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Plan finalisation report – PP-2020-1685

Penrith Local Environmental Plan 2010 (Amendment No. 35) - Winter Sports Facility at 2 Tench Avenue, Jamisontown

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1 Introduction

1.1 Overview

1.1.1 Name of Draft LEP

Penrith Local Environmental Plan 2010 (Amendment No. 35).

The planning proposal seeks to amend the *Penrith Local Environmental Plan 2010* (**Penrith LEP 2010**) to facilitate the development of a winter sports facility with a maximum height of 54 metres at 2 Tench Avenue, Jamisontown (Lot 1 DP 38950) that includes an indoor ski slope. The future winter sports facility may also include hotel accommodation.

1.1.2 Site description

Table 1: Site description

Site Description	The planning proposal (Attachment A) applies to 2 Tench Avenue, Jamisontown, which is legally described as Lot 1 DP 38950 (the Site). The site is currently occupied by a single detached dwelling and swimming pool. The site is outlined red in Error! Reference source not found..
Type	Site.
Council	Penrith City Council (Council).
LGA	Penrith Local Government Area (LGA).



Figure 1: Subject site (Penrith City Council Planning Proposal Report, October 2020)

The site is located on the south-east corner of the intersection of Jamison Road and Tench Avenue. It is an irregular shape, generally falls in an easterly direction and has an area of approximately 2.34 hectares. The site has a street frontage to Tench Avenue to the west and a frontage to Jamison Road to the north.

The site does not comprise any significant vegetation. However, mature trees are located along the southern boundary of the site on the adjoining property. Several trees are also located adjacent to the north of the site in the road reserve of Jamison Road.



Image 1: Subject Site from opposite side of Tench Avenue



Image 2: Subject Site from eastern boundary. Boundary to Nepean Shores at left and to Jamison Road at right



Image 3: View across subject site to long-term dwellings along northern boundary of Nepean Shores



Image 4: Concept of proposal viewed from north-east opposite side of Jamison Road

The site is located within the 'tourism and recreation sub-precinct' of the Riverlink Precinct under the Penrith Development Control Plan 2014 (Penrith DCP 2014). This sub-precinct area is identified as an entertainment, tourism, leisure and lifestyle precinct. The site is zoned SP3 Tourist under the Penrith LEP 2010, which permits a range of tourism related land uses such as amusement centres, recreation facilities (indoor and outdoor), water recreation structures and tourist and visitor accommodation.

The site is located in the following context:

- **North:** To the north is Jamison Road. Further north is the Cables Wake Park and Madang Park. Pursuant to Schedule 5 of the Penrith LEP 2010, 'Madang Park – dwelling and trees' is identified as a heritage item with local significance.

- **East:** To the east is Wilson Lane (which is an unmade road). Further east are large allotments used for rural-residential purposes and a driving range.
- **South:** To the south is the 'Nepean Shores' lifestyle community. The Nepean Shores development is approved as a Movable Dwelling Park and is occupied by both permanent and short stay movable dwellings and ancillary communal facilities. Further south are large allotments currently used for rural-residential purposes.
- **West:** To the west is Tench Avenue. Further west is Tench Reserve and the Nepean River.

1.1.3 Purpose of plan

The planning proposal seeks to facilitate the development of a winter sports facility at the site, which is intended to accommodate the following uses:

- Indoor ski slope;
- Hotel accommodation;
- Function centre;
- Ice skating rink;
- Ice and rock climbing facilities;
- Altitude training;
- Gymnasium and training facilities; and
- Food and drink premises, comprising bars, cafes and restaurants.

To achieve this outcome, the planning proposal seeks to amend Part 7 (Additional local provisions) of the Penrith LEP 2010 to increase the maximum height of building (HOB) control for development on the site from 8.5 metres to 54 metres, subject to satisfying the following criteria:

1. The development will result in a building that is used for the purpose of recreation facilities (indoor) that includes an indoor ski slope;
2. A Floor Space Ratio (FSR) of 1.2:1 is not exceeded. However, an FSR above 1.2:1, up to a maximum of 1.45:1, is allowable if the development also features a hotel component;
3. The development is in accordance with a site-specific Development Control Plan (**DCP**) prepared for the site, which provides additional planning and design guidance;
4. The design of the building exhibits design excellence and is the result of an architectural design competition. Architectural design competition is defined in the local provision for the site;
5. The development is designed to ensure that the northern façade of all dwellings located on land at Lot 1 DP 788126 (Nepean Shores) are to receive a minimum of 3 hours of direct sunlight between 9am and 3pm daily, all year; and
6. The development minimises adverse impacts on surrounding land.

The planning proposal includes a 'sunset clause', where the proposed provisions would no longer apply on or after 31 December 2024. This proposed provision requires lodgement of a Development Application (**DA**) for the proposed winter sports facility within 3 years of the LEP amendment being made.

A Voluntary Planning Agreement (VPA) for the proposal at the site was executed on 13 September 2021 between Council and Winter Sports World Pty Ltd. A copy of the executed VPA is provided at **Attachment F**. The VPA sets out mechanisms for the timing and delivery of road improvements at the intersection of Blaikie Road and Jamisontown Road, Jamisontown.

No other changes are proposed as part of the planning proposal, as shown in **Table 2**. The existing SP3 Tourist zoning applying to the site remains unchanged, as the proposed land-uses are already permissible with consent in the SP3 zone. No map amendments are required.

Table 2: Current and proposed controls

Control	Current	Proposed
Zone	SP3 Tourist.	No change.
Maximum height of building	8.5m.	54m, provided relevant requirements are met.
Floor Space Ratio	No FSR control applies to the site.	<ul style="list-style-type: none"> Maximum 1.2:1 FSR. Maximum 1.45:1 FSR if development also includes a hotel component.
Site-specific DCP	No site-specific DCP applies to the site.	Development to be in accordance with the site-specific DCP.
Design competition	Not currently required for development on the site.	Design competition required where a height above 8.5m is sought.
Solar access	No solar access clause applies to the site.	Development will be required to ensure that the northern façade of all dwellings in Nepean Shores receive a minimum of 3 hours of direct sunlight between 9am and 3pm.
Sunset clause	No sunset clause currently applied to the site.	Site-specific LEP provisions to expire on 31 December 2024.

1.1.4 State electorate and local member

The site is within the Penrith State electorate. Stuart Ayres MP is the State Member. The site is within the Lindsay Federal electorate. Melissa McIntosh MP is the Federal Member. To the team's knowledge, neither MP has made any written representations regarding the planning proposal.

To the Department's knowledge, there are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this planning proposal.

2 Gateway determination and alterations

The Gateway determination issued on 2 May 2019 (**Attachment B**) determined that the planning proposal should proceed, subject to conditions (refer also to Gateway determination report at **Attachment G**). Council was not granted delegation to be the local plan-making authority.

A Gateway alteration was granted on 24 January 2020 to extend the timeframe to complete the LEP by 2 February 2021 (**Attachment H**).

On 6 April 2021, the Department wrote to Council prescribing completion timeframes for the finalisation of the planning proposal (**Attachment I**). The correspondence required the planning proposal to be finalised by 25 June 2021.

Council has met all of the Gateway determination conditions (as altered), with the exception of the LEP completion timeframe condition. The planning proposal was due to be finalised by 25 June 2021. Council formally submitted the planning proposal to the Department for finalisation on 21 September 2021 (**Attachment D**).

Whilst the gateway determination date was not met, the extended completion time to complete the planning proposal is considered justifiable in this instance to allow enough time to address each of the issues raised during consultation by the community and agencies.

3 State Significant Development Application

On 23 June 2020, a Scoping Report to request Planning Secretary's Environmental Assessment Requirements (SEARs) for a winter sports facility at the site was submitted to the Department (SSD-10475). SSD-10475 relies on the outcomes of this planning proposal and the draft LEP. The winter sports facility proposed under SSD-10475 is as described in this planning proposal.

On 21 July 2020, SEARs were issued by the Department for SSD-10475 (**Attachment J**). The following agencies provided advice which informed the issued SEARs:

- NSW Environment, Energy and Science.
- Penrith City Council.
- Transport for NSW.
- NSW Environment Protection Authority.
- Heritage NSW.
- NSW Rural Fire Service.
- Endeavour Energy.

The Environmental Impact Statement (EIS) for SSD-10475 is yet to be submitted by the proponent to the Department.

4 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the planning proposal was publicly exhibited by Council from 9 October 2020 to 6 November 2020, as required by section 29 of the *Local Government Act 1993*. A draft site-specific DCP and a VPA offer were concurrently exhibited with the planning proposal.

During the public exhibition period, a total of 93 community submissions were received, comprising 32 submissions of support and 61 objections. Of the 93 community submissions received:

- 50 submissions were made by residents of Nepean Shores. All of the Nepean Shores submissions objected to the planning proposal.
- Of the remaining 43 non-Nepean Shore submissions, 11 were objections and 32 supported the planning proposal. These submissions were made by:
 - A mix of local residents, business owners, winter sports enthusiasts, winter sports athletes and interested parties from overseas;
 - Hometown Australia (the owner and operator of Nepean Shores), which objected to the planning proposal;
 - Penrith Ice Palace (the operator of an existing nearby iceskating centre in Jamisontown), which objected to the planning proposal; and
 - The proponent for the planning proposal, which made a submission in support of the planning proposal but objected to the requirement for a design competition.

