

DEVELOPMENT APPLICATION:
Proposed New Race Stalls
Lot 12 in DP 1176987
Nos 127-141 Station Street, Penrith

Prepared For:



July 2014

Preparation, Review and Authorisation

Revision No.	Date	Prepared By:	Reviewed By:	Approved for issue by:
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Document Certification

This report has been developed based on agreed requirements as understood by Michael Brown Planning Strategies Pty Ltd at the time of investigation. It applies only to a specific task on the lands nominated. Other interpretations should not be made, including changes in scale or application to other projects.

Any recommendations contained in this report are based on an honest appraisal of the opportunities and constraints that existed at the site at the time of investigation, subject to the limited scope and resources available. Within the confines of the above statements and to the best of my knowledge, this report does not contain any incomplete or misleading information.

SIGNED:

Position: Town Planner

Date: 2/07/14

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A: Reduced architectural plans

Executive Summary

This Statement of Environmental Effects (SoEE) has been prepared by Michael Brown Planning Strategies Pty Ltd on behalf of Harness Racing NSW. This report should be read in conjunction with development plans prepared by **McKinnon Design** and supporting technical documentation appended to this report (refer to **Table 1**).

The new race stalls will replace the existing stalls and provide accommodation for up to 97 horses on race days. Eighty two of the stalls will be within the building, with the remaining 15 being external as tie-up stalls (under cover). The building will provide all-weather protection for participants. The proposal will also involve the demolition of a number of existing structures and a new perimeter road along the Ransley Street frontage. A covered walkway will be constructed linking the stable complex to the existing swab bay.

The SoEE evaluates the proposed development for its compliance with the statutory controls embodied in various statutory planning instruments. This Statement demonstrates that the development is consistent with the aims and objectives of these instruments. In preparation of this document, consideration has been given to the following:

- The Environmental Planning and Assessment Act, 1979, as amended;
- The Environmental Planning and Assessment Regulation;
- Penrith Local Environmental Plan 1998 (Urban Land);
- Draft Penrith Local Environmental Plan 2010 (Stage 2);
- Penrith Development Control Plan 2010;
- State Environmental Planning Policy (Infrastructure);
- State Environmental Planning Policy 55 – Remediation of Land; and
- Deemed State Environmental Planning Policy No. 20 – Hawkesbury Nepean River (SREP).

The proposal will greatly improve the stalls provided within Penrith Paceway and will provide improved amenity for horses and participants. There has been considerable attention given to the layout of the development having regard to its relationship to existing development on the site. The development is part of a commitment by Harness Racing NSW to upgrade facilities at a number of tracks throughout NSW. The new stalls are part of this commitment.

This report clearly and comprehensively addresses the statutory regime applicable to the application and demonstrates that the proposed development is complimentary and compatible with the area.

In light of the above planning merits of the proposed development, the proposal succeeds when assessed against the Heads of Consideration pursuant under Section 79C, and we recommend that Council grant consent to the development, subject to appropriate conditions.

1 Introduction

1.1 GENERAL

This Planning Report has been prepared to accompany the submission of a Development Application which seeks approval to demolish the existing race day stalls and replace with a new race stall complex, as described in Section 4 of this SoEE. Reduced plans prepared by McKinnon Design are attached as **Annexure A**.

1.2 VISION FOR THE STALLS

The proposed stalls development will consolidate the existing race day stalls to:

- Provide improved stabling facilities;
- Improved facilities for participants (trainers, drivers – toilets and changerooms);
- Improve safety for horses and participants;
- Washbays;
- Race day office;
- A stewards room;
- Owners and trainers room;
- Public viewing area; and
- Enhance the stabling facilities to a level of best practice.

The stalls development will result in essentially like-for-like volume of race day stalls, providing 97 stalls within the complex. The key facilities that will be accommodated in the stalls are indicated on the plans and further described in **Section 4** below. Essentially the new complex will be able to house the existing facilities under one roof.

1.3 PROPONENT AND CONSULTANT TEAM

The report has been prepared on behalf of Harness Racing NSW, the proponent of the project. The following provides a list of the development team shown in **Table 1** below:

TABLE 1 - PROJECT TEAM

The Project Team	
Architectural	McKinnon Design (Annexure A)

1.4 SCOPE OF REPORT

The Report describes the nature of the site and its immediate context. It proceeds to document the proposal and concludes with an assessment against the prevailing planning regulations and a request for approval.

1.5 REPORT STRUCTURE

This SoEE is structured in the following manner:

Section 2 – Describes the Site and provides a detailed description of the site and the nature of surrounding development.

Section 3 – Details the Proposed Development and other relevant information.

Section 4 – Details the Statutory Controls that apply to the Development Site.

Section 5 – Details the Environmental Assessment of the proposed Development.

Section 6 – Provides a Conclusion.

The following commentary and assessment is provided in respect of the above.

