



**Office of
Environment
& Heritage**

Your reference : DA 4 Mod 6
Our reference: : DOC11/32100
Contact : Rod Fox, 9995 6839

Mr H Reed
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GPO Box 39
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Attention Mr Phil Jones

Dear Mr Reed

Thank you for your letter dated 12 July 2011 seeking comments from Office of Environment and Heritage (OEH) on the proposed Penrith Lakes Scheme Rip Rap and Associated Infrastructure Modifications (DA 4 Mod 6).

OEH has reviewed the information provided and comments on the proposed modifications are outlined in Attachment A.

As you may be aware, the Penrith Lakes Development Corporation (PLDC) has applied for a variation to its current Environment Protection Licence for the activities undertaken as part of the Penrith Lakes Scheme, the variation to the licence will be finalised once the appropriate consent has been issued for the installation of the rip rap material.

I trust that OEH's comments are of assistance to you and if you have any questions, or wish to discuss this matter further please contact Rod Fox on 9995 6839.

Yours sincerely

5 AUG 2011

GISELLE HOWARD
Director Metropolitan
Environment Protection and Regulation
Office of Environment and Heritage
Department of Premier and Cabinet

The Department of Environment, Climate Change and Water is now known as the Office of Environment and Heritage, Department of Premier and Cabinet

Attachment A

OEH's comments on Penrith Lakes Development Corporation's application to modify development consent (DA4) under section 75W of the EP&A Act, prepared in response to the DoP&I request for comment, dated 12/7/11.

1. Condition 27A – Water Management Plan

a. Water Balance Plan

PLDC has stated that the Water Balance Plan shouldn't apply to the quarrying period, as it relates to operation of the completed lake system. OEH considers this to be a reasonable argument, however notes that PLDC hasn't proposed any new text for this part of the condition.

b. Erosion and Sediment Control Plan

PLDC have asked that the requirements for an ESCP be removed, as erosion and sediment control is covered in the Rehabilitation Manual. OEH has made a cursory review of the Manual and notes that it does include causes of erosion during construction and controls to be implemented in the Scheme.

c. Flood Management Plan

The proposed changes to the Flood Management Plan relate only to the maintenance of structures during the period that PLDC is responsible for (until handover to government). The proposed condition will still require PLDC to undertake flood modelling and collect detailed baseline data and describe measures to minimise flood risk associated with the scheme. The only change is that it will not detail maintenance of flood controls after the scheme is dedicated to government.

d. Surface Water Management Plan

PLDC have proposed to have some elements of the Surface Water Management Plan removed, including information on (i) surface water flows and quality, (ii) impacts on end users, (iii) stream health and (iv) channel stability. It is not clear why PLDC have requested these changes but may simply be rewording the condition, as most of these items are duplicated at the end of the condition.

OEH considers that it is important to have information on surface water flow and quality, impacts on water users, stream health and channel stability. Without adequate information on these elements, it will not be possible to develop and implement appropriate controls to manage the water in the Penrith Lakes Scheme (either during quarrying or operation).

OEH considers that the requirement for information on channel stability be retained in the conditions. It is not clear why PLDC have requested that this be removed from the surface water management plan. It may be that some information is in the Landscape Manual such as riverbank, drainage channels, foreshore treatments, etc. OEH considers that this element of the water management plan is important, as to date, the Penrith Lakes Task Force has identified an issue with the stability of the Nepean River bank. It is not clear how the change in water levels in the Penrith Lakes Scheme could affect flow of water through the riverbank and ultimately the riverbank stability. PLDC should determine whether riverbank stability is a concern and how management of water levels during quarrying and lake operation might affect this.

OEH believes that these works will likely fit the requirements of a Controlled Activity under the Water Management Act 2000 and therefore the relevant approval requirements should be discussed with the NSW Office of Water.

e. Groundwater Management Plan

PLDC has requested that some of the requirements of the Groundwater Management Plan be deleted, on the basis that it duplicates monitoring requirements under the existing Water Plan and also that existing studies on groundwater interaction have already been completed. OEH is not aware of the requirements of the Water Plan, so recommends that DoP&I make an assessment of whether these requirements are adequately addressed under existing regulatory requirements. Furthermore, OEH has not had access to any groundwater assessments through the Penrith Lakes Task Force and has not been provided with information on groundwater from PLDC when requested through this forum. Therefore OEH would only support removing these requirements if DoP&I are satisfied that the potential for interaction with groundwater have been adequately assessed, most appropriately through the installation of an appropriate barrier or impermeable back-fill material to prevent either ingress of or egress to groundwater.

f. Surface and Groundwater Response Plan

PLDC has requested that the requirement to implement measures to prevent, minimise or offset leakage from alluvial aquifers be removed from the Plan. As noted above, OEH has not been provided with detailed information by PLDC on groundwater interactions through the Penrith Lakes Task Force, so cannot determine whether PLDC has already adequately assessed groundwater leakage and thus no longer needs to conduct ongoing monitoring and response to this issue. Having said that, OEH notes that PLDC provided qualitative advice that the back-fill material would in effect create an impermeable barrier to groundwater interaction. Further evidence should be provided to support this statement, including field data and examples of where such an approach has resulted in that outcome on comparable sites.

