

Change of Use – Café and Wine Bar - 100 Old Castlereagh Road, Castlereagh

Part 4 Development Application (DA23/9236)

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Cover image: *The cottage subject to this application (Source: Applicant's documentation)*

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Glossary

Abbreviation	Definition
AEP	Annual Exceedance Probability
AHD	Australian Height Datum
Applicant	Stimson Urban & Regional Planning obo Sydney Helicopters Group Pty Ltd
Council	Penrith City Council
DA	Development Application
Department	Department of Planning, Housing and Infrastructure
Development	The development as described in the SEE and RTS for the Change of Use – Café and Wine Bar – 100 Old Castlereagh Road, Castlereagh
EHG	The Department of Planning and Environment – Environment and Heritage Group (now the NSW Department of Climate Change, Energy, the Environment and Water - Biodiversity Conservation and Science Group)
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
Minister	Minister for Planning and Public Spaces
PMF	Probable Maximum Flood
Planning Secretary	Secretary of the Department of Planning, Housing and Infrastructure
RTS	Response to Submissions
SEE	Statement of Environmental Effects – ‘Proposed Change of Use – Café and Wine Bar – 100 Old Castlereagh Road, Castlereagh’ prepared by Stimson Urban & Regional Planning dated June 2023
SEPP	State Environmental Planning Policy
SES	State Emergency Service
Western Parkland SEPP	State Environmental Planning Policy (Precincts – Western Parkland City) 2021

Executive Summary

Introduction

This report provides an assessment of DA23/9236 seeking approval for a change of use of a disused dwelling for the purposes of a Café and Wine bar at 100 Old Castlereagh Road, Castlereagh. Proposed construction works involve the installation of a commercial kitchen.

The Applicant is Stimson Urban & Regional Planning on behalf of Sydney Helicopters Group Pty Ltd and the site is located within the Penrith local government area. The Minister for Planning and Public Spaces is the consent authority for the development under clause 5.7(a) of the *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* (Western Parkland SEPP), as the development is located on land zoned 'Tourism' within the Penrith Lakes Scheme.

Engagement

The Department publicly exhibited the application for 14 days from 18 August 2023 to 31 August 2023. During the exhibition period, the Department received comments from Council, the State Emergency Service (SES) and the Department of Planning and Environment – Environment and Heritage Group (EHG) (now the NSW Department of Climate Change, Energy, the Environment and Water - Biodiversity Conservation and Science Group). No submissions were received from the community.

In response to issues raised in submissions and additional information requested by the Department, the Applicant submitted a Response to Submissions (RTS) report which provided additional information for the proposal.

Assessment

The Department has considered the merits of the proposed development in accordance with the relevant matters under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the issues raised in the submissions and the Applicant's response.

The key issues associated with the proposed development are flooding, acoustic impacts, structural adequacy of the building and compliance with the Building Code of Australia.

The Department has carefully considered the proposal as well as the issues raised in the submissions and is satisfied the proposal is acceptable for the following reasons:

- It is permissible with development consent on land zoned 'Tourism' under the Western Parkland SEPP and consistent with the objectives of the SEPP;
- The café will be located above the 1% AEP plus freeboard, which mitigates the risk to property. The site can also be safely evacuated in accordance with the approved Flood Evacuation Management Plan;
- Potential noise impacts generated from the operation of the Helipad on workers and attendees comply with the relevant requirements under the *Work Health and Safety Act 2011* and the noise emission standards developed in the previous, separate approval of the Helipad;
- Potential noise impacts generated from operation of the proposal on surrounding sensitive receivers are considered minor and can be addressed through mitigation measures;

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- The Department has conditioned the requirement for the Applicant to address the structural adequacy of the building and the provision of an on-site sewage management system (OSSM) prior to operation;
- The proposal will provide an entertainment destination for the enjoyment of the local community, tourists and visitors to the Penrith Lakes locality; and
- The development should have a positive multiplier effect on the local economy during construction and operation through the employment of sub-contractors and staff and purchase of stock and produce.

Conclusion

The Department's assessment concludes the site is suitable for the proposed development and the proposal is in the public interest. The Department consider the potential impacts can be mitigated and would not result in any adverse impact to workers and attendees of the site.

The Department therefore recommends the application be approved, subject to conditions.

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1 Introduction

1.1 Introduction

This report provides the Department of Planning, Housing and Infrastructure's (the Department) assessment of development application DA23/9236 (the application) lodged by Stimson Urban & Regional Planning (the Applicant) under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application seeks approval for the change of use of a disused dwelling at 100 Old Castlereagh Road, Castlereagh for the purposes of a café and wine bar, involving the installation of a commercial kitchen.

1.2 Subject Site

The site is legally defined as Lot 2 DP 1013504 and is located at 100 Old Castlereagh Road, Castlereagh (**Figure 1** and **Figure 2**) and has a frontage of approximately 630 metres along Old Castlereagh Road. The site is located approximately 60 km north-west of the Sydney Central Business District (CBD), 30 km north-west of the Parramatta CBD and approximately 2.4 km north-west of the Penrith CBD within the Penrith local government area (LGA).

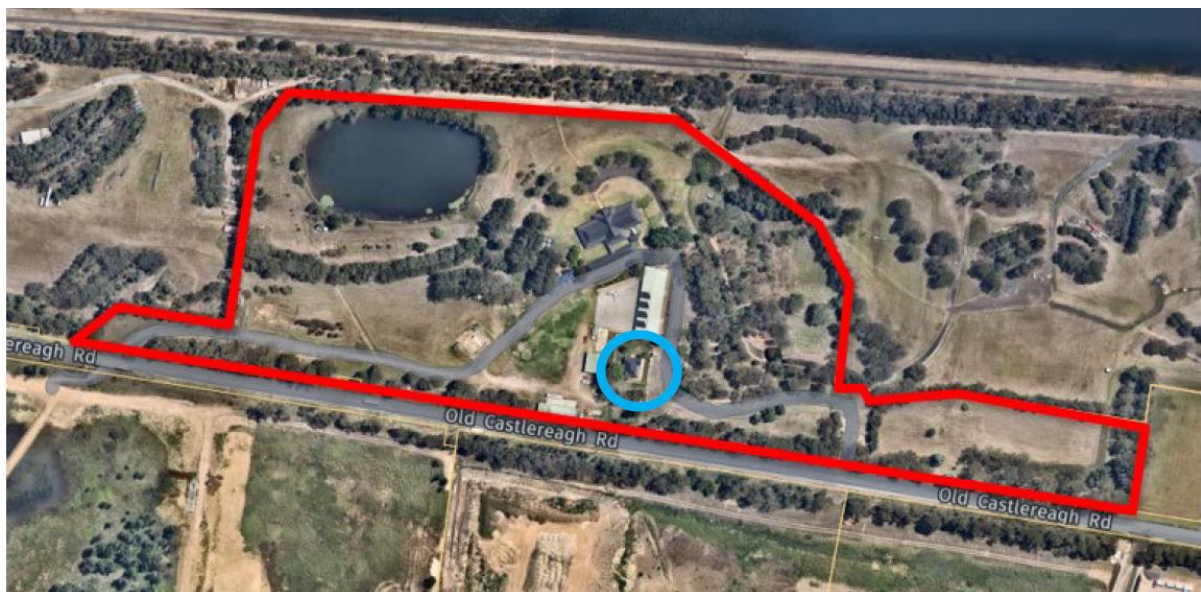


Figure 1 | The site boundary of the Helipad (outlined in red), with the subject site circled in blue (Source: Applicant's documentation)



Figure 2 | A closer view of the subject site, circled in blue (Source: Applicant's documentation)

Sydney Helicopters Group Pty Ltd operates a helipad for the use of small to medium turbine engine helicopters for charter, utility and emergency services operations from the site. Other embellishments of the site include a shed used as a maintenance hangar, a hardstand area, an office building and a car park.

The dwelling/cottage was constructed approximately 100 years ago and is linked to the agricultural historical use of the site. It is a single-storey brick building with a timber framed roof, metal roof covering and hardwood floors on bearers and joists. The south-eastern corner of the building contains a covered timber verandah, and there is an existing brick paved walkway that leads to the northern entrance from the car park to the east (**Figure 3**).



Figure 3 | Front view of the cottage. (Source: Applicant's documentation).

1.3 Surrounding Land Uses and Road Network

The subject site is located within the southern portion of the Penrith Lakes Scheme area. The surrounding area comprises a mix of industrial, commercial, residential and recreational uses (**Figure 4**).

To the north of the site is the Sydney International Regatta Centre and Penrith Whitewater Stadium.

To the east of the site are two rural residential properties.

To the south of the site is the future Nepean Business Park, which is currently under construction.

To the west of the site it the Penrith Motorcycle Rider Training Centre.



Figure 4 | Subject Site and surrounding land uses (Base source: NearMap 2023)

1.4 Penrith Lakes Scheme

The Penrith Lakes Scheme (the Scheme) is a 30-year quarrying and rehabilitation proposal being undertaken by Western Sydney Lakes (WSL) (formally known as the Penrith Lakes Development Corporation (PLDC)) in accordance with a Deed of Agreement, dated 11 August 1987 (amended 14 August 1989), with the NSW Government. The boundary of the Scheme is identified in **Figure 5**.

The Scheme is located on the Nepean River floodplain. It is being transformed from a sand and gravel quarry into a water-oriented recreation park, with land suitable for rural, tourism and employment uses. Quarrying activities on the site ceased in September 2015. Since then, WSL has been progressively rehabilitating the site.

Development on the Penrith Lakes site is governed by *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* (the Western Parkland SEPP). The Penrith Lakes Scheme comprises approximately 80 ha of waterways, 110 ha of parklands, 118 ha of environmental area, 33 ha of employment area and 52 ha of tourism area, and 1,330 ha of unzoned land subject to future land use planning, following the completion of flood investigations and community consultation.

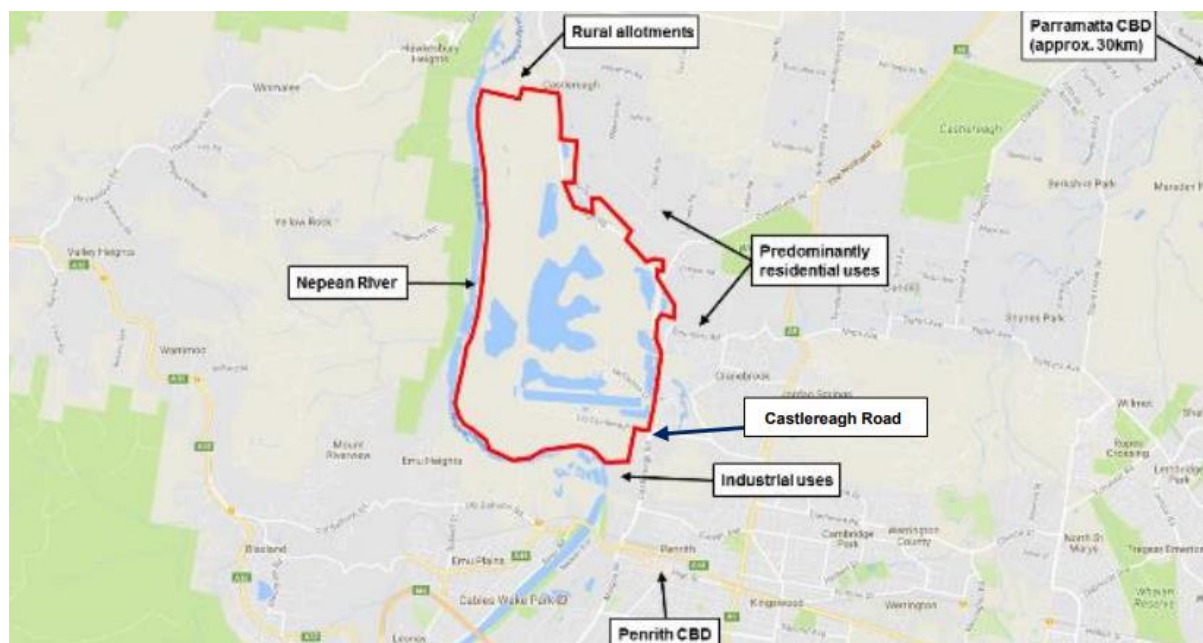


Figure 5 | Penrith Lakes Scheme boundary outlined in red (Base Source: Google Maps).

