



Finalisation Report

State Environmental Planning Policy (Precincts –
Western Parkland City) 2021 Amendment to Penrith
Lakes Scheme Policy

June 2023



Published by NSW Department of Planning and Environment

dpe.nsw.gov.au

Title: Finalisation Report

© State of New South Wales through Department of Planning and Environment 2023. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose provided you attribute the Department of Planning and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (**February 2023**) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Acknowledgment of Country

Penrith Lakes is located on Dharug land, on the banks of what is traditionally known as Yandhai, or the Nepean River.

The Department of Planning and Environment (the Department) acknowledges the Traditional Owners and Custodians of the Dharug people and pays respect to Elders past, present and future. The Department also acknowledges the Deerubbin Local Aboriginal Land Council and the Muru Mittigar Corporation for their work in representing and advocating for the First Nations people of the Penrith area.

Contents

Acknowledgment of Country	i
Executive Summary	1
1. Introduction.....	3
1.1 Overview of Amending SEPP 2023.....	3
1.2 History of the Site	3
2. Exhibition Details.....	5
2.1 Exhibition and Submissions Period	5
2.2 Exhibited Materials	5
2.3 Public Notice and advertisement of exhibition	6
2.4 Notification of Key Stakeholders	6
2.5 The Amending SEPP 2023 includes uses that were not exhibited	6
3. Submissions Summary	6
3.1 Number of Submissions.....	6
3.2 Issues raised in submissions	7
4. Consideration of Issues	9
4.1 Community submissions	9
4.1.1 Loss of recreational land and commercialisation of Penrith Lakes.....	9
4.1.2 Amenity impacts relating to heliport amendment	10
4.1.3 Amenity impacts relating to film production precinct	11
4.2 Agencies submissions	12
4.2.1 Flooding and Evacuation	12
4.2.2 Traffic and Transport.....	14
5. Flood Advisory Panel	15
5.1 Advice.....	15
6. Post-exhibition amendments	17
6.1 Amendments not proceeding	17
6.2 Altered amendments.....	18
6.3 New amendments.....	21
6.4 Amending SEPP 2023	24
6.5 Post-exhibition targeted consultation	25
6.5.1 Western Sydney Lakes submission.....	26
6.5.2 Penrith City Council submission	26
6.5.3 Transport for NSW submission.....	27
6.5.4 Additional Section 3.25 Consultation	28
7. Consistency with other Instruments, Acts and Policies	29
7.1 Greater Sydney Region Plan and Western City District Plan.....	29
7.2 State Environmental Planning Policy (Precincts – Western Parkland City) 2021	29
7.3 Section 9.1 Ministerial Directions for Plan Making.....	30
Appendix A – Response to Submissions	
Appendix B – Flood Advisory Panel Report	
Appendix C – Submissions	

Executive Summary

This report outlines amendments to the *State Environmental Planning Policy (SEPP) (Precincts – Western Parkland City) 2021 – Chapter 5 Penrith Lakes Scheme*. The amendments are included in the *State Environmental Planning Policy (Precincts Western Parkland City) Amendment (Penrith Lakes Scheme) 2023 ‘Amending SEPP 2023’*.

The Amending SEPP 2023 intends to facilitate additional small-scale employment and tourism/recreation opportunities within Penrith Lakes, strengthen the development assessment process in relation to protecting key vista and view corridors, the consideration of the impact of a development on State infrastructure, design controls for development on the foreshore areas, and strengthen flood planning and evacuation considerations. Some components of the Amending SEPP 2023 were not exhibited.

A draft SEPP amendment was exhibited from 14 August to 26 September 2021 (Exhibited SEPP). The exhibition package included a consultation report, site identification maps and the requests for rezoning submitted by Penrith Lakes Development Corporation (PLDC, now known as Western Sydney Lakes (WSL)), Lakeside Studios and Sydney Helicopters.

The exhibited proposals included the following proposed amendments, amongst other things to:

- Permit new land uses at specific sites within the Penrith Lakes Scheme including:
 - A heliport
 - Office premise to be used by Western Sydney Lakes
 - Film production precinct and associated facilities
 - A private golf course and associated facilities
 - Tourism and commercial uses of Landers Inn by listing the site as a local heritage item
- Include new provisions for protecting solar access and key vistas and view corridors
- Ensure flood evacuation will be considered for all land use proposals within the Penrith Lakes scheme
- Amend the satisfactory arrangements clause for designated State public infrastructure to ensure that appropriate contributions are made by developers towards State public infrastructure such as roads, regional open space, schools, and emergency services

183 submissions were received from Government agencies, landowners, community and industry groups. The broad nature of the amendments under consideration attracted a wide response. Key issues raised in submissions include:

- The encroachment and loss of recreational land promised to the community;
- The commercialisation of Penrith Lakes;
- Increased traffic congestion and burdens upon public infrastructure; and
- Perceived negative impacts upon the environment, amenity, community lifestyle and flood risks.

A discussion of the key issues can be found in Section 2 of this report and a summary of all submissions and responses by the Department of Planning and Environment (the Department) can be found at **Appendix A**.

Following exhibition, Western Sydney Lakes submitted a rezoning proposal for land in Penrith Lakes, known as Southbank. The rezoning proposal (the Phase 1 – Southbank Proposal) proposed the following land uses be permissible in the South bank Precinct:

- Business park (17.6ha)
- Retail and commercial precinct(10.7ha)

- Hotel and tourist accommodation (4.33ha)
- Farmers' market (3.88ha)
- Public open space, cultural and community uses (10ha)
- Foreshore embellishment area (4.33ha)
- Outdoor recreation, wave park and golf driving range (7.24ha)
- Supporting infrastructure including roads, sewer and pump station (10.92ha)

Flood and evacuation planning for Penrith Lakes is the main planning consideration for future development at Penrith Lakes. The site is located within the Hawkesbury-Nepean Valley and is impacted by flooding. Development on the site has the potential to increase risk to life in an emergency flood event because there is little or no evacuation capacity in the road network.

The Exhibited SEPP and Phase 1- Southbank Proposal were referred to the Department of Planning and Environment's (the Department) Flood Advisory Panel (the Panel). The Panel recommended that only 'low intensity uses', that would not significantly increase risk to life, be permitted.

A number of post exhibition changes were made to ensure that the proposed SEPP amendment enabled development suitable for the site having regard to the flood and evacuation risks within the Hawkesbury Nepean Floodplain, and in response to submissions.

The following uses outlined in the Exhibited SEPP are not recommended to proceed:

- Film production precinct – a high intensity uses that would pose an unacceptable evacuation risk
- Solar access provisions – detailed solar access provisions are contained within the Stage 1 Development Control Plan. A general control requiring development not impact the amenity of the foreshore is included in the Amending SEPP 2023.
- Listing of 'Landers Inn' as a local heritage item – further investigation is required prior to listing as a local heritage item in the SEPP as only the stables is listed in Penrith LEP 1991.

The following uses proposed by the Phase 1 – Southbank Proposal are not recommended to proceed:

- Business park, retail and commercial precinct, hotel and tourist accommodation and farmers market – These uses are considered to be high intensity uses that should only be considered following further flood planning and evacuation modelling, as recommended by the Panel.

The following land uses and amendments proposed by the Amending SEPP 2023 were not publicly exhibited:

- 'Recreation facility (outdoor) for the purposes of a golf driving range and an outdoor water recreational park on part Lots 12 and 18 DP 1013504 (Key Sites map);
- 'café or restaurant' on Lot 3 DP1255572 'Landers Inn' (Key Sites map);
- Flood planning provisions applying to land under the probable maximum flood level.

The Department carried out targeted post exhibition consultation with Penrith City Council, Transport for NSW and Western Sydney Lakes on the proposed SEPP amendment.

This report outlines the consultation process, summarises issues raised in submissions, how the Department has responded to these submissions including post exhibition amendments.

1. Introduction

1.1 Overview of Amending SEPP 2023

The Amending SEPP 2023 will:

- Adopt new land use mapping to align zoning boundaries with current cadastre boundaries.
- Provide new provisions to protect key vistas and view corridors.
- Strengthen flood evacuation provisions applying to development on land below the level of a probable maximum flood within the Site.
- Concurrence of Planning Secretary to enable an assessment of whether there is an impact of a proposed development on existing State public infrastructure and whether there is a need for additional State public infrastructure to support a development.
- Permit new land uses at specific locations, with the location identified on either the Additional Permitted Uses (APU) or Key Sites maps:
 - ‘heliport’ on Lot 2 DP 1013504 (APU map);
 - ‘office premises’ on part Lot 2 DP236125 (APU map);
 - Golf course over various lots (Key Sites map);
 - ‘recreation facility (outdoor) for the purposes of a golf driving range and an outdoor water recreational park on part Lots 12 and 18 DP 1013504 (Key Sites map);
 - ‘café or restaurant’ on Lot 3 DP1255572 ‘Landers Inn’ (Key Sites map).
- Development on the foreshore associated with the ‘office premises’ site and the golf course will require the provision of continuous public access along land identified as ‘foreshore land’. This provision is supported by a new Special Areas map which identifies the ‘foreshore land’.

