



Figure 3: Airbus EC120

Submission on SSD MOD (MP06-310-Mod 4)

Wolgan Valley Emirates Resort – “Temporary Changes to Helicopter Transport”

Submission prepared by:

Blue Mountains City Council – 18 May 2026



NSW Department of Planning, Housing and Infrastructure
Via planning portal

Blue Mountains City Council submission

SSD-Modification – (MP06-310-Mod4) Emirates One and Only Resort Wolgan Valley

Thank you for the opportunity for Blue Mountains City Council to make a submission to the s4.55(2) SSD application (MP06-0310- Mod 4) for the 'temporary' increase in helicopter flight movements for Wolgan Resort (the **proposal** or the **modification**).

Consultation

Although the proposal seeks to significantly increase the frequency of helicopter flight movements over the Blue Mountains LGA, there has been no consultation with the Blue Mountains City Council, nor any notification provided for the modification of the deemed State Significant Development (SSD).

Submission 1: consultation with BMCC ought to have been undertaken.

The proposal

The SSD modification proposal seeks to radically increase flight frequency to and from the Emirates Resort in Wolgan Valley. The Director-General had originally restricted the Part 3A Major Projects concept approval in 2006 to four (4) helicopter trips per week, taken to be eight (8) flight movements. The proposal is for an increase up to 210 flight movements per week. Such a proposal results in a significant intensification of the activity from that originally approved, which has its principal flight paths over the Blue Mountains Local Government Area (LGA).

The original approval was a conventional resort development, with principal access by motor vehicles, with negligible helicopter flights. It had limited, if any, potential for impact on the towns and villages of the Blue Mountains. The new proposal essentially creates a "fly-in, fly-out" (FIFO) resort, with the potential for ongoing impacts across the Blue Mountains World Heritage Area and the urban corridor. In planning terms, it is a radical transformation or re-conceptualisation that cannot be taken forward as a modification under the *Environmental Planning and Assessment Act 1979* ("the Act").

“Temporary” response

The proposal is advanced as a ‘temporary’ response to the Mt Victoria Pass closure of the Great Western Highway and the Wolgan Road failure which is unlikely to be re-opened before 2031. The resort is currently closed because of these road failures, which are outside the control of the Emirates Resort, and are the task of the NSW Government to rectify and/or fund.

The Council acknowledges this “catastrophe” faced by the Resort as described in the modification report. While the cause of these infrastructure and investment failings has been the subject of ongoing representations by relevant local councils for years, the remedy by the NSW Government for the Resort, through the current SSD modification process, must nonetheless be legally sound. In Council’s view, the proposal cannot be advanced as “temporary” nor as a “modification” under the Act.

The modification report describes the proposal as:

The proposed modification consists of two parts:

- modifying the approved Final Approach and Take Off (FATO) directly to and from the west (and within the Resort property) of the approved and operating helipad and the subsequent flight path southward to and from the resort; and
- modifying the maximum number of weekly helicopter trips to and from the helipad from 14 trips a week to be temporarily increased up to 15 trips a day/105 per week until restoration of all-weather two wheel drive road access to Wolgan Valley and the resort is restored.

If the modification application is not approved, the resort will remain closed for another 7 to 8 years whilst the NSW government and Lithgow City Council consider options funded by disaster recovery funding to restore all weather vehicle access to the valley including the option of the design, approval and construction of a new road.

The actual modification proposal in fact consists of a third part. As well as the ‘temporary’ increase of flight movements to 210 per week in response to the catastrophe (2026: 4) the modification seeks a permanent or ongoing uplift of 100 helicopter flight movements per week once the GWH and Wolgan Road are re-opened. That is, a change in perpetuity (2026: 19 and elsewhere):

(c) When two wheel drive road access is restored to Wolgan Valley and the Resort, the maximum number of helicopter trips will be 50 trips per week and a maximum of 10 helicopter trips in any given day.