2 Proposed Development

2.1 Description of the Development

The application seeks consent for the change of use of an existing disused dwelling for the purpose of a café and wine bar.

Proposed construction works consist of the installation of a commercial kitchen.

The Statement of Environmental Effects (SEE) included in **Appendix A** provides the full development details.

2.2 Applicant's Need and Justification for the Development

The Applicant has noted that the dwelling is surplus to the needs of the helicopter operation. The proposed conversion to a café and wine bar should activate the site and provide future funding for ongoing maintenance. The Applicant intends to create a food and beverage entertainment destination that will complement the strategic direction and objectives established by the Western Sydney Lakes.

3 Statutory Context

3.1 Part 4 development

The development is located in Castlereagh within the Penrith Lakes Scheme area, as identified under the Western Parkland SEPP. The proposal is permissible with development consent on land zoned 'Tourism' under the Western Parkland SEPP and it is classified as a Part 4 development under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

3.2 Permissibility

The Western Parkland City SEPP is the principal planning instrument applicable to this application. The site is on land that is zoned 'Tourism'. The proposed change of use for the purpose of a café and wine bar is classified as a 'Food and Drink Premises', which is permissible with consent in the Tourism zone.

3.3 Consent Authority

Under clause 5.7(a) of the Western Parkland SEPP, the Minister is the consent authority for development applications on land zoned Tourism, Employment, Environment, Parkland, Waterway and unzoned land.

In accordance with the Minister's delegation dated 9 March 2022, the Director, Regional Assessments may determine the application as:

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

3.4 Mandatory Matters for Consideration

The following are the relevant mandatory matters for consideration:

- the matters in section 4.15(1) of the EP&A Act
- relevant Environmental Planning Instruments (EPIs)
- objects of the EP&A Act
- Ecological Sustainable Development (ESD)
- Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).

The Department's consideration of these matters is set out below, **Section 5** and **Appendix B**.

Environmental Planning Instruments

The relevant environmental planning controls and guidelines that apply to the proposal include:

- State Environmental Planning Policy (Precincts – Western Sydney Parkland) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021

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

Objects of the EP&A Act

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

The Department has considered the objects of the EP&A Act in its assessment of the application (see **Appendix B**) and is satisfied that the application meets the objects of the EP&A Act.

Ecologically sustainable development

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

The potential environmental impacts of the development have been assessed and, where potential impacts have been identified, mitigation measures and environmental safeguards have been recommended. The development is not anticipated to have any adverse impacts on native flora or fauna, including threatened species, populations and ecological communities, and their habitats as there is no vegetation clearing proposed nor any vegetation in close proximity to the proposed works. As such, the Department considers that the development would not adversely impact on the environment and is consistent with the objectives of the EP&A Act and the principles of ESD.

Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)

Subject to any other references to compliance with the EP&A Regulation cited in this report, the requirements for fees (Part 13, Division 3) have been complied with.

4 Engagement

4.1 Department's engagement

In accordance with the requirements of Schedule 1 of the EP&A Act and the Department's Community Participation Plan, the Department publicly exhibited the application between Friday 18 August 2023 to Thursday 31 August 2023 (14 days) on the NSW Planning Portal. The Department notified surrounding landowners, Penrith City Council (Council) and relevant state authorities of the exhibition in writing.

The Department undertook a site visit on 4 October 2023 to inspect the building and determine if the submitted application provided sufficient detail concerning fire safety, accessibility, and structural adequacy.

4.2 Submissions and Advice

During the exhibition period, the Department received submissions from Council, the State Emergency Service (SES) and the Department of Planning and Environment – Environment and Heritage Group (EHG) (now the NSW Department of Climate Change, Energy, the Environment and Water - Biodiversity Conservation and Science Group). No submissions were received from the community.

Council did not object to the application and provided the following advice:

Planning and Evacuation Considerations –

- The development should comply with the required car parking and motorbike requirements under the *Penrith Lakes Development Control Plan*;
- The draft Plan of Management (PoM) should be finalised prior to the granting of consent;
- details of waste storage onsite should be provided; and
- The flood planning provisions within the *Penrith Local Environmental Plan 2010* must be addressed and the Applicant must engage with SES and Infrastructure NSW (INSW) regarding flood requirements.

Environmental Health Considerations –

- The noise generated from the live performances, the use of the driveway and car park, garbage collection and the operation of the Helipad on the subject site must be assessed;
- The PoM should include finalised venue capacity numbers; and
- The application must demonstrate that the on-site sewage management system has the capacity to cater for the proposed development.

Public Health –

- Standard recommended conditions were provided regarding the fit out and operation of commercial kitchens, food safety and waste disposal.

SES advised that:

- consideration of flooding issues is undertaken in accordance with the requirements of NSW Government's Flood Prone Land Policy as set out in the Flood Risk Management Manual 2023 and supporting guidelines, including the Support for Emergency Management Planning and relevant planning directions under the EP&A Act.
- The recently approved Flood Evacuation Management Plan (FEMP) adequately covers the evacuation of the Helipad and the proposed café. No significant concerns were raised regarding the development, but it must be noted that the proposed café is located on a low flood island, meaning that evacuation routes will become flooded prior to the site itself becoming inundated. As such, to protect lives it is essential that the site is closed and fully evacuated prior to evacuation routes becoming cut.

EHG advised that the Flood Risk Assessment had a limited scope of work and only considered the requirements of the *Penrith Development Control Plan 2011*, despite the *Penrith Lakes Development Control Plan – Stage 1* applying to the site instead. EHG also acknowledged that the FEMP incorporated consideration of the Helipad approval and the subject application and advised that the FEMP was provided to SES for review to ensure it is consistent with relevant strategies.

Transport for NSW (TfNSW) and the Environment Protection Authority (EPA) were consulted but did not provide comments.

A link to the full copy of the submission and advice is provided in **Appendix A**.

4.3 Response to Submissions

Following notification, the Department placed the submissions and advice on its website and requested the Applicant provide a response to the issues raised. The Department also requested the Applicant respond to issues raised by the Department related to:

- Addressing new provisions inserted into Chapter 5 of the *State Environmental Planning Policy (Precincts—Western Parkland City) 2021* as part of the recent SEPP amendments finalised on 30 June 2023;
- Updating the Noise Impact Assessment to assess potential impacts from the operation of the café and wine bar sensitive receivers and workers and attendees;
- Addressing additional requirements of the Penrith Lakes DCP;
- Providing a report from a suitably qualified person that outlines the suitability of the on-site sewage management system; and
- Updating the Building Code of Australia (BCA) report in consideration of comments provided by the Department's Building Surveyor following a site visit to determine the structural adequacy of the building as well as provisions for fire safety and accessibility.

The Applicant provided a Response to Submissions (RTS) package on 6 November 2023 addressing the issues raised. The applicant provided a copy of the recently approved FEMP, additional acoustic information and requested that the development be conditioned to address structural integrity and BCA compliance issues.

The RTS was made publicly available on the Department's website and referred to Council, EHG and SES for further comments.

- Council advised that the internal noise levels of the café resulting from the operation of the Helipad must be appropriate prior to the determination of the application. Council also expressed concern regarding the level of detail provided regarding the on-site sewage management system and requested that additional detail should be provided and assessed prior to determination.
- EHG advised that the approved FEMP must be revised to consider the updated requirements of the *Draft Hawkesbury Nepean Regional Flood Study 2023*.
- SES advised that reference should be made to the submission provided during exhibition and no further comments were provided.

5 Assessment

The Department has considered the SEE, Council's comments, and the RTS in its assessment of the development. The Department considers the key assessment issues to be noise, flooding and evacuation. Each of these matters are addressed separately below. A number of other issues have also been considered and assessed in **Table 2** and **Appendix B**.

5.1 Noise and vibration

Construction Noise

The application proposes the installation of a commercial kitchen. The Applicant has noted that the proposed works are classified as minor, internal and fewer than three weeks in duration. Therefore, the scope of works is defined as 'short term' within the EPA Interim Construction Noise Guidelines (ICNG). Consequently, an assessment of potential noise impacts from construction to nearby sensitive receivers is not required.

The Department is satisfied with this assessment and no further information is required. Nevertheless, the Department has included conditions with mitigation measures proposed, including no construction traffic to arrive on site before 7am or leave after 6pm, limiting construction to standard hours and the use of quieter plant and equipment.

The Department considers the proposal's construction noise impacts are manageable and acceptable subject to implementation of the mitigation measures.

Operational Noise and Vibration - Helipad

The subject site includes a Helipad that operates under the approval for DA 21/15298, which permits helicopter movements in accordance with the conditions outlined in **Table 1**.

Table 1 | The approved conditions around helicopter movements and associated activities under DA 21/152298.

Item	Requirement
Hours of operation – take-off and landing	7:00 am to 10:00 pm
Hour of operation – maintenance and refuelling	7:00 am to 6:00 pm 7:00 am to 10:00 pm (if not audible to residential receivers)
Movements per week – sunset to 10:00 pm	6
Flights per calendar year	750

The approval for DA 21/15298 also included an assessment of operational noise impacts to surrounding sensitive receivers. An operational helicopter noise criterion of 48dB(A)LA_{eq} (24 hour) for residential receivers and 55dB(A)LA_{eq} (24 hour) for commercial or recreational receivers was proposed by an independent acoustic consultant procured for the Department, as there is no current regulatory guideline or standard for in-flight operational helicopter noise and vibration.

During the assessment of subject DA 23/9236, the Department requested that the Applicant provide an assessment of potential impacts of the noise generated from the operation of the helicopters on workers and attendees of the proposed café and wine bar. In the Response to Submissions (RTS), the Applicant's acoustic consultant advised that the subject site is located within the same titled lot as the Helipad, therefore the noise assessment and requirements approved for the Helipad under DA 21/15298 also apply to the subject site. Notwithstanding, the noise consultant advised that the anticipated operational helicopter noise level on the application site is 48dB(A)LA_{eq} (24 hour), which is compliant with the noise limit requirements for commercial or recreational receivers established in the Helipad approval.

The Department notes that the 48dB(A)LA_{eq} (24 hour) operational noise level also complies with the requirements of the *Code of Practice – Managing noise and preventing hearing loss at work* under the *NSW Work Health and Safety Act 2011*, which sets a workplace noise limit of 85 dB(A)LA_{eq} (8 hours). Therefore, the Department is satisfied that the operation of the Helipad will not result in hazardous noise impacts to workers. Nonetheless, the Department has included conditions outlining the noise limit for workers.

The Applicant did not provide an operational vibration assessment under the subject DA 23/9236. However, noting that the noise emissions comply with the relevant criteria when measured at property boundaries, the Department is satisfied that potential vibration impacts to the surrounding area will be minor. Notwithstanding, the Department has recommended conditions to include a complaints management and response procedure. This would include complaints about vibration impacts.

Operational Noise and Vibration – Café and Wine Bar

The Noise Impact Assessment also included an assessment of potential noise impacts to sensitive receivers surrounding the subject site from the operation of the café and wine bar, including potential impacts from traffic noise. The Applicant assessed potential noise emissions against the NSW Liquor & Gaming standard noise conditions. The assessment concluded that the anticipated noise levels will be compliant with the relevant conditions.

The Department is satisfied with the assessment provided and is confident that the operation of the café and wine bar will not cause disturbance to neighbouring properties. Therefore, no additional conditions are required.

5.2 Flooding

Site Conditions

Site elevations range from approximately 15 to 26 metres Australian Height Datum (AHD), with terrain sloping away from Old Castlereagh Road. There are several structures on the lot with correlating driveways and roads as well as a hardstand carpark area.

The dwelling is situated where the ground level is approximately 26m AHD.

Flood Risk

A Floodplain Assessment Report was included in the application to outline the site conditions, the existing flood behaviour and the subsequent development response.

The report interpreted the *Nepean River Flood Study* to conclude that the site is unaffected by site inundation up to the 1 in 500 AEP flood event, with the site becoming completely submerged in the 1 in 1000 Annual Exceedance Probability (AEP) event. The site is subject to extreme high hazard flooding in the Probable Maximum Flood (PMF).

EHG reviewed the Floodplain Assessment Report and advised that the report had a limited scope of work and was considered inadequate to provide a sound understanding of the flood behaviour and constraints.

