponent to monitor the likely impact of increased helicopter movements and where required amend the planned operations to avoid such impact
- avoid disturbance of the bat roosting habitats on the escarpment above the Resort, by ensuring helicopter movements do not occur until half an hour after sunrise or after half an hour prior to sunset
- ensure mitigation measures are put in place to prevent the helicopter movements from causing adverse noise impact on the area's aesthetic values
- approval should include a condition requiring the Proponent to continue to implement and monitor the *Fly Neighbourly Agreement* (FNA) for the Blue Mountains National Park, to ensure aircraft impacts on the GBMWA and neighbouring communities are minimised.

The **Heritage Council of NSW** did not object to the modifications, as there were no State Heritage Register listed items affected by the proposal, no additional excavation works and the proposed helipad would be located outside of the Potential Archaeological Deposit areas and any archaeological site.

Lithgow City Council did not object to the modifications, subject to compliance with the *Apiaries Act 1985* and that the Proponent becomes a registered bee keeper.

DPI requested the Proponent provide a plan of the proposed location of the bee hives as part of the Response to Submissions (RTS) process, has a registered bee keeper on-site and manages the bee hives in accordance with the Australian Honey Bee Industry Biosecurity Code of Practice.

The **EPA** advised that the number of proposed helicopter movements will trigger the requirement for an Environment Protection Licence (EPL) under Schedule 1, Part 1, Clause 20(1) Helicopter-related activities of the *Protection of the Environment Operations Act 1997* (POEO Act). Under these requirements, both a) and b) of this clause must be satisfied:

"Helicopter-related activity", meaning the landing, taking-off or parking of helicopters (including the use of terminals and the use of buildings for the parking, servicing or maintenance of helicopters), being an activity:

- a) that has an intended use of more than 30 flight movements per week (where take-off and landing are separate flight movements)*
- b) that is conducted within 1 kilometre of a dwelling not associated with the landing, taking-off or parking of helicopters.*

but not including an activity that is carried out exclusively for the purposes of emergency aeromedical evacuation, retrieval or rescue.

The EPA noted that it is not responsible for regulating taxing, start-up, take-off, flight or landing activities. So, the EPL will only regulate on-ground non-flight activities such as maintenance activities, dust generation and fuel storage. The EPA also recommended a number of administrative requirements which are already reflected in the Project Approval conditions.

Fire and Rescue advised that it was unable to provide comment on the modification requests due to current staffing resources and workload.

OEH did not object to the modifications as no excavation or disturbance is proposed for the helipad and the proposed bee hives would not be located on NSW National Park land. It was considered that no threatened fauna or flora or threatened ecological communities are present or are likely to be disturbed by the activities proposed by the modifications. **OEH** requested that the Proponent carry out an assessment of the plant species present at the proposed helipad site to be provided in the RTS.

6.2 Public Submissions

The Department received 10 public submissions which included three from organisations. Of the public submissions received, five objected to the requests, three were in support and two did not state a position but sought additional information from the Proponent.

Issues raised in the general public submissions included:

- the significant increase in helicopter trips / movements
- the potential impact on the GBMWA and Wolgan Valley
- the potential impact the new flight paths will have on the GBMWA.

Two of the general public objections came from the **Colong Foundation for Wilderness Ltd** and **Blue Mountains Conservation Society Inc.** Their submissions raised concerns regarding:

- the status of the land swap between the Proponent and the NSW Government
- the proposed increase in helicopter trips / movements
- the potential impact the increase of helicopter movements and new flight paths on the GBMWA
- compliance with the FNA and the *Environment Protection and Biodiversity Conservation Act 1999* Approval 2006/2567 (EPBC Act Approval)
- potential for mid-air collisions with the proposed new flights
- the potential impact of introduced bee species on the National Park.

6.3 Response to Submissions

The Proponent provided a Response to Submissions (RTS) on 15 December 2017. The RTS included additional information and clarification around a number of issues raised by the Department and within the submissions received. The RTS confirmed the Proponent's commitment to implement the FNA and ensure there are no joy flights from the Site into the surrounding GBMWA.

The Department referred the RTS to Government Authorities in addition to publishing the RTS on the Department's website. In response to the Department's referral, further submissions were received from DPI, EPA, the Heritage Council of NSW and OEH. These submissions are summarised as follows.

DPI re-emphasised the need for the Proponent to have a registered beekeeping license in accordance with section 159 of the *Biosecurity Act 2015* for the on-site beekeeping activities.

After reviewing the RTS, the **EPA** advised as there are no residential properties within 1 km of the helipad, the helicopter-related activity would not be considered 'scheduled' under Clause 20(1) of the POEO Act. For helicopter-related activity to be a scheduled activity, both a) and b) of Schedule 1, Part 1 Clause 20(1) POEO Act must be satisfied. As discussed in their initial submissions, b) refers to the residential properties being within 1 km of the location of the helipad.

