

Penrith Lakes Scheme Modification DA2 MOD 11

Importation of an additional 3.35m tonnes of fill, with fill and rehabilitation works to operate on a 24 hour basis, 7 days per week

Section 4.55(2) Modification Assessment (DA2 MOD 11)



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Glossary

Abbreviation	Definition
Council	Penrith City Council
Department	Department of Planning, Industry and Environment
DA	Development Application
EESG	Environment, Energy and Science Group, DPIE
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPI	Environmental Planning Instrument
EPL	Environment Protection Licence
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
PLDC	Penrith Lakes Development Corporation
PLIP	Penrith Lakes Importation Protocol
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
Proponent	Great River NSW Pty Limited
SEARs	Planning Secretary's Environmental Assessment Requirements
SEPP PLS	State Environmental Planning Policy (Penrith Lakes Scheme) 1989
TfNSW	Transport for NSW

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1 Introduction

1.1 Background

This report provides the NSW Department of Planning, Industry and Environment's (Department) assessment of an application to modify the development consent (DA2 MOD 11) for extractive operations and rehabilitation for the 'DA2 area' at Penrith Lakes (the Penrith Lakes Scheme).

The modification application (**Appendix A**) seeks approval to:

- allow the importation of an additional 3.35 million tonnes of Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) and/or material subject to a site specific resource recovery order and exemption as issued by EPA from time to time.

(Note: the current consent allows for the importation of 13 million tonnes of VENM at a maximum rate of three million tonnes per year)

- allow fill and rehabilitation works on the subject site to operate on a 24 hour basis, 7 days a week.

(Note: the approved hours of operation under condition 36BB of Mod 6 are 6am to 9pm Monday to Friday and 6am to 3pm Saturday)

The original application also sought approval for the final landform and site levels, but this component of the application was removed and addressed in the 2020 Two Year Plan for Employment Lands approved by the Minister on 11 August 2020.

The application has been lodged by Great River NSW Pty Limited (the Applicant) pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Subject site

The Penrith Lakes Scheme is located approximately 50 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 (**Figure 1**). It 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 beyond Castlereagh Road. It adjoins industrial lands to the south-west and rural allotments to the north.

The modification relates to the DA2 area of the Penrith Lakes Scheme (**Figure 2**), and in particular the Employment Lands located in the south eastern portion of the Penrith Lakes Scheme. The Employment Lands are generally bound by Old Castlereagh Road to the north, existing industrial development to the east and Nepean River to the south. The site area includes the majority of land zoned Employment under *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* (the SEPP) and includes an area of unzoned land (**Figure 3**).