The amendments made to the Amending SEPP 2023 following exhibition are discussed in detail in Section 6 of this report.

1.2 History of the Site

In 1987, the Government executed a Deed of Agreement with Penrith Lakes Development Corporation (PLDC) now known as Western Sydney Lakes (WSL), which was undertaking long term quarrying operations on the Penrith Lakes site, to provide a management and financial framework for the delivery with the Penrith Lakes Scheme.

Since 1989, development on land within the Penrith Lakes Scheme has been governed by the Penrith Lakes SEPP. This SEPP has provided a regulatory framework to support the quarrying, rehabilitation and dedication of land on the site.

In 2014 the Government (the former Office of Penrith Lakes) exhibited a draft Vision Plan for Penrith Lakes (draft vision plan) that envisaged the evolution of the site over the next 20 years. The draft Vision Plan included a preliminary and notional breakdown of the indicative uses of the Penrith Lakes site, including the provision of parkland and water based recreation for the western Sydney, as well as areas for urban development, including tourism and residential.

In September 2015, sand and gravel extraction ceased at the Penrith Lakes site and WSL is finalising its rehabilitation of the site.

In 2017, a SEPP amendment rezoned certain land within the Penrith Lakes scheme for residential, employment, tourism, parkland, waterway and environmental purposes.

In March 2022, the provisions of the Penrith Lakes Scheme (*State Environmental Planning Policy (Penrith Lakes Scheme) 1989*) have been incorporated into the consolidating SEPP – *State Environmental Planning Policy (Precincts – Western Parkland City) 2021*.

In 2021, a Development Control Plan was adopted providing additional guidance for development within the Tourism and Employment zoned land within the SEPP.

In 2022, the Department commenced a master planning visioning exercise for the Penrith Lakes Scheme, in conjunction with key stakeholders including Penrith City Council and Western Sydney Lakes. This project has been placed on hold due to the NSW Government's Flood Inquiry and the Department's Flood Advisory Panel review of the Exhibited SEPP and Phase 1 – Southbank Proposal. Following the making of the Amending SEPP 2023, the Department will meet with key agencies to discuss the future of the masterplan.

2. Exhibition Details

The Exhibited SEPP was exhibited from 14 August to 26 September 2021. The exhibited proposals included the following proposed amendments, amongst other things:

- To permit new land uses at specific sites within the Penrith Lakes Scheme including:
 - A heliport
 - Office premise to be used by Western Sydney Lakes
 - Film production precinct and associated facilities
 - A private golf course and associated facilities
 - Tourism and commercial uses of Landers Inn by listing the site as a local heritage item
- New provisions for protecting solar access and key vistas and view corridors
- New provisions to ensure flood evacuation will be considered for all land use proposals within the Penrith Lakes scheme
- Satisfactory arrangements provisions to ensure that appropriate contributions are made by developers towards State public infrastructure such as roads, regional open space, schools, and emergency services

Following exhibition, Western Sydney Lakes submitted a rezoning proposal for land in Penrith Lakes, known as Southbank. The rezoning proposal (the Phase 1 – Southbank Proposal) proposed the following land uses be permissible in the South bank Precinct:

- Business park (17.6ha)
- Retail and commercial precinct(10.7ha)
- Hotel and tourist accommodation (4.33ha)
- Farmers' market (3.88ha)
- Public open space, cultural and community uses (10ha)
- Foreshore embellishment area (4.33ha)
- Outdoor recreation, wave park and golf driving range (7.24ha)
- Supporting infrastructure including roads, sewer and pump station (10.92ha)

2.1 Exhibition and Submissions Period

The Exhibited SEPP, including the amendments listed under Section 2 above, was exhibited from 14 August to 26 September 2021. All submissions received by the Department have been considered in the summary of submissions report at **Appendix A**. A total of 183 submissions were received.

2.2 Exhibited Materials

The following documentation was publicly exhibited as part of the exhibited proposals:

- Consultation Report for the purpose of publicising an explanation of the intended effect of the proposed Amending SEPP 2023;
- Locality and Site identification maps; and
- Requests for rezoning.

The requests for rezoning were submitted by several proponents including: Western Sydney Lakes (seeking amendments to facilitate the private golf course, office premise and tourism rezoning of Landers Inn), Urbis on behalf of Sydney Helicopters (seeking an amendment to facilitate a heliport) and Willow Tree planning on behalf of StudioWest (now Lakeside Studios) (seeking amendments to facilitate the film production precinct).

The Exhibited SEPP package was available on the Department's website www.planning.nsw.gov.au

2.3 Public Notice and advertisement of exhibition

A joint media release announcing the start of exhibition was issued by the Minister for Planning and Public Spaces and Minister for Jobs, Tourism, Investment and Western Sydney on 15 August 2021.

A social media campaign across Facebook targeting Penrith local government area residents aged 18 to 65+ was run and twitter post. The exhibition was featured in the NSW Planning and Public Spaces Bulletin to all councils on 16 August 2021.

An A-frame sign notifying locals of the exhibition was installed along the walking track at the Penrith Regatta Centre in collaboration with Office of Sports.

2.4 Notification of Key Stakeholders

The Department notified key stakeholders in writing at the start of the exhibition period including State agencies, Penrith City Council, community and industry groups and associations, landowners, parties and individuals who have previously made submissions or representation regarding former policy amendments for Penrith Lakes.

As required under Section 3.25 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) the Environment, Energy and Science Division of the Department, and the Department of Primary Industries (DPI) Fisheries were consulted.

All submissions are summarised in Appendix A.

2.5 The Amending SEPP 2023 includes uses that were not exhibited

Some of these uses (the wave park and golf driving range) are included in the Amending SEPP, but have not been exhibited.

The 'café or restaurant' use on Lot 3 DP1255572 'Landers Inn' (Key Sites map) was not included in the Exhibited SEPP, but is in response to the need identified in the supporting material for the exhibited proposals seeking to secure the sustainable protection of this significant building.

The Department carried out targeted post exhibition consultation with Penrith City Council, Transport for NSW and Western Sydney Lakes on the proposed SEPP amendment.

3. Submissions Summary

To be clear, this section relates to the Exhibited SEPP only.

3.1 Number of Submissions

The Department received a total of 183 submissions and over 1,000 visits to the Facebook page. A breakdown of the submissions is provided in Table 1; all submissions received are listed and summarised at **Appendix A** with the Department's response.

Table 1 Summary of Submissions

Submission Author	Number of Submissions
Community groups, individuals and businesses	163
Landowners	6
Local councils	2
Agencies	12

Submission Author	Number of Submissions
Total	183

3.2 Issues raised in submissions

The nature of amendments under consideration attracted a wide response in the submissions and online social media posts. In summary:

- 48% of the written submissions objected to one or more components of the proposed Amending SEPP 2023.
- 21% of the submissions declared expectations and desires around the delivery of Penrith Lakes as public recreational land and did not make any other specific comments.
- 31% of the written submissions supported one or more components of the proposed Amending SEPP 2023 and/or provided conditions to support components of the proposed Amending SEPP 2023.

The broad themes contained in the submissions are depicted in **Figure 1** below. More specifically, there was general support for improving the useability of the Penrith Lakes Scheme and strengthening its provisions around solar access, view protection, flood evacuation, and State infrastructure provision. The submissions also acknowledged that the site-specific proposals present significant new economic, employment, and tourism opportunities for Western Sydney.

Key themes of concern centred on the encroachment and loss of recreational land, the commercialisation of Penrith Lakes, increased traffic and burden upon public infrastructure. Other concerns related to perceived negative impacts upon the environment, amenity and community lifestyle and flood risks. These themes were often raised when making a direct comment about individual site-specific land use proposals being considered under the Consultation Report.

Just under 50% of the submissions raised concerns that the proposed amendments will result in the loss of available park and recreation land within Penrith Lakes. This included 21% of the total submissions, which made no other comment in relation to the proposed Amending SEPP 2023.

The Heliport proposal also attracted a high level of interest with 40% of all submissions received objecting to the matter. The primary site-specific concerns related to the potential for helicopter flight paths and noise emissions to impact amenity within Penrith Lakes, surrounding communities, recreation land, and biodiversity values.

Traffic concerns were also widespread and raised as a broad issue for Penrith Lakes, as well as in the submissions that made specific comment concerning various site-specific proposals.

Feedback to the Facebook campaign was a mixture of negative and neutral. Negative comments criticised the Government would not listen to community feedback. Neutral comments overwhelmingly related to the desire for Penrith Lakes to be retained as recreational parkland.

