



Penrith Lakes Scheme Modification

Section 4.55(1A)
Modification Assessment
(DA2 MOD 10)

February 2020

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Glossary

Abbreviation	Definition
Applicant	Penrith Lakes Development Corporation
Consent	Development Consent
Council	Penrith City Council
Department	Department of Planning, Industry and Environment
DPI	Department of Primary Industries
ENM	Excavated Natural Material
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
EPL	Environment Protection License
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
RMS	Roads and Maritime Services
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SEPP PLS	<i>State Environmental Planning Policy (Penrith Lakes Scheme) 1989</i>
VENM	Virgin Excavated Natural Material



1. Introduction

1.1 Background

This report provides an assessment of an application seeking to modify a development consent (DA2 MOD 10) for extractive operations and rehabilitation for the 'DA2 area' at Penrith Lakes (the Penrith Lakes Scheme).

The application seeks approval to import spoil from the excavation of the WestConnex M4-M5 Link and Sydney Metro tunnels onto the site as rehabilitation fill, in addition to the approved use of Virgin Excavated Natural Material (VENM) and Excavated Natural Material (ENM).

The application has been lodged by the Penrith Lakes Development Corporation (PLDC) (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 The site

Penrith Lakes (the site) is located approximately 50 kilometres (km) north-west of the Sydney Central Business District (CBD), 30 km north-west of the Parramatta CBD and 3 km north of the Penrith CBD, in the Penrith local government area.

The site is bound by the Nepean River to the west and south and Castlereagh Road to the east. Residential development in Cranebrook is located to the east of the site beyond Castlereagh Road. The site adjoins industrial lands to the south-west and rural allotments to the north (**Figure 1**).

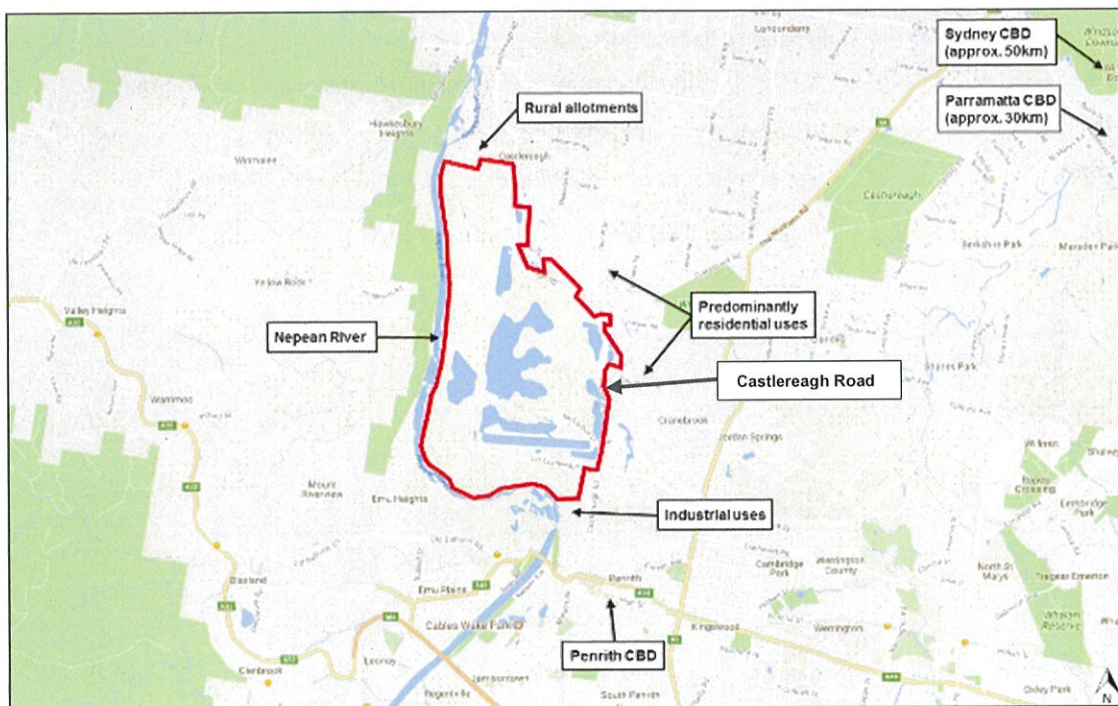


Figure 1 | The Penrith Lakes site is outlined in red (Base Source: Nearmap)

The proposed modification relates to the DA2 area, located to the south east of the Penrith Lakes Scheme (**Figure 2**).

