

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA14/1545
Proposed development:	Recreation Facility - Flyboarders (Nepean River)
Property address:	32 a Bruce Neale Drive, PENRITH NSW 2750 32 Bruce Neale Drive, PENRITH NSW 2750
Property description:	Lot 2 DP 579647 Lot 4 DP 579648 Lot 31 DP 1074554
Date received:	8 December 2014
Assessing officer	Belinda Borg
Zoning:	RE1 Public Recreation - LEP 2010 RE2 Private Recreation - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a Development Application for the operation of a proposed *Charter and Tourism Facility* on the Nepean River, Penrith. The site is known as Lot 2 DP 579647 and Lot 4 DP 579648, 32A Bruce Neale Drive Penrith, and is located adjacent to the Nepean Rowers Club. The proposed development will utilise the Nepean River, however the Nepean River does not have a Lot & DP reference.

The proposed charter and tourism facility is permissible with development consent.

The application has been referred externally to the Roads and Maritime (RMS). A licence is required to allow operation of the proposed facility prior to commencement of use.

The proposal has been assessed having regard to the provisions of Sydney Regional Environmental Plan No. 20 - Hawkesbury/Nepean River and Penrith Local Environmental Plan 2010.

Appropriate conditions of consent have been recommended regarding a timeframe for commencement of operations, the overall duration of operations permitted, hours of operation, as well as priority being given to rowers on the river over fly boarders.

Pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979, an assessment of the subject application has been made. Having regard to the matters discussed in this report, the application is recommended for approval subject to conditions of consent.

Site & Surrounds

The site is located generally in front of the Nepean Rowers Club, immediately on the eastern banks of the Nepean River.

The Penrith Rowing Club (with bistro and facilities) is also located adjacent to the site.

A public car park is located to the east off Bruce Neale Drive.

Proposal

The proposal seeks approval for the operation of a Charter and Tourism Facility.

Details of the proposed development are as follows:

- The operation of charter and tourism facility, being fly boards, on the eastern edge of the Nepean River, generally located in front of the Rowers Club.
- An area of the river 50m x 50m is to be penned off as a secluded area using floatable buoys, within the 8 knot zone.
- The fly boards will be stored within a trailer and stored elsewhere outside of operation hours.
- A small tent with table will be erected daily on the banks of the river.
- The proposed hours of operation are 9am-6:30pm, Saturday and Sunday, and 7 days a week during holidays.
- The fly boards will be transported to the landing prior to the commencement of operations each day and returned to the trailer the end of each day. The overnight storage of fly boards on the Nepean River is not proposed as a part of this application.
- No construction works are required as a part of the proposal.
- Customers park in the public car park, which has two pathways leading to the water.

Fly boarding involves water jet power machines which allows propulsion underwater and in the air, with two nozzles under your feet which are controlled by tilting your feet.

A Model Safety Management Plan (dated August 2014) has been prepared.

Plans that apply

- Penrith Local Environmental Plan 1998 (Urban Land)
- Development Control Plan 2006
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The aim of the plan is to protect the environment of the Hawkesbury - Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. General planning considerations set out in Clause 5 of SREP 20 and the relevant specific planning policies and relevant strategies set out in Clause 6 are considered in the assessment of the development. In particular, protecting the scenic quality of the riverine Corridor.

The proposal does not include large boats or storage structures, therefore the visual impact will be minimal and transient as to when the fly boards are in use. Further, no signage is proposed.

Penrith Local Environmental Plan 1998 (Urban Land)

Provision	Compliance
Clause 7 - Aims and Objectives of the Plan	Complies - See discussion
Clause 9 - Zone Objectives	Complies - See discussion