The **Heritage Council of NSW** advised that had no further comments in relation to the modifications.

OEH considered that the flora survey provided in the RTS was not conducted in accordance with the methodology specified in the Framework for Biodiversity Assessment and no cover abundance scores for species have been provided. It was noted that 15 of the 17 species identified on-site are non-native. **OEH** concluded that the proposed activities associated with the helipad will have a negligible impact on biodiversity, therefore a biodiversity offset is not required for the modification requests.

The Department has considered the issues raised in these submissions, the RTS and the supplementary responses, in its assessment of the modification requests.

7. ASSESSMENT

The Department has assessed the merits of the proposed modifications. During this assessment, the Department has considered the:

- EA and assessment report for the original applications
- existing conditions of approval (as modified)
- the EA supporting the proposed modification (**Appendix B**)
- submissions from State government authorities, Council and the general public (**Appendix C**)
- the Proponent's response to issues raised in submissions
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department considers the key assessment issues are:

- helipad location and movements, including flight paths and number of trips
- noise
- biodiversity
- implementation of the original land swap agreement with National Parks.

Table 3 includes the Departments assessment of other issues including the bee hives, helipad operational matters and administrative amendments.

7.1 Helipad Location and Movements

Location

The Proponent proposes to construct a new helipad in the south-western part of the site, near the existing guest houses. The helipad would be utilised for guest transfers to and from the site, when not taking the trip by road. The existing helipad, located in the north of the site near the Resort entry gate, would be retained for emergency use only. The existing helipad is located 200 m from the nearest residences, which are north of Wolgan Road. The Proponent selected the proposed new helipad location for its distance from residences (3 km), which would enable an increase in movements without significant noise impacts. Donkey Mountain, at an elevation of 350 m, shields the helipad from the residences. The proposed helipad would be located on an existing cleared area and no construction works would be required, beyond grass mowing and painting, to delineate the landing area.

The Proponent engaged Global Airspace Solutions to evaluate the proposed helipad location against relevant guidelines. Global Airspace Solutions confirmed the proposed location complies with the *CASA Guidelines for the establishment and operation of onshore helicopter landing sites* (February 2014).

Two submissions objecting to the modification raised concerns about the proposed helipad location in relation to noise and biodiversity impacts. These are discussed in detail in **Sections 7.2 and 7.3**.

The Department considers the proposed helipad location meets relevant guidelines and has recommended a condition requiring on-going management and maintenance of the helipad in accordance with the CASA guidelines. The Department has also recommended a condition limiting the use of the existing helipad for emergencies only, once the new helipad is operational.

Flight Paths

The Proponent proposes to alter the existing helicopter flight paths to accommodate the new helipad location, and to reduce noise at residences. Under the existing Project Approval, helicopters take off and land in an east-west direction, which is close to residences, see **Figure 3**. The flight path to Sydney then takes a south-easterly route over the GBMWA. The proposed flight path from the new helipad would involve take off and landings in a north-south direction, over 3 km from residences, with the route to Sydney continuing in a south-easterly direction over the GBMWA (see **Figure 4**).

Several submissions raised concerns about the proposed changes to flight paths, including:

- compliance with the existing FNA for the Blue Mountains National Park
- impacts on the natural and aesthetic values of the GBMWA and the visitor experience
- use of the helipad for joy flights across the GBMWA
- potential impacts on bat roosting sites close to the Site.