4.1 Submissions during exhibition

4.1.1 Submissions supporting the planning proposal

32 community submissions, including one submission from the proponent, were made in support of the planning proposal. The key supporting points raised in the community submissions highlighted the following perceived positive impacts of the planning proposal:

- Positive impacts on the Tench Avenue/Jamison Road locality and setting;
- Economic and tourism benefits; and
- Benefits to the winter sports industry.

The Department notes each of the submissions in support of the planning proposal.

4.1.2 Submissions objecting and/or raising issues about the planning proposal

61 community submissions objected to the planning proposal. Of these, 50 submissions were made by residents of Nepean Shores, which is located to the south of the site. Hometown Australia (the owner and operator of Nepean Shores) and Penrith Ice Palace (the operator of an existing nearby ice-skating centre in Jamisontown) also raised objections to the planning proposal.

Council and Department responses to the key issues raised in the submissions objecting to and/or raising issues about the planning proposal is provided in **Table 3**.

Table 3: Responses to key issues

Issue raised	Council response and Department response
Building height, impact on local character and visual impact	<p><u>Council Response:</u></p> <p>The proposed building height does not align with existing Council policy for the area in respect to built form and would significantly impact solar access provision to Nepean Shores. It is also evident that it would be difficult to approve a subsequent DA for this proposal on this site. The planning proposal should therefore not be supported.</p> <p>It is likely that the amenity of the Nepean Shores residential community would be significantly impacted by the proposed development, due to the imposing built form proposed in close proximity to homes. Council's planning controls and policies for the locality around Tench Avenue and Jamison Road currently permit only lower-scale built form and promote a nature-focused river environment. The height and FSR proposed are a significant diversion from the established planning controls set by Council. The proposed height would change the low-scale built form of the locality, providing an imposing building. The planning proposal should therefore not be supported.</p> <p>There are several Council planning documents which identify the importance of maintaining or enhancing certain views in the area, being views to the Blue Mountains escarpment from roads and public areas, and views to and from the Nepean River.</p> <p>These Council planning documents also identify the intersection of Jamison Road and Tench Avenue as an important gateway location that contains a highly visible landmark building displaying design excellence with street activation. The proposed height would impact on views to the mountains and change the nature of the Tench Avenue/Jamison Road gateway environment.</p> <p><u>Department Response:</u></p> <p>The relevant policies and controls provide some indication of what the desired future character area of the area is.</p>

Issue raised	Council response and Department response
	<p>Penrith LEP 2010 has a maximum building height of 8.5 metres for the Tourist zone, including the site, and surrounding rural and residential areas. Council's reports notes that further future development of the Tourist zone may change that character.</p> <p>Objective 3 of the SP3 Tourist zone, Penrith LEP 2010 does suggest that development be of 'appropriate scale that maintains important views to and from the River and Blue Mountains', but that scale is not specifically defined in the LEP or supporting DCP and policy documents.</p> <p>Clause 7.5 - Protection of scenic character and landscape values in Penrith LEP 2010 seeks to identify and protect areas that have scenic value and minimise visual impact. The relevant map only identifies the western third of the subject site as having scenic and landscape value, suggesting that the important view is the interface with the river and adjoining open space. The Visual Impact Assessment submitted by the applicant shows minimal impact on views from the other side of the river, and long views down the river. The part of the site identified as having scenic quality is the part of the building that will be lower in scale. The new DCP for the site, and LEP controls for solar access will ensure this outcome.</p> <p>Part 13.4.2 Tourism and Recreation Precinct, of the Penrith DCP 2014 provides the Riverlinks Precinct Plan, which includes the site. It identifies that the southern part of the site is a 'gateway location' but does not provide additional guidance on landscape or built form character.</p> <p>The proposed height is considered to be acceptable in terms of visual impact because:</p> <ul style="list-style-type: none"> • The existing controls and policies focus on protecting regional and river views, on which the proposal will have only minimal impact. • Additional view impact analysis as undertaken by the applicant to assess impacts on regional views from the mountains (refer to Section 5 of this report and Attachment S2). This work shows that the building will not be visible from key vantage points. The building will be also oriented east-west along its long axis, helping to limit the impact on views to the mountains and river. • The planning proposal includes a requirement for design excellence and that a competition be undertaken. Mitigating visual impact, and the benefits of additional landscaping to minimise impact will be considered as part of this process. Visual impact will then be considered further at DA stage. The Department notes that the issued SEARs for SSD-10475 requires the proponent to address built form, urban design and environmental amenity criteria in the EIS for the future development. This includes a requirement to provide a detailed visual and view impact analysis of the detailed design. <p>Further assessment of the local character impacts of the proposal is provided in section 5.1.6 below.</p>
Overshadowing of Nepean Shores	<p><u>Council Response:</u></p> <p>It is likely that the amenity of the Nepean Shores residential community would be significantly impacted by the proposed development, due to overshadowing and the imposing built form proposed in close proximity to homes.</p> <p>Residential uses are not currently permissible in the SP3 Tourist zone in which Nepean Shores and the proposed Winter Sporting Facility are situated. However, Nepean Shores is an existing, lawful community, approved in 1987, that has not indicated an intention to redevelop. Consideration must be given to the impacts on these long-term residents. There is concern that the proposed development would de-value homes at Nepean Shores, and would either displace residents, or force</p>

Issue raised	Council response and Department response
	<p>them to remain with no viable alternative, creating social impacts extending beyond the site.</p> <p><u>Department Response:</u></p> <p>The Department notes that Council officers recommended that the planning proposal not be supported, primarily because of these unacceptable impacts on solar access, but that the planning proposal was supported for finalisation by the Council at its 24 May 2021 meeting.</p> <p>Council's assessment of the shadow analysis provided by the proponent revealed that 10 long-term cabins on the northern edge of Nepean Shores would not receive any sun and are overshadowed between 9am and 3pm in midwinter. The Department agrees with Council that this overshadowing impact would be unacceptable. The Department also agrees that the residences in Nepean Shores are legal uses, and that they should be afforded the same amenity as other dwellings for the purposes of assessing solar impacts.</p> <p>Following further modelling and testing, the planning proposal has been amended to include a provision that all dwellings and moveable dwellings in Nepean Shores must receive 3 hours of solar access between 9am and 3pm in midwinter.</p> <p>This control will have the impact of reducing the built form envelope achieved on site. Further information is provided in section 5.1.4 of this report.</p> <p>The Department considers that the additional controls will ensure the future development is appropriately designed to minimise built form and overshadowing impacts, addressing the concerns of community members and Council.</p>
Flood evacuation	<p><u>Council Response:</u></p> <p>Council noted that at the time of reporting, a written submission had not been provided by NSW State Emergency Services. SES had however verbally advised that the proposal does not significantly contribute to flood evacuation risk.</p> <p><u>Department Response:</u></p> <p>Further advice from was sought from NSW State Emergency Services, who confirmed that the site could be safely evacuated, and is not considered to have a significant impact on emergency flood evacuation from the Penrith and Jamisontown areas across the full range of flood events up to Probable Maximum Flood (Attachment Q).</p> <p>Further flood evacuation analysis is provided in Table 7 of this report to address section 9.1 Ministerial Direction 4.3 – Flood Prone Land.</p>
Flooding impacts	<p><u>Council Response:</u></p> <p>Council notes the site is impacted by the 1 in 100 year flood and the Probable Maximum Flood. Council considers that flood impacts could be resolved at DA stage.</p> <p><u>Department Response:</u></p> <p>The Department reviewed the flood impact study and given the flood risks in this area, and in response to additional submissions received from residents of the Nepean Shores community, sought additional information from the proponent. A subsequent Flood Impact and Risk Assessment Report dated September 2021 (Attachment K) and additional information provided on 14 October 2021 (Attachment L) confirms that both local overland and regional riverine flooding on the site can be managed where the building is raised to create an undercroft area and maintains overland flow. This design response creates issues for safety and street activation, but it has generally been agreed with Council officers that these issues can be resolved through good design at DA stage.</p>