1.3 Penrith Lakes Scheme

The Penrith Lakes Scheme is a 30 year quarrying and rehabilitation project being undertaken by a joint-venture company, the PLDC. The Scheme is located on the 1,940 hectare Penrith Lakes site, within the Nepean River floodplain. It is being transformed from a sand and gravel quarry into a water-oriented recreation park, with land suitable for rural, tourism or employment uses. Quarrying activities on the site finished in September 2015 and PLDC has been progressively rehabilitating the site.

In 1987, the NSW Government entered into a Deed of Agreement with PLDC which outlines the rights and responsibilities of each party in the implementation of the Penrith Lakes Scheme. Under the 1987 Deed, PLDC will dedicate the land to the NSW Government following the completion of extraction activities and rehabilitation works.

Development on the Penrith Lakes site is governed by the State Environmental Planning Policy (Penrith Lakes Scheme) 1989 (SEPP PLS). The SEPP allows approximately 80 ha of waterways, 110 ha of parklands, 118 ha of environmental area, 33 ha of employment area and 52 ha of tourism area. It also includes 1,330 ha of unzoned land that will be subject to future land use planning following the completion of flood investigations and consultation with the community.

1.4 Approval history

1.4.1 Development consents

There are a number of development consents that govern the quarrying activities and rehabilitation works on the site.

Sydney Regional Environmental Plan No 11 (SREP 11) allowed the submission of sequential development applications (DAs) for the progressive release and rehabilitation of resource-bearing land within the Penrith Lakes Scheme. Four consents (DA1 to DA4) have subsequently been approved by the Minister, summarised in **Table 1**.

Table 1 | Summary of the Original DAs

Consent/Date	Description
DA 1 Dated July 1982	Interim extraction while detailed planning studies and preparation of SREP 11 were undertaken.
DA 2 Dated 24 February 1987	Applies to land east of the former alignment of Castlereagh Road (southern part) and includes Lake A, the Southern Wetlands and Quarantine Lake.
DA 3 Dated 27 June 1995	Applies to land east of the former alignment of Castlereagh Road (northern part).
DA 4 Dated 9 September 1998	Applies to land west of the former alignment of Castlereagh Road and includes the Wildlife Lake, Quarantine Lake, Lake A, Lake B and the Southern Wetlands.