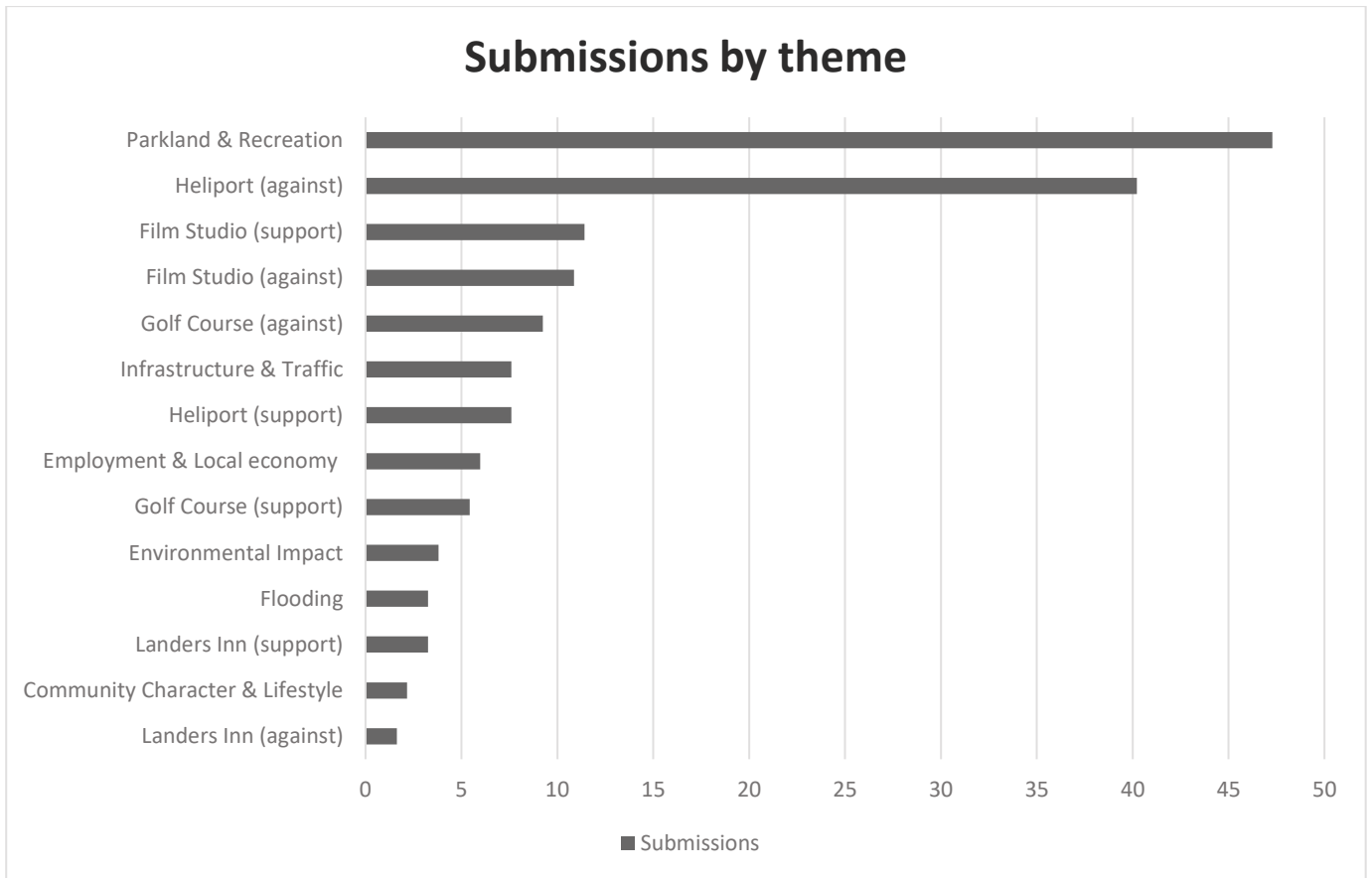


Figure 1 Submissions by theme

4. Consideration of Issues

This section relates to some of the components of the Amending SEPP 2023 as outlined under Section 2 of this report. This section discusses the key issues raised in submissions from the community and government agencies. A response has been provided to all submissions in Appendix A. Post exhibition changes are referred to in this section however are discussed in detail in Section 6 of this report.

4.1 Community submissions

169 submissions were received from members of the community. The key themes are summarised and a response provided as to how the issues were considered within the finalisation of the Amending SEPP 2023.

In addition to the themes discussed below, there were two themes (flooding, evacuation and traffic congestion) raised by the community that were also raised within Government agency submissions. These concerns are addressed under Section 4.2 Agency submissions.

4.1.1 Loss of recreational land and commercialisation of Penrith Lakes

A number of submissions expressed that the parklands should be protected for public and community use and embellished to provide a range of recreational opportunities both in and around the lakes, as previously promised to the community. Submissions saw the development of Penrith Lakes as public parklands being threatened and compromised as the exhibited proposals represented greater private investment on the site.

Many submissions also raised this concern in relation to the proposal to zone additional land as 'Parkland' to facilitate a private golf-course proposal.

There is a clear community expectation that significant public parkland will be delivered through the planning and development of Penrith Lakes and made available to the public in the near future.

Department Response

The community's expectation for public parkland to be made available at Penrith Lakes is acknowledged and is in line with the NSW Government's overall vision for Penrith Lakes to be a signature piece of regional open space in the Western Parkland City, with a strong world-class sporting and recreational identity.

The NSW Government is progressively taking ownership of land at Penrith Lakes. The Planning Ministerial Corporation (PMC) as the interim land owner for land dedicated to the NSW Government owns approximately 570 hectares (ha) of the almost 2,000 ha site. Land owned by PMC includes the whitewater stadium, regatta centre, lakes bordering Castlereagh Road, Hadley Park and most recently, Wildlife Lake (dedicated in 2022).

There are some areas that are open to the public such as the Penrith Whitewater Stadium and Sydney International Regatta Centre. The Whitewater stadium is usually available from September to June for whitewater rafting, kayaking, swiftwater rescue training and hosts local, national and international slalom competitions. The Regatta Centre is an event venue however is open to the public for public recreation such as walking and cycling where possible on non-event days.

Currently, Penrith Lakes as a whole is unable to be opened to the public due to the requirement for the land to be remediated from a former quarry site so it is suitable for future use. This includes both the lakes and surrounding land. Considering the amount of land, including lake area, within the Penrith Lakes Scheme the remediation process will take some time to complete.

Further work is required to establish the movement and open space strategies for the broader site. To date, there has been work done on the future use of Penrith Lakes including a draft masterplan prepared by the former NSW Office of Communities in 2013 which was exhibited for community comment but not adopted. The Department commenced a visioning exercise for Penrith Lakes in

2022 in consultation with key stakeholders and was placed on hold pending the NSW Government's Flood Inquiry and the Department's Flood Advisory Panel's review of this project.

This work can be undertaken as part of a development application or as a separate, strategic exercise that can form future development applications. Following the making of the Amending SEPP 2023, the Department will discuss with key agencies the future of the master planning work.

In addition, the adopted Water Management Plan (available on the Department's website) for Penrith Lakes identified some potential end uses for the lakes. All lakes (Main Lakes A & B), Regatta Lake, Treatment Lake (Duralia Lake), Wildlife Lake, Detention Basin will have aesthetic value as an end use. Specific end uses for fishing will only be possible for the Main Lakes A & B, and the Wildlife Lake will be used for wildlife habitat including aquatic and shoreline habitat. Other end uses are outlined in the table below.

Table 2 Adopted Penrith Lakes Water Management Plan Stage 2

LAKE	END WATER USE
Main Lakes A & B	Water surface sports – primary and secondary contact
Regatta Lake	Lake water management Water surface sports – secondary contact
Treatment Lake (Duralia Lake)	Lake water management Water surface sports – secondary
Wildlife Lake	Lake water management Scientific and educational
Detention Basin	Lake water management

While the timeframe for the land to become publicly accessible is not known at this stage, the NSW Government is committed to its overall vision for Penrith Lakes as a signature piece of regional open space.

It is important to note that Penrith Lakes includes land zoned for employment and tourism purposes, and the heliport, office premises and film production precinct proposals are located on tourism zoned land. The community's concern regarding the zoning of land to support a private golf course are noted, however it is considered that this use should not necessarily prohibit public access through the site. Any future development application for this use will need to demonstrate how pedestrians and vehicles will move through the site and have access between destinations and attractions, including the waterfront and foreshore. It is therefore proposed to allow for a golf course use in part of the site.

4.1.2 Amenity impacts relating to heliport amendment

There was limited support for the heliport amendment with over 40% of all submissions received raised concern about this proposal. Concerns related to the impact of the operation of the heliport on the amenity on surrounding communities, environment and world heritage protected areas. Submissions also questioned why the heliport couldn't be located on another site.

There was a concern that mechanisms to enforce and manage flight paths were not adequate. Many of the submissions indicated that alternative sites should be considered for Sydney Helicopters' relocation.

The submissions that supported the amendment acknowledged benefits related to improved bushfire management as well as employment and tourism opportunities.