Clause 9 - Zone Permissible	Complies - See discussion
Clause 10 - Subdivision controls	N/A
Clause 10 - Subdivision objectives	N/A
Clause 10A - Subdivision Glenmore Park	N/A
Clause 11 - Controls for Dual Occupancy and Multi-unit Housing	N/A
Clause 11 - Objectives for Dual Occupancy and Multi-unit Housing	N/A
Clause 12 - Building Envelope	N/A
Clause 12 - Maximum External Wall Height	N/A
Clause 12 - Minimum Landscape	N/A
Clause 13 - Provisions for Environmental Performance	N/A
Clause 14 - Design Principles in development generally	N/A
Clause 15 and Schedule 3 - Development for additional purposes	N/A
Clause 16 - Activities Unaffected by this Plan	N/A
Clause 17 - Community Services and Infrastructure	N/A
Clause 18 - Temporary Use of Land	N/A
Clause 19 - Near boundary of Adjoining Zones	N/A
Clause 19A - Acquisition of Land	N/A
Clause 20 - Acquisition of Land reserved for roads	N/A
Clause 22 - Acquisition of Land within Zone 5(B), 6(B) or 7(A)	N/A
Clause 23 - Development of Land within Zone 5(B), 6(B)	N/A
Clause 24 - Acquisition of land within zone 6D by the Corporation	N/A
Clause 25 - Community use of educational establishments and tertiary institutions	N/A
Clause 26 - Additional matters for consideration for development in zones 6A, 6B or 6D	N/A
Clause 27 - Advertising of development applications for restaurants and kiosks in Zone No.6A, 6C or 6D	N/A
Clause 28 - Tree Preservation	N/A
Clause 29 - Prohibited access	N/A
Clause 30 - Development on contaminated land	N/A
Clause 31 - Development for the purposes of advertisement	N/A
Clause 32 - Flood Liable Land	Complies
Clause 33 - Development of certain land for medical centres	N/A
Clause 34 - Consent required for subdivisions	N/A

Clause 35 - Development of land at North Penrith	N/A
Clause 36 - Thornton Hall and land in the vicinity	N/A
Clause 37 - Land in the vicinity of Combewood	N/A
Clause 37A and Schedule 5 - Claremont Meadows Stage 2	N/A
Clause 38 - Development of the Werrington Mixed Use Area	N/A

Zoning & Permissibility

At the time of lodgement, the site was zoned 6(a) Public Recreation under LEP 1998. The use is permissible as a *recreation area*. The Nepean River is zoned W2 Recreational Waterways under Penrith Local Environmental Plan 2010. *Charter and tourism boating facilities* and *Recreational Facilities* are permissible with consent within the zone.

The site now falls under LEP 2010 (Amendment 4) and the site is now zoned RE1. *Charter and tourism boating facilities* are permissible with consent in the RE1 zone and is defined as:

charter and tourism boating facility means any facility (including a building or other structure) used for charter boating or tourism boating purposes, being a facility that is used only by the operators of the facility and that has a direct structural connection between the foreshore and the waterway, but does not include a marina.

The proposed fly boards satisfy the above definition and are permissible with consent.

Heritage

The rowing lanes on the Nepean River are heritage listed. This application does not impact upon the rowing lanes and is controlled by way of conditions of consent.

Bushfire

The site is bushfire affected however the use does not trigger referral to RFS and no permanent structures are proposed.

Flooding

The site is flood affected, however this has no impact upon the proposed development. A special condition has been recommended which prevents operations to occur during flooding or significant rise in water level.

Environmental Impacts

The proposed development is considered to be low scale and not expected to generate large amounts of waste or environmental impacts and therefore is likely to be sustainable.

Signage

No permanent structures or signage is proposed, therefore there will be minimal impact upon the scenic quality of the river.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2006

Provision	Compliance
Chapter 2.1 - Contaminated land	N/A
Chapter 2.2 - Crime prevention through environmental design	N/A
Chapter 2.3 - Engineering works	N/A
Chapter 2.4 - Erosion and sediment control	Complies - see Appendix - Development Control Plan Compliance
Chapter 2.5 - Heritage management	Complies - see Appendix - Development Control Plan Compliance
Chapter 2.6 - Landscape	Complies
Chapter 2.7 - Notification and advertising	Complies
Chapter 2.8 - Significant trees and gardens	N/A
Chapter 2.9 - Waste planning	Complies - see Appendix - Development Control Plan Compliance
Chapter 2.10 - Flood liable land	Complies
Chapter 2.11 - Car parking	Complies - see Appendix - Development Control Plan Compliance
Chapter 2.12 - On-site sewage management	N/A
Chapter 2.13 - Tree preservation	N/A

Section 79C(1)(a)(iv) The provisions of the regulations

The application was notified and no submissions received.