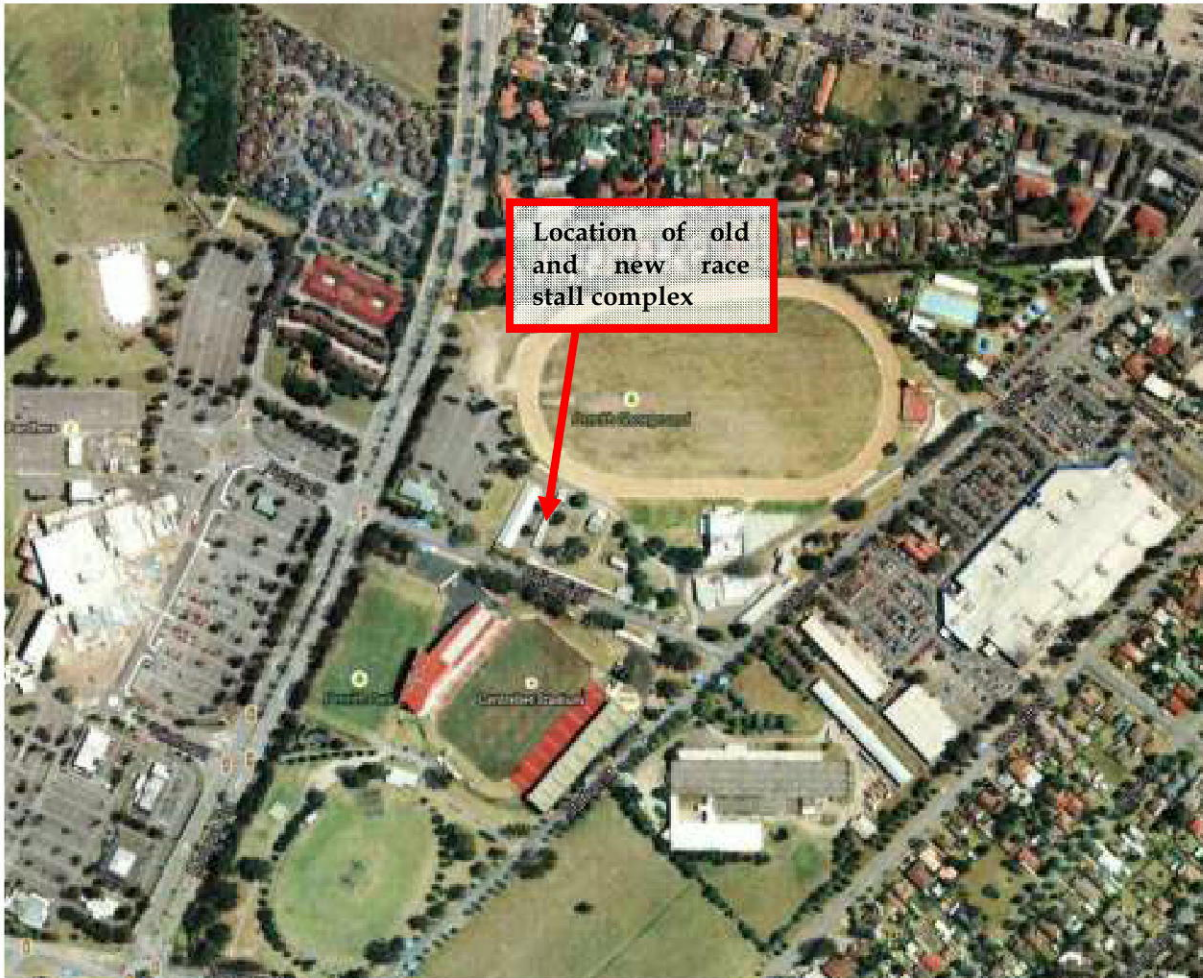
2 The Site

The subject property is known as Lot 12 in DP 1176987 Nos 127-141 Station Street, Penrith.

2.1 THE CONTEXT

The subject land is located within the Local Government Area (LGA) of Penrith. An aerial photograph indicating the location of the proposed race stall complex is shown in **Figure 1** below. The subject property is centrally located in Penrith and could be best described as an entertainment/sporting precinct with the Penrith Panthers Club complex located to the immediate east, the Penrith Stadium across the road in Ransley Street and other sporting fields further to the south.

FIGURE 1 – CONTEXT OF SURROUNDING DEVELOPMENTS



3 The Development Proposal

3.1 DEVELOPMENT DETAILS

The development proposal is as generally shown on the submitted plans prepared by McKinnon Design. The existing stalls are antiquated and need to be replaced, as shown in the photograph below. The new complex will cover the entire stalls area that is currently open in parts. The proposal is a new modern race day stalls, involving the following:

- Demolition of existing stalls and other structures;
- Provision of 97 race day stalls (new) – 82 internal and 15 external (under cover - awning);
- Wash bay facilities (horses);
- Landscaping of parade ring area;
- Changeroom facilities for drivers;
- Owners, trainers and drivers room;
- Stewards room;
- Race day office;
- Removal of trees for internal new road (if necessary) and between the existing stalls;

- New internal road along Ransley Street frontage, which is required to meet fire standards of the Building Code of Australia;
- New rainwater tanks (roof collection); and
- Construction of covered walkway.

The existing float parking area adjacent to Mulgoa Road will be utilised for parking of such vehicles. The new race stall complex will be constructed of the following materials:

- Floor slab;
- Steel portal frame structure;
- Tilt panel walls (dado wall 1.2m high);
- Colourbond sides and roof (profiled); and
- Colourbond sliding doors to secure building.

Essentially the new race stall facilities will result in a like-for-like volume of horse stalls and facilities currently provided in the existing stalls. All other facilities such as wash bays in terms of numbers will be increased.

Photograph 1: Shows view of existing stall complex from Ransley Street. The wall on the street frontage is the rear wall of the existing stalls.



Photograph 2: Shows inside existing race day stalls. Lighting is poor on race nights and cramped conditions for horses and participants.



Photograph 3: Shows part of the area where the new complex will extend just past concrete apron. There is a 25,000Lt water tank located middle top of picture, which will be retained.



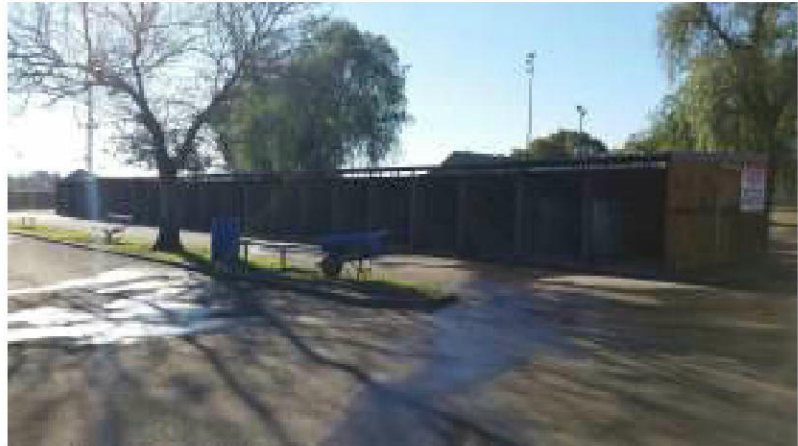
Photograph 4: Shows existing outside stalls. Note constructed of timber, iron sheeting and metal pipes.