The application misrepresents the increase as a temporary measure as it is ultimately proposed that operations will be increased to >256% over the increase approved in Modification 2, not back to the original 14 flights per week, once the Wolgan road is reopened. The incremental increases over time represent a gradual replacement of vehicle transport with helicopters, at the cost of the public’s acoustic amenity in the adjoining World Heritage listed national parks, the Gardens of Stone State Conservation Area and residential areas of the lower Blue Mountains.

In Council’s submission, there should be no permanent uplift as part of this proposal.

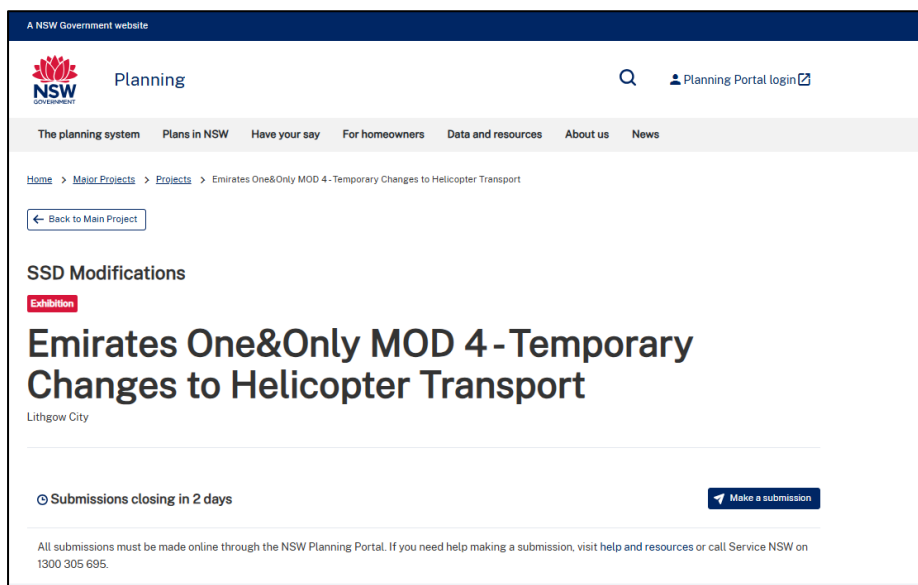
There are sound environmental planning grounds for not entrenching permanent uplift at this stage:

- should an approval be granted (through the appropriate approval pathway other than a modification), the circumstances would permit the assessment of the actual impacts arising from intensified operations until 2031 or until road openings occur, and
- by then, the operation of the Western Sydney International Airport (WSIA) will have commenced, which will influence approved flight paths and helicopter activity, and

- there is sufficient time for an appropriate assessment of impacts to establish the case for permanent uplift (or not) without recourse to crisis settings invoked in the report.

It is a fundamental task to accurately describe the components of the proposed modification. There is no justification provided for permanent uplift. The use of the current and acknowledged ‘catastrophe’ to also enable permanent uplift is unfortunate and misleading.

The Department has also allowed itself to be similarly misled in describing the application as seeking to “modify the approved helicopter flight path and **temporarily** increase the number of helicopter movements to/from the resort”. Should the proposal as presented be considered for approval, it requires re-notification to not mislead the public.



Submission 2: the proposal is advanced as a contingency response to road closures. It should not attempt to entrench ongoing or permanent uplift of flight frequency as per s.5.2 of the proposal following road opening. No approval should be given at this stage for permanently increased flight movements. This should properly be informed by a subsequent assessment based on an analysis of increased movements during any temporary uplift, should that be approved.

Due to Department’s notification error, which describes the proposal as “temporary”, the modification cannot be approved in its current form.

This approach to deleting any uplift beyond the “temporary” component is prudent and is not prejudicial to the proponent given the timeframes available.

Section 4.55(2) modification

The proposal is advanced as a s.4.55(2) SSD modification under Part 4 of the Act.

The statutory tests differ from the Part 3A scheme and the assessment under s.75W of the Act for the modification of concept approvals under the transitional provisions. That process was underpinned by SEARs and was applied to the previous modification involving helicopter flight frequency uplift at the resort. Judicial guidance confirms the “substantially the same development” test of s. 4.55 did not apply through statute under the previous s.75W modification that permitted increases in flight frequency, albeit more measured.