The Department requested the Applicant provide an updated Flood Risk Assessment which included consideration of the relevant requirements of the Western Parkland SEPP and the Penrith Lakes DCP. Following the receipt of the Applicant's updated Floodplain Assessment Report, EHG and SES had no further comments about the scope of the Applicant's flooding assessment.

The Department is satisfied that the updated Floodplain Risk Assessment Report is adequate for the following reasons:

- The café is located above the 1% AEP plus freeboard, which mitigates the risk to property. The site is unaffected by site inundation up to the 1 in 500 AEP flood event;
- The report addresses the relevant requirements of the Western Parkland SEPP and the Penrith Lakes DCP;
- The report provides an adequate outline of flood risk and demonstrates that the proposed development does not exacerbate flood risk in the locality; and
- Mitigation measures such as the Flood Evacuation Management Plan (FEMP) was approved by the Department in September 2023. This is discussed in more detail below.

Flood Evacuation

A preliminary FEMP (May 2023) was provided with the subject application to demonstrate the evacuation procedures and requirements of the site during a regional flood event, based on information provided in the *Nepean River Flood Study*. The preparation of a FEMP was required by conditions B4 and B5 of the Helipad approval.

The Department approved the FEMP on 20 September 2023. The FEMP made the following assumptions:

- 8 hours of reliable warning of flood events is available;
- It takes approximately 1 hour for the SES to mobilise its operations for this area on receipt of a flood warning and it takes the community 1 hour to accept that evacuation is necessary and to prepare for evacuation. Therefore, it is conservatively assumed that 6 hours are available for the site to evacuate;
- The total anticipated number of patrons and staff occupying the Sydney Helicopters site at any given time would be 60; and
- There are 40 available parking spaces on the site. On average, each car would accommodate 3 passengers.

Noting these assumptions, the following scenarios were provided:

- **Scenario 1 – Private vehicle evacuation:** Adopting an average of 3 persons per car and the 40 car parking spaces provided, there is the capacity to evacuate 120 persons by private car. All patrons and staff of the Sydney Helicopters site could be evacuated within 5.36 hours from the time that an evacuation notice is given.
- **Scenario 2 – Pedestrian evacuation:** Staff and patrons to walk east along Old Castlereagh Road and further east along Andrews Road to a location above the regional PMF flood level. All patrons and staff of the Sydney Helicopters site could be evacuated within 5.5 hours from the time that an evacuation notice is given.

During exhibition, EHG advised that:

- the FEMP is provided to the SES for review to ensure it demonstrates consistency with the SES emergency management strategy for the North Penrith sub-sector in the context of the Hawkesbury-Nepean Valley regional evacuation strategy;
- The FEMP considers the impact of the local flooding on the proposed evacuation routes such as Andrews Street; and
- the FEMP consider the draft *Hawkesbury-Nepean Valley Flood Study 2023*.

SES acknowledged that the evacuation capacity for the café and wine bar was included in the FEMP, but also recommended that consideration of flood impacts is undertaken in accordance with the requirements of NSW Government's Flood Prone Land Policy as set out in the Flood Risk Management Manual 2023 and supporting guidelines, including the Support for Emergency Management Planning.

However, while the FEMP does not address the policies and guidelines recommended by SES above, the Department is satisfied that the FEMP is satisfactory as the café is located above the 1% AEP plus freeboard, which mitigates the risk to property, and the site can also be safely evacuated in accordance with the approved FEMP.

Nonetheless, the Department has included the following conditions:

- Within six months of the public release of the *Hawkesbury-Nepean Valley Flood Study 2023*, the FEMP must be updated to consider the findings of the study and be submitted to the Department for approval;
- The FEMP must also be updated to include consideration of the requirements of the NSW Government's Flood Prone Land Policy as set out in the Flood Risk Management Manual 2023 and supporting guidelines, including the Support for Emergency Management Planning.

5.3 Other issues

The Department's assessment of other issues is provided in **Table 2**.

Table 2 | Other Issues

Issue	Findings	Recommendations
Structural adequacy	<p>The Applicant provided a Building Code of Australia (BCA) report to outline the current state of the building. The report provided a disclaimer that it is not possible for all elements of the building to meet current standards, as it was constructed around 100 years ago. Instead, the report focused on the minimum requirements for fire safety, egress, and accessibility.</p> <p>The report concluded that several elements of the building required improvement to bring the building closer to compliance with the current BCA, including access to the WC, adequate door widths and the provision of accessible carparking spaces. The recommendations of the BCA report and the proposed commercial kitchen will require a Construction Certificate be obtained for these works.</p> <p>Department staff (including the Department's Principal Building Surveyor) conducted a site visit on 4 October 2023 to inspect the building and determine if the submitted application provided sufficient detail concerning fire safety, accessibility, and structural adequacy and if further recommendations were warranted.</p> <p>Following the inspection, the Department's Building Surveyor requested that the Applicant provide the following information to confirm the adequacy of the building:</p> <ul style="list-style-type: none"> • an appraisal verifying structural adequacy of the building for the intended use; • demonstration that the front or rear access door will be modified to achieve relevant accessibility requirements; • further information concerning path of travel requirements to the front door and the location of the proposed ramp with gradients; 	<p>The Department has included conditions requiring that the Applicant provide the following information prior to the issuing of a Construction Certificate:</p> <ul style="list-style-type: none"> • a practicing structural engineers' appraisal of the building verifying structural adequacy of the existing structure for the intended use; and • nominate the accessible car parking space on an amended site plan.

Issue	Findings	Recommendations
	<ul style="list-style-type: none"> • nominate the accessible car parking space on an amended site plan; • nominate the installation of a urinal on an amended floor plan; and • nominate that the second bathroom will be fitted out as an ambulant toilet in accordance with relevant standards. <p>A compromise was reached with the Applicant where it was decided that the aforementioned issues could be addressed prior to the issuing of a Construction Certificate.</p> <p>During consultation on the draft conditions, the Applicant advised that the BCA report would be peer reviewed. The findings of the peer review concluded that with the reduced capacity of maximum 56 people, the requirement for a second bathroom with an ambulant toilet and additional urinal was unnecessary. Furthermore, a ramp to the front door would not be required, as the existing pathway to the front entrance is compliant with the relevant BCA requirements. The Department is satisfied with the conclusions provided. Nonetheless, the requirement for a structural engineers' appraisal of the building and the provision of an accessible car parking space has been retained.</p>	
Utilities	<p>The Applicant has noted that a commercial grease arrestor is currently located to the east of the proposed kitchen.</p> <p>During exhibition, Council requested that the Applicant provide additional detail regarding the on-site sewage management system (OSSM).</p> <p>In the RTS, the Applicant outlined the existing Aerated Wastewater Treatment System (AWTS), which is an OSSM that comprises primary and secondary treatment tanks, as well as an 18,000 litre wet-weather storage tank. The Applicant further clarified that the kitchen grease arrestor will be pumped out regularly by a waste collection service.</p> <p>In response to the RTS provided by the Applicant, Council was concerned about the lack of information provided and requested the clarity on the following:</p> <ul style="list-style-type: none"> • calculations of the current wastewater loads entering this system; • calculations of the anticipated additional loads associated with the proposed use; • units of measurement on the pre-designed capacity; • specifications and locations of the tanks associated with the on-site sewage management systems; 	<p>The Department has included conditions of consent requesting that the Applicant comply with Section 68 of the <i>Local Government Act 1993</i> and obtain approval from Council for the operation of the OSSM prior to the issuing of an Occupation Certificate.</p> <p>Additionally, the Department has included a condition requiring that the Applicant outline the arrangements for the waste collection service in the Plan of Management.</p>

Issue	Findings	Recommendations
	<ul style="list-style-type: none"> • a site plan detailing the current disposal arrangements for the AWTs system and kitchen septic tank; • calculations that demonstrate that the size of the current effluent application areas are appropriate; • clarify if the current on-site sewage management systems are wholly contained within the property owned and managed by the Applicant. <p>The Department is satisfied that the existing system can accommodate the additional load associated with the increased capacity of the building. Nonetheless, the Department has included conditions of consent that require the Applicant to comply with Section 68 of the <i>Local Government Act 1993</i> and obtain approval from Council for the operation of the OSSM prior to the issue of an Occupation Certificate.</p> <p>Additionally, the Department has included a condition requiring that the Applicant outline the arrangements for the waste collection service in the Plan of Management.</p>	
Section 7.12 Developer Contributions	<p>The cost of works associated with this application do not trigger the provision of Developer Contributions under the <i>Penrith Section 7.12 Citywide development contributions plan for non-residential development</i>.</p>	<p>No conditions are required.</p>

6 Evaluation

The Department has assessed the development application and supporting information in accordance with the matters for consideration under Part 4 of the EP&A Act, including the Western Parkland SEPP and other relevant environmental planning instruments. The Department's assessment concludes the proposed development is acceptable as:

- It is permissible with development consent on land zoned 'Tourism' under the Western Parkland SEPP and consistent with the objectives of the SEPP;
- The café will be located above the 1% AEP plus freeboard, which mitigates the risk to property. The site can also be safely evacuated in accordance with the approved FEMP;
- Potential noise impacts generated from the operation of the Helipad and the proposed café and wine bar on staff and surrounding sensitive receivers comply with the relevant requirements of the WHS Act and the noise emission standards developed in the approval of the Helipad and potential impacts can be addressed through mitigation measures;
- The proposal will provide an entertainment destination for the enjoyment of the local community, tourists and visitors to the Penrith Lakes locality; and
- The development should have a positive multiplier effect on the local economy during construction and operation through the employment of sub-contractors and staff and purchase of stock and produce.

The Department's assessment therefore concludes the proposal is acceptable and is in the public interest. The Department recommends the application be approved, subject to the recommended conditions (**Appendix C**).

7 Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning and Public Spaces:

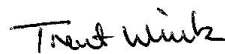
- **considers** the findings and recommendations of this report;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the application;
- **agrees** with the key reasons for approval listed in the notice of decision;
- **grants consent** for the application in respect of DA 23/9236, subject to the conditions in the attached development consent; and
- **signs** the attached development consent and recommended conditions of consent.

Prepared by:



Meg D'souza
A/Senior Planning Officer
Regional Assessments

Recommended by:



Trent Wink
Team Leader
Regional Assessments

8 Determination

The recommendation is **Adopted** by:

A handwritten signature in blue ink, appearing to read 'K T' followed by a long horizontal stroke.

Keiran Thomas

Director

Regional Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – List of Documents

The Department relied upon the following key documents during its assessment of the proposed development:

Statement of Environmental Effects

<https://www.planningportal.nsw.gov.au/daex/under-consideration/proposed-change-use-cafe-and-wine-bar>

Submissions

<https://www.planningportal.nsw.gov.au/daex/under-consideration/proposed-change-use-cafe-and-wine-bar>

Response to Submissions (RtS)

<https://www.planningportal.nsw.gov.au/daex/under-consideration/proposed-change-use-cafe-and-wine-bar>

Appendix B – Statutory Considerations

In line with the requirements of section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act), the Department's assessment of the proposal has included detailed consideration of a number of statutory requirements. These include:

- the objects found in section 1.3 of the EP&A Act; and
- the matters listed under section 4.15(1) of the EP&A Act, including applicable environmental planning instruments and regulations.

The Department has considered all of these matters in its assessment and has provided a summary in **Table 3** and **Table 4** below.

Table 3 | Considerations Against the Objects of the EP&A Act

Object	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The proposal seeks to provide a cafe and wine bar. The development should have a positive multiplier effect on the local economy during construction and operation through the employment of sub-contractors and staff and purchase of stock and produce. The development will contribute interest to the Penrith Lakes area and will not result in unacceptable environmental impacts. The development should have a positive social and economic impact on the community.

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The Department is satisfied the development can be carried out in a manner that is not inconsistent with the principles of ESD.
(c) to promote the orderly and economic use and development of land,	The proposal involves the orderly and economic use of land through the adaptation of the use of an existing disused building.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities,	The Department considers the proposal would not result in unacceptable environmental impacts.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The development does not result in any impacts to built and cultural heritage.
(g) to promote good design and amenity of the built environment,	The Department considers the proposal would not result in unacceptable built form impacts given that it involves an amendment to the existing building.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The Department has included conditions recommending that the proposal adhere to various requirements to ensure the structural adequacy of the building prior to operation.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department referred the development to relevant government agencies and Council during the exhibition period and invited them to comment. The Department has given due consideration to their comments.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department exhibited the application as outlined in Section 4 .