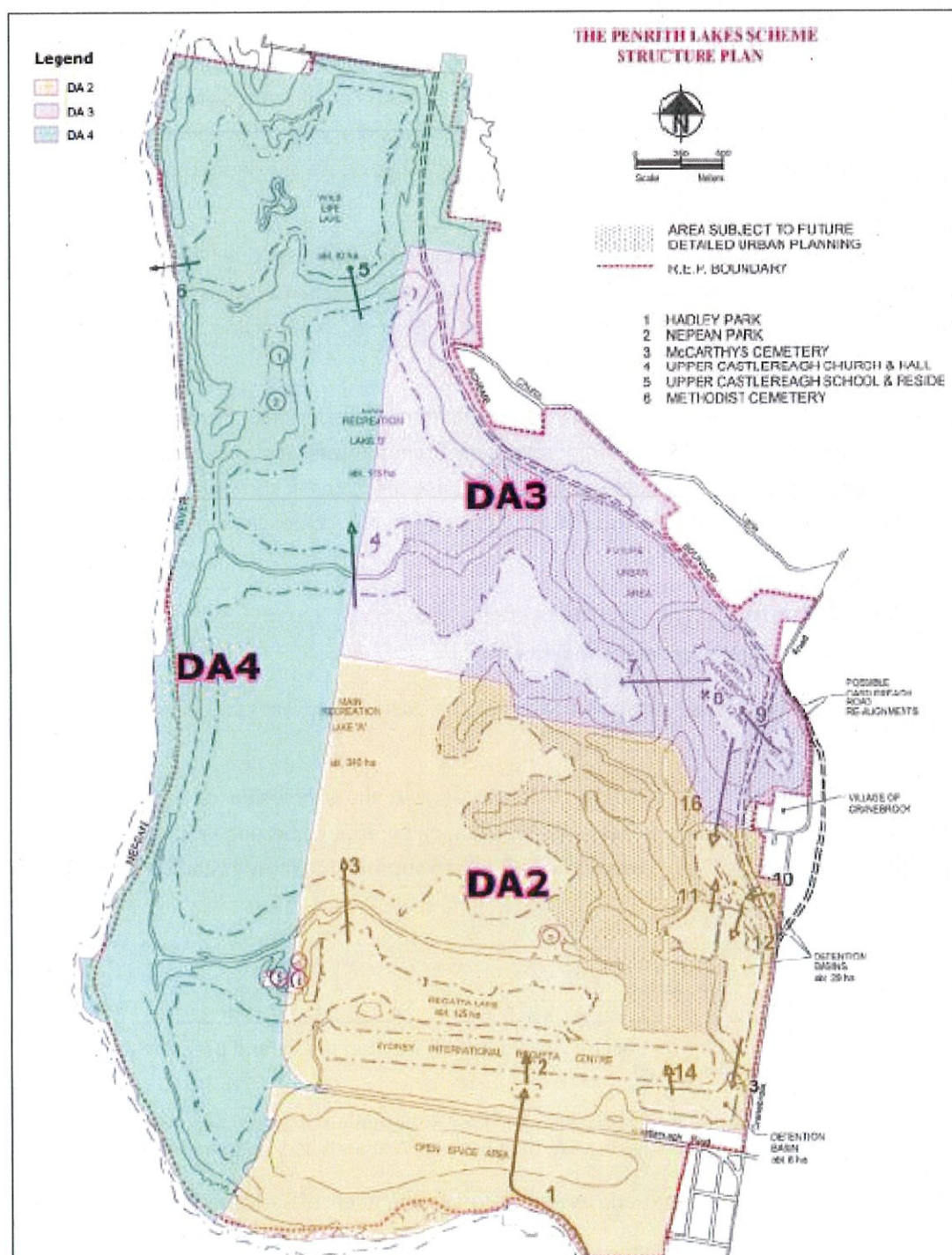


Figure 2: The land associated with the different DAs (Source: Applicant's documentation for DA2 MOD 7)

The following modifications to DA2 are considered relevant to the current application:

Table 2 | Summary of relevant modifications to DA2

Mod number	Summary of modification	Approval date
DA2 MOD3	Allow the importation of up to 3m tonnes of VENM to the site over a three year period (2009 -2011).	4 July 2009 by the Department

Mod number	Summary of modification	Approval date
DA2 MOD 4	Change the timing of works to 2014-2016, amendment of the area for VENM, expand the source of VENM (including North-West Rail construction site), change to haulage routes, removal of one access point and updated noise monitoring.	5 February 2014 by the Department
DA2 MOD 5	Allow the importation of ENM, increase the amount of VENM and ENM imported from 3m tonnes to 8m tonnes at a rate of up to 3m tonnes per year, expand the source of VENM and ENM to include sites anywhere in Sydney, commence importation of the additional VENM and ENM in early to mid-2015.	30 April 2015 by the Department
DA2 MOD 6	Extend the operating hours for the importation of VENM and ENM to 6 am to 9 pm Monday to Friday and 6 am to 3pm on Saturday. No work is to be undertaken on Sunday.	6 November 2017 by the Department
DA2 MOD 7	Increase the amount of VENM and ENM imported to the site by 4.7m tonnes (DA2 and DA3) to a total of 13m tonnes.	8 January 2019 by the Land and Environment Court
DA2 MOD 8	Increase the amount of VENM and ENM imported to DA2 and DA3 sites by 0.3m tonnes to a total of 8.3m tonnes.	28 August 2018 by the Department

1.4.2 Water Management Plans

PLDC has undertaken a detailed review of the Scheme's water management plan (WMP) which provides a holistic approach to water management across the site. In 2013, the Department approved the '2012 Water Management Plan: Stage 1' (2012 WMP). The 2012 WMP includes detailed descriptions for required flood infrastructure and landform design to manage water levels during both typical flow conditions and flood events. The flood management system includes a series of weirs and flow paths between the interconnected lakes to control flood waters within and outside the site.