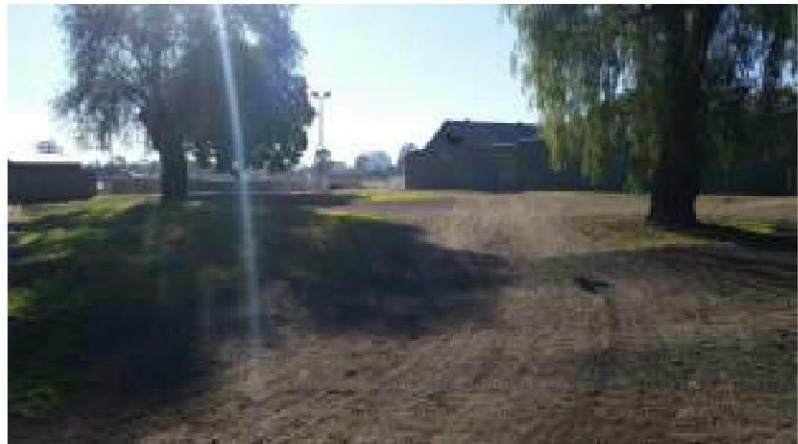
Photograph 5: Shows existing grass area, which will be retained. Note area fenced. Existing car and float parking area.



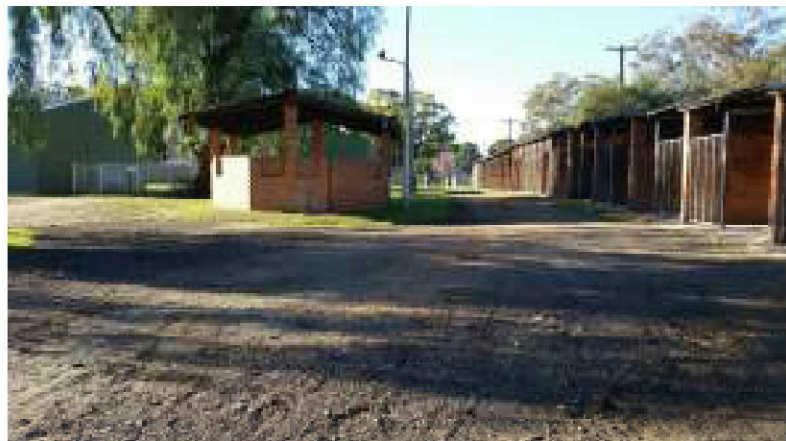
Photograph 6: Shows outdated stalls to be demolished and trees to be removed between stalls. This area will be covered with new complex building.



Photograph 7: Shows existing parade ring. This will be slightly realigned. The surface material may change to a more suitable material.



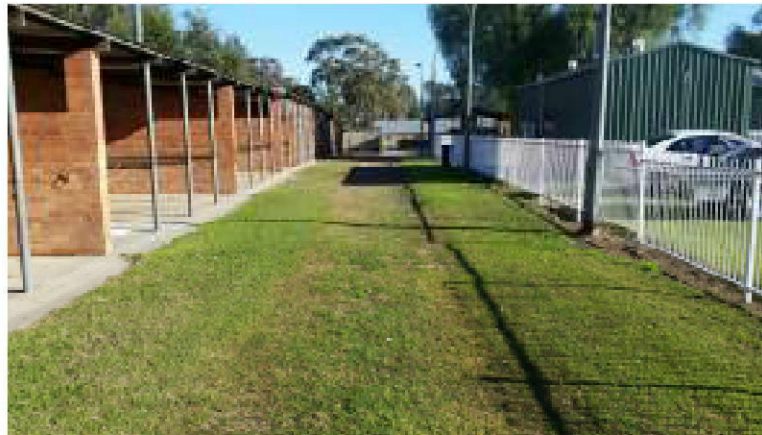
Photograph 8: Shows the shelter to be demolished and the area for an internal roadway, which essentially exists. The stalls to the right of photograph will be retained.



Photograph 9: Shows existing outdated stalls. These stalls are not suitable for horses and will be demolished. These stalls are located adjoining parade ring.



Photograph 10: Shows the view look north (reverse of photograph 8). Stalls on left to be retained.



3.2 SERVICES

As part of the proposal, the building will be connected to existing services on site. This includes electricity and water, which are available. In terms of effluent disposal, details on waste management are provided below in Section 3.4.5. Drainage from the roof will be collected in water tanks and conveyed (overflow) to the drainage system. Water tanks will be installed to collect water for use on the track (watering between races – current practice)

3.3 DEMOLITION

Development consent has been sought for the demolition of the dwelling and structures. The demolition will be in accordance with the requirements as set out under the Australia Standard AS260 – 2001: The Demolition of Structures – which is incorporated into the Occupational Health and Safety Act 2000 administered by WorkCover NSW. Demolition will include:

- The removal of all demolished material and where appropriate materials will be recycled;
- All brickwork, concrete and other hard surfaces will be recycled where possible; and
- Breaking up and removing hard surface areas.

The demolition process will be controlled by specific guidelines including the Occupational Health and Safety Regulation 2001 and all WorkCover requirements, as detailed on the plans.

Any asbestos detected during the demolition period will be removed by an authorised contractor to the required standards. However, an initial check of the structures to be demolished have not detected asbestos.

3.4 CONSTRUCTION MANAGEMENT

An erosion and sediment control plan will be prepared for the construction of the building to control run off during these processes and submitted with the Construction Certificate.

A Site Management Plan will be prepared to ensure the safety of the public during the construction program. This will include:

- Means of managing dust and noise;
- Means of advising the existing residents of the immediate area of the proposal and the construction program on a regular basis and fencing construction site; and
- Means of communicating with the contractor and clear procedures for registering complaints and follow-up.