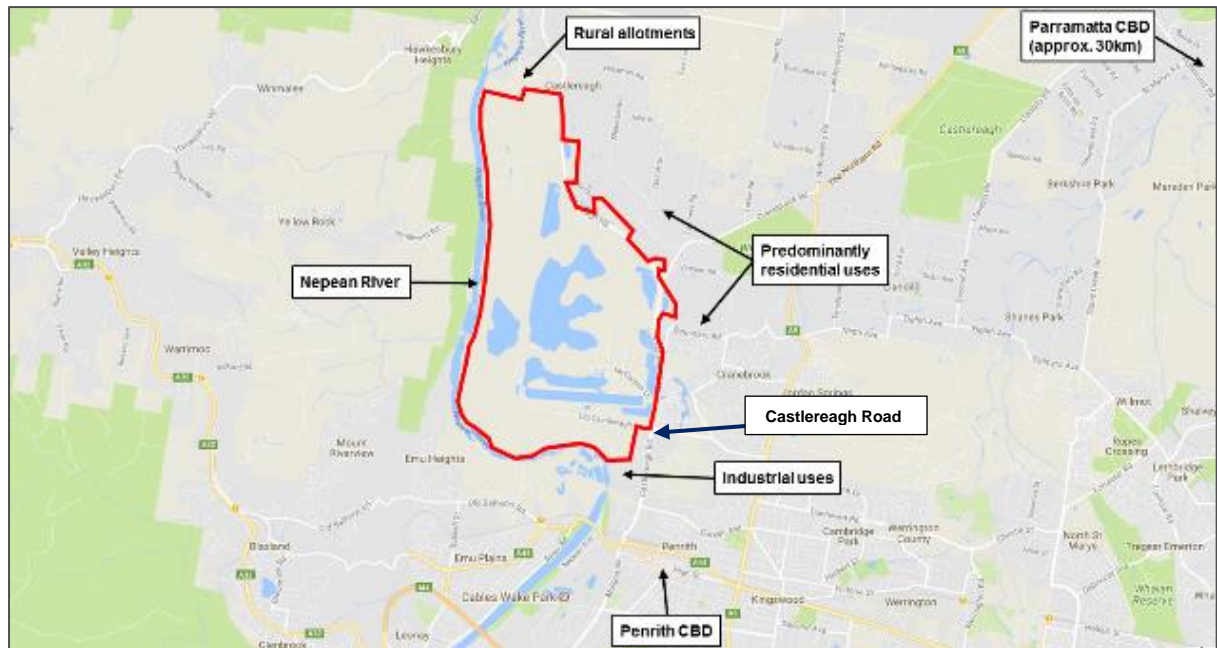


Figure 1 | The Penrith Lakes Scheme (outlined in red) (Source: Nearmap)

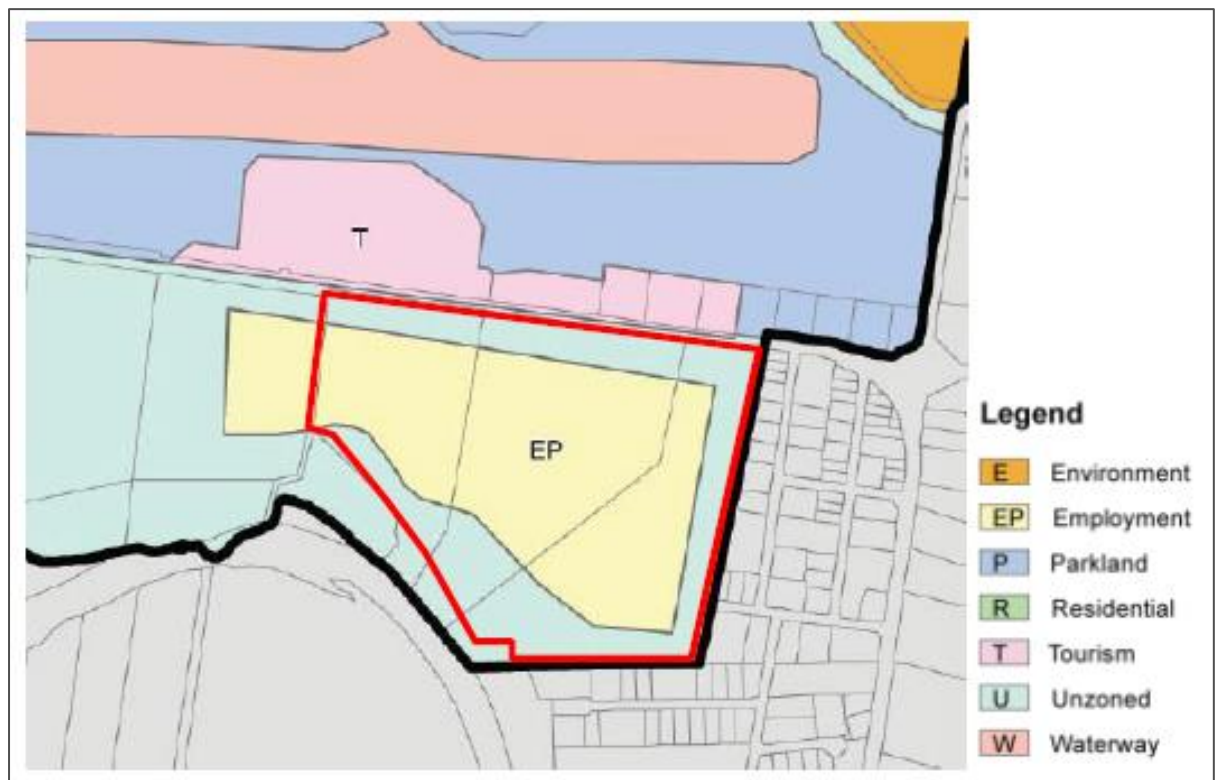


Figure 3 | Zoning under Penrith Lakes Scheme SEPP (site area outlined in red) (Source: Statement of Environmental Effects)