Issue raised	Council response and Department response
	Further flooding impact analysis is provided in Table 7 of this report to address section 9.1 Ministerial Direction 4.3 – Flood Prone Land.
Noise impacts	<p><u>Council Response:</u></p> <p>It is noted that other impacts such as noise impacts could potentially generate impacts. However, these matters are better addressed and resolved as part of a future DA process.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate. No further action is required to address these submissions. The future DA assessment process will require the proponent to address the following relating to noise impacts:</p> <ul style="list-style-type: none"> • Proposed clause of the draft LEP, which requires the future development to minimise impacts on surrounding land. This includes minimising noise impacts; • Applicable Penrith DCP 2014 controls relating to noise mitigation; and • The issued SEARs for SSD-10475, which specifically requires the proponent to address various noise and vibration criteria in the EIS. <p>A Construction Management Plan will be required to address construction noise impacts.</p>
Glare and reflectivity impacts	<p><u>Council Response:</u></p> <p>Council considers glare and reflectivity impacts are better addressed and resolved as part of a future DA process.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate. No further action is required to address these submissions. The future DA assessment process will require the proponent to address the following relating to glare and reflectivity impacts:</p> <ul style="list-style-type: none"> • Proposed clause of the draft LEP, which requires the future development to minimise impacts on surrounding land. This includes minimising glare and reflectivity impacts; • Penrith DCP 2014 controls relating to glare and reflectivity; and <p>The issued SEARs for SSD-10475, which specifically requires the proponent to address various environmental amenity criteria in the EIS, which includes analysis of reflectivity impacts.</p>
Traffic and parking impacts	<p><u>Council Response:</u></p> <p>It is noted that traffic and parking could potentially generate impacts. However, these matters are better addressed and resolved as part of a future DA process.</p> <p><u>Department Response:</u></p> <p>The following summary of the Traffic and Parking Assessment report was provided in the Gateway Report (Attachment G)</p> <p><i>A traffic and parking assessment supports the proposal. The winter sport facility is expected to generate 27 vehicle trips in the morning peak hour and 34 vehicle trips in the afternoon peak. The function centre is expected to generate 350 vehicle trips in the morning peak hour and 175 in the afternoon peak hour.</i></p> <p><i>The assessment states that the proposed development would, overall, generate approximately 445 vehicle trips during the weekday AM peak period; 277 vehicle trips during the weekday PM peak; and, 174 vehicle trips during the weekend AM peak.</i></p> <p><i>This level of traffic generation predominately relates to the function centre use and</i></p>

Issue raised	Council response and Department response
	<p><i>that a large 1000 person event would typically only be held on a limited number of occasions per year. Accordingly, the typical traffic generation associated with the development would be substantially less and in the order of 100 to 150 vehicle trips during each of the above peak periods.</i></p> <p>In regards to car parking, the report identifies that expected parking demand for the only is 172 bays for the indoor recreation component of the development (based on staff and public visitation numbers for Wet'n'Wild) plus the DCP requirement for the hotel and function centre uses at capacity of 460 bays. In response, the development will provide 650 on-site car parking bays. This rate of on-site provision should mitigate impacts on local street parking, which was a concern raised by local residents.</p> <p>Council was required to consult with Transport for NSW as a condition of the Gateway determination.</p> <p>Council response is considered adequate. No further action is required to address these submissions. The future DA assessment process will require the proponent to address the following relating to traffic and parking impacts:</p> <ul style="list-style-type: none"> • Items outlined in the agency submission from Transport for NSW (see Table 4 of this report) which are to be addressed at the DA stage, including the preparation of a Traffic and Parking Report that analyses traffic, parking and access impacts resulting from the future development at the site; • Penrith DCP 2014 controls relating to traffic, parking and access; and • The issued SEARs for SSD-10475, which specifically requires the proponent to address various transport and accessibility (operation) criteria in the EIS. <p>The Department notes that on 13 September 2021, a VPA between Council and Winter Sports World Pty Ltd was executed (Attachment F). The VPA sets out mechanisms for the timing and delivery of road improvements at the intersection of Blaikie Road and Jamisontown Road, Jamisontown. These works will assist with improving future traffic flows resulting from the development.</p>
Privacy impacts	<p><u>Council Response:</u></p> <p>Council considers privacy impacts are better addressed and resolved as part of a future DA process.</p> <p><u>Department Response:</u></p> <p>Council response is considered adequate. No further action is required to address these submissions. The future DA assessment process will require the proponent to address the following relating to privacy impacts:</p> <ul style="list-style-type: none"> • Proposed clause of the draft LEP, which requires the future development to minimise impacts on surrounding land. This includes minimising privacy impacts; • Penrith DCP 2014 controls relating to privacy; and <p>The issued SEARs for SSD-10475, which specifically requires the proponent to address various environmental amenity criteria in the EIS, which includes analysis of visual privacy.</p>
Economic impacts	<p><u>Council Response:</u></p> <p>The proposed development would result in a range of investment, job, tourism and economic benefits. The planning proposal would facilitate a facility of national significance and an iconic landmark in the Penrith region.</p>

Issue raised	Council response and Department response
	<p><u>Department Response:</u></p> <p>On balance, the Department considers that the planning proposal will result in positive economic benefits by providing additional employment opportunities in the tourism and hospitality sector. It may also positively contribute to the night-time economy by providing tourist accommodation.</p> <p>The planning proposal document indicates: <i>The development will support and stimulate development in the SP3 Tourist zone in which the site is located and provide a significant contribution to the local economy. It is estimated that 896 direct and indirect jobs will be created during the development of the facility and that \$145 million will be added to the local economy. During the operating life of the facility, the centre will directly and indirectly support 759 jobs and will add \$74.9 million to the economy per annum. The Economic Assessment included as Appendix 5 forecasts 200,600 visitors to the facility under a Base Case scenario. By 2025 the centre is forecast to achieve annual visitation of 231,000 persons. The proposed amendment to LEP 2010 will allow for these economic benefits to be realised.</i></p> <p>These benefits have been carefully balanced against potential environmental and social impacts. The Department has amended the planning proposal to include additional design and assessment requirements that will be required to be addressed as part of any future DA assessment process, to reduce potential adverse impacts generated by the future development.</p>
Social impacts	<p><u>Council Response:</u></p> <p>Residential uses are not currently permissible in the SP3 Tourist zone in which Nepean Shores and the proposed development are situated. However, Nepean Shores is an existing, lawful community, approved in 1987, that has not indicated an intention to re-develop. Consideration must be given to the impacts on these long-term residents. There is concern that the proposed development would de-value homes at Nepean Shores and would either displace residents, or force them to remain with no viable alternative, creating social impacts extending beyond the site.</p> <p><u>Department Response:</u></p> <p>To mitigate future impacts on Nepean Shores as a result of the future development, and to address the concerns of community members and Council, the Department has amended the planning proposal to include additional design and assessment requirements that will be required to be addressed as part of any future DA assessment process. This includes:</p> <ul style="list-style-type: none"> • Proposed clause of the draft LEP, which requires the future development to ensure that dwellings in Nepean Shores achieve a minimum of 3 hours of direct sunlight between 9am and 3pm; and • Proposed clause of the draft LEP, which requires the future development to minimise impacts on surrounding land. • Preparation of a Construction Management Plan. <p>In addition to this, the Department notes that the issued SEARs for SSD-10475 specifically requires the proponent to include a social impact assessment as part of the EIS, which will assess the social impacts of the development.</p> <p>See additional analysis of overshadowing, visual impact and character impacts in section 5 below.</p>
Suitability of the site for the proposed development	<p><u>Council Response:</u></p> <p>Whilst the proposal would bring many economic benefits to Penrith, the planning proposal is not supported on the basis that the proposal is not suitable for this particular site. The site's design opportunities are limited due to the development's</p>

Issue raised	Council response and Department response
	<p>requirement for a strict building envelope and a 54m building height, meaning the design would significantly restrict solar access to dwellings at the adjacent Nepean Shores site.</p> <p>Whilst the proposal is consistent with the vision of the Riverlink precinct to promote tourism, it is inconsistent with the desired future character which is of a low scale-built form. On this basis, should the proposal advance to a DA it would be very difficult to approve. Given the above, it is concluded that the planning proposal lacks context and does not balance economic, social and environmental outcomes.</p> <p><u>Department Response:</u></p> <p>The Department acknowledges the site is constrained by its size, however considers that the site is suitable for the proposed development, because:</p> <ul style="list-style-type: none"> • The planning proposal is consistent with the following plans and strategies that apply to the site and planning proposal: <ul style="list-style-type: none"> ○ Greater Sydney Region Plan – A Metropolis of Three Cities. ○ Western City District Plan. ○ Penrith 2040 – Local Strategic Planning Statement. ○ Penrith Community Plan 2017. • The proposed land-uses are permissible with consent in the SP3 Tourist zone and consistent with the theme of the 'tourism and recreation sub-precinct' of the Riverlink Precinct, which the site is located in under the Penrith DCP 2014; and • The Department has amended the planning proposal to include additional design and assessment requirements that will be required to be addressed as part of any future DA assessment process. These amendments will ensure solar access to dwellings in Nepean Shore is maintained, the future development exhibits design excellence and the future development results in minimal adverse impacts on surrounding land. <p>The Department considers that the planning proposal requirement that the design of the development must be the result of an architectural design competition will ensure a scheme is developed that most appropriately responds to the site and its surroundings, and that can be progressed at the DA stage.</p>
The need for a design competition	<p><u>Council Response:</u></p> <p>The proponent objected to the requirement for a design competition for the site. Council takes direction from GAO in relation to Design Competitions as it relates to the development proposal. GAO confirmed that a waiver of the competition requirement subject to Clause 8.4 Subclause 4 of Penrith LEP is not supported for this project.</p> <p><u>Department Response:</u></p> <p>Council response is considered adequate. The Department requires that the future development of the site exhibit design excellence and be the result of an architectural design competition. These requirements form part of the draft LEP as follows:</p> <ul style="list-style-type: none"> • Proposed clause of the LEP, which requires that the design of the development is the result of an architectural design competition; and • Proposed clause of the draft LEP, which requires the future development to exhibit design excellence. <p>In addition to this, the Department notes that the issued SEARs for SSD-10475 specifically requires the proponent to address design excellence criteria in the EIS.</p>

The Department considers that each of the matters raised in the submissions from the community have been adequately addressed.