The following is provided in relation to these issues:

3.4.1 DUST

During the site works it is unlikely that dust would be generated during site excavation. However, the following methods should be employed to control any dust that may be generated:

- Hessian will be located along sections of the site fence located in the vicinity of the site works.
- Watering of exposed areas, if necessary.

3.4.2 SEDIMENT AND EROSION CONTROL

Sediment and erosion control are important as it is a serious offence under the Protection of the Environment Operation Act (1997) to place or expose any soil or waste in an area where it can be washed into any stormwater drain or waterway.

Therefore silt fencing, sandbags and/or hay bales will be used to prevent offsite sediment movement. However these should be more fully developed in consultation with the contractor and incorporated into a Soil and Water Management Plan in accordance with NSW Department of Housing (1998) *Managing urban stormwater: soils and construction*. The controls outlined in the plan should be put in place prior to any works commencing.

3.4.3 NOISE CONTROL

Noise producing machinery and equipment should only be operated between the hours of 7.00am and 6.00pm Monday to Friday and 7.00am to 4.00pm on Saturdays, unless requested otherwise by Council. No work will be undertaken on Sundays or public holidays.

If it is necessary to work outside these hours, special permission must be obtained from Council and local residents should be notified. Should alternate noise conditions be set out by Council these will be complied with as appropriate.

3.4.4 OCCUPATIONAL HEALTH AND SAFETY

Prior to the commencement of works the principal contractor should prepare and maintain a site specific Occupational Health and Safety, and Protection of the Environment Plan (OHS&E Plan) which complies with the requirements of clause 226 of the Regulations.

Prior to entering the work area it is essential that all personnel be inducted in the relevant occupational health and safety and environmental protection systems for the site. In addition all personnel should have read and understood the OHS&E Plan.

3.4.5 WASTE MANAGEMENT

The proposed development has embraced the principles of waste minimisation and management from the earliest days of visioning/design work. In a like manner, the demolition and construction phases have been the subject of significant waste minimisation and resource recovery thinking. A Waste Management Plan (WMP) accompanies this application and addresses waste generated during demolition, during construction and on-going operation.

The issue of waste generated by horses on race days is also addressed. This Waste Management Plan (WMP) is prepared to address all relevant issues associated with obtaining approval of the race stall complex.

The WMP identifies waste sources from the stalls during operation and proposes measures to manage waste in a way that satisfies all legislative requirements. In summary the key purposes of the WMP are to:

- Address waste management requirements for the proposal to a standard suitable for approval; and
- Provide guidance for the project in waste minimisation from construction activities.

All waste facilities are required to be designed and constructed in accordance with the Building Code of Australia (BCA) and Australian Standards. It should be noted that existing waste from the stalls is managed within a system located adjoining the stalls, with manure being disposed to garden areas on site.

The proposed stabling complex will essentially house the same number of horses on race days that currently exist, with a slight increase in numbers. It should be noted that this doesn't mean that 97 horses will be racing each race day, but the complex has the capacity for that many horses. Current race meeting fields are for approximately 80 horses, but could increase to 100. In addition, horses leave the complex after competing in a race.

Currently manure is collected by race day staff or participants on a regular basis to ensure that the stalls remain clean and waste doesn't remain in stalls for any extended period of time. Such waste is placed in containers and then disposed in garden areas.

3.4.5.1 THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

The Protection of the Environment Operations Act 1997 (PoEO Act) covers the requirements for waste generators in terms of storage and correct disposal of waste and establishes the waste generator as having responsibility for the correct management of waste, including final disposal.

3.4.5.2 IMPACTS ON EXISTING OPERATION DURING CONSTRUCTION

During the construction of the new stalls, race meetings will still be conducted, with temporary stalls set up in the grass area north of the float parking area. Construction impacts on the surrounding road network will be mitigated through the implementation of the Construction Management Plan that proposes construction access to the Stables Precinct via the existing access point from Ransley Street. The construction site will be fully fenced to prevent public access and comply with relevant Standards.

3.5 SAFETY AND SECURITY

The proposed development adopts the principles of “Safer by Design” to ensure that the development will create an environment, which feels safe and is safe for staff and visitors. In this regard the following is provided:

The CPTED guidelines outline a consent authority’s responsibilities to identify crime risk and to minimise opportunities for crime through the appropriate assessment of development proposals. Under Council’s policy, the application may require referral to the NSW Police Service for assessment. However, we are of the opinion that this is not required for this proposal.

Certain land uses and designs can promote social or anti-social behaviour and buildings and urban design can significantly lower the occurrence of crime and enhance the effectiveness of traditional policing methods.

3.5.1 SAFER BY DESIGN PRINCIPLES

There are four (4) principles, which form the basis of crime risk assessment as it relates to Development Applications. The following provides an analysis of the proposed development in terms of the principles.

3.5.1.1 SURVEILLANCE

From a design perspective surveillance can be achieved by providing:

- Clear sightlines (private/public space)
- Effective lighting
- Landscaping and building elements that do not provide places for offenders to hide and does not provide blind corners.

We consider that the proposed site layout and design of the building offers good and clear sightlines from the building to most shared areas on the site. In addition, there are a number of staff on site during normal business hours to detect any possible crime being committed.

The race stall complex entrance is minimised to control points, but more importantly access to the building and site is controlled by security perimeter fencing. As such access is only available during normal race day/night hours.

3.5.1.2 ACCESS CONTROL

In respect to building access, this would be security controlled, with restricted access to the building. Sliding doors/gates to the building will also protect access. Currently the stalls are open and provide little security.

3.5.1.3 TERRITORIAL REINFORCEMENT

The development, through the design of the building, provides a clear distinction between public and private property. The site already has secured fencing to restrict access.

3.5.1.4 SPACE MANAGEMENT

There are numerous methods to safeguard staff by the inclusion of appropriate 'Safer by Design' principles, which will reduce the likelihood of crimes being committed.