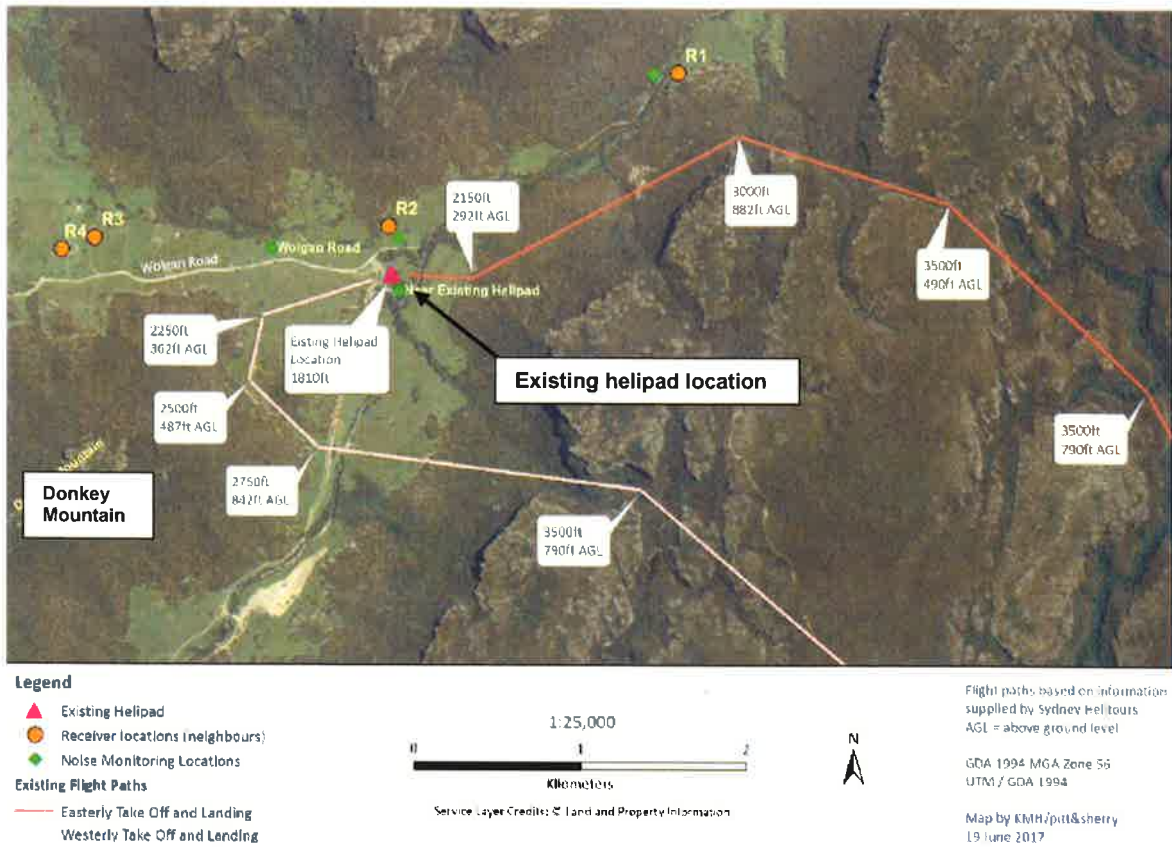


Figure 3: Existing flight paths

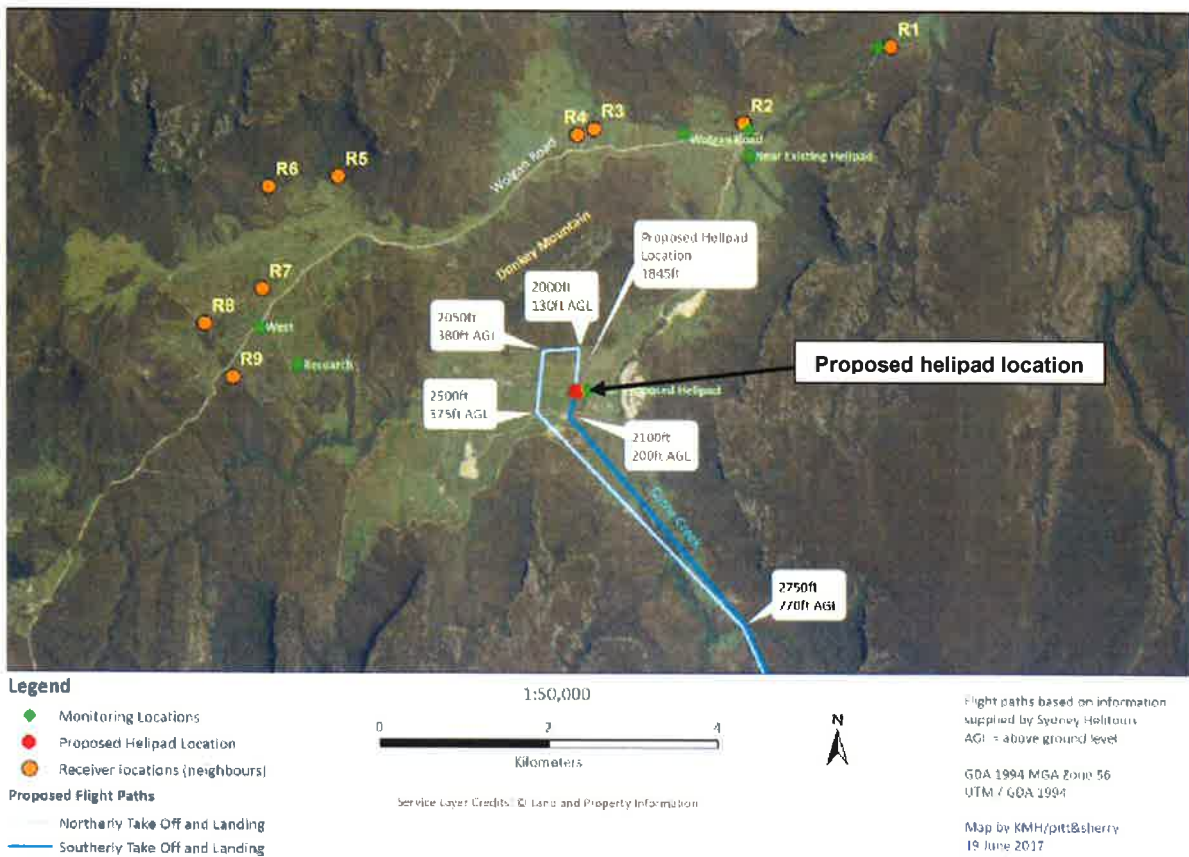


Figure 4: Proposed flight paths

The GBMWA Advisory Committee noted the potential threats to appreciation of the aesthetic values of the World Heritage Area includes overflights by helicopters. It noted the importance of complying with the existing FNA for the control of noise, which can detract from the visitor experience. The GBMWA Advisory Committee recommended the Proponent monitor the impacts of helicopter flights and amend its operations to avoid any impacts. The GBMWA Advisory Committee also referred to an existing EPBC Act Approval which limits helicopter flying times from the Site, to avoid bat roosting periods (flights only allowed from half an hour after sunrise to half an hour prior to sunset).

The Department notes there are existing agreements and approvals in place for the management of impacts associated with helicopter flights from the Site. The Department considers these existing agreements should be referenced in the modified conditions to ensure appropriate procedures are in place for managing potential impacts on the GBMWA. The relevant agreements and approvals are:

- the FNA for the Blue Mountains National Park
- the EPBC Act Approval (2006/2567) for the Wolgan Valley Resort, dated 1 June 2007.

The FNA for the Blue Mountains National Park is administered by the National Parks and Wildlife Service (NPWS). It is a voluntary agreement that sets procedures for the use of air spaces across designated areas, such as National Parks. The FNA includes preferred operating heights, frequencies and areas of operation, to avoid impacts on sensitive areas. The GBMWA Advisory Committee reiterated the importance of implementing the FNA to manage impacts on the World Heritage Area. The Proponent confirmed its commitment to implementing the FNA and advised its contract with the helicopter operator includes this commitment. The Proponent also confirmed it would not use the Site to take joy flights across the World Heritage Area. The Department has reflected these commitments in the recommended conditions for the modification.

The EPBC Act Approval included a condition limiting the operation of helicopters in the Resort and the GBMWA from half an hour after sunrise to half an hour before sunset. The Department notes the EPBC Act Approval expired in June 2017. The Department has recommended inclusion of the condition restricting flying times, in the modified Project Approval. This would ensure impacts on the aesthetic values of the GBMWA and the bat roosting sites in the escarpment adjacent to the Resort are appropriately minimised and managed.

The Department considers any potential impacts on the GBMWA from the altered flight paths would be appropriately managed by implementation of the recommended conditions.