4.2 Advice from agencies

In accordance with the Gateway determination (as altered), Council was required to consult with the agencies listed in **Table 4**. **Table 4** also outlines the advice raised in the agency submissions, Council's response and the Department's response.

Table 4: Advice from public authorities

Agency	Advice raised	Council and Department's responses
Transport for NSW (TfNSW) (also includes the previous Roads and Maritime Services)	<ul style="list-style-type: none"> Electronic copies of the SIDRA modelling should be provided for review and comment. The SIDRA modelling should also factor in different approved developments in the area and an existing 'rat-run' via Spencer Street, Loftus Street, Factory Road, Bellevue Road and Tench Avenue (and vice versa). The SIDRA modelling should also apply a cycle time of 140 seconds for signalised intersections. The impact of the proposed development on the cumulative evacuation task should be assessed to the satisfaction of Infrastructure NSW, NSW State Emergency Service and Office of Environment and Heritage to ensure that the proposal does not result in increased risk to life during a flood evacuation. The proponent should consult with Council on possible pedestrian treatments on Jamison Road to connect the site with the shared path on the north of Jamison Road. As part of any future DA, ingress and egress arrangements for the proposed three access points are to be confirmed and demonstrate how these movements will affect Jamison Road. TfNSW strongly recommends that these matters are addressed prior to the finalisation of the planning proposal. At a minimum, these 	<p><u>Council Response:</u></p> <p>The submission from TfNSW requested the proponent to provide additional information in respect to the proponents supporting traffic modelling analysis and flood evacuation plans, for review and comment. TfNSW recommends that the outstanding matters are addressed prior to the finalisation of the planning proposal, or at a minimum are to be resolved at the DA stage.</p> <p>The proponent is of the view that the matters identified by TfNSW should be addressed at the future DA stage, as the proponent is currently in the process of liaising with TfNSW to address matters identified in the SEARs issued in July 2020 for SSD-10475 at the site. The SEARs require the proponent to prepare a Traffic and Transport Impact Assessment in consultation with Council and TfNSW. In this regard, it is warranted that the matters identified in the TfNSW submission are further addressed as part of a future DA process instead of as part of this current planning proposal process.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate.</p> <p>Condition 5 of the Gateway determination for the planning proposal (Attachment B) required the following: "5. Council to consult with the Roads and Maritime Services and Transport for NSW and provide those authorities with anticipated traffic impacts on the external road network, identifying whether any road works are necessary to facilitate the expected increase in traffic volumes." This Gateway determination condition has been met, with TfNSW consulted on the planning proposal and their submission confirming that at a minimum, the matters raised can</p>

Agency	Advice raised	Council and Department's responses
	<p>matters should be resolved at the DA stage.</p>	<p>be addressed at the DA stage as part of the future DA assessment process. The future DA assessment process will also require the proponent to address Penrith DCP 2014 controls relating to traffic, parking and access and the issued SEARs for SSD-10475, which specifically requires the proponent to address various transport and accessibility (operation) criteria in the EIS.</p> <p>The Department also notes that on 13 September 2021, a VPA between Council and Winter Sports World Pty Ltd was executed (Attachment F). The VPA sets out mechanisms for the timing and delivery of road improvements at the intersection of Blaikie Road and Jamisontown Road, Jamisontown. These works will assist with improving future traffic flows resulting from the development.</p>
<p>Government Architects Office (GAO)</p>	<ul style="list-style-type: none"> • A waiver of the competition requirement subject to Clause 8.4 Subclause 4 of Penrith LEP is not supported for this project. This is due to the visual prominence, scale, complexity and significance of the proposal. • This process can be tailored to the specific conditions of the project, as discussed in meetings with Penrith Council, DPIE and the Proponent. • The fixed and variable aspects of the reference design will be identified clearly in the endorsed design competition brief prior to the commencement of the competition. • Selection of a winning design and team through a tailored competition process must be completed prior to the preparation and submission of any future DA. 	<p><u>Council Response:</u></p> <p>The GAO submission received in respect to the planning proposal confirms that a Design Competition for the proposed development is required, considering the visual prominence, scale, complexity and significance of the development proposal.</p> <p>The GAO submission does state that the fixed and variable aspects of the reference design will be identified clearly in the endorsed design competition brief prior to the commencement of the competition. The process can be tailored to the specific conditions of the project. Precise details of the competition process will be agreed to and endorsed through consultation with GAO.</p> <p>The submission confirms that the selection of a winning design through a competition process must be completed prior to submission of a DA.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate.</p> <p>Condition 6 of the Gateway determination for the planning proposal (Attachment B) required the following: "6. Council to consult with the Government Architects Office to clarify proposed design competition requirements and is to obtain the agreement of that Office for this aspect of the proposal prior to finalisation of the plan." This Gateway determination condition has been met, with GAO</p>

Agency	Advice raised	Council and Department's responses
		<p>consulted on the planning proposal and their submission confirming that a design competition would be required for the future DA. GAO also outlined general design competition requirements.</p> <p>The draft LEP includes various design excellence and design competition requirements in accordance with GAO's submission, as follows:</p> <ul style="list-style-type: none"> Proposed clause of the draft LEP, which requires the design of the development to be the result of an architectural design competition; and Proposed clause of the draft LEP, which requires the future development to exhibit design excellence. <p>In addition to this, the Department notes that the issued SEARs for SSD-10475 specifically requires the proponent to address various design excellence criteria in the EIS. This includes details on a required design competition.</p>
<p>Environment, Energy and Science (EES) (previously Office of Environment and Heritage)</p>	<ul style="list-style-type: none"> EES agrees with the planning proposal report which states that it is not anticipated that the proposal will have 'any adverse ecological impacts'. From a floodplain risk management perspective, ACOR's report 'Concept Flood Risk Management and Stormwater Management Report' (June 2018) is considered inadequate. The flood impact assessment should be updated as follows: <ul style="list-style-type: none"> The report confuses the Nepean River flooding with overland flooding. The flood assessment should address both Nepean River flooding and overland flooding due to the variation in their nature. Annexure A depicts existing condition flood level and hazard maps for the immediate vicinity of the site. These maps have discrepancies with Council's adopted flood studies and provide no information on the site itself as the site is blocked out in all maps. 	<p><u>Council Response:</u></p> <p>The submission from EES requested the proponent to provide additional information in respect to the flood impact assessment, and the supporting emergency management planning for flood evacuation. It is anticipated that these matters will be addressed and resolved through receipt of a formal written submission from the NSW State Emergency Service on the proposal.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate.</p> <p>An agency submission was received from the NSW State Emergency Service on the planning proposal (see analysis below), which outlines that the site is not considered to have a significant impact on emergency flood evacuation from the Penrith and Jamisontown areas across the full range of flooding up to Probable Maximum Flood.</p> <p>As previously outlined in Table 3, the Department considers that all anticipated flooding and evacuation impacts generated by the future development at the site are acceptable and will be appropriately managed, as:</p> <ul style="list-style-type: none"> The Department has consulted with the internal Resilience Planning team,

Agency	Advice raised	Council and Department's responses
	<ul style="list-style-type: none"> ○ There is no assessment of flood behaviour for developed condition or for the impact of the development on downstream and adjacent areas. • To test the assumptions of the proposed Flood Evacuation Strategy, an evacuation capacity assessment should be undertaken in consultation with the SES. The assessment should utilise the flood evacuation model established by the Hawkesbury Nepean Flood Risk Management Directorate. 	<p>which considers it acceptable to proceed with the planning proposal (Attachment M).</p> <ul style="list-style-type: none"> • The indicative future built form of the development shows the future development partially elevated with a building undercroft to increase permeable surfaces at the site to reduce flooding impacts and flows. This design element can be further refined at the future DA stage. • A Flood Impact and Risk Assessment Report dated September 2021 that accompanies the planning proposal (Attachment K) confirms that both local overland and regional riverine flooding on the site can be managed and will not noticeably impact existing flood outcomes in the surrounding areas. This is supported by additional information provided on 14 October 2021 (Attachment L), which outlines that in a Nepean River flood that breaks the riverbanks, such as the 0.5% AEP (200 year) event and greater, the site and surrounding properties are inundated by floodwater greater than 2m deep. Evacuation of the public would occur well prior to this flood impact and the inclusion of the future development will not noticeably change this existing flood impact. <p>The Department notes that no commentary was provided by EES on heritage matters, with the Department previously outlining in the Gateway determination report on the planning proposal (Attachment G) that it is not anticipated that the planning proposal will adversely impact the nearby "Madang Park" heritage item. Notwithstanding this, the issued SEARs for SSD-10475 specifically requires the proponent to address various heritage, archaeology and Aboriginal cultural heritage criteria as part of the EIS.</p>
State Emergency Service (SES)	<ul style="list-style-type: none"> • The site is not considered to have a significant impact on emergency flood evacuation from the Penrith and Jamisontown areas across the full range of flooding up to Probable Maximum Flood (PMF). 	<p><u>Council Response:</u></p> <p>The SES advice states that the site is not considered to have a significant impact on emergency flood evacuation from the Penrith and Jamisontown areas across the full range of flooding up to PMF.</p> <p>The SES advice is consistent with previous informal advice received by Council officers from SES in respect to this matter,</p>