The only information relating to groundwater interaction is the preliminary studies done by the NSW Office of Water and supplied to the Penrith Lakes Task Force, which indicate that the surrounding groundwater will likely be higher than the water level in the Lakes at full supply level, therefore the tendency would be for groundwater ingress. In the event that the impermeable barrier does not work as anticipated, PLDC should develop a response plan which may include setting aside funds for acquiring the licences to reflect any groundwater inflow and any costs of increased treatment due to additional constituents entering the Lakes via the groundwater.

The above should be treated as commentary only and OEH recommends that DP&I seek specific advice from the NSW Office of Water on this issue also.

2 Amendments to Condition 39

Having regard to the existing consent conditions, PLDC's comments, the recent changes to the National Parks and Wildlife Act and Regulations, and general principles for drafting conditions, OEH has the following comments:

a. Condition 39 (a)

Both versions of the consent condition attempt to summarise Part 6 of the NPW Act, the primary legislation for the protection of Aboriginal objects and Places in NSW. Both sets of conditions fall short of accurately reflecting the legislation. The question arises as to whether condition 39 (a) is necessary at all, given that there is specific and detailed legislation on the regulation of Aboriginal heritage in NSW. At best, the existing condition and the condition as proposed are inaccurate and confusing and potentially set up a conflict with the existing legislation and any potential future legislation. It is foreseeable that there may be new legislation regulating ACH in NSW within the life of the existing consent.

Part 6 of the NPW Act provides specific protection for Aboriginal objects and declared Aboriginal places by establishing offences of harm. Harm is defined to mean destroying, defacing, damaging an Aboriginal object or Place, or moving an object from the land. There are

a number of defences and exemptions to the offence of harming an Aboriginal object or declared Aboriginal Place. Under certain circumstances an approval (an AHIP) may not be required, such as where the activity is trivial, negligible or of low impact. Part 6 of the NPW Act also provides for defences and exemptions, including those set out in the Due Diligence provisions of the legislation.

In summary, the condition as expressed in the original consent and as proposed in the amendment by PLDC is superfluous as there is specific legislation dealing with the protection and harm of Aboriginal object in NSW, that being the *NPW Act*. It is therefore recommended that 39(a) be deleted.

b. Condition 39 (b)

The first part of the current consent condition is not supported by OEH as extensive Aboriginal community consultation occurs as part of the AHIP assessment process, in accordance with the gazetted *Aboriginal cultural heritage consultation requirements for proponents 2010*. Aboriginal community participation in any archaeological investigation permitted under the AHIP is set out in the conditions of the AHIP and the associated methodology. The current condition, which requires the applicant to "further consult" with OEH, is therefore duplicative and should be deleted.

The second part of the current condition requires the applicant to consult with OEH regarding Aboriginal participation in the management of heritage values. It is recommended that the current condition be redrafted to require the applicant to consult directly with the Aboriginal community regarding Aboriginal participation in the future management of heritage values. This is more in keeping with the principle of enabling Aboriginal people to participate directly in matters that may affect their heritage.

OEH anticipates that it will have an opportunity to comment on the future management of heritage values when consulted on the Draft plan for the conservation areas and does not seek an additional consultation role.

c. Condition 39 (c)

The OEH does not object to the June 2012 time frame proposed by the applicant for the development of the plans for the conservation areas, particularly given the extent of stakeholder consultation required by the condition.

d. Condition 39 (d)

The OEH supports this condition.

4. Amendment to Condition 65(a1)

The OEH supports this condition.

5. Amendment to Section 3 Erosion and Sediment Control Plans for the Discharge of Water from the Lake to Nepean River.

PLDC has submitted an application to OEH to vary their Environment Protection Licence No. 2956 (EPL) to include three new water discharge points to discharge water from the lake to enable quarry work to continue. The points are specified on the proponent's map titled "*EPA Licence Monitoring Locations PLDC Ref – 10877 dated 26 May 2011*". As a result of this application a "DRAFT" Section 58 Licence Variation Notice under *Protection of the Environment Operation Act 1997*, has been prepared (in consultation with the licensee) to vary the licence to incorporate only two of the water discharge points 14 and 16 along with strict discharge limits, monitoring and reporting requirements. The licence variation will label points 14 and 16 as points 14 and 15. Notwithstanding this, as previously stated the PLDC has requested that the consent and EPL be changed to incorporate three new discharge points 14, 15 and 16. OEH has no objection for the consent to be varied to

incorporate the discharge points and relevant erosion controls. However, OEH's licence variation will not include discharge point 15 (as shown on the consent variation) as this point relates to a flood outlet point for the wildlife lake when the lake has been completed, and not a controlled discharge point for the dewatering of the quarry void for quarrying purposes.

Notwithstanding the above, the proposed changes to the consent mentioned in Section 3 will be covered by the licence variation and the existing EPL conditions.