Number of Trips

The Proponent advised it has experienced an increased demand for helicopter trips to and from the Site for visiting guests. The increased demand is generally aligned with school holiday periods and around special tourist events, such as the Bathurst car races. The Proponent advised that demand is variable, with corporate clients at times requesting multiple helicopter trips to transport larger groups. The Proponent requested an increase from the existing approved four trips per week to 18 trips per week, and up to 36 trips per week during peak holiday periods and tourist events. These include:

- the NSW school holidays (six weeks in summer and two weeks in autumn, winter and spring respectively)
- Easter long weekend (if not coinciding with school holidays)
- Bathurst car races (one week in February and one week in October).

Again, several submissions raised concerns about the potential impacts of increased helicopter trips, including:

- noise and vibration impacts on residences
- impacts on the natural values of the GBMWA
- how flight numbers would be regulated.

The potential noise impacts are considered in **Section 7.2**. Impacts on the natural values of the GBMWA were discussed in the section on Flight Paths above.

The Department has considered the Proponent's request to increase helicopter trips and notes the increase is considerable compared to the approved four trips per week. However, the Department acknowledges that demand has changed since the Resort commenced operation 10 years ago and some additional trips are warranted to meet client needs. Given the proximity of the Resort to the World

Heritage Area and the Wolgan Valley community (albeit the helipad now further away), the Department considers a reduced number of trips would be appropriate. As such, the Department recommends the modification allow for the following trip numbers be permitted at this stage:

- maximum 14 trips per week (outside holiday periods)
- maximum 20 trips per week (during defined holiday periods and tourism events, as listed above)
- maximum 5 trips on any given day
- maximum 2 trips per day on Public Holidays

The Department considers, this approach accommodates the increased demand for helicopter trips, whilst ensuring impacts on the GBMWHHA and neighbouring residences are minimised. The Department has recommended conditions requiring an environmental performance audit, 12 months after operation of the new helipad, to ensure helicopter movements are not adversely impacting the GBMWHHA and neighbouring residences. The Department also recommends the Proponent implement an Operational Helicopter Management Procedure to record the number of trips, flight paths, any complaints and corrective actions taken.