Section 79C(1)(b)The likely impacts of the development

Context and Setting

The development proposal is consistent with the envisaged character of the Nepean River. The proposal is compatible with the surrounding locality, subject to limitations on hours of operation and the tent not being left unattended.

Appropriate conditions of consent have been recommended to ensure the operation of the Charter and Tourism Facility respects the existing uses of the Nepean River to create a safe environment for all patrons, through the Plan of Management.

The operation of the Charter and Tourism Facility is considered to be an appropriate use of the river, while assisting in activating the Nepean River and associated parkland.

Parking

The proposed development relies upon the existing car parking areas available within adjoining public car park. No additional parking spaces are proposed for this development. It is noted that existing car parking areas are utilised by users of the reserve, walking tracks and Rowers Clubs, people accessing the ramp, with peak demand for these parking spaces on the weekend and during the summer school holidays.

The parking demand within and surrounding reserve needs to be address as a part of an overall Plan of Management for the locality, rather than as a part of this Development Application. Given the size of the development and the time limited.nature of the development consent, the provision of additional parking to support the development is not warranted.

Noise impact

It is noted in the additional information provided to Council on 12 March 2015 that the Jetski is enabled with a 'D-Sea-Bel' sound reducing system.

An Acoustic Report is required to address the noise impacts on the Nepean Rowing Club (including outdoor terrace areas), the impacts on the recreational spaces (including those adjacent to Bruce Neale Drive and Weir Reserve), and the nearest residential receiver (given that sound can travel further over water). The report would be required to comply with the NSW Industrial Noise Policy and be prepared by a qualified acoustic consultant. This will be required by way of condition of consent.

Air pollution/odour

There are no expected air quality or odour impacts associated with the recreational activity.

Waste

Waste is proposed to be collected by Sydney Flyboarders on site and transported back to their residential address and disposed of. It will be conditioned that waste is to be removed from the site.

Water quality management

Conditions will be applied requiring information to be submitted regarding the fuels required on site, including quantities, and storage information (bundling and location).

Section 79C(1)(c)The suitability of the site for the development

The proposal provides for additional water based opportunity to utilise the Nepean River that compliment the existing uses of the river. The provision of an Operational Plan and Plan of Management, in consultation with New South Wales Rowing, Nepean Rowing Club and Sydney International Regatta Centre, will ensure the Charter and Tourism Facility will have no impact on the use of the Nepean River as a training and event venue for local, state and international rowing organisations. The proposal is therefore suitable for the subject site.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

Community consultation

In accordance with Chapter 2.7 of the Penrith Development Control Plan for the City of Penrith 2006 – Notification and Advertising/ Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2010, the proposed development was notified to nearby and adjoining residents.

Council notified to adjoining and nearby residences in the area and the exhibition period was between 15 December 2014 and 12 January 2015. Council has received no submissions in response.

Roads and Maritime Service

The proposed development was referred to the Roads and Maritime Service (RMS) for comment, as the proposal is located on the Nepean River.

Department of Primary Industry (Fisheries)

Consideration of the Fisheries Management Act 1994, revealed that the proposed development does not block the passage of fish, is not aquaculture and does not require dredging. Therefore no approval is required from DPI.

New South Wales Department of Planning and Infrastructure

The bed and banks of the Nepean River are considered to be Crown Land, under the care, control and management of Penrith Council. Owners consent has been provided by Penrith Council.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Parks and recreation	No objections

Section 79C(1)(e)The public interest

The proposed development is consistent with the objectives of the EP&A Act in so far as it promotes the co-ordinated, orderly and appropriate use of the Nepean River. As a result Council may be satisfied that the development subject to conditions is consistent with the public interest.