Table 4 | Matters for Consideration under Section 4.15 of the EP&A Act

Matter	Consideration
a) the provisions of: i.) any environmental planning instrument, and	The Department has considered the relevant environmental planning instruments in its assessment of the development. Details of the assessment is provided further below in Appendix B .
ii.) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	In June 2023, an amendment to the Western Parkland SEPP was finalised. The amendment included additional consideration of flood evacuation for all land use proposals. The Department has reviewed the proposal against the amendments and is satisfied the proposal is compliant.

iii.) any development control plan, and	The Department has considered the relevant development control plan in its assessment of the development.
iii.) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	The Applicant has not entered into a planning agreement under Section 7.4 of the EP&A Act.
iv.) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,	The Department has assessed the development in accordance with all relevant matters prescribed by the regulations, the findings of which are contained in this report.
b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department has considered the likely impacts of the development in detail in Section 5 and throughout Appendix B of this report. The Department concludes that all environmental impacts can be appropriately managed and mitigated through the recommended conditions of consent.
c) the suitability of the site for the development,	<p>The subject site is ancillary to the Helipad operations and the proposed use of the disused cottage will assist in activating the previously underutilised building.</p> <p>The Department has included conditions requiring that the subject dwelling meets current BCA standards prior to operation.</p>
d) any submissions made in accordance with this Act or the regulations,	All matters raised in submissions have been summarised in Section 4 of this report and given due consideration as part of the assessment of the development in Section 5 and throughout Appendix B of this report.
e) the public interest.	The Department considers the proposal to be in the public interest (refer to Section 4).

State Environmental Planning Policy (Precincts – Western Parkland City) 2021

The primary EPI that applies to the site is Chapter 5 of the *State Environmental Planning Policy (Precincts – Western Parkland City) 2021*. The proposal is consistent with the aims of the Western Parkland SEPP and has been assessed against relevant provisions of the SEPP as outlined in **Table 5**.

Table 5 | Chapter 5 of Western Parkland SEPP

Requirement	Comment
<i>Part 5.1 Preliminary</i>	
5.1 Aims of Chapter	The proposal is considered to satisfy the aims of the Chapter as it seeks to undertake works to permit development that will not impact the implementation of the Penrith Lakes Scheme. The proposal also will not detrimentally impact the ongoing operation of Olympic legacy infrastructure.
5.7 Consent Authority	The site is located on land zoned 'Tourism' and as such, the Minister is the consent authority.

Requirement	Comment
<i>Part 5.2 Development control</i>	
<p>5.12 Development for the purposes of implementing the Penrith Lakes Scheme</p> <p>(1) Development for the purposes of implementing the Penrith Lakes Scheme may, with development consent, be carried out on land to which this Chapter applies.</p>	<p>The proposal is permissible with consent under the Policy and would contribute to the Tourism zone and the implementation of the Penrith Lakes Scheme.</p>
<p>(2) The consent authority shall grant consent to development to which this section applies unless—</p> <p>(a) the consent authority is of the opinion that the development the subject of the application—</p> <ul style="list-style-type: none"> (i) does not fully implement the Penrith Lakes Scheme on the land to which the application for development relates, (ii) will not ensure the satisfactory implementation of the Penrith Lakes Scheme, or (iii) is not generally in accordance with the structure plan, and 	<p>The proposal is considered to further implement the Scheme as it provides for tourist-oriented development.</p>
<p>(b) in the case of an application to carry out development which includes an extractive industry, the consent authority is of the opinion that—</p> <ul style="list-style-type: none"> (i) development should not be carried out until other land to which this Chapter applies is developed for purposes which include an extractive industry, (ii) the land, the subject of the application, will not be rehabilitated and reconstructed— <ul style="list-style-type: none"> (A) generally in accordance with the structure plan, or (B) to ensure the satisfactory implementation of the Penrith Lakes Scheme, or (iii) the person (including any person related, connected or otherwise associated to or with that person) proposing to carry out that development has not complied with the conditions of a consent previously granted to carry out development which included an extractive industry in respect of other land to which this Chapter applies. 	<p>Not applicable</p>
<p>(3) The consent authority shall not consent to the carrying out of development for the purposes of implementing the Penrith Lakes Scheme unless the person making the application has submitted a statement of the environmental effects of the proposed development containing</p>	<p>A Statement of Environmental Effects has been submitted and adequately addresses the matters specified in clauses 1 and 2 of Schedule 2.</p>

Requirement	Comment
the matters specified in section 1 of Schedule 5 and addressing the matters specified in section 2 of that Schedule.	
(4) In determining an application to carry out development to implement the Penrith Lakes Scheme, the consent authority shall take into consideration the following matters— (a) the Penrith Lakes Scheme Regional Environmental Study,	The Study outlines the creation of lakes, recreational land and tourism sites within the Penrith Lakes Scheme. The proposal would provide a tourism use within Penrith Lakes and, subject to management measures, would not detrimentally affect waterways or the quantity or quality of recreational spaces within Penrith Lakes.
(b) the recommendations, if any, of such technical working parties as may be established from time to time by the consent authority,	No technical working party was established to make recommendations on this application.
(c) the statement of environmental effects accompanying the application,	The SEE was reviewed and considered.
(d) the proposed sequence of extraction and rehabilitation,	Quarrying activities on site have ceased and the proposal will not interfere with current rehabilitation works.
(e) whether the land is to be dedicated to the Crown and, if not, the proposed control and management of the land,	Not applicable
(f) the management and control of water resources including— (i) the source of water in order to fill any lake (including the quality and quantity of water from that source), (ii) water reticulation systems from the Nepean River to any lake, from lake to lake and from any lake to the Nepean River, (iii) the water quality of any lake (including the aquatic ecosystem), (iv) water treatment facilities, (v) water depth of any lake, (vi) flood control, (vii) storm water control, (viii) the effect that development would have upon the quantity and quality of the existing groundwater, the level of the existing water table and groundwater movement, (ix) lake usage, (x) staged development of the lakes and their usage during stage development,	The site can be safely evacuated in accordance with the approved FEMP. The site is currently serviced by a commercial grease arrestor and a septic tank for primary treatment. The Applicant has proposed having the grease arrestor pumped out regularly by a waste collection service. Noting that the site is located in proximity to the Sydney International Regatta Centre and the Nepean River, the Department has included conditions requiring the Applicant to obtain approval for the operation of an On-site Sewage Management System by Council prior to operation.

Requirement	Comment
(xi) the need to monitor the water quality of the lakes having regard to their intended use, and	
(xii) the effect upon the Hawkesbury/Nepean River system,	
(g) the rehabilitation and reconstruction of the land including—	The proposal does not impact the structural stability and soil compaction of landforms and the Nepean River embankment.
(i) landscape design,	
(ii) the structural stability and soil compaction of landforms (including, where appropriate, the land shown on the structure plan as future urban),	
(iii) the stability and impermeability of the Nepean River embankment,	
(iv) soil conservation, and	
(v) revegetation,	
(h) access to, the supply of water from any existing source to, and the supply of and access to municipal and utility services to, land to which this Chapter applies, other than that part of that land the subject of the application,	The SEE advises that the premises benefits from an existing water supply. Nonetheless, a condition is included requiring that the Applicant provide evidence of arrangements for the water supply to the development.
(i) any item of the environmental heritage listed in Schedule 6,	No identified heritage item will be impacted by the proposal.
(j) the effect upon a locality, place or building not listed in Schedule 6 having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations, and	No identified locality, place or building listed in Schedule 6 will be impacted by the proposal.
(k) the need and frequency to monitor the implementation of the subject development.	Not applicable
(5) This section has effect despite anything to the contrary in the Land Use Table or any other provision of this Chapter.	Noted

Part 5.3 Permitted or prohibited development on zoned land

The site is located in the 'Tourism' zone. A café and wine bar is classified as a 'Food and drink premises'. Therefore, the proposed use is permissible with consent.

Part 5.5 Additional provisions for zoned land

5.31 Development on land zoned Tourism

Development consent must not be granted for development on land zoned Tourism unless the consent authority has considered the following—

The proposed use of the site is not expected to generate significant traffic and will not impact on the street network. The application was referred to TfNSW, who provided no comments. The SEE notes that site currently contains over 28 formalised car parking spaces available immediately adjacent to the cottage itself, with substantial opportunities for overflow parking (if required) elsewhere on the site. It will be necessary to provide an accessible parking space.

Requirement	Comment
<p>(a) a traffic and transportation plan that includes proposals about the management of traffic impacts caused by the development,</p> <p>(b) if the development involves or is near a heritage item—</p> <p>(i) a heritage conservation management plan prepared in relation to that heritage item and approved by the Planning Secretary, and</p> <p>(ii) whether the development is consistent with that plan,</p> <p>(c) whether a stable foundation exists or can be developed for the development,</p> <p>(d) whether the existing development platform (including subgrade) can be adequately protected from scour by the discharge of a 1:100 ARI (average recurrence interval) flood event,</p> <p>(e) whether the proposed development appropriately allows for potential differential settlement given the existing geotechnical conditions and the proposed foundation and for the geotechnical conditions present at the site to prevent excessive total and differential settlement.</p>	<p>The proposal is not located in proximity to the heritage item. Therefore, a conservation was not required.</p> <p>Not applicable. The proposal is for the change of use of an existing building.</p> <p>The development is located above the 1:100 ARI flood level.</p> <p>Not applicable. The application is for the use of an existing building.</p>
<i>Part 5.6 Miscellaneous provisions</i>	
<p>5.33 Heritage conservation</p> <p>(1) Objectives The objectives of this section are as follows—</p> <p>(a) to conserve the environmental heritage of Penrith,</p> <p>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</p> <p>(c) to conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</p>	<p>The site is neither a heritage item nor in a conservation area and no items of heritage significance under the Penrith Lakes SEPP are near the site that could be impacted.</p>
<p>5.38 Flood planning</p> <p>(1) The objectives of this section are as follows—</p> <p>(a) to minimise the flood risk to life and property associated with the use of land,</p> <p>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</p> <p>(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,</p>	<p>(1) The subject site is identified as being flood prone.</p> <p>(a) and (b) The development does not seek to introduce a new land use or propose to construct a building.</p> <p>(c) as no new buildings are proposed and the provision of external ramps and paraphernalia is exceptionally minor in scale, the Department considers the development would not have an impact on flood behaviour.</p> <p>(d) the site is subject to a FEMP that has been approved by the Department for evacuation.</p> <p>(e) the proposed development is not a critical infrastructure facility.</p>

Requirement	Comment
<p>(d) to enable the safe occupation and efficient evacuation of people in the event of a flood,</p> <p>(e) to protect the operational capacity of emergency response facilities and critical infrastructure during flood events.</p>	<p>The Department is satisfied that the development is consistent with the objectives of this clause.</p>
<p>(2) Development consent must not be granted to development on land the consent authority considers to be below the level of a probable maximum flood unless the consent authority is satisfied the development—</p> <p>(a) is compatible with the flood function and behaviour on the land, and</p> <p>(b) will not significantly adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) will not significantly adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of evacuation routes for the Hawkesbury-Nepean Valley floodplain in the event of a flood, and</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</p> <p>(e) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(f) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p>	<p>(2) The Department has considered the points (a) to (f) below:</p> <p>(a) The development does not seek to introduce new buildings or land uses to the site.</p> <p>(b) Given no new buildings are proposed, proposed and necessary external alterations are minor, and no change to the existing landform is proposed, the Department considers the development would not impact the flood behaviour or affectation to adjoining properties</p> <p>(c) The proposed development will not impede on the flood evacuation procedures outlined in the <i>Hawkesbury-Nepean Flood Emergency Sub plan</i>.</p> <p>(d) Risk to life is minimised as floor levels are above the 1 in 500 AEP flood level.</p> <p>(e) Given that the development involves minor changes to an existing building, the development is unlikely to affect erosion and siltation from a flooding perspective.</p> <p>(f) Given the small size of the proposal, any economic loss is likely to be borne by the applicant.</p>
<p>(3) In deciding whether to grant development consent to the erection of a building on land the consent authority considers to be below the level of a probable maximum flood, the consent authority must consider the following—</p> <p>(a) whether the building will be affected by projected changes to flood behaviour resulting from climate change,</p> <p>(b) the intended design and scale of the building,</p> <p>(c) whether the design of the building incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</p> <p>(d) the potential to modify, relocate or remove the building if the Hawkesbury-Nepean Valley floodplain is impacted by flooding.</p>	<p>(3) The Department has considered the points (a) to (d) below:</p> <p>(a) The proposal involves the change of use of existing building. Hence, the flood function and the behaviour as a result of the climate change is not expected to change compared to the existing case.</p> <p>(b) The scale of the building is not proposed to change under this application.</p> <p>(c) Risk to life is minimised as floor levels are above the 1 in 500 AEP flood level. An FEMP approved by the Department also supports this development.</p> <p>(d) Noting the age of the building, it is unlikely to be relocated if impacted by flooding. However, the Applicant has confirmed that the building could be demolished if required.</p>

Part 5.7 Urban release areas

The site is not located within an Urban Release Area as such this Part does not apply.