The statutory threshold test of s4.55 has been a feature of the Act since its inception. By satisfying the substantially the same test, the scope of the original approval is maintained within statutory parameters or, if not, it must be assessed as a fresh development application. Incremental changes through modification must always be tested against the original approval.

The proposal's assessment is cursory and inadequate:

6.4 Environmental Planning and Assessment Act 1979

6.4.1 Section 4.55 Modifications

Section 4.55(2)(a) of the EP&A Act states the consent authority may modify a consent if:

"it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and"

The helipad location, flight hours, and other such matters as approved will not be altered, only the flight path and number of trips.

No physical modifications are proposed. The proposed development, as modified, is still a *tourist facility*. Therefore, the proposed modification is substantially the same development for which consent was originally granted.

The quantitative and qualitative differences, which are legally required, between the original Part 3A approval and the current 'temporary' uplift proposal have not been evaluated. The proposal suggests that 'only' the flights paths and number of trips are altered without specificity or assessment of impacts.

Helicopter flights under the proposal could no longer be considered a component which, at 4 trips per week, was considered in 2007 to be *"too infrequent to be a significant source of annoyance provided that flights are restricted to daytime only"*. Helicopter flights would now be approved for the operation at a number that exceeds the original number by 26 times. In both quantitative and qualitative terms, such a proposal could only be approved by way of a development application. It is beyond the modification power of s.4.55(2) of the Act:

In quantitative terms the report identifies the frequency metrics, noting the distinction between "trips":

Table 3: Summary of changes against consent and modifications

Helicopter Trips	Original Consent	Modification 2	Proposed Modification
Monday to Sunday (excluding period defined below)	Maximum 4 trips per week	Max 14* trips per wk *Max 5 per day, exc. Public Holidays restricted 2 trips a day.	Max 105* trips per wk. Max 15* trips per day.
Peak holiday and tourism periods (Easter, School holidays, Bathurst car races, gen Feb & Oct).	Maximum 4 trips per week	Max. 28 trips per wk. *Max. 5 per day, exc. Public Holidays restricted 2 trips a day.	Max 105* trips per wk. Max 15* trips per day.
Flights times	Only during daylight hours and where over the GBMWHA and at least 30 mins after sunrise and 30 mins prior to sunset.	No change.	No change.
Flight path	Not shown	Along Carne Creek valley	To & from west

* Sch 2 of the consent defines a Helicopter trip as "A scheduled arrival and departure from the Site (i.e. 2 helicopter movements)".

The s.75W "Modification 2" approved 11 May 2018 (middle column above) is of no moment in terms of the s.4.55 test. The statutory threshold is that a modification can alter an original activity, but it cannot radically transform it in the manner proposed.

Like for like, the original proposal was restricted to a negligible 8 helicopter movements per week, while the proposed uplift to a frequency of 210 flight movements per week is substantially different, even within context of the overall resort considered as a whole.

There are statutory markers in NSW that suggest quantifiable thresholds for the frequency of helicopter flights that may have implications for environmental management or impact assessment:

- the *Protection of the Environment Operations Act 1994* that identifies 30 flight movements per week, or
- the ‘designated development’ in the EP&A Act and Regulations that recognises 7 flights movements per week, requiring an environmental impact statement (EIS).

The original approval was for helicopter flights well less than these flight frequency thresholds used in NSW, whereas the current proposal is 210 flight movements, which is a material escalation or intensification on an objectively quantifiable test.

In qualitative terms, it is necessary to characterise what was originally approved versus what is proposed through the modification pathway. Section 4.55(3)(b) requires the consent authority give due consideration of the reasons given by the consent authority for the original consent “but only as far as the reasons are of relevance to the application”.

The Director-General’s Environmental Assessment Report of April 2007 (subsequently confirming the concept approval) relevantly considers a “helipad to accept 4 flights per week” formed part of the original Part 3A concept proposal which was approved on 12 May 2006.