Agency	Advice raised	Council and Department's responses
		<p>which was detailed in the 24 May 2021 Council report (Attachment C).</p> <p>Given the receipt of the SES submission, it is considered that the outstanding matter of flood evacuation has now been fully considered and addressed.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate. No further action is required to address this submission.</p> <p>The future DA assessment process will require the proponent to further assess evacuation impacts, with the issued SEARs for SSD-10475 specifically requiring the proponent to address various flooding and drainage criteria as part of the EIS, including details on flood evacuation.</p>
Rural Fire Service (RFS)	<ul style="list-style-type: none"> RFS does not have any concerns to the planning proposal subject to the previously issues general terms of approval dated 20 July 2020 for SSD-1047. 	<p><u>Council Response:</u></p> <p>RFS raised no objection to the planning proposal.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate.</p> <p>Condition 4 of the Gateway determination for the planning proposal (Attachment B) required the following: "4. Council to consult with NSW Rural Fire Service prior to exhibition in terms of section 9.1 Direction 4.4. Planning for Bushfire Protection. Should the proposal be considered to be inconsistent with direction following receipt of advice from that authority, Council is to bring this matter to the attention of the Department prior to finalisation of the proposal." This Gateway determination condition has been met, with RFS consulted on the planning proposal and their submission not objecting to the planning proposal and its progression. The advice raised can be adequately addressed at the future DA assessment stage.</p>
Sydney Water	<ul style="list-style-type: none"> The proposed development presents potential demand impacts upon sewage pumping station SP0904 and as such, further investigation will be required to determine the servicing requirements for this site. It is recommended that the proponent engage a Water Servicing Coordinator 	<p><u>Council Response:</u></p> <p>Sydney Water raised no objection to the planning proposal.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate.</p> <p>No further action is required to address this submission. The advice raised can be</p>

Agency	Advice raised	Council and Department's responses
	<p>as soon as possible, and a feasibility application is lodged with Sydney Water prior to a Section 73 application being made.</p> <ul style="list-style-type: none"> It is recommended that an inception meeting is held with Sydney Water after the proponent has prepared a detailed concept servicing proposal for potable water and wastewater services. 	adequately addressed at the future DA assessment stage.
Telstra	<ul style="list-style-type: none"> No response was received from Telstra on the planning proposal. 	<p><u>Council Response:</u></p> <p>No response was received from Telstra on the planning proposal.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate.</p> <p>Telecommunication matters can be addressed in detail as part of the future DA assessment stage.</p>
Endeavour Energy	<ul style="list-style-type: none"> Subject to the matters previously outlined in Endeavour Energy's submission made to the Department for the request for SEARs for SSD-10475, Endeavour Energy has no objection to the planning proposal. 	<p><u>Council Response:</u></p> <p>Endeavour Energy raised no objection to the planning proposal.</p> <p><u>Department Response:</u></p> <p>Council's response is considered adequate.</p> <p>No further action is required to address this submission. The advice raised can be adequately addressed at the future DA assessment stage.</p>

The Department considers that each of the matters raised in the submissions from public authorities has been adequately addressed.

4.3 Post-exhibition changes

4.3.1 Council resolved changes

At Council's Ordinary Meeting on 24 May 2021, Council resolved to proceed with the planning proposal with no post-exhibition changes (**Attachment C**).

Council formally submitted the planning proposal to the Department for finalisation on 21 September 2021 (**Attachment D**). No post-exhibition changes were made to the planning proposal by Council.

4.3.2 The Department's recommended changes

Following the receipt of the planning proposal from Council, the Department has made a number of changes to the planning proposal. Each of the post-exhibition changes are outlined below.

4.3.2.1 Change 1: Amended Indoor Ski Slope Requirement

The planning proposal as exhibited and endorsed by Council sought to allow a maximum HOB of 54m at the site on the condition that, amongst other things, a ‘substantial component’ of the future development is an indoor ski slope facility.

The Department has removed this requirement, as the use of ‘substantial component’ is considered to be ambiguous and subject to legal interpretation. The Department also considers the ‘substantial component’ requirement unnecessary to achieve the intent of the planning proposal. The future indoor ski slope will be of a size that ensures it is viable and usable by a wide range of persons. The draft LEP now reads along the lines of:

“Development consent must not be granted to development for the purposes of recreation facilities (indoor) that include an indoor ski slope on the land to which this clause applies unless the consent authority is satisfied of the following—”

4.3.2.2 Change 2: New Solar Access/Overshadowing Control

The Department has included an additional condition that aims to protect solar access to movable dwellings in Nepean Shores, in response to concerns raised during the public exhibition period. The proposed new condition reads along the lines of:

“the development will not result in the entire northern façade of a dwelling house on Lot 1, DP 788126, 6-22 Tench Avenue, Jamisontown receiving less than 3 hours of direct sunlight daily between 9am and 3pm.”

4.3.2.3 Change 3: New Adverse Impacts Control

The Department has included an additional condition that aims to ensure the future development is designed and constructed to minimise adverse impacts on surrounding land, in response to concerns raised during the public exhibition period. The proposed new condition reads along the lines of:

“the development minimises adverse impacts on surrounding land.”

4.3.2.4 Change 4: Amended ‘Sunset Clause’ Date

The planning proposal as exhibited and endorsed by Council sought to apply a ‘sunset clause’ where the proposed Penrith LEP 2010 provisions would no longer apply 3 years after the date the proposed LEP is made. The Department has amended the ‘sunset clause’ date so the draft LEP ceases to apply from and including on 31 December 2024.

4.3.3 Justification for post-exhibition changes

The Department notes the post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- Are a reasonable response to comments provided by the community;
- Allow the planning proposal to proceed whilst ensuring appropriate measures are in place to protect Nepean Shores and surrounding land; and
- Do not alter the overall intent of the planning proposal to provide a winter sports facility.

5 Department’s assessment

The planning proposal has been subject to detailed review and assessment through the Department’s Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following section reassesses the planning proposal against relevant Section 9.1 Ministerial Directions, State Environmental Planning Policies (SEPPs), Regional and District Plans and Council’s Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the planning proposal (as altered).

The planning proposal submitted to the Department for finalisation:

- Is consistent with the Regional and District Plans relating to the planning proposal;
- Is consistent with the Local Strategic Planning Statement relating to the planning proposal;
- Is consistent with the relevant Section 9.1 Ministerial Directions relating to the planning proposal, excluding a technical inconsistency with Direction 6.3, which is justified; and
- Is consistent with the relevant SEPPs relating to the planning proposal.

Table 5 and **Table 6** identify whether the planning proposal is consistent with the assessment undertaken at the Gateway determination stage in the Gateway determination report (**Attachment G**). Where the planning proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters, these are addressed in **section 5.1**.

Table 4: Summary of strategic assessment

Strategic assessment	Consistent with Gateway determination report assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
Local Strategic Planning Statement	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 5.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 5.1
SEPPs	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 5.1

Table 5: Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 5.1
Environmental impacts	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 5.1
Infrastructure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 5.1

5.1 Detailed assessment

The following section provides an assessment of the matters relating to the planning proposal that are marked as inconsistent in **Table 5** and **Table 6** with the previous Gateway determination report for the planning proposal dated 2 May 2019.

5.1.1 Local Strategic Planning Statement

The Penrith Local Strategic Planning Statement 2020 (Penrith LSPS) was adopted in March 2020 and is now applicable to the site and planning proposal. The Penrith LSPS contains local planning priorities to guide the future growth and development of the Penrith LGA.

The following local planning priorities are applicable to the planning proposal:

- *Planning Priority 1: Align development, growth and infrastructure.*
 - The proposed future development facilitated by this planning proposal will provide increased tourist facilities, indoor recreation facilities, commercial floor space and potential hotel accommodation in the Penrith LGA, which will create jobs and attract

future visitors. To support this growth, an associated VPA for road upgrades has been executed on 13 September 2021 between Council and Winter Sports World Pty Ltd (**Attachment F**).