State Environmental Planning Policy (Resilience and Hazards) 2021 (Reliance and Hazards SEPP)

Chapter 4 of the Resilience and Hazards SEPP contains the provisions of the former State Environmental Planning Policy No. 55 Remediation of Land (SEPP 55). The chapter aims to provide a State-wide approach to the remediation of contaminated land. In particular, it aims to promote the remediation of contaminated land to reduce the risk of harm to human health and the environment by specifying:

- under what circumstances consent is required
- the relevant considerations for consent to carry out remediation work
- the remediation works undertaken meet certain standards and notification requirements.

The Applicant did not submit a contamination assessment with the application. Notwithstanding, the Department has considered the suitability of the site for the proposed works and notes:

- the works are minor in nature and principally located internally
- the site is not identified on the NSW EPA Contaminated Land Register
- the site has previously been used for residential and agricultural purposes with no known contaminating processes having occurred

Given the information available, the Department considers that the site is suitable in its current state without the need for further investigation or remediation works.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP): Chapter 2 Infrastructure

Chapter 2 facilitates the effective delivery of infrastructure across the State and lists categories of development defined as traffic generating development that trigger a referral to Transport for NSW (TfNSW) in accordance with clause 2.122 of the SEPP.

The proposal is anticipated to generate minimal traffic, with the proposed capacity of the café and wine bar capped at 60 people, inclusive of staff.

The Department provided a copy of the proposal to TfNSW for comment, consistent with its approach of seeking comment on development applications from relevant Government agencies. TfNSW noted that they had no comments on the application.

Penrith Lakes Development Control Plan Stage 1

The Penrith Lakes Development Control Plan Stage 1 applies to all land zoned Tourism or Employment under Chapter 5 of the *State Environmental Planning Policy (Precincts – Western Parkland City) 2021*.

Provision	Complies	Comment
Penrith Lakes context		
2.2 Landscape All development will be consistent with the following planning principles: <ol style="list-style-type: none"> 1. Landscaping promotes understanding of the connection of Aboriginal people to Country and the importance of the site as a meeting place 2. Ensure restoration of the landscape and natural systems of the Western Parkland City 3. Protect and frame the expansive views of the parkland and waterways and the character of Penrith Lakes 4. Integrate landscape design and planning as part of a holistic approach to site development 5. Landscaping is designed appropriate to the context of the wider Penrith Lakes landscape setting and endemic vegetation 6. Ensure development contributes towards the Greater Sydney canopy cover target of 40% by retaining existing trees, where possible, and planting new trees that are supported by sufficient deep soil for canopy growth 7. Ensure sustainable biodiversity and ecological conservation through the protection of watercourses, wetlands and riparian corridors 8. Encourage the use of stormwater and recycled water for maintaining landscaping and minimising the demand on potable water 9. Reinforce the distinct landscape character areas that build on the existing landscape features. 	Yes	<ol style="list-style-type: none"> 1. The proposed development is not located on a site that is of importance as a meeting place for Aboriginal people. 2. The proposed development would not impact the natural systems of the Western Parkland City. 3. The proposed development would not obstruct views to parkland and waterways. 4. The site has been developed considering landscape design. 5. Landscaping has been designed appropriately in the context of the wider Penrith Lakes setting and endemic vegetation. 6. The proposed development does not impact on canopy cover. 7. The proposal would not affect existing watercourses, wetlands or riparian corridors. 8. The proposal would not significantly increase existing demand on potable water. 9. The proposal would not affect the existing landscape character.
3. Environmental considerations		
3.1 Flood planning and evacuation		
Objectives	Yes	<ol style="list-style-type: none"> a) The Department has included conditions requiring that the FEMP is to be updated to be consistent with the NSW

Provision	Complies	Comment
<ul style="list-style-type: none"> a) Ensure development on the floodplain is consistent with the NSW Government's Flood Prone Land Policy and the principles in the NSW Government's <i>Floodplain Development Manual</i>. b) Minimise flood risk to life of the users of the development in the full range of flooding, including the 5% annual exceedance probability (AEP), 1% AEP, 0.5% AEP, 0.2% AEP and the probable maximum flood (PMF). c) Maintain the flood function of the floodplain to minimise impacts of development on flood behaviour and adverse impacts to community. d) Enable safe evacuation from the land and ensure development does not adversely impact the evacuation capacity of the existing Hawkesbury–Nepean community. e) Allow development that is compatible with the flood hazard and flood function of the land. f) Avoid significant adverse impacts on flood behaviour and the environment. g) Manage changing flood risk due to climate change. 		<ul style="list-style-type: none"> Government's Flood Prone Land Policy and principles in the NSW Government's <i>Floodplain Development Manual</i>. b) The development site is located above the flood planning level and not directly affected by flooding in frequent or rare flood events. c) The development site is located above the 1% AEP plus freeboard, which mitigates the risk to property. d) Subject to recommended conditions, the proposed development enables safe evacuation from the land and ensures the development does not adversely impact the evacuation capacity of the existing Hawkesbury–Nepean community. e) The proposed development is compatible with the flood hazard and flood function of the land. f) There is expected to be negligible change to flood behaviour and the environment due to the development. g) Considering climate change impacts, the site becomes inundated by the flood hazard in the 1 in 1000 AEP flood event. In the circumstances, the proposed change of use is considered acceptable
1. Development on land below the level of the PMF that will increase the number of people on the land must be consistent with the flood evacuation requirements outlined in Section 3.1.1 of the DCP.	Yes	The proposed development is unlikely to significantly increase people on the land requiring flood evacuation, particularly in the event of predicted inclement weather due to the nature of the activities.

Provision	Complies	Comment
		Vehicle evacuation has been confirmed in consultation with the SES.
2. All development that will increase the number of people on the land must submit a flood emergency management plan prepared in accordance with and to demonstrate compliance with flood evacuation requirements in Section 3.1.1 of the DCP.	Yes	A flood emergency management plan has been prepared and approved by the Planning Secretary.
The following controls apply to land below the flood planning level: 3. A flood and drainage investigation that overlays the 20%, 5%, 1%, 0.2% AEP and PMF level and any overland flows must be submitted with a development application. The levels on the survey are required to be verified during construction by a survey certificate.	Yes	The development site is located above the flood planning level plus freeboard. The flood and drainage overlays for 1% annual exceedance probability (AEP), 2% AEP, 0.1% and Probable Maximum Flood (PMF) were provided in the Floodplain Risk Assessment.
4. The drainage investigation must acknowledge and mitigate the effects of flood on proposed infrastructure.	Yes	The Floodplain Risk Assessment considered the impact of flooding and provides appropriate mitigation measures for the development.
5. Development must not adversely impact flood behaviour for the full range of floods (up to and including the PMF) and is to consider cumulative impacts of development on surrounding land, including: a) loss of flood storage b) loss of or changes to flood flow paths c) acceleration or obstruction of flood flows d) increase in the depth, duration or velocity of floodwaters e) any reduction in flood warning times elsewhere on the floodplain.	Yes	There is no change to both impervious fraction, topography and flood behaviour due to the development.
6. The applicant must demonstrate that: a) the development will not increase the flood hazard or risk to other properties	Yes	a) The proposed development is not directly affected by flooding in frequent flood events, and becomes directly affected by

Provision	Complies	Comment
<ul style="list-style-type: none"> b) all structures are designed and constructed to ensure structural integrity up to the 0.2% AEP, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification must be provided confirming the above c) the proposed building materials are flood-compatible d) the buildings are sited in the optimum position to avoid floodwaters and allow safe flood evacuation e) the development will not expose any occupants of the land to unacceptable levels of risk. 		<p>the flood hazard in the 1 in 1000 AEP flood event. It is exposed to extreme high hazard flooding in the PMF which represents a theoretical event with an extremely low likelihood of occurrence. The development site is located above the 1% AEP plus freeboard which will not increase flood hazard or risk to other properties.</p> <ul style="list-style-type: none"> b) No earthworks are proposed as part of the development. c) As above. d) Access to the development may be cut in more frequent events, and this will be managed by the FEMP that has been approved by the Department. This contributes to mitigating the risk to life. e) The proposed development is unlikely to significantly increase people on the site requiring flood evacuation, particularly in the event of predicted inclement weather due to the nature of the activities. There is minimal change to both impervious fraction and topography. There is expected to be negligible change to flood risk due to the development.
7. Development, excluding temporary structures, in high flood hazard areas, floodways' and land below the 1% AEP should be avoided.	Yes	The works are located above the 1% AEP plus freeboard which contributes to mitigating the risk to property.

Provision	Complies	Comment
8. Development must demonstrate that any overland flow is maintained for the 1% AEP overland flow.	Yes	The development's overland flow is maintained for the 1% AEP overland flow as all works are above the 1% AEP flood.
9. Consent will not be granted to filling of floodways or high flood hazard areas.	N/A	The development will not result in the filling of floodways or high flood hazard areas.
10. Development shall be consistent with the following guidelines: a) <i>Managing Flood Risk Through Planning Opportunities—Guidance On Land Use Planning In Flood Prone Areas</i> (Hawkesbury–Nepean Floodplain Management Steering Committee) b) <i>Reducing Vulnerability of Buildings to Flood Damage—Guidance On Building In Flood Prone Areas</i> (Hawkesbury–Nepean Floodplain Management Steering Committee) c) <i>Designing Safer Subdivisions—Guidance On Subdivision Design In Flood Prone Areas</i> (Hawkesbury–Nepean Floodplain Management Steering Committee).	N/A	The proposed internal works are on land above the flood planning level. The proposed and necessary external works comprise ramps and are minor; These works are not anticipated to measurably affect flood waters.
11. Development must avoid significant adverse effects on the floodplain environment that would cause erosion, siltation, destruction of riparian vegetation or a reduction in the stability of the riverbank or watercourse.	Yes	<p>Minimal built form and works are proposed that would not impact the floodplain environment. There is minimal change to both impervious fraction and topography and expected to be negligible change to flood behaviour due to the development.</p> <p>The development would not remove riparian vegetation or reduce stability of river banks or watercourses. The proposal would not cause avoidable erosion or siltation.</p>

Provision	Complies	Comment
12. All electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed, located above the flood planning level, or both.	Yes	The development is located above the 1% AEP plus freeboard which contributes to mitigating the risk to property.
13. Hazardous or potentially polluting materials must not be stored below the 0.2% AEP level unless adequately protected from floodwaters in accordance with industry standards.	Yes	As above.
14. Adequate flood signage and exits must be installed to facilitate safe and orderly evacuation from flooding without reliance upon the State Emergency Service or other authorised emergency services personnel.	Yes	The approved FEMP contains recommendations for flood signage.
15. Fencing must not impede the flow of floodwaters or increase flood affectation on surrounding land.	N/A	No fencing would be installed that would impact the flow of floodwaters or increase flood affectation on surrounding land.
3.1.1 Flood evacuation considerations		
Controls 1. Development that will increase the number of people on the land below the probable maximum flood (PMF) level at Penrith Lakes covered by this DCP must be consistent with the Flood Response Guideline (if available), or the objective to achieve early site evacuation and/or non-attendance in the event of a flood or probable flood.	Yes	<p>The proposed development is not directly affected by flooding in frequent or rare flood events and becomes directly affected by the flood hazard in the 1 in 1000 AEP flood event. It is exposed to extreme high hazard flooding in the PMF which represents a theoretical event with an extremely low likelihood of occurrence.</p> <p>The Flood Response Guideline is still in preparation.</p> <p>The proposed development is unlikely to significantly increase people on the land requiring flood evacuation, particularly in the</p>