1.4.3 Two Year Plans

The conditions of consent under DA2 (and DA3 and DA4) include a requirement to prepare 'detailed consents' every two years (referred to as Two Year Plans). These form the detailed consent for works, including landform rehabilitation, associated with the Scheme. PLDC is required to submit Two Year Plans, providing the detailed plans for works to be carried out in the subsequent two years, in accordance with the Structure Plan and Deed to the satisfaction of the consent authority. There are currently several Two Year Plans which apply to various areas of the site.



2. *Proposed modification*

The Applicant has lodged an application, under section 4.55(1A) of the EP&A Act, seeking approval to amend the development consent (DA2) to import spoil from the excavation of the WestConnex M4-M5 Link and Sydney Metro tunnels onto the site as rehabilitation fill (DA2 MOD 10), in addition to the approved use of VENM and ENM.

The Applicant also lodged an application seeking the same changes to the development consent for DA3 (MOD 8), which is being assessed separately. The Applicant originally sought to also modify DA4 (MOD 13) to reflect the above but advised the Department on 24 January 2020 that this modification is to be withdrawn.

The WestConnex M4-M5 Link and Sydney Metro tunnel spoil are not classified as either VENM or ENM, however are subject to the following Environment Protection Authority (EPA) Resource Recovery Orders and Resource Recovery Exemptions:

- The Sydney Metro tunnel spoil order November 2018
- The Sydney Metro tunnel spoil exemption November 2018
- The M4-M5 tunnel spoil order 2019
- The M4-M5 tunnel spoil exemption 2019.

The Applicant has submitted correspondence from an EPA Accredited Site Auditor and a report by ERM Services Australia stating that, subject to compliance with the requirements of the above EPA Exemptions and Orders and compliance with the submitted Penrith Lakes Importation Protocol (Importation Protocol), the WestConnex M4-M5 Link and Sydney Metro tunnel spoil:

- is acceptable for use as engineered fill for future residential, recreational and open space uses
- will not change the site's suitability for future residential, recreational and open space uses
- will not result in future health risks.

The modification does not seek to amend other components of the DA, including the maximum amount or rate of fill importation to the site.



3. Statutory context

3.1 Scope of modification

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining applications that seek to modify a development consent and results in minor environmental impacts.

The matters for consideration under section 4.55(1A) of the EP&A Act that apply to the proposal are considered in **Table 3**.

Table 3 | Section 4.55(1A) modification involving minimal environmental impact

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The proposal seeks to allow the importation of WestConnex M4-M5 Link and Sydney Metro tunnel spoil to the site for filling purposes. The modification does not seek to amend other components of the DA, including the maximum amount or rate of fill importation. The Department is satisfied that the modification will not result in any significant impacts on the site and surrounding area and the development is substantially the same as the originally approved development.
c) the application has been notified in accordance with the regulations, and	The modification application has been notified in accordance with the regulations. Details of the notification are provided in Section 4 of this report.
d) any submission made concerning the proposed modification has been considered.	The Department did not receive any public submissions on the proposal. Details of consideration of the public authority submissions are provided in Section 4 and 5 of this report.

3.2 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the original DA against the mandatory matters for consideration in section 4.15 of the EP&A Act. The Department considers this proposal does not result in significant changes that would alter the assessment and conclusions made in the original assessment.

3.3 Approval authority

In accordance with the Minister's delegation, the request may be determined by the A/Director, Regional Assessments, as:

- Penrith City Council (Council) has not made an objection
- a political disclosure statement has not been made
- there are no public submissions in the nature of objections.

3.4 State Environmental Planning Policy (Penrith Lakes Scheme) 1989

The original DA and subsequent modifications were assessed and complied with SREP 11 or SEPP PLS (as in force at the time of determination). An assessment of relevant provisions of SEPP PLS is provided in **Appendix A**. The Department considers that the proposal continues to comply with the SEPP PLS.