Department Response

The Consultation report outlined that a number of environmental, built form and operational considerations that would be assessed at the development application stage for the heliport. Since the exhibition of this Exhibited SEPP, a 'helipad' proposal on the same site as the proposed 'heliport' amendment has been assessed by the Department and approved by the Independent Planning Commission (the Commission) on 3 August 2022.

If the 'heliport' proposal was to proceed, a separate development application would be required. However, the assessment and conditions placed on the 'helipad' approval remain relevant as a 'helipad' and 'heliport' are very similar. The only difference is a heliport is a place open to the public used for the taking off and landing of helicopters.

The Department's assessment report considered by the Commission in its determination of the 'helipad' responded to concerns about the potential impacts of the proposal in urban and national park areas of the Blue Mountains. The following comments were made:

- The report states the Department is unable to specify where helicopters are able to fly outside of take-off and landing manoeuvres as these matters are subject to civil aviation regulations.
- The Civil Aviation Regulations state that helicopter pilots must not operate at altitudes lower than 1000 feet above ground level in urban areas and 500 feet in non-urban areas, unless in the act of taking off or landing, or under other limited circumstances requiring CASA approval.
- The Department is unaware of any noise criteria for wilderness areas.

In its approval, the Commission set strict conditions which reduce the proposed hours of operation, set an annual limit for the total number of helicopter flights, limit take-off and landing activities in the vicinity of the closest residential properties, and provide a mechanism for additional acoustic mitigation measures at those properties.

To further ameliorate amenity concerns, the Department approved a modification application which precludes certain types of flights over the Blue Mountains Local Government Area, ensure certain types of flights fly at a minimum altitude of 2,000 feet above the LGA, and that the Blue Mountains Fly Neighbourly Advice is followed. The amendments also require recording of the minimum flying altitude.

The strict conditions set by both the Commission and the Department through the modification adequately address the amenity concerns raised by the community.

Other concerns relating to the 'heliport' proposal question the site selection and why the heliport cannot be located in the new airport. The site selection process was undertaken by the proponent. The 'helipad' approval by the Commission demonstrates a helipad is appropriate for this location, subject to complying with the conditions of consent.

4.1.3 Amenity impacts relating to film production precinct

The submissions which commented on this development proposal were evenly split between support and objecting to the proposal.

The submissions that indicated support towards the proposal acknowledged its significant potential for creating new local industries, increasing commercial activity and education opportunities in Western Sydney and at the base of the Blue Mountains. However, submissions acknowledged that more detail and environmental assessment will be required through the development application process to ensure matters such as flood evacuation, urban design, visual impacts, landscaping, managing land use interfaces and local infrastructure were appropriately addressed.

The submissions which opposed the proposal were concerned with the lack of detail contained in the Consultation Paper and raised concern regarding potential negative impacts such as increased

traffic, flood risk, noise and amenity loss for other users within Penrith Lakes and environmental degradation. These submissions also raised concern that the land was being lost to private development as opposed to being established for public recreation and environmental parkland.

Department Response

Amenity concerns raised in the submissions are noted.

The film production precinct amendment is not proceeding as part of the Amending SEPP 2023. Further detail is provided in Section 5 Flood Advisory Panel and Section 6 Post-Exhibition amendments.

4.2 Agencies submissions

14 submissions were received from Government and utility authorities. Submissions were received from:

- Blue Mountains City Council
- Civil Aviation Safety Authority
- Department of Infrastructure, Transport, Regional Development and Communication.
- Department of Primary Industries
- Department of Primary Industries (Fisheries)
- Environment, Energy and Science (EES)
- Office of Sport
- Nepean Blue Mountains Health
- Penrith City Council
- State Emergency Service (SES)
- Sydney Water
- Transport for NSW
- Tafe NSW
- Western Sydney Airport

Appendix A outlines the issues raised in each submission and the Department's response. As outlined in Section 2.4 of this report, the consultation paper was referred to two State agencies under Section 3.25 of the Act 'Special consultation procedures concerning threatened species'.

DPI Fisheries was satisfied that the proposal would not affect critical habitat or threatened species, populations or ecological communities, or their habitats, as listed under the Fisheries Management Act.

Environment, Energy and Science division of the Department identified significant amounts of the endangered ecological community River Flat Eucalypt Forest within the private golf course site and suggested this area be subject to a Biodiversity Development Assessment Report and zoned Environmental Conservation. As discussed in Section 6 of this report, the area identified as containing the significant vegetation has been excluded from the golf course area.

This section focuses on the key themes and how they were considered within the finalisation of the Amending SEPP 2023.

4.2.1 Flooding and Evacuation

Concerns were raised by the community and Government agencies regarding the proposal's potential to increase the population exposed to flooding risk within Penrith Lakes and requested greater flood impact analysis to be undertaken to support the development proposals.

NSW SES provided two submissions relating to the Exhibited SEPP. Both submissions raised significant concerns regarding the evacuation capacity for Penrith Lakes. Due to the speed, depth and duration of flooding at this site, people will need to self-evacuate by private vehicle. The cumulative effect of current and future development of the site and implications of this development on the regional evacuation routes need to be considered to ensure the proposal does not result in an increased risk to life during a flood evacuation. The capacity of the road network to cater for flood evacuation events should be carefully considered.

In addition to the above, SES' first submission dated September 2021, provided the following specific advice:

- The relocation of the office is not an issue for evacuation capacity.
- The heliport would not be a significant issue for evacuation capacity.
- Landers Inn proposal may not have a significant impact on evacuation capacity subject to the intended use
- Film production precinct generates approximately 2,000 vehicles. There would need to be an assessment of the cumulative impact on this precinct on evacuation capacity.
- Private golf course. There would need to be an assessment of the cumulative impact of this precinct on evacuation capacity given the current proposal for development in the area.

SES in its second submission dated February 2022 advised that, in conjunction with other State agencies including the Department, it ran scenarios of additional vehicles as a result of proposed development within Penrith Lakes. This approach was taken to assess the cumulative impact of additional commercial development on evacuation capacity.

With current warning timeframes, an additional 1,000 vehicles in Penrith Lakes (at the southern end) can be evacuated without impinging on the evacuation capacity of nearby areas. SES advised with an approved early warning timeframe, an additional 3,500 vehicles in Penrith Lakes (at the southern end) can be evacuated within the extended warning timeframe without impinging on the evacuation capacity of the nearby areas. To ensure that the number of vehicles needing evacuation does not exceed the capacity of the regional road evacuation routes, a vehicle cap would be required in the form of maximum parking rates.

Department response

The SES advice is read in conjunction with the advice from the Department's Flood Advisory Panel (Section 5 of this report) which has been considered within the Department's post-exhibition changes (Section 6 of this report).

Flood risk is the primary planning consideration for Penrith Lakes, as it is within the Hawkesbury - Nepean floodplain. The Penrith Lakes Scheme is at a critical congestion point in the floodplain's evacuation road network, with limited capacity for evacuation from within Penrith Lakes when evacuation orders are issued.

It is noted that following SES' advice, the NSW Land and Environment Court approved the Nepean Business Park development in March 2022. As part of the Flood Emergency Response Plan, the Business Park will have a vehicle cap of 1,000 vehicles when a certain flood trigger is reached.

As a result of this approval, there is no evacuation capacity within current warning timeframes for additional development at Penrith Lakes. Further development is possible with early evacuation measures but only up to a maximum of 3,500 vehicles. Currently there is no adopted early evacuation guideline that outlines the considerations to be included within an early evacuation plan. As a post-exhibition amendment, in Amending SEPP 2023, the Department has strengthened the requirements for a development to consider flood planning and evacuation at development assessment stage.

Given the flood and evacuation risks associated with this proposal, and the content of submissions, the Department referred the draft SEPP to the Flood Advisory Panel. The Panel was informed by a

Technical Advisory Group that included SES and Transport for NSW. Refer to Section 5 of this report for more information about the Panel's recommendations, and how the Amending SEPP is consistent with those recommendations.

4.2.2 Traffic and Transport

Transport for NSW (TfNSW) recommend that the proposed amendments to the SEPP to permit further traffic generating uses not be finalised until the cumulative Transport Impact Assessment is completed, a supporting infrastructure implementation plan and funding mechanism is in place, and an appropriate sustainable development cap identified.

Concern was expressed that existing and proposed development would likely require upgrades to Castlereagh Road and involve third party land acquisition. It is not clear whether the developer would be able to provide the necessary road upgrades to support access to the development.

The impact of the proposed development on the cumulative evacuation tasks across the Hawkesbury-Nepean Valley should be assessed to ensure that the proposal does not result in increased risk to life during a flood evacuation.

Department response

The Department commissioned a traffic and transport investigation for the Penrith Lakes Scheme to investigate the impacts of future development and consider its infrastructure requirements. The findings of this report represent a point in time and will be considered as part of the broader masterplan for the site.