Conclusion

The proposal represents further development towards activating the Nepean River and diversifies the existing uses of the river. The appropriate management and operation of the *Charter and Tourism Facility* will ensure that the development will not adversely impact on the existing users of the river or conflict with the operation of the boat ramp.

The proposed development has been assessed against the relevant heads of consideration contained in Section 79C of the Environmental Planning and Assessment Act 1979 and has been found to be satisfactory. The likely impacts have been considered and found to be satisfactory and the site is suitable for the proposed development and the proposal is in the public interest. The proposal is therefore worthy of Council's support, subject to conditions of consent.

Recommendation

That DA14/1545 for a Charter and Tourism Facility (Fly Boarders) at 32 a Bruce Neale Drive PENRITH NSW 2750 be approved, subject to the conditions contained in Part B.

CONDITIONS

General

1 [A001](#)

The development must be implemented substantially in accordance with the plans and details stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

2 [A007 - VARIABLE TIME PERIOD](#)

The use subject of this consent must be commenced within two (2) years of the date of determination. Evidence is to be provided to Penrith Council indicating the date of commencement of the use.

The use subject of this consent is limited to a period of 18 months from commencement of operations. Prior to the expiry date of this consent, the applicant will be required to submit a new development application for any continuance of the use.

Council is to be notified in writing of the commencement of operations.

3 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)

The operating hours are from 9am to 6:30pm, Saturday to Sunday and 7 days a week during school and public holidays.

4 [A Special \(BLANK\)](#)

Prior to the commencement of the use, a Plan of Management is to be prepared in consultation with the Nepean Rowing Club New South Wales Rowing and Sydney International Regatta Centre. The to ensure the operation of the Charter and Tourism Boating Facility does not conflict or interfere with rowing events to be held on the Nepean River. Priority is to be given to the rowers on the river at all times.

5 [A Special \(BLANK\)](#)

Prior to the commencement of the use, an operational plan is to be prepared and submitted to Council for approval, which includes, but is not limited to the following details:

- Plans detailing the users of the fly boards are limited to an area adjacent to the existing landing and outside of the existing rowing lanes within the Nepean River. The area is to be marked through the use of buoys.
- Details of the placement of the marker buoys within the Nepean River and their subsequent removal during a major rowing event.
- Details relating to the operation of the Charter and Tourism Boating Facility without limiting access to the existing landing for other users of the Nepean River.
- Details of sales and management of the Charter and Tourism Boating Facility within the pontoon area.
- Procedures for the movement of the fly boards from the storage trailer to the existing landing.
- Safety procedures to protect the users of the fly boards, including access to a safety boats to assist in the rescue/ return of the fly boards.

6 [A Special \(BLANK\)](#)

The operation of amplified music is not permitted in conjunction with the Charter and Tourism Boating Facility.

7 [A Special \(BLANK\)](#)

Life jackets are to be worn by hirers at all times when on the fly boards.

8 [A Special \(BLANK\)](#)

The fly boards, buoys and associated tent and tables and chairs are to be removed from the Nepean River at the end of each day.

No pontoon is to be erected and at no time are fly boards to be stored on the banks of the Nepean River or within the adjoining reserve.

9 [A Special \(BLANK\)](#)

The Charter and Tourism Facility is not to operate during times of flood or any significant rise in river height.

10 [A Special \(BLANK\)](#)

The operation of the Charter and Tourism Facility is limited to the indicated 50m x 50m zone, marked by temporary buoys when in use.

11 [A Special \(BLANK\)](#)

The operation of the Charter and Tourism Facility is not to result in the exclusive use of the existing landing at any time. The landing is to remain unobstructed to allow other users to gain access to the river.

12 **A Special (BLANK)**

The area of operation shall be maintained in a clean and tidy manner and is to be manned by an employee of the business at all times to ensure the security of the customer's valuables whilst using the fly boards.

13 **A Special (BLANK)**

An Aquatic Licence from the NSW Roads and Maritime Service is to be obtained prior to the commencement of operations. The fly boards are not permitted to operate in NSW navigable waters without an Aquatic Licence from RMS.