- **Planning Priority 7: Enrich our places.**
 - The proposed future development facilitated by this planning proposal will provide a unique addition to the recreational and leisure offering in Penrith. Council is seeking to identify and confirm the local character of its communities, and then undertake detailed planning to guide future development.
- **Planning Priority 14: Grow our tourism, arts and cultural industries.**
 - The proposed future development facilitated by this planning proposal will stimulate and support tourism related development in the Riverlink Precinct. It will provide a new and unique addition to the adventure tourism market that is anticipated to attract over 230,000 visitors per year. There are no similar facilities in Australia. The facility is expected to attract a range of visitors including residents, daytrip visitors, domestic visitors and international visitors.
- **Planning Priority 20: Manage flood risk**
 - The planning proposal has been designed to manage flood risk. Flood analysis associated with the planning proposal has been outlined in detail in **Table 3** and **Table 7** of this report.

The Department considers the planning proposal to be consistent with each of the applicable Penrith LSPS local planning priorities and is acceptable.

5.1.2 Section 9.1 Ministerial Directions

Section 9.1 Ministerial Directions that were noted as unresolved or weren't previously addressed as part of the Gateway determination report (**Attachment C**) that apply to the planning proposal have been addressed in **Table 7**.

Table 7: Section 9.1 Ministerial Directions Assessment

Directions	Consistent /Inconsistent	Reasons for Consistency or Inconsistency
Direction 2.3: Heritage Conservation	Consistent	<p>In the Gateway determination report on the planning proposal (Attachment G), the Department noted the following:</p> <p><i>"It is not anticipated that the proposal will adversely impact upon the [Madang Park Homestead] heritage item and the proposal is consistent with the direction. Council's consultation with the Office of Environment and Heritage during the exhibition period, however, is recommended."</i></p> <p>As identified in Table 4, EES (previously Office of Environment and Heritage) was consulted on the planning proposal and did not provide any commentary relating to heritage. It is therefore assumed that the planning proposal will not adversely impact the heritage item as determined by the Department in the Gateway determination report and is considered to be consistent with Direction 2.3.</p>
Direction 4.3: Flood Prone Land	Consistent	<p>In the Gateway determination report on the planning proposal (Attachment G), the Department noted the following:</p> <p><i>"it is agreed with Council that the proposal is not technically inconsistent with the Direction."</i></p>

Directions	Consistent /Inconsistent	Reasons for Consistency or Inconsistency
		<p><i>“The Department notes that additional advice was sought over site evacuation timing; evacuation traffic flows from other areas; evacuation routes; and, destinations. It is considered that these matters can be appropriately addressed by the SES at the time Council consults with that organisation.”</i></p> <p>As identified in Table 4, SES was consulted on the planning proposal and did not object, stating that the site is not considered to have a significant impact on emergency flood evacuation from the Penrith and Jamisontown areas across the full range of flooding up to PMF.</p> <p>The Department amended Direction 4.3 on 14 July 2021 to include revised requirements which weren't previously considered. Revised Direction 4.3 requires a draft LEP to also be consistent with the provisions of 'Considering flooding in land use planning guideline 2021'. The Department maintains the view expressed in the Gateway determination report that the planning proposal is not inconsistent with the Direction. The proposed land-uses on the site are already permissible under the existing SP3 Tourist zoning prescribed for the site by the Penrith LEP 2010. Therefore, it is already anticipated that tourist related land-uses and associated impacts, including those proposed under this planning proposal, will be realised at the site on flood prone land. SES and the Department's internal Resilience Planning team have raised no objections to the progression of the planning proposal.</p> <p>In addition to this, as identified in Table 3 when addressing community concerns relating to flooding at the site, the Department considers it acceptable to proceed with the planning proposal, as anticipated flooding and evacuation impacts generated by the future development at the site are acceptable and will be appropriately mitigated. This is due to applicable planning and design criteria that will be required to be considered at the future DA stage, including controls contained to the draft LEP, Penrith DCP 2014 and the SEARs for SSD-10475. The indicative future built form of the development also shows the future development partially elevated with a building undercroft to increase permeable surfaces at the site to improve flooding impacts and flows. This design element can be further refined at the future DA stage as part of the required design competition. The planning proposal is therefore considered to be consistent with Direction 4.3.</p>
Direction 4.4: Planning For Bushfire Protection	Consistent	<p>In the Gateway determination report on the planning proposal (Attachment G), condition 4 required the following:</p> <p><i>“4. Council to consult with NSW Rural Fire Service prior to exhibition in terms of section 9.1 Direction 4.4. Planning for Bushfire Protection. Should the proposal be considered to be inconsistent with direction following receipt of advice from that authority, Council is to bring this matter to the attention of the Department prior to finalisation of the proposal.”</i></p>

Directions	Consistent /Inconsistent	Reasons for Consistency or Inconsistency
		As identified in Table 4 , RFS was consulted on the planning proposal and did not object to its progression. The planning proposal is therefore considered to be consistent with Direction 4.4.
Direction 6.3: Site Specific Provisions	Technical inconsistency, but justified	<p>In the Letter to Council on the planning proposal (Attachment N) that formed part of the Gateway determination, the Department outlined the following:</p> <p><i>“The planning proposal’s inconsistency with section 9.1 Direction: 6.3 Site Specific Provisions is justified in accordance with the terms of the Direction. No further approval is required in relation to this Direction.”</i></p> <p>Notwithstanding this, the Department has amended the planning proposal post-exhibition to include additional site-specific controls, which require the future development at the site to protect solar access to dwellings at Nepean Shores and to minimise adverse impacts on surrounding land. The planning proposal is therefore technically inconsistent with Direction 6.3. However, inconsistency with this Direction is justified, as the proposed site-specific controls ensure:</p> <ul style="list-style-type: none"> • The future development is appropriately designed to minimise impacts, including built form and overshadowing impacts; and • Concerns raised by Council and the community are appropriately addressed. <p>Any technical inconsistency with Direction 6.3 is therefore considered to be adequately justified.</p>

The Department considers that the planning proposal is consistent with the relevant Section 9.1 Ministerial Directions relating to the planning proposal, excluding Direction 6.3, which is justified.

5.1.3 State Environmental Planning Policies

SEPPs that were noted as requiring further consideration or weren’t previously addressed as part of the Gateway determination report (**Attachment G**) that apply to the planning proposal have been addressed in **Table 8**.

Table 8: State Environmental Planning Policies assessment

SEPP	Assessment
Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2-1997) (SREP No 20)	<p>Condition 1(a) that formed part of the Gateway determination (Attachment B) for the planning proposal required the following:</p> <p><i>“1.(b) the schedule of deemed SEPPs within the proposal to further address SREP No 20 – Hawkesbury-Nepean River (No 2 – 1997) by making reference to the applicable provisions of the SEPP and clarifying the manner in which the proposal is consistent with these provisions”.</i></p> <p>Council’s planning proposal dated October 2020 (Attachment A) has been updated to address SREP No 20 to satisfy condition 1(a) of the Gateway determination. The planning proposal does not propose provisions that would impact the application of SREP No 20. A detailed assessment of the</p>

SEPP	Assessment
	intended future development against the provisions of SREP No 20 will be required as part of the future DA assessment process.
Draft Design and Place State Environmental Planning Policy (Design and Place SEPP)	<p>The draft Design and Place SEPP was publicly exhibited from 26 February 2021 to 28 April 2021. The Design and Place SEPP seeks to introduce requirements for different scales of development including precincts and significant development.</p> <p>Under the Design and Place SEPP, precinct considerations will apply in the following relevant circumstances:</p> <ul style="list-style-type: none"> • Wherever a requirement for a 'precinct plan', 'precinct study' or 'master plan' is specified in another instrument. • To any planning proposal under section 3.33 of the EP&A Act greater than 10 ha or 1000 people. • To any other similar plan or spatial arrangement greater than 10 ha or 1000 people. <p>Under the Design and Place SEPP, significant development considerations will apply to:</p> <ul style="list-style-type: none"> • Development on a parcel of land; <ul style="list-style-type: none"> ○ Within a precinct or on a site bounded by streets on all sides. ○ On a site greater than 4000sqm or 500 people. ○ On a site greater than 1500sqm in a metropolitan centre. • SSD as declared in the State and Regional Development SEPP, on urban land. <p>The proposed development is expected to have a capacity for more than 1,000 people. The future gazetted Design and Place SEPP would therefore apply to the planning proposal.</p> <p>Whilst the Design and Place SEPP does not apply to the planning proposal at this time as it is draft, the Department notes that the planning proposal contains provisions that are generally consistent with proposed provisions contained to the draft Design and Place SEPP. These comprise the following:</p> <ul style="list-style-type: none"> • Under the Design and Place SEPP, a precinct structure plan is required for all precincts and significant development. Similarly to this requirement, the planning proposal includes a requirement that a site-specific DCP must be prepared for the site to inform the design and vision of the intended future development; and • The Design and Place SEPP seeks to introduce a design excellence process. Similarly to this requirement, the planning proposal includes the following design excellence provisions: <ul style="list-style-type: none"> ○ Proposed of the draft LEP, which requires the design of the development to be the result of an architectural design competition; ○ Proposed clause of the draft LEP, which requires the future development to exhibit design excellence; and ○ Proposed clause of the draft LEP, which requires the future development to minimise impacts on surrounding land.