The Amending SEPP 2023 contains low traffic generating proposals (outlined in Section 6 of this report) and are unlikely to have a significant impact on the local road network and intersections. The traffic impact associated with these uses will be better assessed in detail at the development application stage. The Amending SEPP 2023 includes requirements for development proposals to consider the impact of the development on existing State public infrastructure and requires that the Planning Secretary provide concurrence on development applications, only where they are satisfied that there is infrastructure in place to support the development.

In regards to the impact of the development on evacuation capacity across the Hawkesbury-Nepean Valley Floodplain, this is addressed within the Flood Advisory Panel report discussed in Section 5.

5. Flood Advisory Panel

The 2022 NSW Flood Inquiry recommended a review of planning rules for developing flood-prone land and the importance of NSW taking a greater proactive, risk-based approach to flooding and land-use planning decisions. Part of this risk-based approach included the recommendation of developing new flood planning levels for high-risk catchments to be determined by a new NSW Reconstruction Authority, which could take several years to complete.

Part of the Department's response was to establish Flood Advisory Panels to provide expert advice on certain proposals under assessment, including the Penrith Lakes Exhibited SEPP and the Phase 1 – Southbank Proposal.

The Flood Panel's advice was issued to the Department's assessment team for consideration in finalising the Amending SEPP 2023.

5.1 Advice

The Flood Advisory Panel advice was issued on 30 March 2023 (**Appendix B**). The relevant advice to be considered in the finalisation of this SEPP amendment includes:

- The Panel understands that the development potential of the Site is directly linked to evacuation capacity and that significant investment is likely to be required if the full potential of the Site is to be realised.
- The Panel supports the progression of the proposed uses of lower intensity, such as the golf course, Landers Inn, office relocation and the heliport, that do not significantly impact the available evacuation capacity.
- Progression of the remaining SEPP amendments, including the proposals for Southbank and the Film Production Precinct should be subject to addressing the flood-related issues, including:
 - additional flood modelling that accounts for greater precipitation and flooding as a result of climate change, is calibrated with the most recent flood events and includes hazard mapping for each event
 - a cumulative impact assessment of flood behaviour taking account of future developments and any proposed reprofiling of the Site
 - analysis of cumulative traffic impacts, taking into account traffic volumes, choke points and converging traffic from surrounding areas, such as the Richmond/Windsor floodplain and Penrith
 - consideration of flash flooding and any associated impacts on evacuation timing and routes
 - provisions to implement development controls for resilient building design
 - a detailed analysis of development caps, infrastructure schedule, staging plan, cost estimates and funding agreements to enable supporting infrastructure that is critical to emergency management and the evacuation capacity of the Site and its impact on regional evacuation capacity
 - a geotechnical assessment be undertaken to ascertain the stability of the levees and
 - future buildings under the potential flood flows in events up to and including the PMF.
- The Panel recommends that, given the flood and evacuation issues at the Site, other low intensity development proposals could be investigated, subject to resolving SES's concerns regarding early evacuation of the site.

- The Panel strongly recommends any proposed early warning system be reviewed and endorsed by relevant emergency agencies and TfNSW prior to finalisation of any rezoning for higher intensity uses.
- Any development in addition to the golf course (as proposed), the heliport, the office relocation and Landers Inn should be subject to the implementation of a satisfactory early evacuation warning system and an initial overall Site capacity cap of 3,500 (including vehicles associated with the existing development and supported lower intensive uses).
- The Panel advises that any future development will need to be determined with respect to the ability for safe evacuation, and ensure the uses do not include residential accommodation services, either temporary or permanent. The evacuation capacity should be considered on the basis of the existing road network and committed infrastructure funding (by Council and/or the State Government), to the satisfaction of the Department.
- The Panel strongly advises against an intensification of uses that would require extended occupation, including residential and tourist accommodation uses that would further impact on evacuation capability.

Department response

The Department has considered the above advice in recommending post exhibition changes (Section 6 of this report). The Department notes the substantial amount of work required to support the consideration of a higher intensity development on the site, such as the film production precinct.

The Amending SEPP 2023 only permits low intensity development which is suitable for the site in the context of evacuation capacity. Future amendments to the SEPP may be supportable following the additional flood work being undertaken in consultation with the relevant agencies.

6. Post-exhibition amendments

The Department is making a number of post exhibition amendments which are outlined in this section of the report.

6.1 Amendments not proceeding

The following items are not proceeding as part of the Amending SEPP 2023:

- The listing of 'Landers Inn' as a local heritage item within the relevant Schedule of the SEPP(Precincts – Western Parkland City).

Landers Inn is a 19th century inn and sandstone barn. The *Penrith Local Environmental Plan 1991 (Environmental Heritage Conservation)* (Penrith LEP 1991) is the environmental planning instrument that lists the sandstone stables at Landers Inn as a heritage item 'Item C6: Ruins of stone stables'.

The intent of the proposed amendment to list Landers Inn within the SEPP as a local heritage item was to enable the proponent to utilise provisions under c15.33 Heritage Conservation to permit tourism and commercial uses subject to development consent. It is noted that similar conservation incentives exist within the Penrith LEP 1991.

There appears to be uncertainty regarding which structures within Landers Inn are of heritage significance as only the stables are listed in Penrith LEP 1991. Further investigation is required prior to listing the Inn as a local heritage item. It is more appropriate for this heritage investigation to form part of the masterplanning review of Penrith Lakes along with all the other heritage items on site.

- Additional permitted uses to facilitate a film production precinct.

The exhibited consultation paper proposed an additional permitted use to enable a film production precinct over approximately 42 hectares of tourism zoned land. The Additional Permitted Use provision would include *Light Industry, High Technology Industry, Tourist and Visitor Accommodation, Educational Establishment, Food and Drink Premises and Office Premises*.

The Flood Advisory Panel considered this proposal as a high intensity use and recommended additional work be completed to determine whether this use is appropriate for the site. This additional work included flood modelling, cumulative traffic impact assessment, evacuation modelling, geotechnical assessment and infrastructure assessment work (see Section 5 above for more details). This amendment is not proceeding as part of Amending SEPP 2023.

- Solar access provisions

The exhibited consultation paper stated the SEPP amendment would contain provisions protecting solar access and minimise overshadowing to public open space, recreation areas, heritage items and adjoining properties.

Penrith Lakes Development Control Plan (Stage 1) includes controls protecting solar access to public open space, recreation areas, heritage items and adjoining properties. Including provisions in the SEPP require a level of justification and specific detail to ensure there is no ambiguity on how a development proposal can achieve solar access requirements. It is more appropriate for these requirements to be considered as part of the master planning work which will identify the public open space, recreation areas and heritage items.

No solar access provisions are included within the SEPP amendment. However, a general control requiring development not impact the amenity of the foreshore is included in the Amending SEPP 2023.

6.2 Altered amendments

During the process of finalisation and in response to submissions, the Department has altered the following amendments:

- Satisfactory Arrangements clause

The exhibited consultation paper proposed to amend the existing satisfactory arrangements clause in the SEPP to include all development proposals within a 'Urban Release Area' as defined in Penrith Lakes. Currently the clause is only worded to require subdivisions to consider this clause.

In response to submissions, the SEPP amendment will instead include a clause requiring a consent authority, prior to issuing of development consent, to obtain concurrence of the Planning Secretary. In deciding whether to grant concurrence, the Planning Secretary must consider:

- the impact of the development (and cumulative impact) on the existing designated State public infrastructure and the need for additional designated State public infrastructure,
- the steps taken to address the impacts, including whether a planning agreement has been, or will be, entered into contributing to designated State public infrastructure.

In addition, the Planning Secretary must also consult with the public authorities that the Planning Secretary considers relevant to the development.

- Flood planning provisions

The exhibited consultation report identified that development under other SEPPs such as SEPP (Exempt and Complying Development Codes) 2008 and SEPP(Transport and Infrastructure) 2021 (formerly SEPP Educational Establishments and Childcare Facilities 2017) are not required to consider flood evacuation provisions under Clause 5.38 Flood Planning of the SEPP(Precinct – Western Parkland City) 2021.

The consultation report proposed the existing flood management provisions be amended to ensure flood evacuation is being considered for any land use proposal that requires development consent. The clause would also seek to designate Penrith Lakes as a Protected Area – Evacuation Constraint, which would preclude new land uses being established within Penrith Lakes through complying development certificate processes and without appropriate consideration of flood evacuation.

To require development under different SEPPs such as SEPP (Transport and Infrastructure)2021 to consider flood evacuation provisions applying to the Penrith Lakes Scheme, an amendment to the relevant SEPPs would be required. The Department is not proceeding with amending other SEPPs at this time. As a result of the NSW Flood Inquiry and Flood Advisory Panel advice, the Department has reviewed the existing flood planning provisions.

The existing flood planning provisions in the SEPP apply to land under the flood planning level being *'the level of a 1:100 ARI (average recurrence interval) flood event plus 1 metre freeboard'*. The existing flood planning provisions includes:

(1) Objectives:

- a. to minimise the flood risk to life and property associated with the use of the land,
- 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,
- c. to avoid significant adverse impacts on flood behaviour and the environment.