A copy is to be submitted to Penrith Council.

14 **A special BLANK**

Prior to Operation an Acoustic Report addressing the noise impacts on the Nepean Rowing Club (including the outdoor terrace), recreational spaces (including those adjacent to Bruce Neale Drive and Weir Reserve) and the nearest residential receivers is required to be submitted to Council. This Acoustic Report is to be prepared by a suitably qualified Acoustic Consultant in accordance with the requirements of the NSW Industrial Noise Policy. Proposed Operational Hours and noise mitigation measures are to be included in a Noise Management Plan.

Environmental Matters

15 **D015 - Spill prevention & clean-up procedures**

A plan detailing spill prevention, contingency and emergency clean-up procedures for the activity shall be submitted to Council prior to operation. The approved procedures plan shall be implemented in the event of a spill or emergency.

16 **D Special BLANK**

All waste generated onsite by the flyboarding activity, participants, spectators and instructors is to be removed off site and to be disposed of to a licensed waste management facility.

17 **D Special BLANK**

Refueling shall only take place in a secured, banded area.

Operation of OSSM

18 **Recreational Water Monitoring Program**

A recreational water quality monitoring program and strategy is to be developed for the defined recreational waters in accordance with the NHMRC *Guidelines for Managing Risks in Recreational Water* 2008. The program shall be based on a risk assessment and include routine monitoring of the chemical, physical and bacteriological qualities of the water. The plan shall also include, but not be limited to, a quality assurance program, contingencies where sampling and analysis identifies non compliances with the guidelines, data analysis and recording, and reporting procedures.

The plan shall be completed by an appropriately qualified person and be submitted to Penrith City Council for approval prior to the activity commencing.

19 **Recreational Water Quality Risk Assessment**

A risk based assessment shall be completed by an appropriately qualified person of the defined recreational water area, for the proposed use, in accordance with the NHMRC *Guidelines for Managing Risks in Recreational Water* 2008. The assessment shall be completed in accordance with appendix one to four of this guideline.

The assessment shall be submitted to Penrith City Council for approval prior to the activity commencing.

Appendix - Development Control Plan Compliance

Development Control Plan 2006

Part 2 - City wide controls

Consideration has been given to the planning controls contained within Penrith Development Control Plan 2014, which is now in force and is a consolidation of DCP 2010 and 2006, however the key requirements do not change.

Given the unique nature of the development, and its location on the Nepean River, there are no specific aspects of the Development Control Plan that are considered relevant to the development. The general principles and controls have been considered below.

Sustainability

The proposed use is considered to be sustainable and does not adversely impact upon the adjoining land uses or environment.

Vegetation

No vegetation removal is required.

Watercourse

The recreational use is not envisaged to adversely impact upon the water quality or the overall health of the river.

Erosion & Sedimentation Control

The fly boards are not likely to result in erosion or sedimentation impacts. No building works are proposed.

Waste

Waste is proposed to be collected by Sydney Fly Boarders on site and transported back to their residential address and disposed of. It will be conditioned that waste is to be removed from the site.

Heritage

The rowing lanes on the Nepean River are heritage listed. This application does not impact upon the rowing lanes and is controlled by way of conditions of consent.

Advertising

No permanent structures or signage is proposed.

Transport & Parking

The proposed development relies upon the existing car parking areas available within adjoining public car park. No additional parking spaces are proposed for this development. It is noted that existing car parking areas are utilised by users of the reserve, walking tracks and Rowers Clubs, people accessing the ramp, with peak demand for these parking spaces on the weekend and during the summer school holidays. The parking demand within and surrounding reserve needs to be address as a part of an overall Plan of Management for the locality, rather than as a part of this Development Application. Given the size of the development and the time limited.nature of the development consent, the provision of additional parking to support the development is not warranted.

Noise

The fly boards are enabled with a 'D-Sea-Bel' sound reducing system. An Acoustic Report is required to address the noise impacts on surrounding users by way of condition of consent.