Provision	Complies	Comment
		event of predicted inclement weather due to the nature of the activities.
<p>2. Development consent must not be granted to development on land below the PMF level that will increase the number of people on the land, unless the consent authority is satisfied that:</p> <p>a) appropriate systems and processes will be in place to ensure the efficient evacuation of the site and surrounding area and will not adversely impact on the evacuation routes in the Hawkesbury-Nepean Valley floodplain in the event of a flood</p> <p>b) a flood emergency management plan has been prepared.</p>	Yes	<p>The proposed works are on land above the flood planning level. The development is unaffected up to the 1 in 500 AEP flood event. The site becomes almost completely submerged in the 1 in 1000 AEP event and is subject to extreme high hazard flooding in the PMF.</p> <p>Existing evacuation procedures are compatible with the site and there is unlikely to be any impact on egress and safety in a flood event compared to existing conditions.</p> <p>An FEMP has been prepared in consultation with the SES. The Flood Evacuation Management Plan was approved by the Department on 20 September 2023.</p>
<p>3. The flood emergency management plan must address the following matters:</p> <p>a) an overview of the flood risk and resilience of the site and the surrounding area</p> <p>b) details the requirements for governance and documentation of flood preparedness and response at Penrith Lakes</p> <p>c) measures to be undertaken by occupants of the site to manage the risk to life in the event of a flood</p> <p>d) measures to be undertaken by occupants of the site to ensure the efficient evacuation of people in the event of an early flood warning</p> <p>e) immediate flood relief and recovery actions to be undertaken by occupants of the site following a flood event or false alarm of a flood event</p>	No	<p>A FEMP which has been prepared in consultation with the SES.</p> <p>The FEMP has been submitted to the Department with respect to the Helipad approval for the site. The Department assessed the FEMP with respect to the DCP, and the Department approved the FEMP on 20 September 2023.</p> <p>The Department has included a condition of consent requiring that the FEMP be updated to take into consideration the recommendations, requirements and flood</p>

Provision	Complies	Comment
f) long-term review of systems and processes to ensure the efficient evacuation of the site and recovery measures to be undertaken by occupants of the site following a flood event or false alarm of a flood event.		levels of the endorsed <i>Hawkesbury-Nepean Flood Study 2023</i> when it is finalised and made publicly available
4. Despite any other provision in the DCP, the consent authority must not grant consent to a development application for development on land below the PMF in the Penrith Lakes precinct unless provisions 1, 2 and 3 are satisfied.	Yes	The Department is satisfied that provisions 1, 2 and 3 are satisfied or can be, subject to conditions of consent.
3.2 Water-sensitive urban design and stormwater management		
Objectives <ul style="list-style-type: none"> a) Ensure that development does not result in the pollution of waterways (including the Nepean River and the lakes). b) Ensure that development does not generate stormwater discharges that exceed the capacity of the drainage network. c) Minimise nuisance flows of stormwater to adjoining properties. d) Minimise hardstand and impervious areas on developed land to minimise run-off. e) Ensure an integrated approach to water cycle management and drought management through the use of water-sensitive urban design principles, including maximising onsite detention and stormwater reuse. 	Yes	The development will not impact on waterways and will not generate stormwater discharges that exceed the capacity of the drainage network, cause nuisance flows or excess runoff.
Controls <ul style="list-style-type: none"> a) A stormwater management plan must be submitted with development applications (excluding minor alterations and additions). The plan must provide details of the management of stormwater and the measures proposed to mitigate changes in water quality, run-off volume and peak flow of stormwater on adjoining or downstream sites, both during and after construction. This plan must provide details demonstrating that the drainage systems have adequate capacity. a) The plan is to demonstrate that development can achieve the following: <ul style="list-style-type: none"> • 90% reduction in the post-development mean annual load total gross pollutant (greater than 5 mm) • 85% reduction in the post-development mean annual load of total suspended solids 	Yes	The proposal is classified as 'minor'. Therefore, a stormwater management plan is not required.

Provision	Complies	Comment
<ul style="list-style-type: none"> • 65% reduction in the post-development mean annual load of total phosphorus • 45% reduction in the post-development mean annual load of total nitrogen • 90% reduction in free oils and grease with no visible discharge • 75% of all stormwater harvested onsite. <p>b) Modelling for determining the mean annual loads from land use must be undertaken in Model for Urban Stormwater Improvement Conceptualisation (MUSIC) and in accordance with the NSW MUSIC Modelling Guidelines (Greater Sydney Local Land Services). The Penrith City Council MUSIC-link is appropriate for model configuration.</p> <p>c) Mitigation of changes to the flow rate and flow duration within the receiving waterways as a result of the development is required. Natural flow paths, discharge points and run-off volumes from the site should also be maintained. Where this is not possible, justification of the changes must be provided to the satisfaction of the consent authority.</p> <p>d) The developed 1% AEP peak flow must be reduced to predevelopment flows by incorporating stormwater detention and management devices.</p>		
<p>b) Development must be consistent with the following guidelines:</p> <p>a) Penrith City Council's Stormwater Drainage Specification for Building Developments</p> <p>b) Penrith City Council's WSUD Technical Guidelines.</p>	Yes	Mostly internal works are proposed, and the existing structure contains adequate stormwater infrastructure.
<p>c) Stream erosion index for all development must ensure that the post-development duration of stream-forming flows shall be no greater than 3.5 times the predeveloped duration of stream-forming flows.</p>	Yes	Mostly internal works are proposed, with hardstand replacing existing structures on site. There is minimal change to both impervious fraction and topography and negligible change to flood behaviour due to the development.
<p>d) The following general stormwater provisions apply:</p> <p>a) Run-off must not be discharged into environmentally sensitive areas, including threatened ecological communities.</p>	Yes	Mostly internal works are proposed, and the existing structure contains adequate stormwater infrastructure.

Provision	Complies	Comment
<p>b) Pipe outlets must have stormwater energy dissipaters, except where waters enter a formed channel or similar structure that is unlikely to be damaged by water flowing in at high velocity.</p> <p>c) Permeable ground surfaces are to be maintained, and, where suitable conditions exist, stormwater infiltration must occur onsite.</p> <p>d) The development of any lot must account for the existing drainage arrangements of the area, including any localised ponding, and whether the proposed development is likely to affect:</p> <ul style="list-style-type: none"> • access to the site • drainage on adjoining properties • localised nuisance flooding on adjoining properties • natural overland flow or drainage paths. <p>Provision must be made in the design of drainage systems for all upstream catchments, including a future connection point and adequate capacity for a fully developed upstream catchment.</p> <p>e) In areas where there is no defined drainage system, the applicant shall liaise with the adjoining owners regarding the construction of a drain or channel to an existing watercourse. This may include the provision of drainage easements.</p> <p>f) Drainage constraints must be assessed in a report prepared by a qualified engineer to ensure that:</p> <ul style="list-style-type: none"> • where capacity may be limited, appropriate drainage measures, including possible onsite detention, is provided • the proposed development will not overload trunk drains during peak storm events or cause localised flooding • if the proposed development will result in additional pollutant loading (and the appropriate licences have been obtained from the relevant government authorities), then those pollutants and run-off will comply with the water quality requirements referred to in this plan • where easements are required across neighbouring properties, the adjoining owners' consent is submitted with the development application. <p>g) If the site does not have access to Penrith City Council's stormwater drainage system, all drainage shall be designed to ensure that the intensity, quantity</p>		

Provision	Complies	Comment
<p>and quality of surface run-off does not adversely affect downstream properties and watercourses. A legal point of discharge will be required.</p> <p>h) If the site has access to Penrith City Council's stormwater drainage system, all stormwater must be collected from the site, and either be recycled for use or discharged into Council's stormwater drainage system. No stormwater will be permitted to discharge across Council's footways or reserves or to enter adjoining land.</p>		
<p>e) The following general stormwater provisions apply:</p> <p>a) Adequate stormwater systems must be designed and constructed to ensure that, development does not increase stormwater peak flows in any downstream area, for all rainfall events up to the 1% AEP event.</p> <p>b) Onsite stormwater detention systems cannot include rainwater tanks, water retention basins or dams.</p> <p>c) Detention systems to be designed in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments.</p> <p>d) Onsite detention systems must be designed using a catchment-wide approach.</p> <p>e) Onsite stormwater detention mechanisms must have a maintenance program in place.</p> <p>f) Onsite stormwater detention mechanisms must be placed on the title of the relevant allotment or property to ensure their retention and maintenance.</p> <p>g) Restriction as to user and Positive Covenant must be registered against the title of the relevant allotment or property to ensure their retention and maintenance of onsite stormwater detention.</p>	Yes	As above
<p>f) The following stormwater design standard must be applied:</p> <p>a) Any new piped drainage system must be designed to control minor stormwater flows under normal operating conditions for a 20% AEP storm event.</p> <p>b) Any new drainage system must be designed to control major stormwater flows under normal operating conditions for a 1% AEP storm event.</p>	Yes	As above

Provision	Complies	Comment
g) Development must provide an integrated approach to water cycle management that addresses water conservation, efficiency, stormwater management and drainage through a coordinated process.	Yes	As above
h) Onsite measures must be implemented to maintain water quality, to control the volume of stormwater run-off and to ensure that the rate at which stormwater leaves the site is at or less than predevelopment volume and rate.	Yes	As above
3.3 Water conservation and reuse		
Objective a) Ensure development maximises use of non-reticulated water.	Yes	A rainwater harvesting and reuse system was developed for the Helipad site following the approval of DA 21/15298.
Controls 1. Development must demonstrate that it meets the following minimum standards under the Water Efficiency Labelling and Standards (WELS) scheme: four-star dual-flush toilets, three-star showerheads, four-star taps (for all taps other than bath outlets and garden taps) and three-star urinals.	Yes	The Department has included conditions requiring that the development meets the standards of the WELS scheme.
2. Development must install rainwater tanks to meet 80% of non-potable demand, including outdoor use, toilets and laundry.	Yes	A rainwater harvesting and reuse system was developed for the Helipad site following the approval of DA 21/15298.
3. Where cooling towers are used, they must: a) connect to a conductivity meter to ensure optimum circulation before discharge b) include a water meter connected to a building's energy and water metering system to monitor water usage c) employ alternative water sources for cooling towers where practical and in accordance with the Public Health Act 2010 and NSW Health guidelines.	N/A	N/A
4. Water use within open space (for uses such as irrigation, pools, water features, and the like) must be supplied from sources other than potable mains water (for	Yes	As above.

Provision	Complies	Comment
example, rainwater, treated stormwater or greywater) to meet 80% of water use demand.		
<p>5. Rainwater tanks must be:</p> <ul style="list-style-type: none"> a) appropriately located and designed (with appropriate types, materials and colours) to minimise the visual impact on any rural, scenic or landscape character of any area b) integrated into the design of any cluster of buildings during the site planning and design process c) the percentage of proposed roof area directed to a rainwater tank must be maximised to increase the effectiveness and reliability of the reuse system; tanks must be plumbed into toilets, washing machines, irrigation systems and hose down facilities d) designed, constructed, or both in accordance with the necessary guidelines to ensure safety and structural stability, including preventing flotation in the event of flooding e) designed to minimise the entry of contaminants into any water that may be harvested for drinking f) the design of tank must allow tanks to be cleaned, maintained and de-sludged as required; tanks must have leaf guard and first flush diverter installed. 	Yes	As above.
<p>6. Where development consent is required for rainwater tanks, the following requirements apply:</p> <ul style="list-style-type: none"> a) rainwater tanks must not exceed 3 metres in height above ground level (including stand); centralised systems may be considered on merit b) rainwater tanks must not collect water from a source other than gutters or downpipes on a building or a water supply service pipe c) rainwater tanks must be structurally sound d) rainwater tanks, and any stands for the tanks, must: <ul style="list-style-type: none"> • be assembled and installed in accordance with the manufacturer's specifications • not rest on a footing of any building or other structure on the property, including a retaining wall 	Yes	As above.