(2) A consent authority must be satisfied that a development:

- a. is compatible with the flood hazard of the land, and
- b. is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- c. incorporates appropriate measures to manage risk to life from flood, and

- d. is not likely to 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
 - e. is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.
- (3) Development consent must not be granted for development on land zoned Employment, Residential or Tourism unless the consent authority is satisfied that the development will not adversely affect the safe and effective evacuation of the land and the surrounding area.

To respond to the site's flooding and evacuation challenges, the flood planning and evacuation considerations for development within Penrith Lakes will be strengthened. New flood planning provisions will be inserted and the application of all flood planning provisions (including the above mentioned provisions) will apply to land below the level of the probable maximum flood (PMF). The above provisions have been reviewed with amendments proposed within the Amending SEPP 2023 to add a degree of flexibility within evacuation capacity constraints to the matters a consent authority must be satisfied of when assessing a development proposal.

The new provisions are based on the *Standard Instrument – Principal Local Environmental Plan* (Standard Instrument) clauses for Flood planning (clause 5.21) and Special Flood considerations (clause 5.22). The Flood planning clause is a compulsory clause for Local Environmental Plans. The SEPP(Precincts – Western Parkland City) Penrith Lakes scheme has not been updated to include these provisions.

The Amending SEPP 2023 includes the following from Clause 5.21 Flood Planning of the Standard Instrument.

- Objectives of this clause:
 - to enable the safe occupation and efficient evacuation of people in the event of a flood.
- The consent authority must consider the following matters when deciding to grant consent:
 - Whether the building will be affected by projected changes to flood behaviour resulting from climate change
 - The intended design and scale of the buildings resulting from the development
 - 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
 - The potential to modify, relocate or remove the building if the Hawkesbury Nepean floodplain is impacted by flooding

Clause 5.22 Special Flood Considerations is an optional clause for Local Environmental Plans. In 2021, 32 councils self-nominated to amend their LEPs by inserting the special flood considerations clause. Earlier this year, the Department exhibited an Explanation of Intended Effect seeking feedback on whether to include this clause in LEPs of the 32 Councils and in addition, sought feedback from councils on applying the clause to all NSW councils. This would either be through inserting a clause in all NSW council LEPs or inserting a clause in the SEPP(Resilience and Hazards) 2021. The exhibition has closed and the Department is considering feedback.

The Amending SEPP 2023 includes the following from Clause 5.22 Special Flood Considerations of the Standard Instrument. The matters a consent authority must be satisfied of below when assessing a development proposal have been amended to include a degree of flexibility within the evacuation constraints.

- Objectives of this clause:
 - to protect the operational capacity of emergency response facilities and critical infrastructure during flood events.
- The consent authority must be satisfied of the following matters when deciding to grant consent:

- That a development will not significantly adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of evacuation routes for the Hawkesbury Nepean floodplain in the event of a flood.

The Amending SEPP 2023 retains the intent of Standard Instrument provisions and are tailored specifically to Penrith Lakes. The amendments to the Standard Instrument provisions for Penrith Lakes are outlined below:

- The Standard Instrument clauses refer to ‘surrounding area’. This has been clarified in the Amending SEPP 2023 to mean the ‘Hawkesbury Nepean Floodplain’.
- The Amending SEPP 2023 enables a degree of flexibility within evacuation capacity constraints in the provisions a consent authority must be satisfied of when approving a development.
- Clause 5.21 in the Standard Instrument only applies to the Flood Planning Area. In the existing Penrith Lakes SEPP, this equates to ‘the level of a 1:100 average recurrence interval flood event plus 1 metre freeboard’. The Amending SEPP 2023 will extend the application of the provisions in Clause 5.21 to all land below the probable maximum flood in the Penrith Lakes Scheme.
- Clause 5.22 in the Standard Instrument only applies to sensitive and hazardous development on land between the flood planning area and the probable maximum flood, or if the consent authority considers the land to be in the event of a flood may cause a particular risk to life and require the evacuation of people or other safety considerations.

The two options for applying Clause 5.22 provisions provided in the Standard Instrument provisions will not be provided in Penrith Lakes via the Amending SEPP 2023. The Amending SEPP 2023 applies all Clause 5.22 provisions to land below the level of the probable maximum flood. The Department is of the view that the land in an event of a flood may cause a particular risk to life and require the evacuation of people or other safety considerations and therefore the clause should apply to all land below the level of the probable maximum flood.

The extension of existing flood planning provisions and extension of Standard Instrument Clause 5.21 flood planning provisions to land below the probable maximum flood is justified considering the flood affection and behaviour on the site and evacuation constraints. It is not intended for this tailored approach to become a framework for other environmental planning instruments in the Hawkesbury-Nepean floodplain.

- Rezoning ‘unzoned’ land to ‘Parkland’ to permit a private golf course.

The exhibited consultation paper proposed an area of unzoned land that sits to the east and north of the Nepean River and South of the International Regatta Centre be zoned ‘Parkland’ to facilitate a new private golf course and associated facilities. The proposed area for the private golf course is estimated at 70 hectares.

The Flood Advisory Panel identified a golf course as a low intensity use that could proceed without further work, however noted that the Panel had not considered this use to include a function or conference facility that could significantly increase parking rates. The Department cannot support a function of conference facility associated with the golf course due to evacuation risk.

The golf course area and boundaries have been refined. It excludes the land identified by the Environment and Heritage Group as containing the endangered ecological community River Flat Eucalypt Forest. The northern boundary of the golf course has been moved further south to exclude an existing connection between the Southern Wetlands and Quarantine Lake to allow the Government to maintain the Southern Wetlands in accordance with the Penrith Lakes Water Management Plan.

In addition, the land will not be rezoned parkland. The land will remain unzoned but have a specific use identified as permissible being a golf course. This is to ensure a proposal on this land remains consistent with the Flood Advisory Panel advice for a low intensity use.

6.3 New amendments

The Department is recommending the following new amendments:

- Development on Foreshore

A key consideration in the Department's assessment of the relocation of the office premise was the site's proximity to the lake's edge and the impact of such a development on future public access around the lake and to the lake's edge. Similarly for the golf course proposal, future public access around the lake, to the lake's edge and around the Southern Wetlands is important.

The Amending SEPP 2023 includes a new provision that sets up a framework for development to be located within proximity to a lake's edge subject to meeting certain design outcomes and public accessibility provisions. It is intended this provision would only apply to land in certain circumstances such as areas for high activity uses that front a lake's edge, such as the office premise or in the case of the golf course and wetland to allow critical public access.

This clause is supported by a SEPP map, Special Areas map, which maps the foreshore area. The foreshore area in relation to the office premise site and golf course site is mapped with a width of 50m.

The objectives of this provision are to:

- facilitate a continuous pedestrian pathway and cycleway along the foreshore,
- ensure public access to the waterway and foreshore is maintained,
- ensure development on land in the foreshore will not affect the amenity of the area,
- ensure development on land in the foreshore is appropriately located to ensure public access.

Development consent must not be granted to development on land identified on the Special Areas Map unless the consent authority is satisfied that:

- the provision of public access, including access for disabled persons, along the foreshore will not be compromised by the development, and
- the development will include a pedestrian pathway and a cycleway along the foreshore, and
- each building resulting from the development will be designed and orientated to provide active frontages to the pedestrian pathway along the foreshore, and
- access for maintenance of the natural lake system and the wetlands will not be compromised by the development.

It is noted that the existing Penrith Lakes DCP – Stage 1 identifies a 50m building setback for land in the Tourism West precinct (which includes the office relocation site). This clause permits development within the 50m building setback if the provisions regarding public access and building activation towards the pedestrian pathway are satisfied.

- Recreational Facility (Outdoor) and 'restaurants or cafes'

Specific land uses will be permitted on unzoned land and identified on a new Key Sites map:

- recreational facility (outdoor) for the purposes of a golf driving range or outdoor water recreational park will be permissible on part Lots 17 and 18 DP 1013504.
- restaurants or cafes will be permissible on Lot 3 DP 1255572 (Landers Inn)

The above Key Sites are identified in Figure 2 under Section 6.4 Amending SEPP 2023 section of this report. The area mapped for the golf driving range or outdoor water recreational park excludes significant vegetation.

The identification of these specific land uses are essentially additional permitted uses. However, as the parcels of land the proposals apply to are unzoned, it is appropriate they are shown on the Key Site map. The key site proposals will be informed by site specific development control plans that will provide for further environmental, urban design and transport management requirements.

The proposed new amendments are considered low intensity development and should not have a significant impact on the road network from an evacuation and traffic perspective.

The Panel advice noted that the Landers Inn site is some distance from the evacuation capacity impacts identified at the southern end of the site. The Panel agreed that some commercial tourism uses could be supported at the Landers Inn site, the Panel strongly advised against any intensification of uses that would require extended occupation, including residential and tourism accommodation uses that would further impact on evacuation capacity.