The Department acknowledges the recommended maximum number of trips is less than the Proponent applied for. Therefore, the Department has included a condition giving the Proponent the opportunity to increase helicopter trips, up to a maximum of 28 trips per week for specific tourism events. In doing so, the Proponent must provide justification for the required number of helicopter trips and include additional procedures to manage the increased trips for the duration of the tourism event. The Secretary's approval would be required before any increase would be granted for such an event.

The Department considers the maximum of 14 trips per week and up to 20 during holiday periods and tourism events is suitable as it enables the Resort to improve whilst ensuring the amenity of the GBMWHHA is maintained at an acceptable level. The requirement for an environmental performance audit would ensure any impacts from increased helicopter use are identified and measures taken to minimise and manage those impacts.

With these measures in place, the Department's assessment concludes the increased helicopter trips would have limited environmental consequences and can therefore be appropriately managed.

7.2 Noise

A key issue associated with the proposed increase in helicopter trips is the potential noise impacts on neighbouring residences. As noted in **Section 7.1**, the Proponent proposes a new helipad, located 3 km from residences and new flight paths, to minimise potential noise impacts from the increased trips.

Wilkinson Murray prepared a noise assessment for the modification to consider the potential impacts. The assessment followed a different approach to standard noise assessments, as there is currently no adopted guideline for the assessment of noise from helicopters. Also, the EA for the original application did not include an assessment of helicopter noise, as the relatively low number of helicopter movements were considered insignificant.

The noise assessment considered monitored noise levels from existing helicopter take-off and landings at the Site and relevant caselaw on helicopter noise. The assessment applied conversion factors from the *Australian Standard AS 2021:2015 Acoustics – Aircraft noise intrusion – building siting and construction*, to establish a target for helicopter noise from the Site. The EPA did not raise any concerns with this approach and the Department's noise specialist considered the noise targets to be appropriate. The Department notes the EPA does not licence helipads that are located more than 1 km from the nearest residence. The noise targets established for the Site are shown in **Table 1**.

Table 1: Noise targets for the Site at residential receivers

Activity	Noise limit
Take-off and landings	L _{Aeq,24hr} 40 dBA
	L _{Amax} 45 dBA (10 pm to 7 am)

The noise assessment included monitored noise levels from helicopter take-off and landings at the Site and predicted noise from a worst-case scenario of five helicopter trips per day, see **Table 2**. The assessment concluded noise from five helicopter trips per day would exceed the noise targets if using the existing helipad, but would be well below the noise targets using the proposed new helipad, given its distance from residences and the intervening topography of Donkey Mountain.

The Department considered the noise assessment, issues raised in submissions and reviewed relevant caselaw, the FNA and the AirServices Australia *Environmental Principles and Procedures for Minimising the Impact of Aircraft Noise*. The specialist

Table 2: Comparison of noise levels from existing and proposed helipad locations

Receivers (see Figure 3)	Existing Helipad			Proposed Helipad	
	L _{Aeq,24hr} (Flying)	Range L _{Amax} (Landing)	Range L _{Amax} (Take-off)	L _{Aeq,24hr} (Flying)	L _{Amax} (Landing/ Take-off)
Noise targets	L _{Aeq,24hr} 40 dBA	L _{Amax} 45 dBA	L _{Amax} 45 dBA	L _{Aeq,24hr} 40 dBA	L _{Amax} 45 dBA
R1	45	40-79	47-68	<30	<40
R2	50	78-83	74-84	<30	<40
R3/R4	42	49-78	43-67	<30	<40
R7	<30	-	-	<30	<40 barely audible

The Department considers the predicted noise impacts from increased helicopter flights would be below the established targets and would result in an overall improvement over existing conditions given the new location of the helipad and flight paths. The potential for noise impacts on the nearby GBMWA would be limited by the proposed conditions, restricting flights to daytime, after sunrise and before sunset.

The Department has recommended helicopter management conditions which will include a requirement to meet the noise targets set out in EA, limits on helicopter trip numbers in off-peak and holiday periods, restricted day-time operations and the requirement for an Operational Helicopter Management Procedure for recording and responding to complaints. With these measures in place, the Department is satisfied that helicopter noise would be appropriately managed.

7.3 Biodiversity

The new helipad would be located on cleared pasture land within the Site and would not require any construction works. Maintenance would include regular mowing and painting to delineate the landing area. The Proponent did not include a flora and fauna assessment in the application but referred to the flora and fauna assessment prepared by the Australian Museum Business Services (AMBS) in 2005 for the original project application. This assessment noted the area was open managed pasture which lacked appropriate conditions to provide structure, shelter, foraging and breeding resources for native flora and fauna species.