The Director-General’s response to submissions was instructive concerning the anticipated low-scale element associated with infrequent helicopter movements and the risk of intensification, such as:

- **“Transport:** several submissions reiterated earlier concerns that over time the helipad would become a heliport and spoil the amenity of the GBMWHA... (2007:6)
- *One of the concerns raised in submissions from the general public was that the helipad would become a heliport in the future. The impact of helicopter flights was assessed as part of the original concept plan for the proposal, and Emirates is not seeking to increase the number of flights from that approved for the concept plan. The facility would generate four helicopter flights a week (i.e., 8 helicopter movements), and Emirates has committed to prepare a flight neighbourly agreement in consultation with the Civil Aviation Safety Authority. This commitment is supported by the Department and the Department considers that impacts would be minimal due to the low number of flights. Notwithstanding, the recommended conditions of approval limit the number of flights to the facility to four per week.*
- “Concerns raised in submissions from the public and interest groups that there was no assessment on the impact of helicopter noise:
 - Recommended conditions of approval limit the number of flights to four per week.
 - Four flights a week is considered to be too infrequent to be a significant source of annoyance, provided that flights are restricted to daytime only” (2007:15)

The Director-General reasoned that the detrimental prospect of helicopter intensification or frequency (as raised by objectors to the original proposal) would be suitably controlled by conditioning a limit of 4 trips per week. Such a proposal, in the context of the resort development, could be characterised as low scale, below thresholds and infrequent.

This reasoning is required to be accounted for by s.4.55(3)(b) and is relevant to a proposal to increase frequency to 210 flight movements per week which is an entirely different prospect to the original approval. The concerns acknowledged by the Director-General, which at the approved frequency and scale, did not necessitate impact assessment for helicopters. This stands in contrast to the modification proposal and is instructive in terms of the intensification proposed.

The misgivings expressed in public submissions to the original approval process in relation to subsequent intensification are well founded given the current proposal. The protection is provided by s.4.55(2) of the Act, which requires development to remain substantially the same.

The development moves from a conventional resort relying on vehicular access, and incidental helicopter use, to effectively a FIFO resort relying on helicopter movements for principal access. It gives rise to helicopter flights across the urban corridor and the WHA of the Blue Mountains, with flight paths between Wolgan Valley and Penrith/KSA.

The development is no longer substantially the same but a completely reconfigured operating model with a different range of impacts and a frequency level not contemplated in the original approval of the resort.

Submission 3: In quantifiable and qualitative terms of the proposal is a radical transformation. The acceptance of the helicopter element of the original approval was predicated on low scale, conditioned movements, as reasoned by the Director-General at the time of the approval.

The subject modification application inserts helicopters as the primary mode of transportation for guests from Sydney to the Resort. One mode of travel will replace another and there will be significant environmental impacts arising from that change in mode and frequency.

The helicopter service as now proposed is an independent use, even if it remains an ancillary use, and must be assessed on that basis.

The development cannot be said to meet the statutory test of being substantially the same. The quantifiable level of flight movements (or the activity frequency) bears no resemblance to the original proposal. The fact is that both have helicopter movements, but along with the reconceptualization of the Resort, it is fundamentally different.

The proposal cannot be advanced as a modification. It should be assessed as a new development proposal against the statutory framework accounting for the actual impacts and current circumstances.

Flight paths

The circumstances of flight paths are very different from 2006. As well as the road closures, the approval of flight paths for the Western Sydney International Airport (WSIA) will compress helicopter flights close to the GBM WHA and/or the urban corridor of the Blue Mountains, particularly in the lower Blue Mountains, from Springwood down to Penrith.

This would be of no consequence given the negligible flights as originally approved. The future interplay of substantially increased flight frequency and WSIA flight paths could not have been

envisaged. These changed circumstances associated with one of Australia's largest infrastructure projects, with now known flight path implications across the Blue Mountains, are not accounted for in the modification application and should inform an SSD assessment.

The helicopter "flight paths" are referred to in the application (such as s4.6), these are not detailed. There is reference to overflight acoustic assessment but not the spatial range of flights associated with the proposal operating in a known corridor through the Blue Mountains.