4. Engagement

4.1 Department's engagement

The application (for the proposed changes to DA2, DA3 and DA4) were made publicly available on the Department's website and notified to Council and relevant State agencies for 15 days between 23 July 2019 to 6 August 2019.

The Department received submissions from Council, EPA and the Department's Water and NSW Natural Resource Access Regulator (Department's water group), all of which provided comments on the proposal as summarised in **Table 4**. No submissions were received from the public.

Table 4 | Summary of Submissions

Council

Council did not object to the proposal, however noted the following:

- clarification is required that the fill quantity and quality will be consistent with the approved land form endorsed through the existing Two Year Plans
- the fill will be subject to written confirmation from an environmental consultant prior to receipt at the site and will be subject to the site's existing Importation Protocol
- the EPA will be the appropriate regulatory authority for the environmental aspects of operations under the *Protection of the Environment Operations Act 1997*
- compliance with existing approved management plans and procedures should form part of any consent.

EPA

EPA provided the following comments:

- fill is to be inspected and tested, and an unexpected finds protocol be in place to ensure conditions of the EPA exemption and order are met, which should be covered in an Importation Protocol
- recommends a condition requiring the implementation of the Importation Protocol.

Department's Water and NSW Natural Resource Access Regulator (Department's water group)

The Department's water group recommended conditions requiring:

- the Importation Protocol be updated to reflect the additional fill sources and quality assessment methods identified in the proposal
- a management plan be prepared, in consultation with the Department's water group, to monitor and manage potential impacts to ground and surface water systems from the potential introduction or heightened hydrogeochemical aspects from a wider range of sulphide or sulfate compounds and increased salinity.

4.2 Additional information

Due to the nature of submissions, the Department did not request a response to submissions, as the issues would be considered through the Department's assessment (**Section 5**).

On 13 December 2019, the Applicant wrote to the Department providing a response to the comments by the Department's water group. This response provided:

- an updated Importation Protocol referencing the M4-M5 Link Tunnel and Sydney Metro Tunnel fill
- confirmation that the exemptions for the proposed fill already requires that the material not contain asbestos, Acid Sulfate Soils (ASS), Potential Acid Sulfate Soils (PASS) or sulfidic ores.

The Department's water group responded that this addressed its comments and that a management plan is not required.



5. Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification application and associated documents
- the Environmental Assessment and conditions of the original approval (as modified)
- submissions received on the proposal
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key assessment issues associated the proposal is fill quality. All other assessment issues are considered in **Table 5** below.

5.1 Fill quality

The proposal seeks to import spoil from the excavation of the WestConnex M4-M5 Link and Sydney Metro tunnels for use as fill for the rehabilitation of the DA2 area. The Department notes that use of this spoil is subject to EPA Resource Recovery Orders and Resource Recovery Exemptions and are not classified as VENM or ENM (which are already approved to be used on the site).

The Applicant has submitted confirmation from an EPA Accredited Site Auditor and ERM Services Australia stating that, subject to compliance with the requirements of the EPA Exemptions and Orders and with the submitted Importation Protocol, the WestConnex M4-M5 Link and Sydney Metro tunnel spoil:

- is acceptable for use as engineered fill for future residential, recreational and open space uses
- will not change the site's suitability
- will not result in future health risks.

Council and the EPA advised that, as recommended in Applicant's supporting information, the fill should be subject to inspections and validation testing when necessary. The EPA also advised that the unexpected finds protocol, included in the Importation Protocol, should be implemented. The Department's water group recommended that the Importation Protocol be updated to reflect the additional fill types being imported.

The existing Importation Protocol relates to the importation of VEMN and EMN to the site. However, as noted by the EPA, measures related to validation testing, sampling and unexpected finds protocols, contained in the existing Importation Protocol, are considered acceptable for the additional fill.

In response to comments raised in submissions, the Applicant provided an updated Importation Protocol (Version 9.3, revision 04, dated 30 January 2020) which makes specific reference to the WestConnex M4-M5 Link and Sydney Metro tunnel spoil classified under an EPA Resource Recovery Order and Resource Recovery Exemption in all applicable sections.