5.1.4 Environmental impacts – overshadowing

Overshadowing impacts generated by the planning proposal were considered prior to issue of the Gateway determination. Based on information provided at this time, it was initially understood that

the adjoining Nepean Shores site generally provided short-term accommodation and was therefore considered less likely to be disadvantaged by overshadowing impacts. Notwithstanding this, the planning proposal did note that there may be some longer-term occupants of the cabins along the northern boundary of Nepean Shores, but the extent and exact location of these cabins was not confirmed.

Nepean Shores benefits from an existing development consent (DA87/0195) for a Moveable Dwelling Park on the site issued on 24 December 1987. The most recent modification to this development consent was granted by the NSW Land and Environment Court on 7 April 2014 and permits 199 movable dwellings on the site, of which a maximum of 157 dwellings are permitted as long-term sites and 42 dwellings are for short-term accommodation.

Figure 2 shows the location of the short and long-term cabins at Nepean Shores. Ten long-term cabins are located along the northern edge of the Nepean Shores site, with private open spaces orientated towards the north facing onto the planning proposal site.



Figure 2: Location of short and long-term cabins at Nepean Shores (Sutherland & Associated Planning letter, 10 June 2021)

An Urban Design Report was submitted with the planning proposal and publicly exhibited by Council. The Urban Design Report included shadow diagrams that demonstrated the shadow impact that would be generated by the anticipated future development at the site. These shadow diagrams were also previously provided by the Department in the Gateway determination report (**Attachment G**).

The publicly exhibited shadow diagrams were based on the original concept design as shown in the Urban Design Report. Based on the shadow diagrams, all 10 long-term cabins on the northern edge of Nepean Shores would not receive any sun overshadowed between 9am and 3pm in midwinter. The Department considers this overshadowing impact to be unacceptable, as the Nepean Shores development is not classified as 'tourist and visitor accommodation'.

The approval in place for Nepean Shores, as well as the nature of the development, reflects a 'caravan park' with a large proportion of the 'moveable dwellings' used as permanent dwellings. Whilst a 'moveable dwelling' does not fall within the definition for 'residential accommodation', it nevertheless provides a form of permanent residential accommodation. Residents in moveable dwellings should be able to maintain the same level of amenity afforded to residents in other permanent dwellings. This is particularly relevant having regard to the provisions of *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*, which aims "to promote the health, safety and amenity of the occupiers of manufactured homes and other moveable dwellings".

There is no control for solar access and overshadowing of movable dwellings in Penrith LEP 2010 or Penrith DCP 2014. The Department did not find precedent controls for this use in other areas either.

The Department is of the view, as noted earlier in this report, that because the development has approval and long-term dwelling owners have in-perpetuity leasehold over their dwellings, the same amenity as afforded to other dwellings should be protected for residences in Nepean Shores, for the purposes of establishing standards for amenity and solar access. It is recommended that the standards in 'Part D2 Residential Development' of the Penrith DCP 2014 for general residential uses be used as a benchmark for Nepean Shores. These standards, which require 3 hours of solar access between 9am and 3pm have been adopted and are proposed to be included in the planning proposal.

Additional information was provided by the proponent to the Department on 10 June 2021 (**Attachment O**). This additional information included 'Solar Study 4' diagrams (**Attachment P**), which illustrate a modified building envelope for the site that allows for 3 hours of solar access to all residences at the Nepean Shores site without compromising the overall intent of the planning proposal (see **Figure 3**). The Department's internal Urban Design team has assessed the findings of 'Solar Study 4' and confirms their accuracy.

Alternative Penrith DCP 2014 diagrams have also been prepared (**Attachment P**) to show how this proposed modified building envelope can be incorporated into the site-specific DCP for the site (see **Figure 4**). The proponent has confirmed that the proposed winter sports facility can be feasibly developed in accordance with the 'Solar Study 4' proposed building envelope (**Attachment R**).

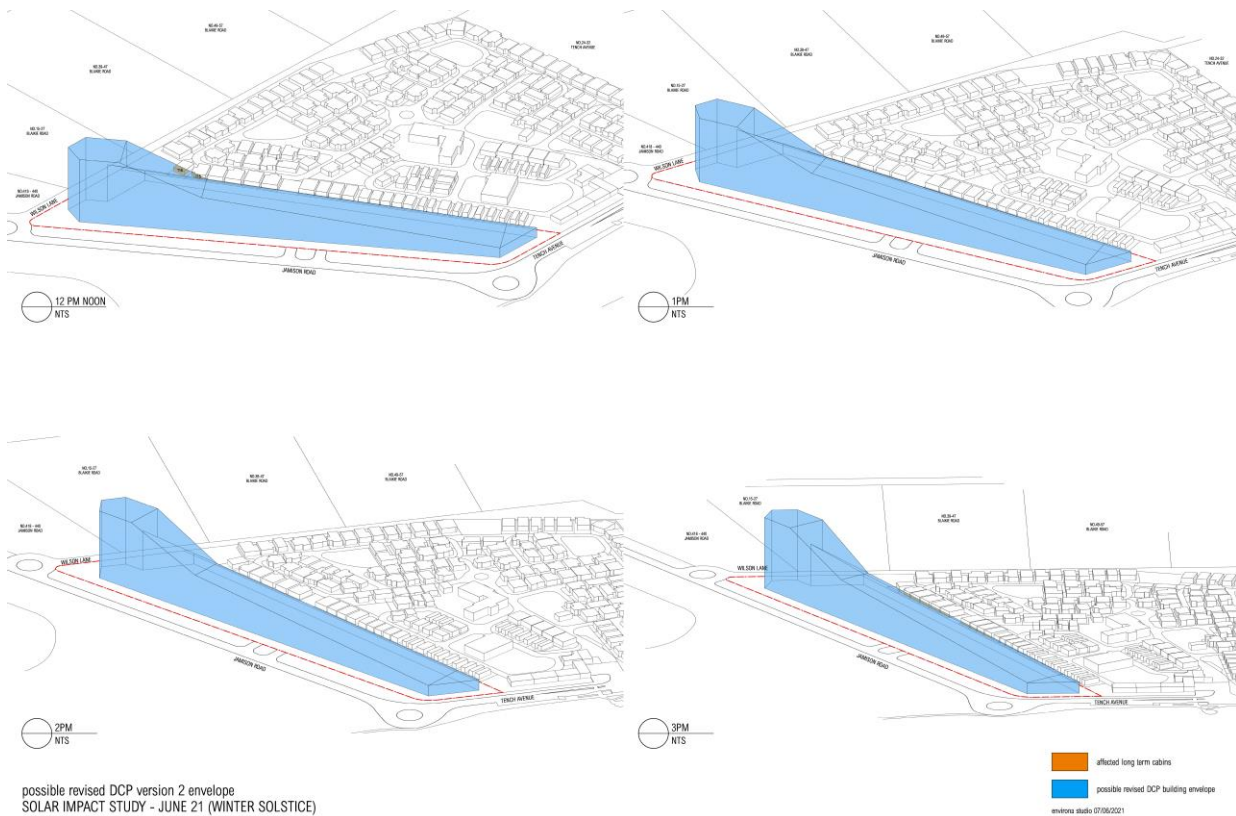


Figure 3: Solar study 4 - revised building envelope (Envirana Studio, June 2021)



Figure 4: Solar study 4 - revised Penrith DCP 2014 building envelope (Envirana Studio, June 2021)

To ensure this outcome occurs and overshadowing impacts resulting from the future development at the site are addressed, the Department has amended the planning proposal post-exhibition to require that these amenity standards are met.

As outlined previously in **Table 3**, the Department has also amended the planning proposal to include additional design and assessment requirements that will be required to be addressed as part of any future DA assessment process. The Department also acknowledges that further solar access analysis will be required at the future DA assessment stage to assess the impacts of the future detailed design.

5.1.5 Visual impact and impact on local character

An objective of the SP3 Tourist Zone in the Penrith LEP 2010 is ‘to create an appropriate scale that maintains important views to and from the Nepean River and Blue Mountains escarpment, while also improving important connections to Penrith City Centre and the Nepean River.’ This is supported by a key principle in the Riverlink Precinct Plan 2008 to ‘encourage views to the Blue Mountains from the public domain’. The Riverlink Precinct Plan design requirements are reflected in the Penrith DCP 2014 Part 13 A.

The prevailing building height control for the Tourist zone and surrounding rural and residential areas in the LEP is 8.5 metres. As noted earlier in this report, the surrounding area comprises low scale single and two-storey development. As such, the 54 metres height Winter Sports facility will be prominent in the landscape and represents a significant departure from the existing low-scale built character of the area. Council noted that while the development is inconsistent with the current character, further future development of the Tourist zone may change that character.

A Visual Analysis report was provided in support of the Winter Sports proposal (**Attachment S1**). The methodology employed for the visual impact assessment was:

- A crane was placed on site extended to the 54 metres maximum building height location. The height was confirmed by the crane operator and by drone flight. Banners were used to ensure visibility from distance;
- A series of 28 viewpoints were selected for images to be captured, selected to ensure top of crane was visible. Viewpoints range from very close, mid-distance and further (to some 3km away);
- A series of images was produced from each viewpoint and the development concept plan overlayed. GPS data confirms location, bearing, distance etc;
- For each viewpoint, a Description of Existing View and Extent of Obstruction commentary is provided.