In its submission, OEH requested the Proponent provide a flora and fauna assessment of the new helipad location. The Proponent's RTS included such an assessment prepared by Western Sydney University. The assessment identified mostly pasture grass species and did not identify any threatened species. **Plate 1** shows the proposed helipad location.

OEH noted the assessment was not carried out in accordance with the OEH's *Frameworks for Biodiversity Assessment*, however it noted most of the plant species identified were non-native grasses. OEH concluded the proposal helipad would have a negligible impact on biodiversity on the Site and advised that a biodiversity offset would not be required. Consideration of the potential impacts of the new helipad on bat roosting sites in the GBMWA was discussed in the section on Flight Paths in **Section 7.1**.

The Department concludes the proposed helipad would have a negligible impact on biodiversity values on the Site. The Department has recommended the Proponent update its landscape management plan to include procedures for managing the new helipad location.



Plate 1: Proposed helipad location

7.4 Land Swap with National Parks

As part of the Concept Plan approved in 2006, the Proponent was to swap land with the NPWS. The Proponent proposed to provide 114 ha of high conservation value land to the GBMWHA in exchange for 39.5 ha of cleared land on the edge of the GBMWHA, see **Figure 5**. The Minister for Environment gave in principle agreement to the land swap in 2006 and granted a lease to the Proponent for the 39.5 ha of cleared land, until the legal agreements for the land swap were finalised. The Department understands the lease agreement includes requirements for the Proponent to manage the 114 ha of land in accordance with the *National Parks and Wildlife Act, 1974*, the GBMWHA Strategic Plan and the FNA.

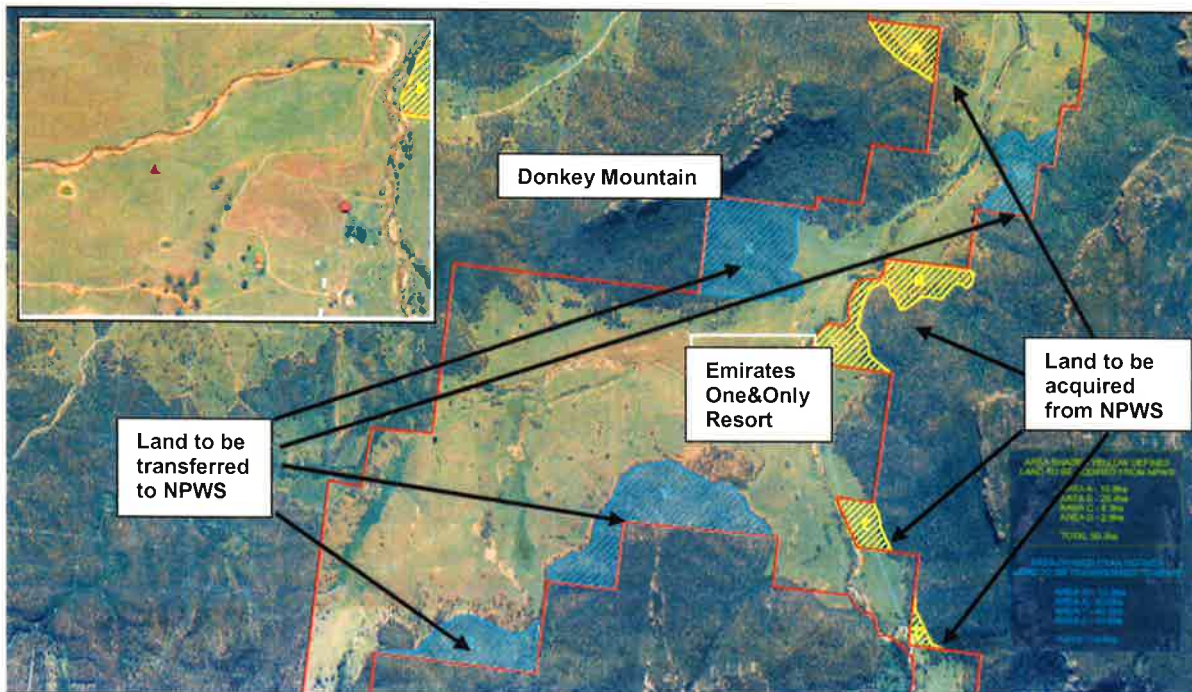


Figure 5: Land to be swapped between the Proponent and NPWS

The Department's original merit assessment noted the land swap would result in a net benefit for the GBMWSHA by extension of the area by 114 ha. In the subsequent 2007 Project Approval, the Proponent obtained approval to build some of its Resort on part of the 39.5 ha area of land leased from the NPWS.

