

Modification of Development Consent

Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning and Public Spaces, I modify the consent referred to in Schedule 1, subject to the conditions in Schedule 2.



Keiran Thomas
Director
Regional Assessments

Sydney

5 November 2020

SCHEDULE 1

Development consent:	DA 2 granted by the Minister for Urban Affairs and Planning on 24 February 1987
For the following:	Development for the purposes of implementing the Penrith Lakes Scheme
Applicant:	Penrith Lakes Development Corporation
Consent Authority:	Minister for Planning
The Land:	Penrith Lakes Scheme (as it relates to DA2)
Modification:	DA 2 MOD 11: modification to allow the importation of an additional 3.35 million tonnes of fill and for 24 hour/ 7 days per week operating hours

SCHEDULE 2

The consent is modified as follows:

- (a) Insert the following bullet point in Development Application:

- (n) **Modification Application DA2 MOD 11 and supporting documents dated 10 July 2019 (excluding any plans or documents relating to changes to landform as removed from the scope of MOD 11 on 21 August 2020), revised SEE entitled "Section 4.55(2) Modification of Development Consent DA2 (REF 86/2720) – Penrith Lakes Scheme" dated 13 September 2019, additional information dated 21 August 2020 and additional transport information dated 28 September 2020.**

Note: All references to VENM in this consent mean Virgin Excavated Natural Material, as defined in the Protection of the Environment Operations Act 1997.

- (b) After Condition 17A insert new Condition 17B shown in **bold and underlined** as follows:

- 17B Prior to commencement of VENM and ENM importation approved under DA2 MOD 11, PLDC and/or future owners shall implement erosion and sediment control measures on site, in accordance with the relevant requirements in the latest version of the *Managing Urban Stormwater: Soils and Construction guideline*. These erosion and sediment control measures shall be inspected and maintained for the duration of VENM and ENM importation on the site.**

- (c) Condition 17CC is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

- 17CC Prior to the commencement of fill importation pursuant to MOD 9, ~~and~~ MOD 10 **and MOD 11**, the EPA and Department shall be notified confirming the sources of the fill and provided with documentation, prepared by an appropriately qualified environmental consultant, confirming that the material complies with the requirements of the relevant:

- (a) The Sydney Metro tunnel spoil order November 2018
- (b) The Sydney Metro tunnel exemption November 2018
- (c) The M4-M5 Link tunnel spoil order 2019
- (d) The M4-M5 Link tunnel spoil exemption 2019.
- (e) any other site-specific Resource Recovery Order and Exemption issued by the EPA.

- (d) After Condition 36BB insert new Condition 36BBB shown in **bold and underlined** as follows:

- 36BBB Development described in DA2 MOD 11 is permitted to be carried out on a 24 hour basis, 7 days a week subject to any restrictions on operating hours that may be required by a Dust Management Plan and Noise Management Plan approved under Condition 37B.**

- (e) Condition 36C is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struck-out~~ words/numbers as follows:

- 36C The Applicant shall ensure the development complies with the noise limits set out in Table 2, unless it has secured a written agreement from the affected landowner to exceed these limits.

Sensitive Receiver	Noise Limits dB(A), L _{Aeq} , 15 minutes, daytime
Poplars Heritage Complex (at occupied residence only)	43
Cranebrook Village	45
South Cranebrook residences	39
Upper Castlereagh Uniting Church residence	51
Whitewater Stadium (when in used)	48
<u>39 and 47 to 65 Old Castlereagh Road and Waterside Estate</u>	<u>47 (7am to 6pm) 42 (6pm to 10pm) 37 (10pm to 7am)</u>
<u>Business/industrial area that lies between the MOD 11 site and east to Castlereagh Road and south-east to Boundary Creek</u>	<u>70 (offices/retail) 75 (industrial premises)</u>

Table 2 Noise Limits

Notes:

- Noise from the development is to be measured at the most affected point within the residential boundary, or at the most affected point within 30 metres of the dwelling where the dwelling is more than 30 metres from the boundary, to determine compliance with the noise level limits in condition 36C.
- Where it can be demonstrated that direct measurement of noise from the premises is impractical, the Department of Environment and Conservation may accept alternative means of determining compliance. See Chapter 11 of the *NSW Industrial Noise Policy*.
- The modification factors presented in Section 4 of the *NSW Industrial Noise Policy* shall also be applied to the measured noise levels where applicable.
- The noise emission limits identified in condition 36C apply under meteorological conditions of wind speed up to 3 metres per second at 10 metres above ground level.

- (f) After Condition 37A insert the new Condition 37B shown in **bold and underlined** as follows:

37B PLDC and/or future owners shall prepare and implement a Noise Management Plan (NMP) for traffic and construction noise and a Dust Management Plan (DMP) for VENM and ENM importation approved under DA2 MOD 11.