- Re-exhibition considerations

The Department undertook targeted consultation on the post exhibition amendments, submissions received are discussed in Section 6.5 of this report. The table below provides justification as to why re-exhibition is not required. For further details regarding amendments that have been altered following exhibition, or new amendments see Section 6.2 and Section 6.3 respectively of this report.

Table 3 Justification for post exhibition amendments – re-exhibition

Exhibited Amendment	Proposed Amendment	Exhibition not required
Expanded satisfactory arrangements clause – to capture all development	Planning Secretary Concurrence	Intent of the proposed amendment remains as exhibited. Change in clause due to drafting of the amendment.
Flood Planning provisions – require development under other SEPPs to consider Penrith Lakes flood planning provisions	Expanded Flood Planning provisions	Flood Planning provisions are a combination of clauses 5.21 and 5.22 within the Standard Instrument. Minor variation from these clauses to tailor to Penrith Lakes scheme.
Rezoning ‘unzoned’ land to ‘Parkland’ to permit a private golf course.	Specific land use identified being a golf course	Intent of the proposed amendment remains as exhibited. Amendment will ensure a proposal on this land remains consistent with the Flood Advisory Panel advice for a low intensity use.

Exhibited Amendment	Proposed Amendment	Exhibition not required
New amendments	Development on Foreshore provision	<p>A key consideration in the assessment of the relocation of the office premise was the proposed site's proximity to the lake's edge and the impact of such a development on future public access around the lake and to the lake's edge. This provision will require a development to provide public access to the lake's foreshore.</p> <p>This new provision also applies to the golf course site where it borders a lake and the Southern Wetlands.</p>
	Restaurant/Cafe land use of Lander' Inn	<p>These uses are consistent with the aims of the Penrith Lakes scheme (outlined below table). They support the NSW Government's vision for Penrith Lakes, creating a place to play, relax, work and visit.</p>
	Golf driving range/outdoor recreational water park land use	<p>These uses are low intensity that should not have a significant impact on the road network from an evacuation and traffic perspective. Provisions in Amending SEPP 2023 will require development applications for these uses to consider evacuation capacity and whether there is necessary State infrastructure in place to support development.</p> <p>The 'café or restaurant' use on Lot 3 DP1255572 'Landers Inn' was not included in Exhibited SEPP, but is in response to the need identified in the supporting material for the Exhibited SEPP seeking to secure the sustainable protection of this significant building.</p>

The above amendments don't warrant exhibition as they are consistent with the aims of the Penrith Lakes Scheme, specifically:

- to provide a development control process that ensures that environmental and technical matters are considered in the implementation of the Penrith Lakes Scheme,
- to identify certain land that may be rezoned for employment, environmental, parkland, residential, tourism and waterway purposes and land that will be rezoned as unzoned land,
- to ensure that the implementation of the Penrith Lakes Scheme does not detrimentally impact on the ongoing operation and use of Olympic legacy infrastructure, including the Sydney International Regatta Centre and the Penrith Whitewater Stadium.

6.4 Amending SEPP 2023

In summary the Amending SEPP 2023 will:

- Adopt new mapping under the Penrith Lakes Scheme to align zoning boundaries with current cadastre boundaries.
- Provide new provisions to protect key vistas and view corridors.
- Strengthen flood planning provisions applying to development on land below the level of a probable maximum flood within the Penrith Lakes Scheme.
- Ensure developments consider the impact (including cumulative of development with other development in the area) on existing, and the need for additional, State public infrastructure prior to development consent being issued.
- Permit new land uses at specific locations within the Penrith Lakes Scheme.
 - 'heliport' on Lot 2 DP 1013504;
 - 'office premises' on part Lot 2 DP236125;
 - 'recreation facility (outdoor) for the purposes of a golf driving range and an outdoor water recreational park on part Lots 12 and 18 DP 1013504;
 - Golf course over various lots;
 - Café or restaurant on Lot 3 DP 1255572 (Landers Inn).
- Development on the foreshore will require the provision of continuous public access along land identified as 'foreshore land'.

The location of the new land uses proposed in the Amending SEPP 2023 are shown in Figure 2 overleaf.



Figure 2 Amending SEPP 2023 – location of development proposals

6.5 Post-exhibition targeted consultation

In May 2023, the Department undertook targeted consultation with Penrith City Council, Transport for NSW and the proponent, Western Sydney Lakes, on the post exhibition amendments.

6.5.1 Western Sydney Lakes submission

WSL provided a response dated 18 May 2023 (**Appendix C1**). It encouraged the Department to make an urban instrument consistent with the Phase 1 – Southbank Proposal including employment, tourism and parkland zones subject to any conditions the Department reasonably considers to be required in respect of evacuation and flooding.

This letter also states it includes requirements for development that do not accord with other planning instruments for land in the Hawkesbury Nepean floodplain and the effect of this will be that even with limited use provided in Amending SEPP 2023, they are unlikely to ever be able to be realised.

Department response

The Amending SEPP 2023 includes flood planning provisions that are tailored to the Penrith Lakes site as outlined in Section 6.2 of this Report. The Amending SEPP 2023 will be one of the first SEPPs made with consideration given to the outcomes of the NSW Government's 2022 Flood Inquiry and advice from the Department's Flood Advisory Panel (Section 5 of this report).

Section 6.2 Altered Amendments of this report provides an explanation and justification for the proposed flood planning provisions. The Department does not agree that the effect of these provisions mean development is unlikely to be realised. The flood planning provisions includes a degree of flexibility so that development can be realised, achieve the objective of the Amending SEPP 2023 being small scale employment and tourism opportunities, and ensure that future development is appropriate given the site's flooding and evacuation constraints.

6.5.2 Penrith City Council submission

Penrith City Council provided a submission dated 24 May 2023 (**Appendix C2**). In summary, the submission seeks the following:

- The Amending SEPP 2023 does not fully explore the opportunities for development and public access. The site is a significant opportunity for Penrith and Western Sydney more broadly that is not being facilitated.
- A fundamental concern is the absence of a strategic master plan for the site.
- Community's expectation for the past 20 years is that Penrith Lakes will create a diverse open space parkland, including waterway facilities around the lakes, with pedestrian and cycle links from Penrith. How will this be facilitated and when?
- Council advocating for the release and discussion of the INSW Hawkesbury Nepean Flood Study, FEM2 evacuation modelling and the Flood Advisory Report.
- Seeking clarity around the drafting for the key sites and additional permitted uses provisions and the special area map in the Amending SEPP 2023.
- Clause 5.38 is ambiguous and drafted in a manner that makes it impossible to assess/determine development applications, thus precluding development within the Penrith Lakes Scheme. While drafted in line with the standard instrument, it seeks to introduce a higher threshold ('test') which is near on impossible to satisfy.
- Requests further opportunity to comment on the drafting of the amendment and immediate engagement on the vision and masterplan for the site.

Department response

The Amending SEPP 2023 introduces limited employment and tourism/recreation opportunities for Penrith Lakes. It does not fully explore the opportunities for development, parklands and public access, this will be guided by the masterplan. Section 4.1.1 of this report provides additional commentary on the masterplanning.

The legal drafting around the key sites and additional permitted use provisions is clarified under Section 6.3 of this report.

The flood planning provisions in the Amending SEPP 2023 are outlined in Section 6.2 of this report. As discussed under section 6.5.1, the Department does not agree that the effect of these provisions mean development is unlikely to be realised. The flood planning provisions includes a degree of flexibility so that development can be realised and achieve the objective of the Amending SEPP 2023 being small scale employment and tourism opportunities.

6.5.3 Transport for NSW submission

Transport for NSW provided a submission dated 22 May 2023 (**Appendix C3**) to the Amending SEPP 2023 raising the following concerns:

- Proposed amendments may be considered as relatively minor in nature.
- It is unclear if development already permissible on the site already exceeds network capacity.
- Postponing the assessment of traffic impacts until the development application stage through 'Satisfactory Arrangements' is likely to result in the SEPP permitting a level of development uplift on the site without understanding the traffic and transport impacts, infrastructure requirements, feasibility and funding issues that will create issues for all stakeholders.
- There is no current funding commitment in its forward works program for upgrades to Castlereagh Road north of Museum Drive.
- Transport's preference is to not pursue the amendments to the SEPP until an infrastructure implementation plan, funding mechanism, and sustainable development cap is identified.
- Transport requested specific amendments to the Amending SEPP 2023 cl 5.38 Flood Planning including inserting a reference to the Penrith Lakes Early Evacuation Guideline.
- Transport notes the proposed (and current) SEPP zoning map appears to zone the State classified section of Castlereagh Road between Cranebrook Road and Nepean Street as 'Environment'. This section of the existing Castlereagh Road corridor within the proposed SEPP zoning map should reflect a zoning of SP2 Infrastructure (Classified Road).
- Transport requests further consultation regarding the appropriate zoning of this corridor in any future proposed amendments to the SEPP.