Submissions on this modification from the Colong Foundation for Wilderness Ltd and the Blue Mountains Conservation Society raised concerns that the land swap has not been formally finalised. The Department understands there have been some native title issues to resolve before the land swap can be completed.

In the RTS, the Proponent advised that it may take another 10 years to finalise the land swap, given the native title issues and the need for the land swap to be approved by the State government. The Department considered this issue and noted the expectation of the original Project Approval was for the land swap to have occurred shortly after approval was granted, in 2007. To expedite this process, the Department has recommended a condition requiring the Proponent provide evidence that an agreement with OEH (incorporating the NPWS) has been made, for dedicating the 114 ha of land, by 31 December 2018. The agreement must detail all administrative and operating conditions to manage and transfer the lands, as well as timing for when parcels would be dedicated to OEH. By imposing this condition, this would ensure delivery of the environmental net benefits committed to as part of the original Project Approval.

The Department also notes there is no legal impediment to determining the modification request under the EP&A Act, due to the incomplete land swap.

7.5 Other Issues

The Department's assessment of other issues is provided in **Table 4**.

Table 3: Assessment of Other Issues

Issue	Assessment	Recommendation
Bee hives	<ul style="list-style-type: none"> The Proponent proposes to construct and operate up to six bee hives located near the Wolgan Homestead within the heritage precinct, across from the Resort guest accommodation buildings (see Figure 2). The bee hives would be kept for local production of honey, to enhance the culinary and cultural experience for guests and for use in food prepared at the Resort. Bee hives will not be constructed or operated on any land subject to the lease agreement with NPWS. The construction of the bee hives will generate a small quantity of waste including plastic wrap, timber, pallets and polystyrene. In accordance with <i>NSW Waste Avoidance and Resource Recovery Strategy 2014-2021</i>, this material will either be recycled or if necessary disposed at a licenced waste disposal facility. The Department requested further information regarding measures that will be undertaken to prevent competition and attraction of feral honey bees (<i>Apis mellifera L.</i>). The RTS advised that the bee hives will be managed in accordance with the <i>NSW Biosecurity Act 2015</i> to prevent robbing of the hives by feral bees. Management practices will include cleaning up honey or beehive material and preventing exposure of bee hive material to robbing by feral bees. DPI and Council submissions did not object to the modification request however requested confirmation from the Proponent that the bee hives will be managed in accordance with the <i>Apiaries Act 1985</i> and the Australian Honey Bee Industry Biosecurity Code of Practice and that the Proponent has a registered as a bee keeper on-site. Information provided in the RTS confirmed the Proponent's intention to follow all relevant legislation and Codes of Practice and that a bee keepers licence will be obtained for the Site. The Department's assessment concludes the bee hive construction and operation can be appropriately managed by the Proponent and has recommended conditions for inclusion into the 	<p>Require the Proponent:</p> <ul style="list-style-type: none"> has a registered bee keeping licence operates the bee hives in accordance with the relevant legislation and Codes of Practice.

Issue	Assessment	Recommendation
	<p>project approval which require compliance with the relevant legislation and Code of Practices and having a registered bee keeping licence for the on-site bee keeping activities.</p>	
<p>Use of the helipad by guests using their own helicopter</p>	<ul style="list-style-type: none"> • The EA stated an estimated 5% of total helicopter operations could potentially involve guests flying their own helicopter. • The Department requested the Proponent provides further detail regarding this scenario and arrangements surrounding the use of the helipad if a guest's helicopter was parked for the duration of their stay at the Site. • The RTS advised that any guests that wish to use their own helicopter will be required to contact the Proponent's contracted helicopter company to obtain details regarding the approved flight path and landing location. Guest-owned helicopters would then be temporarily parked at the helipad for the duration of their stay. The contracted helicopter company would still be able to safely land and take-off as long as a safe distance of at least 15 m was maintained between the parked and operational helicopters. The RTS confirmed that the guests using their own helicopter will be counted towards the total weekly maximum helicopter trips. • The Department considers the use of the helipad by a guest using their own helicopter can be appropriately managed with the new conditions discussed in Section 7.1. 	<p>Operational management conditions</p>
<p>Helipad vs Heliport</p>	<ul style="list-style-type: none"> • The Colong Foundation for Wilderness Ltd, considered the proposed modification requests constitutes the use as a heliport as defined in the <i>Environmental Planning and Assessment Model Provision 1980</i>, as the proposed location will be open to occasional public use. The definition of heliport in the <i>Environmental Planning and Assessment Model Provision 1980</i>, is "an area or place open to public use which is licensed by the Department of Transport for use by helicopters and includes terminal buildings and facilities for the parking, servicing and repair of helicopters". • The Proponent's RTS advised the helipad will only be used by the Resort's guests and is not open to the public. In addition, no structures are proposed to be built at the helipad site and there are no proposed facilities for serving or repair proposed for the helipad or larger Resort area. • The Department notes Lithgow Local Environmental Plan 2014 defines a 'heliport' as a type air transport facility which includes associated communication and air traffic control facilities or structures. The Site does not have any communication and air traffic control facilities or relevant infrastructure. • The Department is satisfied the new location is a 'helipad' as defined under the Lithgow LEP and the <i>Environmental Planning and Assessment Model Provision 1980</i>. 	<p>No conditions required</p>
<p>Administrative amendments</p>	<ul style="list-style-type: none"> • Schedule 2 of the Concept Plan (05_0079) has been deleted and replaced to allow for administrative amendments. • Minor administrative amendments to update definitions have been made in the Project Approval (06_0310). 	<p>Include conditions to update the Concept and Project Approval accordingly</p>