Such inclusions are:

- All lighting is to be designed and installed to reduce vandalism and be low maintenance.
- Light fittings (lamps, fittings and switches) to be energy efficient and located at suitable locations.
- Installation of security lighting, if necessary.

3.5.2 CONCLUSION

Having regard to the safer by design principles referred to above, we are of the opinion that the proposed development, through the building and access design and incorporated safety features described above, provides a satisfactory response in minimising crime risk.

4 Assessment of Relevant Controls and Policies

4.1 RELEVANT PLANNING INSTRUMENTS, CONTROLS AND POLICIES

The following documents are relevant to the proposed development:

- Environmental Planning & Assessment Act 1979;
- NSW State Plan;
- Penrith Local Environmental Plan 1998 (Urban Land);
- Draft Local Environmental Plan 2010 (Stage 2);
- Penrith Development Control Plan 2010 (PDCP); and

- Deemed State Environmental Planning Policy No 20 – Hawkesbury Nepean River No 20.

4.2 OBJECTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The Environmental Planning and Assessment Act 1979 (the Act) contains the objects of the Act. These are:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and co-ordination of communication and utility services,
 - (iv) the provision of land for public purposes,
- (v) the provision and co-ordination of community services and facilities, and
- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
- (vii) ecologically sustainable development, and...
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment. (Emphasis Added).

The proposal accords with the objects because it:

- Will enhance the capabilities of the Penrith to provide key stabling facilities to support harness racing in Australia; which is a long established social and economic industry.
- Consolidate the stall facilities within a single complex, which is consistent with the current land use controls and incorporates a built form that promotes efficient land use and provides improved facilities for participants and horses.

4.3 NSW STATE PLAN

The NSW State Plan was revised in March 2010 and provides targets for ‘increasing participation in recreational and sporting activities’. The Plan includes the following relevant directives which the Stalls Complex Application will contribute to achieving:

- Promote our parks – by improving the efficiency of land use directly adjacent to sporting fields and the Nepean River that is a key urban parkland/corridor.
- Increase participation in recreational and sporting activities – supporting the ongoing operations and development of harness clubs at a state level.

4.4 STATE ENVIRONMENTAL PLANNING POLICY 55 – REMEDIATION OF LAND

Due to the nature of former land uses on the site, the proposed development is subject to the provisions of SEPP 55 – Remediation of Land.

Specifically the Policy provides under Clause 7(1) that development consent must not be granted by Council unless:

- (a) It has considered whether the land is contaminated, and
- (b) If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) If the land requires remediation to be suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

That part of the subject property has been used for stable buildings for a number of years. Given the intended the continued use of this part of the site for race day stalls, it is considered that a contamination report is not justified and not necessary.

4.5 RELEVANT PROVISIONS OF DEEMED STATE ENVIRONMENTAL PLANNING POLICY NO. 20 HAWKESBURY-NEPEAN RIVER

The aim of this plan is to protect the environment of the Hawkesbury – Nepean River system by ensuring that the impacts of future land use are considered in a regional context.

Part 2 “Policies and Consideration” applies to the preparation of Environmental Planning Instruments, Control Plans and requires consideration of development proposals in the area covered by the plan. Part 3 “Development Controls” contain the development controls, which are imposed by the plan. Part 3 of the SREP details matters to be considered by the consent authority when determining a development application in the area covered by the Plan.

SREP 20 has a number of general and specific heads of consideration that are of relevance. These are as follows:

4.5.1 TOTAL CATCHMENT MANAGEMENT

There will be no alteration of the catchment as a result of the proposal. Appropriate controls can be put in place during works to ensure that there is no impact from runoff from the site.

4.5.2 ENVIRONMENTALLY SENSITIVE AREAS

The proposal does not involve the excavation of the soil below 1m and therefore it is unlikely that the development would be affected by such soils. Nevertheless, suitable controls will be incorporated to ensure footings and drainage lines are constructed to such standards.

4.5.3 WATER QUALITY

The development is within the capability of the land and will not cause degradation of the land or surrounding lands.

4.5.4 CULTURAL HERITAGE

There are no heritage matters of relevance to this proposal.

4.5.5 FLORA AND FAUNA

There is no impact on significant flora and fauna as a result of these works, although the proposal does involve the removal of a tree, if necessary, and trees located between existing stalls. But these will be replaced.

4.5.6 RIVERINE SCENIC QUALITY

The proposal is unlikely to have an impact of the riverine environment, given the location of the proposed building (distance from Nepean River).

4.5.7 URBAN DEVELOPMENT

Subject to the control of site runoff during the construction stage, the development will not have an adverse impact on the water quality of the Hawkesbury Nepean system.

4.6 PENRITH LOCAL ENVIRONMENTAL PLAN 1998 (URBAN LAND)

4.6.1 ZONING

Under Part 3 – Land Use Zones – Clause 8, the subject land is zoned 6(c) Private Recreation. The objective of the zone is:

- To provide and maintain land for a variety of recreational and community pursuits.

In respect of this objective, it is considered that the use of the land clearly meets this objective and the recreational needs are met for participants within the Industry and the land contains a Club for community pursuits. The following uses are permissible with consent:

- Buildings for the purpose of gardening and landscaping;
- Child care centres;
- Clubs;
- Community facilities;
- Drains;
- Flood mitigation works;
- Motels;
- Recreation areas;
- Recreation facilities;
- Restaurants;
- Roads;
- Uses or buildings specifically permitted by an adopted plan of management for the land prepared pursuant to the Local Government Act 1993 and which are under the care, control and management of the Council;
- Utility installations;
- Utility undertakings.

Prohibited development is any other use not listed above.