Provision	Complies	Comment
<ul style="list-style-type: none"> e) freestanding rainwater tanks must be elevated above the 1% AEP flood level or anchored to resist buoyancy and impact forces f) rainwater tanks must use prefabricated materials or be constructed from prefabricated elements designed and manufactured for the purpose of construction of a rainwater tank g) rainwater tanks must be enclosed, and inlets screened or filtered to prevent the entry of foreign matter or creatures h) rainwater tanks must use a non-reflective finish. Materials and colours should complement those used on the dwelling house and any other buildings on the land i) plastic rainwater tanks are not to be used in bushfire-prone areas. 		
3.10 Trading/Operating hours of premises		
Objectives <ul style="list-style-type: none"> a) Ensure that the amenity of adjoining properties, especially residential and rural areas, is preserved. b) Ensure development has the flexibility in trading/operating hours to ensure it is competitive and productive. 	Yes	The revised acoustic report confirms that the proposal can operate in accordance with noise criteria between the hours of 7.00am and 10.00pm.
Controls <ol style="list-style-type: none"> 1. Construction works shall generally be restricted to the following hours: <ul style="list-style-type: none"> a) Monday to Friday, 7 am to 6 pm b) Saturday, 7 am to 1 pm c) Sundays or public holidays, no work. 	Yes	Any construction activities required would be undertaken in the hours specified in the controls. A condition has been included to reflect this.
<ol style="list-style-type: none"> 2. The hours of operation for premises involved in any type of employment-generating activity shall be considered on merit, having regard to the potential impact on the amenity of adjoining properties. 	Yes	<p>The café and wine bar will operate Mondays to Sundays, from 7 am to 10 pm.</p> <p>The hours of operation and associated acoustic impacts on the amenity of the adjoining properties has been assessed in Section 5.1 and potential impacts have been deemed acceptable.</p>

Provision	Complies	Comment
3.11 Waste management		
Objectives <ul style="list-style-type: none"> a) Facilitate sustainable waste management practices during the demolition, construction and operational phases of development. b) Minimise the environmental impacts of waste through waste avoidance, minimisation, re-use and recycling. 	Yes	The proposed cafe is not expected to generate a large amount of waste. Nonetheless, the Department has included conditions around the storage and disposal of waste.
Controls <ul style="list-style-type: none"> 1. A waste management plan must be lodged with a development application, including demolition, construction, changes of use or a combination of these. The plan must include details regarding: <ul style="list-style-type: none"> a) the types and volumes of waste and recyclables generated during the demolition, construction and operational phases b) details of onsite storage, treatment of waste, or both during the demolition, construction and operational phases c) disposal of waste generated during the demolition and construction phases that cannot be re-used or recycled d) ongoing management of waste during the operational phase of the development, including collection regime e) waste minimisation techniques, including recycling. 	N/A	<p>The waste expected to be generated would be from the construction of the kitchen and the operation of the café and wine bar. This would be stockpiled and removed by a licenced contractor.</p> <p>As such, it is considered that a waste management plan is not required.</p>
3.12 Noise and vibration		
Objectives <ul style="list-style-type: none"> a) Ensure that development and traffic associated with development do not adversely impact the amenity of surrounding land uses. b) Ensure appropriate noise mitigation measures are incorporated into development. 	Yes	Noise impacts are assessed in Section 5.1 .
Controls	Yes	The primary noise source from the proposal will be the operation of the café and wine bar.

Provision	Complies	Comment
1. Development must be designed with integrated noise control measures to minimise the impact of noise on adjoining land uses.		It is expected that these activities will generate nil to low impacts to adjoining land uses.
2. Development applications for noise-generating uses must be accompanied by a noise impact assessment from a suitably qualified acoustic consultant that demonstrates compliance with the noise and vibration controls contained within the relevant Australian Standards and State Government Guidelines relating to noise, including but not limited to: <ul style="list-style-type: none"> a) <i>Protection of the Environment Operations Act 1997</i> b) NSW Environment Protection Authority's <i>Noise Policy for Industry</i> c) (former) NSW Department of Environment, Climate Change and Water's <i>NSW Road Noise Policy</i> d) (former) NSW Department of Environment, Climate Change and Water's <i>Interim Construction Noise Guideline</i> e) <i>State Environmental Planning Policy (Infrastructure) 2007</i> f) (former) NSW Department of Planning <i>Development near rail corridors and busy roads – Interim Guideline</i> g) relevant Australian Standards. 	Yes	The application was accompanied by a noise impact assessment by a qualified acoustic consultant. This assessment considers relevant policies and standards.
3. When development may have a vibration impact on adjoining land uses, a vibration impact assessment is to be prepared by a suitably qualified consultant and submitted with the development application. This assessment is to be carried out with consideration of the former NSW Department of Environment and Conservation's <i>Assessing Vibration: a Technical Guideline</i> either no impact or that impacts will be mitigated by suitable measures.	Yes	The noise impact assessment also considered vibration and found that the operation of the helipad would meet relevant guidelines.
4.1 Site Planning		
Objectives <ul style="list-style-type: none"> a) Improve the social, economic and environmental sustainability of development. b) Ensure that development addresses the key site planning principles, urban design and design excellence by: <ul style="list-style-type: none"> • responding to the natural topography and landform of the site 	Yes	The proposal involves internal works to an existing structure. Therefore, site planning considerations are not necessitated.

Provision	Complies	Comment
<ul style="list-style-type: none"> protecting areas of scenic or visual importance in the Penrith Lakes adopting a height, massing and scale that accords with the analysis of the site and minimises visual impact incorporating safety and security measures within site design providing for active living and connectivity through the provision of healthy, walkable, green built environments, including quality public open space, community facilities and walkable streets using, where possible, sustainable materials that minimise impacts on the environment, maintenance and waste incorporating the principles of universal design to maximise accessibility for all people. 		
<i>Controls</i>	Yes	As above
1) Detailed site analysis is required for lots above 1 hectare or sites that have not been developed previously for urban development.		
2) A view impact analysis will be required for development which impacts the identified view corridors identified in Section 2.3.	Yes	As above
4.8 Access and movement		
Objectives	Yes	The proposal will maintain existing access to the site from Old Castlereagh Road.
<ul style="list-style-type: none"> a) Facilitate access and future connections between adjoining precincts. b) Minimise vehicular access points from Old Castlereagh Road. c) Improve permeability and pedestrian access between precincts, the Nepean River and recreation areas. d) Provide new road connections and walking and cycling connections to service development and minimise conflict between pedestrians and vehicles. e) Regulate the key characteristics of new roads to provide traffic safety and efficient traffic flow, appropriate parking, appropriate pedestrian and cycle paths, and suitable verge and road reserve widths in accordance with each road's function and use within the general road hierarchy. 		The conditions include the requirement for the development to consider the principles and protocols of NSW Police 'Safer By Design'.

Provision	Complies	Comment
<ul style="list-style-type: none"> f) Ensure public safety from criminal elements by considering the NSW Police 'Safer By Design' or 'Crime Prevention Through Environmental Design' principles and protocols. g) Minimise construction and maintenance costs and avoid the need for future property acquisition to provide for public roads. h) Maintain flexibility to allow for future changes in land-use patterns. i) Ensure noise from all road and traffic sources is within acceptable limits. j) Incorporate appropriate traffic-calming measures. 		
Controls	Yes	The proposal is minor and not anticipated to generate significant traffic.
1) A traffic and transport plan is to be submitted as part of a development application plan (excluding minor development), detailing site access, movement and management of traffic impacts on the local road network.		
2) A clear street hierarchy must be established using existing public roads (upgraded as necessary) and new collector roads and local streets.	No	No new roads are proposed.
3) Additional access points and driveways from Old Castlereagh Road shall be minimised and allowed only where they are approved as part of the traffic and transport plan prepared for the development.	Yes	The proposal relies on the existing access point from Old Castlereagh Road.
4) Development shall provide new pedestrian connections, as appropriate, to the Nepean River, including new connections from Lugard Street and Old Castlereagh Road.	N/A	The site does not have a river frontage.
5) Roads will be designed to the classification requirements for new developments are set out in Section 10.4 of the Penrith Development Control Plan 2014. Roads are generally to be located above the 1% AEP level and provide rising road access to Castlereagh Road.	N/A	No new roads are proposed.
6) Roads are to be designed in accordance with Penrith City Council's <i>Design Guidelines for Engineering Works for Subdivisions and Developments</i> .	N/A	No new roads are proposed.
7) The road network must be designed to allow efficient access to key destination nodes throughout Penrith Lakes, providing appropriately planned access and	No	No changes to the road network are proposed.

Provision	Complies	Comment
egress intersections to the adjoining major road network of Castlereagh Road to distribute traffic demands.		
8) Where new streets are proposed, a public domain plan is to be submitted with a development application that details the design, maintenance and management of streets.	N/A	No new streets are proposed.
9) Roads shall be designed in accordance with the following principles: a) Road and lane widths must allow for two-way movement and turning movements of vehicles, including consideration for buses, heavy vehicles, garbage trucks and emergency vehicles; b) Verge widths must be sufficient to meet the requirements for utilities, street tree planting, footpaths, shared paths and urban design outcomes; c) Adequate turning paths must be provided for all vehicles at intersections and for property access; and d) Sufficient width must be provided for drainage functions and water-sensitive urban design measures.	Yes	The site contains sufficient turning circles and access for vehicles accessing the site.
10) Development shall, where appropriate, be designed to: a) allow all vehicles to either leave or enter the site in a forward direction b) accommodate heavy vehicle parking and manoeuvring areas c) avoid conflict with staff, customer and visitor vehicular movements d) ensure satisfactory and safe operation with the adjacent road system.	Yes	The existing access to the site meets these controls.
11) The suitability of manoeuvring areas provided for large vehicles is to be designed to comply with Australian Standard – AS2890 series.	Yes	Manoeuvring areas are adequate for the largest vehicle accessing the site.
12) Adequate space is to be provided within the site for the loading, unloading and fuelling (if applicable) of vehicles. These areas must be screened from the road.	Yes	Adequate space screened from the road is available for loading and unloading.
13) New streets are to have a strong landscaped character.	N/A	No new streets are proposed.
14) Verge treatments are to be designed to reflect the intended use of the street activity and function.	N/A	No new streets are proposed.

Provision	Complies	Comment
15) Vehicle and pedestrian entry points are to be appropriately marked and signposted.	Yes	The proposal retains existing entry points which are clearly marked.
16) Paved surfaces must be designed to delineate between different uses, including pedestrian areas, car parking spaces and driveways.	Yes	The existing paving is adequate to delineate between different uses on the site given the lack of pedestrian activity.
17) Development must deliver a permeable and walkable local street network. Pedestrian paths are required on new and upgraded roads.	N/A	N/A
18) Development must ensure that pedestrian and cycle facilities in public spaces are safe, well-lit, clearly defined, functional and accessible to all users.	N/A	N/A
19) The minimum width is 1.5 metres for pedestrian footpaths and 3 metres for shared cycle/pedestrian paths. All new roads are to include pedestrian footpaths on both sides. Shared paths are encouraged on one side of new roads.	N/A	N/A.
20) Pedestrian paths and cycleways, as well as pedestrian refuge islands, are to be designed so that they are fully accessible by all users in terms of access points and gradients, in accordance with Australian Standard – AS1428 (parts 1 to 4— Design for Access and Mobility).	N/A	N/A.
21) The road cross-sections to be adopted will need to be further developed, with consideration given to land-use planning and support for active transport opportunities.	N/A	N/A.
4.9 Parking		
Objectives <ul style="list-style-type: none"> a) Ensure parking areas are well-designed and integrate with development. b) Ensure the provision of an appropriate number of vehicular spaces, having regard to the proposed development. c) Reduce pedestrian and vehicle conflicts on development sites and the adjoining road network. d) Minimise the visual impact of onsite parking to maintain the visual amenity of Penrith Lakes. 	Yes	Parking areas appropriately frame the buildings on the site and provide appropriate vehicular spaces. Retention of the existing parking on site will not affect the visual amenity of the area. The limited site use and lack of public access do not require additional active transport options on the site.