Unlike other helicopter aircraft facilities, this proposal will result in concentrated flight movements between known nodes and attractors: KSA/Penrith/Bankstown through the Blue Mountains corridor to and from the Wolgan Valley resort. The vast majority of flights will be along the urban corridor and residential areas of the Blue Mountains. Moreover, these are likely to be vertically compressed and in proximity to residential receivers because of Commonwealth approved flight paths for WSIA and the specific topography of the Blue Mountains. Overflight acoustic impacts may be expected from flights within hundreds (100s) of metres of dwellings in the Blue Mountains locality. By way of reference, designated development threshold triggers an assessment via an environment impact statement in the case of dwellings within 1000m of an aircraft facility. Similarly, the known low ambient or background noise levels in the Blue Mountains and consequential acoustic impacts are not identified.

The NSW EPA can no longer regulate flight activity, which is a function of CASA.

However, section 4.15 of the EP&A Act provides for an assessment of acoustic impact and this should account for increased frequency of flights in a specific corridor arising from this development. It is self-evident, though not stated, that the principal flight path (with an uplift from 8 to 210 flight movements) will be through the Blue Mountains, with potential impact on the lower mountains.

Consultation with NPWS suggests some consideration of flight paths over the National Park estate, which is an extensive geographic area, but none over the urban corridor and residential areas of the Blue Mountains LGA.

Submission 4: the modification does not account for impacts of flight paths and increased flight frequency in the Blue Mountains as an environmental impact statement for an SSD would be required to do. These impacts or negative externalities arise solely from a proposal that is not substantially the same development and which has not adequately assessed impacts through the modification.

Inadequate impact assessment

The application fails to adequately address the full range of likely significant environmental impacts associated with the proposal, particularly the potential impact of noise pollution on the residents of the lower Blue Mountains and on the environment of the Greater Blue Mountains World Heritage Area, contrary to the requirements of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979.

Currently the proposal only considers the impacts on the immediate surroundings of the Wolgan Valley and on the adjacent Gardens of Stone SCA. However, consideration is required of the potential impacts on a regional scale, including the noise pollution and biodiversity impacts on the adjacent Greater Blue Mountains World Heritage Area and residential areas of the Blue Mountains Local Government Area, which are likely to be negatively impacted by noise pollution arising from the significantly increased number of helicopter movements, which would overfly the Blue Mountains enroute to the Emirates Wolgan Valley Resort.

Helicopters overflying the lower Blue Mountains typically follow the Great Western Highway for visual reference. Due to the new height restrictions imposed on light aircraft flying over the Blue Mountains as part of the new airspace design for WSIA, effective from 9 July 2026, helicopters overflying the lower Blue Mountains will be required to fly at or below 2,500 feet (760 metres) AMSL (Above Mean Sea Level). Due to the topography of the lower Mountains these height restrictions would force helicopters to fly close to the legal minimum height of 300 metres above the ground over residential areas at locations such as Springwood and adjacent townships.

Helicopters overflying the lower Blue Mountains at low to minimal heights will generate additional noise impacts on Blue Mountains residents and wildlife, already projected to be subjected to significant increases of aviation noise associated with the opening of the Western Sydney Airport in July 2026. Background noise monitoring being conducted by the Western Sydney Airport has confirmed that current background ambient noise levels are low -very low, which will make the cumulative impact of these multiple sources of increased acoustic pollution very apparent to impacted residents.

Any diversion of flight routes over the national park in response to resident complaints would potentially allow even lower helicopter flight elevations given that the minimum height limit is 500 feet (150 metres) over National Parks estate. The potential impact on the Greater Blue Mountains World Heritage Area is acknowledged in the associated Biodiversity and Ecological Report App 1 Biodiversity and Ecological Assessment Report 260326 by De Witt Consulting which states that:

“A separate Significant Impact Criteria assessment under the EPBC Act was performed in consideration of the proposal’s implications for the Greater Blue Mountains World Heritage area. The assessment resulted in a recommendation to refer the project to the Australian Government Minister for the Environment for consideration of the project as either a Controlled Action or a Particular Manner. This is due to uncertainty of the impacts of noise over large areas of the World Heritage Property from the helicopter as an intrusive element in the long term.”