The proposed stables complex is not separately defined and therefore could be defined as one of the following:

club means a building used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic or other lawful purposes whether of the same or a different kind and whether or not the whole or part of such building is the premises of a club registered under the Registered Clubs Act 1976.

recreation area means an outdoor area which provides for social, recreational and leisure activities, and includes associated structures (playground equipment, boardwalks, cycleways and the like), but (in the development control table) does not include a building or place or land use specifically defined elsewhere in this Schedule.

recreational facility means a building or place used for indoor recreation (such as a table tennis centre, squash court, swimming pool, gymnasium, health studio or bowling alley), whether or not used for the purpose of gain, but (in the development control table) does not include a building or place specifically defined elsewhere in this Schedule.

Such uses are listed in the permissible use column and therefore are permissible with development consent.

Notwithstanding, the proposal is to replace the existing stalls with a modern complex and the stables complex would be ancillary to the use of the existing paceway and would be considered to have existing use rights.

In this regard, we draw Council's attention to the following decision of the Land & Environment Court in respect of existing use rights and ancillary landuses:

In *Royal Agricultural Society of NSW v Sydney City Council (1987) 61 LGRA 305* it was said that "the characterisation of the purpose of use of land should be done at a level of generality which is necessary and sufficient to cover the individuals activities, transactions or processions carried on, not in terms of the detailed activities, transaction or processes".

It is therefore reasonably argued that the race stall complex is ancillary to the use of the property for racing associated with the harness racing industry and therefore will not operate separately or independently from the use of the property. Therefore the proposed new race stall complex is permissible with development consent.

4.6.2 DEFINITION OF EXISTING USE

Existing uses are subject to the provisions of Part 4, Division 10 of the Environmental Planning and Assessment Act, 1979 (EP&A Act), as amended. Section 10 of the EP&A Act defines 'existing use' under Section 106, an existing use is defined as:

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4 of this Part, have the effect of prohibiting that use, and
- (b) the use of a building, work or land:
 - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and

- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.

Under this section, it is incumbent on the owner of the land to establish existing use rights. The Council has issued development consents since 1966, including the application to amend Consent to Development Application 2140/2002. Having regard to the existing use rights provisions; the proposal is permissible with Council consent. The proposed development (café) is ancillary to the garden centre and not a separate use.

4.6.3 CONTINUANCE OF EXISTING USES

Section 107 Continuance of and limitations on existing use provides that:

- (1) Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.
- (2) Nothing in subsection (1) authorises:
 - (a) any alteration or extension to or rebuilding of a building or work, or
 - (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or
 - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or
 - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 80A (1) (b), or
 - (e) the continuance of the use therein mentioned where that use is abandoned.
- (3) Without limiting the generality of subsection (2) (e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.

Having regard to sections 106 and 107 detailed above, the use of the property has not ceased and has been in operation for in excess of 50 years with Council consent and therefore not abandoned. This position is reflected in *Hudak V Waverly Municipal Council* (1990) 70 LGRA 130 where the Court of Appeal held that "... (if) years go by without actual use and particularly where the factor said to be delaying a resumption of the existing use is something of an indefinite character ... involved an abandonment".

However, Section 109B of the EP&A Act provides that nothing in an environmental planning instrument prohibits, or requires further development consent to authorise, the carrying out of development in accordance with a consent that has been granted and is in force.

There are numerous Court cases on existing use rights including conflicting positions in *Caltex Australia Petroleum Pty Ltd V Manly Council* (2007) NSWLEC 105 (Payne J) and *Briscoe J* in the matter of *Currency Corporation Pty Ltd V Wyong Shire Council* (2006) NSWLEC 692. Importantly the use of the property has continued with various uses approved over the years.

4.6.4 SPECIFIC CLAUSES OF THE LEP

Part 5 – Miscellaneous provides controls other than residential controls of the LEP.

4.6.4.1 TREE PRESERVATION

Clause 28 requires consent for removal of trees. There is a tree that may be removed by this proposal (potentially retained) and trees between the existing stalls to be removed. However, these will be replaced by new landscaping.