Provision	Complies	Comment
e) Enable the conversion of above-ground parking to other future uses. f) Positively support the complementary use and benefit of public transport and active transport options, such as bicycle lanes and footpaths.		
Controls 1) Car parking shall generally be provided in accordance with the land uses and rates outlined in Table 2.	Yes	There are 40 spaces available on the site, which complies with the rates outlined in Table 2 for a restaurant.
2) Unless otherwise stated within this DCP, parking areas within the front setback of the lot must be set behind a landscaped area.	Yes	Parking is not within the front setback of the lot.
3) Unless otherwise stated within this DCP, on-grade car parking shall: <ul style="list-style-type: none"> a) be encouraged where possible to be located on the side or rear of the lot b) be constructed of permeable materials c) provide one large tree for every six car parking spaces d) include fencing or landscaping to improve the visual impact on adjacent areas and allow for safe access to building entry points. 	Partially	The existing parking is at the side and rear of the lot but is not constructed of permeable materials and does not provide trees. However, the subject site contains many existing trees that are to be retained.
4) Where multilevel car parking is located above ground, ventilation grills or screen devices must be integrated into the facade and design of the building.	N/A	N/A.
5) Parking areas are to be designed in accordance with the relevant Australian Standards.	Yes	Parking space dimensions and design meet relevant standards.
6) Along all public street frontages, multilevel above-ground parking areas are to be laminated or sleeved with another use for a minimum depth of 10 metres—for example, building entry lobbies, retail tenancies and commercial floor space.	N/A	N/A.
7) Temporary above-ground parking areas are to be designed to allow future adaptation to other uses. Ramps should be located internally rather than on the facades of parking structures, and multilevel parking areas should allow ease of adaptation of use.	Yes	Parking areas are not temporary but could be adapted to other uses if the site was redeveloped in future.

Provision	Complies	Comment
4.9.1 Car parking		
1) Car parking will be provided in accordance with the requirements of Table 2 Parking rates.	Yes	The DCP requires 1 space per 6sqm of seating area plus 1 space per employee for restaurants. There are 28 spaces available on the site, which complies with the relevant requirements.
2) Parking requirements should be rounded to the nearest whole number and, in the case of 0.5, rounded up. When calculating parking requirements for different land uses, each land-use environment is to be rounded to the nearest whole number and, in the case of 0.5, rounded up, before adding the land-use requirements together.		
3) Car parking arrangement should comply with Australian Standard AS2890.1 (Parking facilities—Off-street car parking) and Australian Standard AS2890.6 (Parking facilities, Part 6—Off-street parking for people with disabilities).		
4) For land uses not included in Table 2, the nearest equivalent rate would apply as informed by the parking requirements in the RTA's <i>Guide to Traffic Generating Developments</i> , Australian Standard AS2890.1 (Parking facilities—Off-street car parking) and Australian Standard AS2890.2 (Parking facilities, Part 2—Off-street commercial vehicle facilities). In the absence of other information, the applicant shall justify their proposed provision of parking spaces in light of their traffic report and the objectives of Section 4.9.		

Provision	Complies	Comment
4.9.2 Additional parking requirements		
<p><i>Bicycle/Motorcycle parking</i></p> <p>Objective</p> <p>a) Support and promote the demand for active transport, such as bicycling and other active transport options.</p> <p>Controls</p> <ol style="list-style-type: none"> 1) Development is to provide bicycle parking in accordance with Austroads' <i>Guide to Traffic Management Part 11—Parking Management Techniques</i>. 2) Bicycle parking spaces must comply with Australian Standard 2890.3 (Parking facilities, Part 3—Bicycle parking). 3) For development that facilitates long-term (all-day) parking, end-of-trip facilities are to be provided, including showers, changing rooms, communal bike tools/repair stand and air compression bike pump. 4) Motorcycle parking must be provided based on 2% of the car parking provision. 5) Motorcycle parking spaces must comply with Australian Standard AS2890.1 (Parking facilities—Off-street car parking). 	No	The proposal does not include active transport facilities. The Department has conditioned that the Applicant provide the relevant bicycle and motorcycle spaces.
<p><i>Service vehicle parking</i></p> <p>Controls</p> <ol style="list-style-type: none"> 1) Service vehicle parking areas must comply with Australian Standard AS2890.2 (Parking facilities, Part 2—Off-street commercial vehicle facilities) and the minimum design vehicle requirements in Table 3. 	No	The proposal will accommodate a medium rigid vehicle rather than the large rigid vehicle specified by Table 3.
4.12 Utility services		
<p>Objectives</p> <ol style="list-style-type: none"> a) Ensure that adequate services are available and provided suitably to facilitate development. b) Ensure that development will not place unreasonable pressure on servicing authorities in terms of timing and extent of supply. 	Yes	The site is already adequately serviced due to its previous use. Nonetheless, a condition has been included to request that sewage works are approved by Council prior to Operation.

Provision	Complies	Comment
Controls	Yes	As above
1) All development applications are to address the existing and proposed provision of services, utilities, or both to a site and whether there is satisfactory capacity to address the required demand of the proposal.		
2) All development applications are to provide evidence that arrangements satisfactory to Sydney Water have been made for water supply and sewer services to the development.	Yes	The site is already adequately serviced due to its previous use. Nonetheless, a condition has been included to request that proof of adequate water supply and approval for sewage works are provided prior to operation.
3) Electricity services are to be provided in accordance with the relevant energy services provider.	Yes	The site is already serviced by electricity.
4) Applicants will be required to obtain a certificate from the energy service provider outlining their notification of arrangements for servicing the site, including the provision of street lighting.	N/A	The site is already serviced by street lighting.
5) Electricity infrastructure is to be placed underground and may be in shared trenches and must be safe for extended floodwater immersion when located at or below the flood planning level extent.	N/A	No new electricity infrastructure is proposed.
6) Gas services, when provided, are to be provided in accordance with the requirements of the relevant services provider based on the specific demand by specific users.	N/A	No new gas services are proposed. Nonetheless, the Department has included conditions noting that no gas services are permitted, and the future use or provision of gas services requires the relevant approvals prior to installation.
7) Gas supply infrastructure, where provided, must be installed underground in shared trenches.	N/A	As above.
8) Telecommunications services are to be provided in accordance with the requirements of the relevant services provider.	Yes	The site has existing telecommunications services.

Provision	Complies	Comment
9) Telecommunications services shall be funded by the applicant, including completion of consultation and design certification required to provide a ready pit and pipe in accordance with National Broadband Network (NBN) guidelines.	Yes	The site has existing telecommunications services.
4.14 Lighting		
Objectives <ol style="list-style-type: none"> Design and locate general and security lighting that improves the safety, security and amenity of the uses and the public domain. Design and locate general and security lighting for business establishments to ensure no adverse offsite impacts, particularly to residential and rural areas. 	Yes	The existing structure is located away from the public domain and residential and rural areas.
Controls <ol style="list-style-type: none"> External lighting to comply with Australian Standard AS4282 (Control of the obtrusive effects of outdoor lighting). Street lighting along internal roads is to be provided in accordance with the Australian Standard AS1158 series (Lighting for roads and public spaces). Lighting design must address NSW Police's principles of 'Crime Prevention Through Environmental Design', having regard to the operating hours of individual tenants and any safety and security issues. Adequate lighting must be provided to meet security requirements without excessive energy consumption. Lighting powered by solar batteries or other renewable energy sources is encouraged. The use of sensor lighting, both internally and externally, is encouraged. 	Yes	A condition has been included to ensure all lighting is to comply with Australian Standard AS4282.
	N/A	N/A.
	N/A	The conditions include consideration of safety and security through the provision of lighting.
	N/A	As above
5.2 Tourism South precinct		
5.2.1 Land application		
Objectives <ol style="list-style-type: none"> To provide for high-quality recreation and tourism uses that celebrate the precinct's lakeside setting. 	Yes	The application proposes a high-quality tourism use that retains the lakeside setting,

Provision	Complies	Comment
<ul style="list-style-type: none"> b) To ensure development prioritises views to the lake and retains significant trees. c) To ensure development creates an attractive arrival to Penrith Lakes, with well-designed buildings that address Old Castlereagh Road. d) To ensure development integrates with its lakeside setting, with generous landscaping, setbacks and views. e) To provide new connections and streets to improve permeability and access to the Regatta Lake. 		retains existing views, most trees and built form relationship to Old Castlereagh Road.
<p>Desired future character</p> <p>All development applications are to demonstrate consistency with the following desired character objectives:</p> <ul style="list-style-type: none"> a) low-scale development fronting the Regatta Lake that responds to its landscape and preserves existing trees where possible b) a generous landscaped buffer along Old Castlereagh Road that provides a sense of arrival, functions as a Gateway to Penrith Lakes and preserves existing trees or plants advanced replacement trees capable of reaching a substantial height and canopy c) preserved north–south views from Old Castlereagh Road to the Regatta Lake through sufficient separation between buildings d) improved permeability and pedestrian access to primary roads, nature trails, the Regatta Lake, and current and future recreational features of Penrith Lakes. 	Yes	No development is proposed fronting the Regatta Lake and pedestrian access will not be provided. The proposal preserves the existing buffer to Old Castlereagh Road and north-south views to the lake.
5.2.2 Tourism South precinct master planning		
<p>Objectives</p> <ul style="list-style-type: none"> a) Ensure that development in the precinct occurs in an orderly manner. b) Ensure that infrastructure, services and amenities are sufficient to support growth and development in the precinct. c) Ensure high quality design. 	Yes	<p>The site is one of three lots that comprise the Tourism South precinct.</p> <p>No subdivision is proposed. This will ensure orderly development that has sufficient infrastructure, services and amenities and an appropriate design quality for the proposed use.</p>

Provision	Complies	Comment
Controls	N/A	No master plan is proposed.
1) Before any development or subdivision application in the Tourism South precinct an adopted master plan for the site is required.		The application proposes a single land use to occupy the site and does not propose subdivision. It is a simpler proposal than other forms of development anticipated by this section of the DCP. The Department does not consider that a master plan would result in an improved outcome against the objectives of this section of the DCP. Requiring a master plan would serve little purpose and would be unreasonable requirement.
2) All precinct master plans must be reviewed by the NSW State Design Review Panel (SDRP) to ensure consistency with the design excellence strategy.	N/A	A design excellence strategy has not been required as the Department does not recommend a master plan for this application. The proposal involves minor changes to the existing built form on the site. The Department considers that SDRP review would provide little benefit in this case.
3) All development applications are to be generally in accordance with the adopted master plan.	N/A	The Department does not recommend a master plan for this application.
4) The primary entry to the Tourism South precinct is to be maintained from Old Castlereagh Road. Additional driveways to Old Castlereagh Road should be minimised.	Yes	The proposal retains the existing entry from Old Castlereagh Road and does not propose any additional driveways.
5) The master plan must include a landscape plan prepared by a suitably qualified consultant and include preferred tree species and canopy size. The landscape plan shall include details on areas of public domain within the precinct, where relevant.	N/A	The Department does not recommend a master plan for this application.

Provision	Complies	Comment
6) The precinct landscape design shall complement the proposed built form and minimise the impact of scale, mass and bulk of the development in its context.	N/A	No significant landscaping or built form changes are proposed.
7) The landscape design shall maximise permeable design solutions, including permeable paving to minimise stormwater run-off.	Yes	While the Department does not recommend a master plan or landscape plan for this application, the proposal retains generous permeable area to minimise run-off.
8) The master plan must include sufficient pervious ground surface area to allow natural drainage to occur. For instance, permeable paving, gravel decking, garden beds or some combination of these.	N/A	While the Department does not recommend a master plan or landscape plan for this application, the proposal retains generous permeable area to allow natural drainage.
9) The landscape plan developed for the master plan must demonstrate how the development of the precinct will contribute to the 40% tree canopy target in the Greater Sydney Region Plan by preserving existing trees, where possible, and adding to the existing canopy to provide green infrastructure and amenity.	N/A	While the Department does not recommend a master plan or landscape plan for this application, the proposal will not impact on existing trees on the site.
10) When assessing development applications, the consent authority will consider the extent to which the proposed development is consistent with the master plan, including cumulative and precedent implications for the planned infrastructure, and services and amenities provision.	N/A	The Department does not recommend a master plan for this application.
11) The applicant must, to the consent authority's satisfaction, demonstrate that any proposed variations to the general arrangement of the master plan are consistent with the precinct's desired future character.	N/A	As above.

Appendix C – Recommended Conditions