1. The NMP and DMP must:

- be approved by the Secretary prior to importation of the 3.35 million tonnes of VENM and ENM;**
- be prepared by a suitably qualified and experienced person(s);**
- be prepared in consultation with Council;**
- verify that the project meets the relevant noise and air quality criteria in the approval (i.e. Conditions 36C and 37 respectively);**
- include provisions to ensure that the project achieves and maintains best practices in both equipment and operations to minimise dust and noise impacts in accordance with conditions of approval;**
- require that all works cease immediately upon written advice from Council or DPIE that a valid dust or noise complaint has been received. Works are not to recommence until ameliorative action is taken to the written satisfaction of Council or DPIE compliance teams.**

2. The DMP must:

- detail all particulate emissions from all sources of the development;**

- (b) describe a program that is capable of evaluating the performance of the operation and determining compliance with key performance indicators;
- (c) identify the control measures that will be implemented for each particulate emission source; and
- (d) nominate the following for each of the proposed controls:
 - (i) key performance indicator;
 - (ii) monitoring method;
 - (iii) location, frequency and duration of monitoring;
 - (iv) record keeping;
 - (v) response procedures if any non-compliances occur, that describe the measures that would be implemented to ensure compliance with the relevant conditions of this approval;
 - (vi) complaints register must document investigations undertaken to identify the causes(s) of and action(s) taken to rectify any complaints received; and
 - (vii) compliance monitoring.
- (e) establish a communications strategy so that affected neighbours are kept informed about the development and are consulted about aspects likely to result in particulate emissions.

3. The NMP must:

- (a) include matters listed under Condition 49A regarding a TNMP;
- (b) consider traffic noise impacts along the entire haulage routes;
- (c) if any non-compliances occur, describe the measures that would be implemented to ensure compliance with the relevant conditions of this approval;
- (d) outline procedures to record and manage responses to any complaints.

The development, including all fill importation, must be undertaken in accordance with any NMP and DMP approved by the Secretary under this condition. The NMP and DMP may be revised at any stage by submitting revised plans for approval by the Secretary.

- (g) Condition 38 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~stuck-out~~ words/numbers as follows:

Use of Watering **Dust Minimisation**

38. PDLC and/or any future owner must ensure that:

- (a) exposed surfaces and stockpiles are suppressed by regular watering.** ~~That the applicant shall keep. a~~All unsealed roads used for extractive or other material or over-burden haulage **shall be kept** sufficiently damp, at all times to prevent wind-blown or traffic generated dust. Plant shall be provided and operated to enable watering at least at a rate of 1.0 litres per square metre per hour;
- (b) all trucks entering or leaving the site with loads have their loads covered;**
- (c) trucks associated with the development do not track dirt onto the public road network; and**
- (d) rehabilitation works are carried out progressively on site to minimise exposed surfaces.**

- (h) After Condition 46A insert new Condition 46AA shown in **bold and underlined** as follows:

46AA Use of the Old Castlereagh Road vehicle access point for transporting fill approved under DA2 MOD 11 to the site shall be restricted to the hours of 7am to 6pm daily. The Lugard Street access point may be used 24 hours per day.

- (i) After Condition 46C insert new Condition 46D shown in **bold and underlined** as follows:

46D (1) PLDC and/or future owners shall prepare a precondition road survey in accordance with TfNSW specifications for the components of Lugard Street and Old Castlereagh Road that are haulage roads as identified in Condition 46A. The precondition road survey must be prepared by a suitably qualified and experienced person within 1 month of commencing importation of VENM and ENM to the site approved under DA2 MOD 11. A copy of the precondition road survey shall be submitted to the Department, TfNSW and Council within 1 week of the date of the precondition road survey.

(2) PLDC and/or future owners shall rectify any deterioration of the road pavement as a result of the VENM and ENM importation approved under DA2 MOD 11 that adversely affects any other road users during the works. At completion of the works, a post-dilapidation report shall be carried out. All maintenance and permanent repairs will be carried out within six months of completion of works, to a condition equivalent to that identified in the precondition road survey, subject to fair wear and tear as determined by Council, and prior to the release of any occupation certificate for works approved under DA2 MOD 7, to the satisfaction of the relevant authority.

Note: these works must be provided at no cost to Penrith City Council or TfNSW and all required separate approvals for the road works must be obtained from the relevant authority.

- (j) After Condition 49AA insert the new Condition 49AAA shown in **bold and underlined** as follows:

49AAA The applicant must submit a revised Construction Traffic Management Plan in accordance with the requirements of condition 49A to the Department for approval prior to the commencement of extended hours of operation and additional importation of VENM and ENM under DA2 MOD 11. The plan is to outline the proposed management of additional vehicle movements associated with the increased operating hours and requirements for VENM and ENM importation.

- (k) After Condition 49CC insert new Condition 49CCC shown in **bold and underlined** as follows:

49CCC In addition to condition 49C, 3.35 million tonnes of VENM, ENM and material subject to a site specific resource recovery order and exemption as issued by the EPA from time to time may be imported to the land at 14-278 Old Castlereagh Road (Lot 1, 2 and 3 of DP1263486)

End of modification
(DA2 MOD 11)