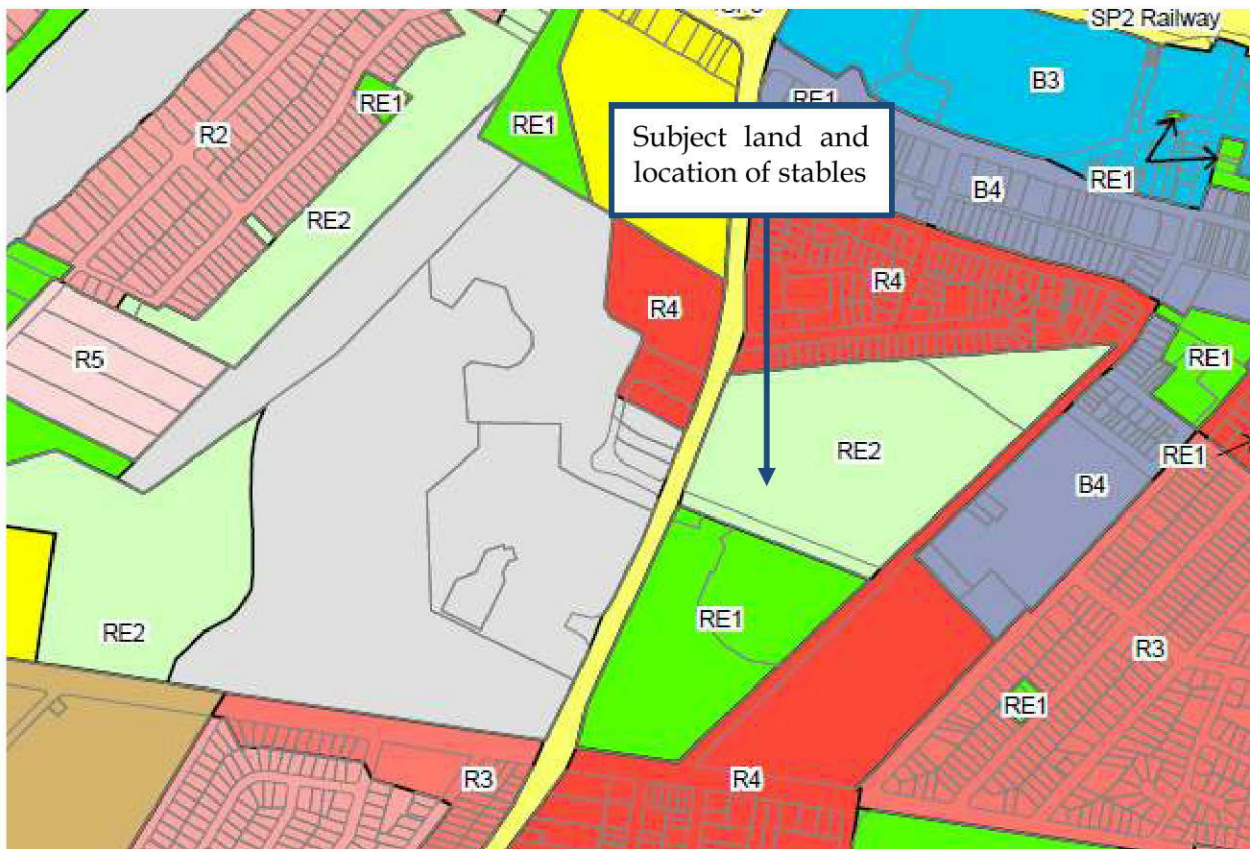
4.6.4.2 CONTAMINATED LAND

This matter was addressed above in Section 4.4.

4.7 DRAFT LOCAL ENVIRONMENTAL PLAN 2010 (STAGE 2)

This draft LEP was placed on public exhibition and has been referred to the Department of Planning and Environment and is awaiting adoption. Under the draft LEP the subject land is proposed to be zoned RE2 – Private Recreation, as shown in **Figure 2** below.

FIGURE 2 – LAND ZONE



The objectives of the zone under clause 2.3 are:

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

In respect of the objectives, the proposed development is consistent with dot points 1 & 2.

The following uses are permissible with development consent.

Building identification signs; Caravan parks; Child care centres; Community facilities; Environmental facilities; Environmental protection works; Function centres; Hotel or motel accommodation; Information and education facilities; Kiosks; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres, Restaurants or cafes; Roads;

The proposed stables are not defined in the draft LEP, but would be considered to 'fit' under the following definitions:

'recreation facility (major) means a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people whether regularly or periodically, and includes theme parks, sports stadiums, showgrounds, racecourses and motor racing tracks.'

Such a land use is not permissible in the zone. It would be noted that a Club is situated on the land and that the Penrith Paceway has a registered club "Club Paceway". A registered club is defined as:

'registered club means a club that holds a club licence under the Liquor Act 2007.'

In addition to the paceway, the club building has a restaurant, has a function centre and operates regular markets, shows and circuses. Having regard to the matters addressed in Section 4.6 above, it is considered that the proposed stables can be approved under existing use rights and indeed are considered to be ancillary to the use of the land. The stables complex is an integral part of the use of the land.

It is also noted that function centres and restaurants are a permitted use of the land, as defined below.

'function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.'

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, takeaway meals and drinks or entertainment are also provided.'

On the basis of the above, we are of the opinion that the subject stables building are permissible with development consent.

4.8 SPECIFIC CLAUSES

The following clauses are applicable to the proposed development.

4.8.1 HEIGHTS OF BUILDINGS

Under clause 4.3 of the draft LEP, the heights of buildings map there is no height control.

4.8.2 OTHER CLAUSES

There is no floor space ratio restriction under Clause 4.4. The matter of tree removal (Clause 5.9) has been addressed above. In respect of Clause 5.10 – Heritage Conservation, it is noted that there are two heritage items located in Station Street (2260216 & 2260217) and one at 65 Mulgoa Road (2260815 – The Willows house).

FIGURE 3 – HERITAGE ITEMS



The latter item is located within the vicinity of the stables complex and is of local significance. However, it is considered the proposed building will have minimal impact of this item, as the Mulgoa Road frontage of the subject land is screened by existing vegetation, a carpark and four-lane road separate the building from the item and development in the form of a carpark area for Penrith Panthers and other development impinge more on the item than the proposal.

Clause 6.2 of the LEP requires that Council cannot grant development consent if the land cannot be serviced. The land is already serviced, but such services may need augmentation.

In respect of salinity issues, the LEP Maps do not indicate that the land is affected by salinity. Notwithstanding, the installation of infrastructure and footings can be designed to comply with the requirements of developing in saline soils. With flooding, the Maps do not indicate that the land is flood affected.

There are no other applicable clauses of the draft LEP to the proposed development.

4.9 PENRITH DEVELOPMENT CONTROL PLAN

The subject Development Control Plan provides a compendium of development controls for the Penrith Local Government Area.

The following provides an assessment of the proposal against the DCP requirements that are of relevance. Where there is any non-compliance, justification will be provided for variation to the relevant control (refer to **Table 2**).

TABLE 2 - COMPLIANCE WITH CONTROLS

Section	Development Control	Comments	Compliance
C1 Site Planning	Site analysis to be undertaken.	Undertaken on submitted plans (Annexure A).	Yes.
1.2 Design principles	Design to consider site constraints, energy efficiency, building bulk, safety (CPTED).	Addressed in Section 3.5 above.	Yes.
C2 Vegetation Management	Trees to be preserved.	Trees to be removed and development consent sought for removal.	Yes.
C3 Water Management	Drainage and flooding to be considered.	Addressed in submitted plans.	Yes.
C4 Land Management	Contamination to be considered.	It is considered given current use of land, that the land is not contaminated (refer to Section 4.4 above).	Yes.
C5 Waste Management	Waste during construction and post construction to be considered.	Refer to attached waste management plan.	Yes.
C6 Landscape Design	Landscape plan to be provided.	Refer to landscape plans.	Yes.
C7 Heritage	Known areas of heritage to be considered.	Land not shown on maps to be affected. Notwithstanding, this aspect was addressed above in Section 4.8.2.	Yes.
C8 Public Domain	Pedestrian amenity.	Pedestrian pathways will be provided internally to the development or extended to link uses on site.	Yes.