Department response

The objectives of the Amending SEPP 2023 are to support the growth of small scale tourism/recreation and employment opportunities within the Penrith Lakes scheme. It is appropriate that the traffic impacts associated with these uses are determined and considered with the detailed concept design at the development application stage.

It is more appropriate that the infrastructure requirements, feasibility and funding is determined in conjunction with the masterplanning of the site.

The Department carried out targeted consultation of a draft Early Evacuation Guideline with key stakeholders. This guideline remains in draft form and it is not appropriate to reference an unpublished guideline within an environmental planning instrument. As the early evacuation guideline is not finalised, the Amending SEPP 2023 contains additional flood evacuation provisions as discussed in Section 6.2 of this report.

The 'environment' land use zone applying to the section of road between Cranebrook Road and Nepean Street can be reviewed in a future SEPP amendment.

6.5.4 Additional Section 3.25 Consultation

The Amending SEPP 2023 includes two land uses (restaurant and café (Landers Inn), and golf driving range and outdoor recreational water park) that weren't the subject to consultation with Environment and Heritage Group or Department of Primary Industries under Section 3.25 of the Act.

The Department has determined it can be concluded that the additional land uses will not adversely affect critical habitat or threatened species, populations or ecological communities, or their habitats for the following reasons:

- The submissions from these agencies in response to the 2021 exhibition didn't identify any critical habitat or threatened species, populations or ecological communities, or their habitats in proximity to the Landers Inn site.
- The Landers Inn site contains a locally heritage listed item (ruins of stone stables), other structures and a house. The site includes limited, scattered vegetation and is not adjoining the Lake.
- The site subject to the proposed golf driving range and outdoor water recreational park has been rehabilitated as part of the former quarry site. It is highly disturbed, excludes significant vegetation, and it does not adjoin a lake or existing water body.

7. Consistency with other Instruments, Acts and Policies

7.1 Greater Sydney Region Plan and Western City District Plan

The Greater Sydney Region Plan, dated October 2018, identifies a ‘Metropolis of Three Cities’ within Greater Sydney: the Western Parkland City, the Central River City and the Eastern Harbour City. Penrith Lakes is within the Western Parkland City and the Western City District Plan, dated October 2018, applies to the precinct. The District Plan establishes planning priorities and actions for growth and development.

The following planning priorities are relevant to Penrith Lakes:

- W9 Growing and strengthening the metropolitan cluster. Part of the site is located within the Greater Penrith cluster. The Amending SEPP 2023 is consistent with the action to grow the tourism economy and facilitate opportunities for a diverse economy that delivers jobs.
- W15 Increasing urban tree canopy cover and delivering Green Grid connections. Penrith Lakes is identified as a priority Green Grid corridor and identifies the site as creating a diverse open space parklands and waterway facilities around the lakes and along the Nepean River, with pedestrian and cycle links from Penrith and important links with the Great River Walk project. While the Amending SEPP 2023 doesn’t facilitate the delivery of open space parklands or pedestrian/cycle links identified in the District Plan, the nature and location of the proposals included within the SEPP amendment does not preclude the delivery of parklands in the future.
- W16 Protecting and enhancing scenic and cultural landscapes. The Amending SEPP 2023 includes provisions to protect key vistas and views including views to the Blue Mountains.
- W20 Adapting to the impacts of urban and natural hazards and climate change. The size and topography of the Hawkesbury-Nepean Valley means it has the greatest flood exposure in NSW. More stringent consideration is warranted for areas affected by the probable maximum flood as well as the 1:100 year flood. The following planning principles have been considered in the Amending SEPP 2023:
 - Applying flood related development controls on land between the 1 in 100 chance per year flood level and the PMF level.
 - Applying more flood-compatible building techniques and subdivision design for greater resilience to flooding.

Planning for any future development within Penrith Lakes will need to carefully consider the significant risk to people and property from flooding during extreme events. The District Plan contemplates some development (other than residential) may be considered if they avoid increasing risks to people and property, including evacuation impacts.

The Amending SEPP 2023 is consistent with this Planning Priority by applying flood planning provisions to land below the PMF level and requiring a consent authority to consider whether the design of the building incorporates measures to minimise the risk to life.

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

Chapter 5 Penrith Lakes Scheme is the relevant section of this SEPP. The aims of this Chapter are as follows:

- (a) To provide a development control process that ensures that environmental and technical matters are considered in the implementation of the Penrith Lakes Scheme,

- (b) To identify and protect items of the environmental heritage,
- (c) To identify certain land that may be rezoned for employment, environmental, parkland, residential, tourism and waterway purposes and land that will be rezoned as unzoned land,
- (d) To permit interim development that will not detrimentally impact on the implementation of the Penrith Lakes Scheme,
- (e) To ensure that the implementation of the Penrith Lakes Scheme does not detrimentally impact on the ongoing operation and use of Olympic legacy infrastructure, including the Sydney International Regatta Centre and the Penrith Whitewater Stadium.

The Amending SEPP 2023 has been prepared with consideration given to these aims.

The additional permitted uses of 'office premises' and 'heliport' are located within the Tourism zone. The objectives of this zone are as follows:

- To provide for a variety of tourist-orientated development and related uses.
- To provide for diverse tourist and visitor accommodation and activities that are compatible with the promotion of tourism in Penrith that utilises the public assets of the Penrith Lakes Scheme.
- To create an appropriate scale that maintains important views to and from the Nepean River as well as the Blue Mountains escarpment, while also improving important connections to the Penrith City Centre and the Nepean River.

The 'office premises' will provide the administrative infrastructure necessary to facilitate broader development and investment throughout the Tourism zone and wider Penrith Lakes. The 'heliport' will provide a tourism element to the approved helipad and promote tourism within the Penrith Lakes Scheme.

7.3 Section 9.1 Ministerial Directions for Plan Making

The Amending SEPP 2023 is not strictly required to comply with the Minister's directions as they apply only to the preparation of Local Environmental Plans. However, an assessment of consistency with the relevant directions issued by the Minister under Section 9.1 of the Environmental Planning and Assessment Act 1979 has still been undertaken.

Table 4 Section 9.1 Directions – consistency

Section 9.1 Direction	Statement of Consistency
Focus area 1: Planning Systems	
1.1 Implementation of Regional Plans	The Amending SEPP 2023 is consistent with A Metropolis of Three Cities and the Western City District Plan. See Section 7.1 of this report.
1.3 Approval and Referral Requirements	The Amending SEPP 2023 contains a concurrence provision of the Planning Secretary. The inclusion of this provision has been approved by the Department.
Focus area 4: Resilience and Hazards	
4.1 Flooding	The Amending SEPP 2023 seeks to include additional flood planning provisions for development on land up to the probable maximum flood level. The Amending SEPP 2023 will facilitate low intensity employment, tourism and hospital development only that will have minimal impact on the evacuation network in the event of the flood.

Section 9.1 Direction	Statement of Consistency
4.3 Planning for Bushfire Protection	<p>Penrith City Council's Bushfire Prone Lane map identifies the land containing the golf driving range and outdoor water recreational park as bush fire prone land – Vegetation Category 2. RFS defines Vegetation Category 2 as rainforests, lower risk vegetation parcels. Lower vegetation parcels represent a lower bush fire risk to surrounding development.</p> <p>The land subject to the golf driving range and outdoor water recreational park is highly modified due to it being rehabilitated from a former quarry site. Historical quarry activity cleared all extant landscape elements and vegetation from Penrith Lakes and remnant native vegetation is absent from the Phase 1 Southbank Proposal. There is vegetation on the southern border of this site.</p> <p>It is appropriate for referral to the NSW RFS to occur as part of a development application.</p> <p>The golf course land is also mapped containing bushfire prone land – Vegetation Category 2. Considering the nature of this development, it is appropriate for referral to the NSW RFS to occur as part of a development application.</p>
4.4 Remediation of Contaminated Land	<p>A Land Suitability Statement was submitted to support the Phase 1 – Southbank Proposal. It confirmed following a review of the validation report and subsequent site suitability report that the 'Phase 1' area, which includes the land subject to the golf driving range and outdoor water recreational park proposals, as suitable as 'residential with access to soil'. The Land Suitability Statement concludes that the proposed development area of 'Phase 1' is suitable to support the proposed developments.</p> <p>Land subject to the heliport and office proposals was zoned Tourism in 2017.</p> <p>Land subject to the restaurant/café use (Landers Inn) has a heritage listed item on the site and would not have been used as part of the quarry operation.</p> <p>Land subject to the golf course is unzoned land. The request for rezoning was not supported by a contamination report. Remediation of the land within the quarry site is subject to a strict process as outlined in the Deed of Agreement between Penrith Lakes Development Corporation and the NSW Government. The land will be remediated in accordance with the requirements of this Deed.</p>
4.5 Acid Sulfate Soils	Land is not identified as containing acid sulfate soils.
Focus Area 5: Transport and Infrastructure	
5.1 Integrated Land Use and Transport	The Amending SEPP 2023 will increase job supply in Western Sydney, closer to worker's homes.