As a City within a World Heritage Area and with a regional economy highly reliant on ecotourism, where tourists expressly come for the quiet and contemplative enjoyment of the natural environment, the cumulative noise pollution impacts are a significant threat to this mainstay of our regional economy. Facilitating the transportation needs a small number of high-end tourists at the expense of the broader Blue Mountains eco-tourism industry is bad economics and is not supported by Blue Mountains City Council. The Blue Mountains National Park is valued by both residents and visitors for its natural, relatively undisturbed soundscape, which contributes to visitor experiences of tranquillity, solitude, and connection with nature. Increased helicopter operations from the Wolgan Valley Resort will generate noise pollution across a wide area of the park, including popular walking tracks and climbing areas. The impacts on the National Parks users are likely to notably decrease the amenity of the National Park for tourists, thus damaging the brand of the Blue Mountains.

No social licence for scenic or joy-flights

There is a history of significant community opposition to non-essential tourism related helicopter movements in the Blue Mountains LGA and the broader Greater Blue Mountains World Heritage Area. There has been the repeatedly voiced concern that non-essential helicopter flight movements will interfere with essential emergency and operational helicopter activities. There exists a legitimate community perception that the transportation of guests by helicopter represents a de facto backdoor approval for unofficial joy flights over the GBMWH A en-route to the Emirates Wolgan Valley Resort in the guise of guest transportation.

Multiple precedents of the rejection of similar applications by planning authorities in the vicinity of the Greater Blue Mountains World Heritage Area exist. These include:

- (a) the recent rejection by the Blue Mountains Local Planning Panel of the Development Application No. X/1210/2025 for a helipad ancillary to and within the grounds of the Fairmont Resort to facilitate the transportation of guests to and from the resort, 1 Sublime Point Road, LEURA NSW 2780,
- (b) The NSW Department of Planning, Industry and Environment (Crown Lands) rejection of the application to grant a long-term commercial lease for helicopter and heli-tourism operations at Katoomba Airfield in 2021. The decision followed intense local opposition, with over 85% of 1,582 public submissions in 2019 opposing the proposal.
- (c) the deed of operation banning joy flights over the Greater Blue Mountains World Heritage Area as a condition for the Sydney Helicopters Penrith Lake Scheme Helipad
- (d) The banning of joy flights as a condition of the Wolgan Valley Resort Helicopter Operations Management Plan App 5

The current approval (as modified in 2018) provides:

“18F The Proponent must ensure no helicopter joy-flights to the surrounding National Park areas are undertaken from the site”

The “to and from” journey will be over a world-renowned landscape. How is this condition to be understood and regulated for scenic flights? In promoting landscape views, flights will be close to scenic areas and thus the urban corridor of the Blue Mountains.

Approval of the modification risks setting a dangerous precedent, signalling to comparable high end accommodation providers that helicopter transportation represents a legitimate form of transportation in the GBMWH A region despite its clear lack of social licence and the adverse negative impacts on the general public and the GBMWH A environment.

Submission 5: the proposed retention of Condition 18F – agreed in principle - does not meet the known and likely operational impacts of the new proposal for the Blue Mountains. The suggestion that a flight over the Blue Mountains LGA is not a joy-flight or scenic-flight given its scenic values needs to be reconciled with contemporary expectations. The experience of tourists to and from the Resort, with the expectation of close views of the Blue Mountains, requires a modern management framework not evidenced in the proposal.

In conclusion Blue Mountains City Council would like to register its opposition to the proposed modification for the reasons listed above, as the proposal is not considered to be in the public interest, having regard to its limited benefit and significant potential adverse environmental, community and

recreational impacts on the broader region, which have not been adequately assessed contrary to s4.15(1)(e) of the Environmental Planning and Assessment Act 1979.

Should further information or clarification be required, please contact Will Langevad, Director-Environment and Planning at wlangevad@bmcc.nsw.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Dillon'.

Dr Rosemary Dillon

Chief Executive Officer