C9 Advertising	Signage to form part of application.	Signage not proposed.	Yes.
C10 Transport & Access	Traffic generation and parking requirements to be submitted with DA.	Traffic generated by the existing development will not substantially change with the new stables complex, as essentially the proposal results in a like-for-like scenario. Sufficient car parking is also provided on-site for the stables complex. Carparking is also provided in a number of areas for the various uses on the land. It is considered that the proposed stables will not substantially increase the need for additional carparking.	Yes.
C11 Subdivision	General requirements for subdivision to be addressed.	Not applicable.	Yes.
C12 Noise	Land affected by aircraft or road noise.	Not applicable.	Yes.
C13 Infrastructure	Utility services to be provided.	Services already available.	Yes.

5 Assessment of Environmental Impacts

5.1 GENERAL

An overview assessment of the environmental effects of conducting the subject activity in the manner previously described in this report is provided below.

This assessment has had regard to the provisions of Section 79C of the Environmental Planning and Assessment Act (as amended). An environmental assessment of the proposed development has been undertaken, that has addressed the key environmental considerations of the proposal.

Overall, the proposal provides an innovative built form for the stalls providing state-of-the-art race day housing for horses. The design approach has also had an extensive iterative process with participants to ensure that the stalls will meet with their requirements having regard to other stable complexes within NSW. The proposal is to upgrade to a new complex to meet modern standards.

5.2 SECTION 79C (1) (a) – (i) PROVISIONS OF ENVIRONMENTAL PLANNING INSTRUMENTS, (ii) EXHIBITED DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS, (iii) DCP, (iv) THE REGULATIONS.

The relevant matters for consideration include the provisions of Penrith LEP 1998, draft LEP 2010 (Stage 2), PDCP 2010 and DSEPP No. 20, all of which have been considered in Section 5 of this Report.

5.3 SECTION 79C (1) (b) – IMPACT OF THE DEVELOPMENT

5.3.1 NATURAL AND BUILT ENVIRONMENT

The natural environment will remain unchanged by this proposed development.

5.3.2 SOCIAL AND ECONOMIC IMPACT

No adverse social or economic impacts will be occasioned by the proposal. The proposal will however, provide a modern race day stabling complex that will provide improved facilities for participants and the public.

Short-term employment on the site during the construction phase will be provided. This is consistent with the Penrith Employment Strategy adopted by Council in March 2007. The subject land is not identified in the Strategy, however, the land does employ a number of persons and therefore the proposal is consistent with this Strategy.

5.3.3 SITING, HEIGHT, BULK, SCALE, FORM AND CHARACTER

The race stall complex will be taller in height than the existing stalls, and obviously larger in scale, as depicted in the plans.

The need for a larger complex has been addressed throughout this report. The race stall complex is essentially a single storey building constructed of face concrete tilt panel material (dado wall) and colourbond sides and roof. The building has been designed to align with the existing stall complex and in particular to provide direct access to the parade ring and track. Externally the stalls will have soft earth tones. The roof adds some colour and visual interest to the long facades, contrasting with future landscape planting to occur within this part of the land. The building will be partially visible from Mulgoa Road and Ransley Street, with existing screen landscape planting and a brick wall/fence screening the building from each street, respectively. The building will also be visible within the grounds given its size.

It is within the grounds and from the abovementioned areas, that the potential visual impact is considered. It should also be noted that the character of this part of the land and indeed the current use of the property is related to harness racing. Existing buildings on site are quite large and reflect their use for spectators watching racing events.

The building will 'sit' within a green space on the property and within a well-designed quality landscape when landscaping is undertaken as part of the proposal. This quality landscape space and other spaces in the property meshed together form a cohesive public realm responding to the needs of patrons and that of the Club to provide a 'family-friendly' environment whereby families can enjoy a picnic-like atmosphere.

The visual catchment, or view shed, of the proposal is limited by the topography of the site and to some extent existing vegetation on the western side of the property – Mulgoa Road frontage (refer to **Figure 1** above). The site is generally level, with the most sensitive viewing catchment limited, particularly having regard to the Penrith Panthers Stadium to the south. The residential properties to the north adjoining the paceway have limited views, although it is noted that these dwellings are elevated and that their view is from the rear of these properties. The new complex will improve the appearance of this part of the land.

It is considered that the potential visual impact is minimal and that the distance between these dwellings and the complex is one that will not have a detrimental impact and that view sheds have not been reduced.

5.3.4 TRAFFIC AND PARKING IMPACTS – NO CHANGE TO EXISTING

5.3.4.1 LIKELY IMPACT OF PROPOSED DEVELOPMENT

As discussed in this report, the proposal results in a like-for-like scenario. As such it is unlikely that the development will substantially increase traffic generation or the need for additional carparking. It is noted however, that an accessible carparking space has been provided for this development.

5.3.5 BUILDING CODE OF AUSTRALIA

In respect of the building complying with the Building Code of Australia (BCA), a compliance with the BCA will be undertaken at the Construction Certificate stage. It is noted, however, that accessible facilities are provided within this complex to be compliant.

5.4 SECTION 79C (1) (c) – THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

The site is considered suitable for the proposed use. Further, the proposal, sensitively pursued, does not impact adversely upon the natural or built environment.

5.5 SECTION 79C (1) (d) – SUBMISSIONS

This cannot be dealt with as part of this Statement.

5.6 SECTION 79C (1) (e) – THE PUBLIC INTEREST

The public interest is an overarching concept. The proposal could be considered to be in the public interest if pursued in accordance with the approval as sought. Its impacts are negligible and capable of satisfactory management.

6 Conclusion

The proposal capitalises on the opportunities presented by the site to provide a modern race stall facility at the Paceway. There are no adverse environmental issues that arise from the proposal and no inconsistency with planning instruments, apart from those matters addressed in this Statement. Council is accordingly requested to grant a pragmatic approval in an expedient manner.

Annexure "A"

Reduced Plans