Noting the above, the Department supports the importation of spoil from the excavation of the WestConnex M4-M5 Link and Sydney Metro tunnels for use as fill for the rehabilitation of the DA2 area. The Department recommends conditions that the additional fill comply with all requirements of the EPA exemptions and orders, and the updated Importation Protocol.

Table 5 | Summary of other issues raised

Issue	Findings	Recommended condition
Ground and surface water	<ul style="list-style-type: none"> The Applicant advised that the proposal would not result in any additional water quality issues, as existing management measures are in place to control sediment entering surface water and soil testing measures are in place to ensure contaminants are not imported to the site. The Department's water group advised that the proposed fill has the potential to impact ground and surface water systems due to the potential for a wider range of sulphide or sulfate compounds and increased salinity. In response, the Applicant provided confirmation that the exemptions for the proposed additional fill already requires that the material not contain asbestos, Acid Sulfate Soils (ASS), Potential Acid Sulfate Soils (PASS) or sulfidic ores. The Department's water group advised that it is satisfied that the proposed fill will not adversely impact ground or surface water. 	<ul style="list-style-type: none"> No additional conditions or amendments necessary to existing conditions.
Fill quantity / Surrounding amenity impacts	<ul style="list-style-type: none"> Council requested confirmation that the fill quantity would be consistent with the approved land form endorsed through the existing two-year plans. The Department notes the modification seeks to expand sources of fill importation and does not propose to amend any other existing conditions relating to maximum amount of fill, rate of fill importation, noise and dust management, traffic management or erosion control. Subject to compliance with existing conditions, the Department does not consider the modification will result in additional amenity impacts to surrounding areas. 	<ul style="list-style-type: none"> No additional conditions or amendments necessary to existing conditions.
Administrative changes	<ul style="list-style-type: none"> The Department notes that several conditions relating to erosion control, noise and dust management plans, transport and fill monitoring only reference importation of VENM and ENM. As such, the Department has recommended that these conditions be amended or, where required, a new condition be added to reference all approved fill permitted to be imported to the site. 	<ul style="list-style-type: none"> Update relevant conditions to refer to all fill permitted to be imported.



6. Evaluation

The Department has assessed the proposal in accordance with the relevant requirements of the EP&A Act. The Department considers the proposal is acceptable on the basis that:

- it would not result in any significant additional impacts on the environmental quality of the site or amenity of the surrounding area
- the Penrith Lakes Importation Protocol has been updated to refer to the M4-M5 Link and Sydney Metro tunnel spoil classified under an EPA Resource Recovery Order and Resource Recovery Exemption
- conditions are recommended requiring that the additional fill comply with all requirements of the EPA exemptions and orders, and the updated Importation Protocol
- the proposal will not impact ground and surface water quality
- the proposal continues to facilitate the rehabilitation and reconstruction of the site in accordance with the Penrith Lakes Scheme Structure Plan and Deed
- the modified proposal would be substantially the same as the original DA approval.

The Department is satisfied that the modification should be approved, subject to the recommended conditions (see **Appendix D**).



7. Recommendation

It is recommended that the A/Director, Regional Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that application DA2 MOD 10 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application
- **modify** the development consent DA2 MOD 10
- **signs** the attached approvals of the modification (**Attachment B**).

Recommended by:

Michelle Niles
Senior Planner
Regional Assessments



8. Determination

The recommendation is: **Adopted** by:

Brendon Roberts
Acting Director
Regional Assessments
as delegate of the Minister for Planning and Public Spaces.



Appendices

Appendix A – State Environmental Planning Policy (Penrith Lakes Scheme) 1989

Clause 8 of the SEPP PLS relates to development for the purposes of implementing the Penrith Lakes Scheme and sets out the matters for consideration before granting consent. The Department has considered the applicable provisions of clause 8 in **Table 1**:

Table 1 | Clause 8 Development for the purposes of implementing the Penrith Lakes Scheme