8. CONCLUSION

In its assessment of the modification requests, the Department reviewed the original applications, the EA, submissions received from Government Authorities and the general public and the Proponent's RTS. The modification requests have been assessed in accordance with the relevant requirements of the EP&A Act.

The Department is satisfied that relocating the helipad, increasing the number of helicopter trips and constructing and operating of the bee hives will have limited environmental consequences in comparison to the approved project. Given the above, the proposed modification requests do not constitute a fundamental change to the approved Concept Plan or Project Approval that is outside the scope of section 75W of the EP&A Act.

In undertaking the assessment, it was noted that both the Department and other government authorities did not have any objection to increasing helicopter trips to and from the Site. While the predicted noise

Therefore, the Department has recommended the number of helicopter trips be reduced to 14 helicopter trips per week for normal operations and 20 helicopter trips per week for identified holiday and tourism high peak periods. A daily limit of five helicopter trips will apply except for Public Holidays where the daily limit will be restricted to two helicopter trips per day. In addition, there will also be restrictions during school holiday periods and for Bathurst Car Racing events.

The Department will require the Proponent to undertake an environmental performance audit prior to providing approval of any further increases in helicopter trips. A 12-month period would provide an opportunity for the Proponent to refine management measures surrounding helicopter trips and facilitate potential planning approval for further helicopter increases in the future. Subject to no complaints and a positive environmental performance audit (including noise monitoring results), the Proponent would be able to seek approval from the Department to increase the maximum number of helicopter trips from 20 to 28 during the identified holiday and tourism high peak periods.

The Department notes the Proponent has breached the approved helicopter trips per week in the past and that this has resulted in an impact on the local residential community of Wolgan Valley. However, it is considered the new location of the helipad and designated flight paths will reduce the noise impact associated with helicopter movements to the nearby residential community of Wolgan Valley. The Department has concluded, with the recommended conditions and implementation of the required operational helicopter management procedure, the number of helicopter trips to and from the Site can be increased and with limited environmental consequences in comparison to the approved Concept Plan and Project Approval.

To ensure the environmental benefits originally envisaged as part of the project are delivered, the Department has required evidence of an agreement between the Proponent and OEH in relation to the land swap be provided to the Department by 31 December 2018.

Potential impacts to the GBMWA will continue to be appropriately managed through the implementation of the FNA and conditions of these approvals. Any potential issues to the nearby residential community and the GBMWA will be identified from the audit process.

The Department concludes the bee hives can be appropriately constructed and managed by the Proponent with limited environmental consequences.

The Proponent has agreed to the recommended approach for the management of helicopter trips to and from the Site, as well as the conditions relating to the bee hive management and the dedication of land agreement with OEH. GBMWA Advisory Committee, NPWS and OEH have advised of their satisfaction with the recommended conditions.

9. RECOMMENDATION

It is recommended that the Executive Director, Key Sites and Industry Assessments, as delegate for the Minister for Planning:

- consider the findings and recommendations of this report
- determine that the requests for Emirates One&Only Resort, Wolgan Valley Concept Plan (05_0079 MOD 2) and Project Approval (06_0310 MOD 2) falls within the scope of section 75W of the EP&A Act
- determine the environmental assessment requirements have been addressed
- modify the Concept Plan approval (05_0079) and Project Approval (06_0310)
- sign the attached instruments of modification (**Appendix A**).

Prepared by:
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Recommended by:



Sally Munk
**Acting Team Leader
Industry Assessments**

Recommended by:



Nicholas Hall
**Acting Director
Industry Assessments**

DECISION

The recommendation is: Approved by:



Anthea Sargeant 11/5/18
**Executive Director
Industry and Key Sites**
as delegate of the Minister for Planning

APPENDIX A – INSTRUMENTS OF MODIFICATION

APPENDIX B – ENVIRONMENTAL ASSESSMENT

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8340

APPENDIX C – SUBMISSIONS

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8340