

13 December 2019

Michelle Niles
Senior Planner, Regional Assessments
Department of Planning, Industry and Environment
GPO Box 39
Sydney NSW 2001



By Email: michelle.niles@planning.nsw.gov.au

Dear Michelle

Re: Penrith Lakes Scheme DA 2 (Mod 10), DA 3 (Mod 8) and DA 4 (Mod 13) – Draft Conditions

We refer to your email dated 6 December 2019 and the draft conditions for DA 2 (Mod 10) attached to that email (**Draft Conditions**). We understand that the same conditions would be imposed for DA 3 (Mod 8) and DA 4 (Mod 13).

Thank you for inviting Penrith Lakes Development Corporation Ltd (**PLDC**) to provide its comments on the Draft Conditions, which are set out in this letter for the Department's consideration.

On 13 November 2019, the Department of Planning, Industry and Environment – Water and the Natural Resources Access Regulator (**Water Regulators**) provided two recommendations in relation to the modification applications for the Department's consideration. Please see attached PLDC's response to those recommendations contained in a letter dated 11 December 2019 prepared by ERM Services Australia (**ERM Letter**).

Condition 49H of the Draft Conditions proposes the imposition of an obligation on PLDC to submit a Ground and Surface Water Management Plan (**GSWMP**) to the Secretary for approval prior to the importation of fill pursuant to the consent (as modified). We assume that this condition has been proposed in response to the second recommendation of the Water Regulators because they indicated that they have '*some concerns that the proposed spoil fill may introduce or heighten deleterious hydrogeochemical aspects to the emplaced materials in terms of a wider range of sulphide or sulfate compounds*'. For the reasons set out in the ERM Letter, PLDC's position is that the Water Regulators' concerns are unwarranted having regard to the terms of the WestConnex Tunnel spoil and Sydney Metro Tunnel spoil exemptions.

As you are aware, in considering modification applications, the consent authority must confine its consideration to the matters in the heads of consideration in section 4.15 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**) relevant to the aspects of the development to which the modification application relates. As a consequence of this constraint, the power to impose conditions on a modification application is similarly constrained to a matter relevant to the aspect of the development to which the modification application relates: *1643 Pittwater Road Pty Ltd v Pittwater Council* [2004] NSWLEC 685.

Put simply, this means that the Department will only be able to consider the section 4.15 matters, and to impose conditions, to the extent that they are relevant to the modification (ie the importation of tunnel spoil in addition to VENM and ENM). PLDC submits that condition 49H of the Draft Conditions does not relate to the modification applications in circumstances where the Water Regulators' concerns are unwarranted and cannot arise having regard to the terms of the relevant exemptions.

In the circumstances, PLDC respectfully requests that this condition is not imposed in respect of any of the modification applications.

Please do not hesitate to contact me regarding the above.

Regards

A handwritten signature in black ink, appearing to read "Arthur Ashburn".

Arthur Ashburn
Manager, Civil Works & Site Operations
Penrith Lakes Development Corporation

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