Requirement	Departments Comment	Complies
Clause 8 – Development for the purposes of implementing the Penrith Lakes Scheme		
(2) The consent authority shall grant consent to development to which this clause applies unless: the consent authority is of the opinion that the development the subject of the application: (i) does not fully implement the Penrith Lakes Scheme on the land to which the application for development relates, (ii) will not ensure the satisfactory implementation of the Penrith Lakes Scheme, or (iii) is not generally in accordance with the structure plan, and in the case of an application to carry out development which includes an extractive industry, the consent authority is of the opinion that: (i) development should not be carried out until other land to which this Policy applies is developed for purposes which include an extractive industry, (ii) the land, the subject of the application, will not be rehabilitated and reconstructed: (A) generally in accordance with the structure plan, or (B) to ensure the satisfactory implementation of the Penrith Lakes Scheme, or (iii) the person (including any person related, connected or otherwise associated to or with that person) proposing to carry out that development has not complied with the conditions of a consent previously granted to carry out development which included an extractive industry in respect of other land to which this Policy applies.	The proposed fill: <ul style="list-style-type: none">• satisfactorily implements the Penrith Lakes Scheme• is generally in accordance with the Structure Plan and therefore maintains compliance• will not affect extractive industry operations on the site which have ceased• facilitates the required rehabilitation and reconstruction works in accordance with the Structure Plan and Deed for Penrith Lakes Scheme.	Yes
(3) The consent authority shall not consent to the carrying out of development for the purposes of implementing the Penrith Lakes Scheme unless the person making the application has submitted a statement of the environmental effects of the proposed development containing the matters specified in clause 1 of Schedule 2 and addressing the matters specified in clause 2 of that Schedule.	The Modification Application adequately addresses clause 1 and clause 2 of Schedule 2 by addressing the (relevant) required matters to be included in the statement of environmental effects.	Yes
(4) In determining an application to carry out development to implement the Penrith Lakes	The Department has carefully considered the Modification Application and an	Yes

Requirement**Departments Comment****Complies**

Scheme, the consent authority shall take into consideration the following matters:

- (a) the Penrith Lakes Scheme Regional Environmental Study,
- (b) the recommendations, if any, of such technical working parties as may be established from time to time by the consent authority,
- (c) the statement of environmental effects accompanying the application,
- (d) the proposed sequence of extraction and rehabilitation,
- (e) whether the land is to be dedicated to the Crown and, if not, the proposed control and management of the land,
- (f) the management and control of water resources including:
 - (i) the source of water in order to fill any lake (including the quality and quantity of water from that source),
 - (ii) water reticulation systems from the Nepean River to any lake, from lake to lake and from any lake to the Nepean River,
 - (iii) the water quality of any lake (including the aquatic ecosystem),
 - (iv) water treatment facilities,
 - (v) water depth of any lake,
 - (vi) flood control,
 - (vii) storm water control,
 - (viii) the effect that development would have upon the quantity and quality of the existing groundwater, the level of the existing water table and groundwater movement,
 - (ix) lake usage,
 - (x) staged development of the lakes and their usage during stage development,
 - (xi) the need to monitor the water quality of the lakes having regard to their intended use, and
 - (xii) the effect upon the Hawkesbury/Nepean River system,
- (g) the rehabilitation and reconstruction of the land including:
 - (i) landscape design,
 - (ii) the structural stability and soil compaction of landforms (including, where appropriate, the land shown on the structure plan as future urban),
 - (iii) the stability and impermeability of the Nepean River embankment,
 - (iv) soil conservation, and
 - (v) revegetation,
- (h) access to, the supply of water from any existing source to, and the supply of and access to municipal and utility services to, land to which this Policy applies, other than that part of that land the subject of the application,
- (i) any item of the environmental heritage listed in Schedule 3,
- (j) the effect upon a locality, place or building not listed in Schedule 3 having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations, and
- (k) the need and frequency to monitor the implementation of the subject development.

assessment of the key issues is provided at Section 5.

Requirement	Departments Comment	Complies
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Clause 31 - Earthworks

<p>(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:</p> <p>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</p> <p>(b) the effect of the development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development</p>	<p>The Department has considered the impacts associated with importation of the proposed fill in Section 5 and the Penrith Lakes Importation Protocol has been updated to refer to the proposed additional fill.</p>	<p>Yes</p>
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Appendix B – Statement of Environmental Effects/ Environmental Assessment

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10016 (DA 2 MOD 10)

Appendix C – Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10016 (DA 2 MOD 10)

Appendix D – Notice of Modification

(see attached)