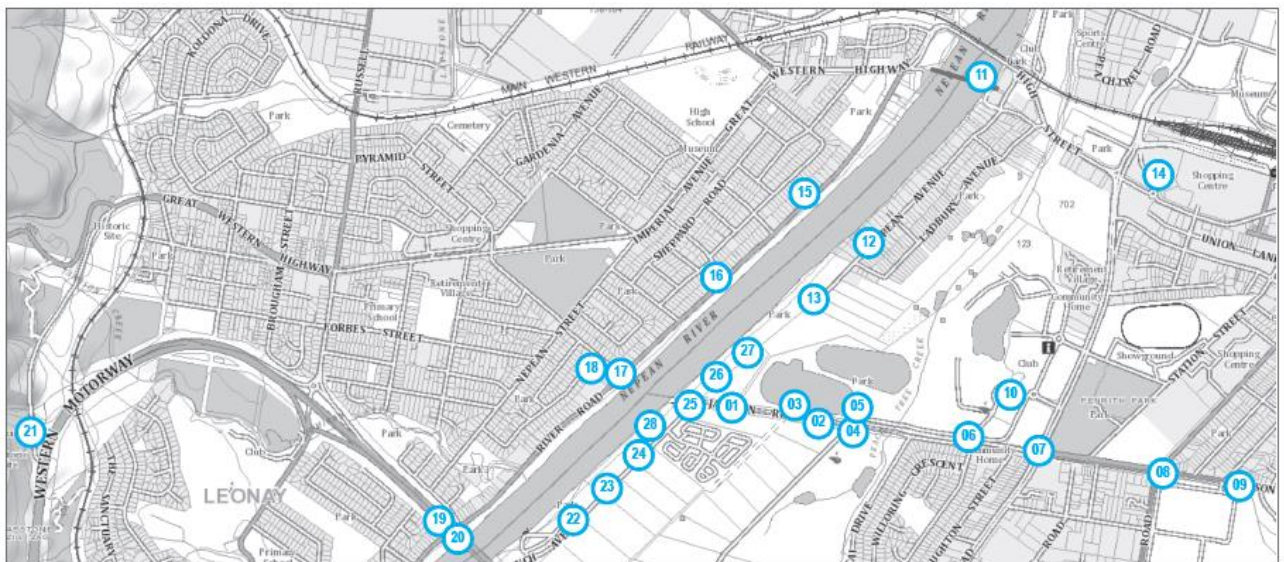


Figure 5: Viewpoints for Visual Analysis – 01 is adjacent to site (Source: Enviroana Studio, Nov 2018)

Key conclusions and observations on the Visual Analysis are:

- Impact on views is imposing from nearest viewpoints, but is ‘softened’ by trees from some views (Viewpoints 01-04, 24-28)
- From many mid-distance viewpoints, part of the building is visible above the treeline, but views to the Blue Mountains beyond are largely uninterrupted and still available from viewpoints to the east, south and north (05-10, 12-13, 15-17, 19-20, 22-23)
- More distant viewpoints: The very top of the building can be seen above the treeline from the Nepean Bridge (11), while from the top of Westfield Penrith (14) and viewpoints 18 and 21 the building cannot be seen. In response to a request of the Department to also address several additional district viewpoints of significance, being views to and from Portal Lookout Glenbrook and Governors Drive Lapstone (**Attachment S2**), the review found that the top of the building would be indistinguishable above the treetops at these distances (4km and 3.5km respectively).
- Good tree cover around Penrith, along main roads and along the Nepean River assists in reducing the impact of the building from many viewpoints and in achieving the key LEP and Precinct Plan objectives.

It is considered the following also will assist in mitigating the visual impact of the development and maintaining significant views:

- The east-west orientation of the proposed development along its long axis, resulting in its more significant impact being when viewed from the south and north;
- Supporting DCP provisions to address the visual impact and minimise amenity impacts on surrounding development. The Department encourages the Council to strengthen and optimise these provisions to provide greatest guidance on expectations of the development;
- The Department has included a proposed LEP provision to require design excellence and the resultant development to reflect the winning entry of a design competition process to be conducted to the satisfaction of the Government Architects Office and the Council.
- The Department has included a proposed LEP provision that the development is to minimise impacts on the surrounding area.

5.1.6 Infrastructure

The Gateway determination report on the planning proposal (**Attachment G**) recommended that Council consult with relevant utility providers including Sydney Water, Telstra and Endeavour Energy during public exhibition. As outlined previously in **Table 4**, Sydney Water and Endeavour Energy raised no objections to the planning proposal. Telstra did not provide a submission on the planning proposal. Notwithstanding this, telecommunication matters can be addressed in detail as part of the future DA assessment stage.

To provide improved road infrastructure to support the future development at the site, a VPA between Council and Winter Sports World Pty Ltd was executed on 13 September 2021 (**Attachment F**). The VPA sets out mechanisms for the timing and delivery of road improvements at the intersection of Blaikie Road and Jamisontown Road, Jamisontown. These works will assist with improving future traffic flows resulting from the development.

6 Post assessment consultation

6.1.1 Meeting with Hometown Australia and Nepean Shores Residents Committee

The Nepean Shores Residents Committee approached the Office of the Minister for Planning and Public Spaces seeking a meeting to discuss concerns with the Winter Sports Facility proposal. A meeting took place. A teleconference meeting of the Department, Hometown Australia (Nepean

Shores owners) and Residents Committee representatives and long-term site owners was held on 21 October 2021. Hometown Australia and Park Residents reiterated issues they had raised in submissions and asked questions on the Department's assessment process. Additional issues raised at this meeting included questions about the economic feasibility of the proposal, ongoing maintenance and management and questions about the planning proposal and development application process.

The Department consulted with the following stakeholders following its assessment of the planning proposal (see **Table 9**).

Table 9: Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Council confirmed on 1/12/2021 that it was agreeable with the draft and that the plan should be made (Attachment E).</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, see below for details</p>
Parliamentary Counsel Opinion	<p>On 9/12/2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Parliamentary Counsel Opinion is provided at Attachment PC.</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, see below for details</p>

7 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The planning proposal has strategic merit, being consistent with the following plans and strategies:
 - Greater Sydney Region Plan – A Metropolis of Three Cities.
 - Western City District Plan.
 - Penrith 2040 – Local Strategic Planning Statement.
 - Penrith Community Plan 2017.
- The planning proposal has site-specific merit, as the proposed land-uses that form part of the intended future development are permitted with consent in the SP3 Tourist zone and are consistent with the themes of the 'tourism and recreation sub-precinct' of the Riverlink Precinct. The Department is satisfied that potential impacts associated with the development can be managed appropriately at development application stage because the planning proposal will require that the development is the result of a competitive design process and that all dwellings and moveable homes in the adjoining Nepean Shores development receive a minimum of 3 hours of solar access in mid-winter, amongst other controls to protect amenity and views.
- The intended future development facilitated by the planning proposal will provide increased jobs and economic activity, and support tourism related development in the Riverlink Precinct. It will provide a new and unique addition to the adventure tourism market that is anticipated to attract over 230,000 visitors per year. There are no similar facilities in Australia;
- The planning proposal is generally consistent with the Gateway determination (as altered);
- The planning proposal is consistent with all relevant Section 9.1 Ministerial Directions relating to the planning proposal, excluding a technical inconsistency with Direction 6.3, which is justified;
- The planning proposal is consistent with all relevant SEPPs relating to the planning proposal; and
- The issues raised during consultation have been addressed and there are no agency objections to the planning proposal.



Ian Bignell
Manager, Place and Infrastructure, Central (Western)



Jane Grose
Director, Central (Western)

Assessment Officer:

Jarred Statham
Planning Officer, Agile Planning and Programs

Attachments

Attachment	Document
PC	PC Opinion
LEP	Draft LEP
Council	Letter to Council
A	Planning Proposal dated October 2020
B	Gateway Determination dated 2 May 2019
C	Council Meeting Report and Minutes dated 24 May 2021
D	Letter to the Department dated 21 September 2021
E	Council Comments on Draft LEP
F	Executed Voluntary Planning Agreement dated 13 September 2021
G	Gateway Determination Report dated 2 May 2019
H	Gateway Alteration dated 24 January 2020
I	Letter to Council dated 6 April 2021
J	Secretary's Environmental Assessment Requirements for SSD-10475
K	Flood Impact and Risk Assessment Report dated September 2021
L	Flood Assessment Response to EES Comments dated 14 October 2021
M	Department Resilience Planning team comments dated 18 October 2021
N	Letter to Council dated 2 May 2019
O	Solar Access Analysis and Supporting Documentation dated 10 June 2021
P	Solar Study 4 Diagrams
Q	SES Submission Letter dated 16 July 2021
R	Proponent agreement to feasibility of revised building envelope dated 18 June 2021
S1 & S2	Visual Analysis Report (Nov 2018) and Additional Regional Analysis (Nov 2021)