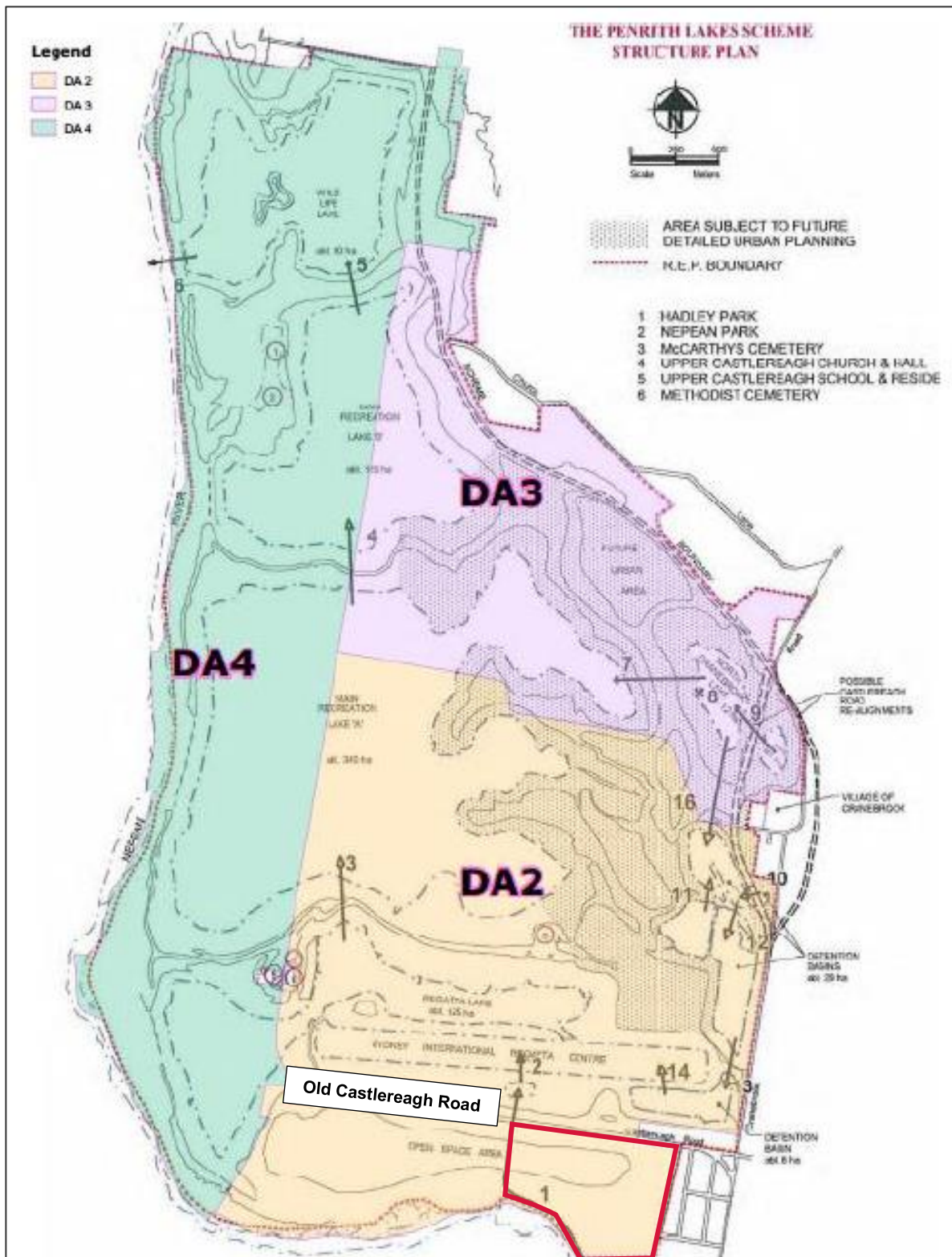


Figure 2 | The land associated with the various DAs, including identification of DA2 (shaded orange) and the Employment Lands (outlined in red) (Source: DA2 MOD 7)

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 Penrith Lakes Development Corporation (PLDC). The Scheme is located on the 1,940 hectare (ha) 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.

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

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.

Table 2 sets out the modifications to DA2 that are considered relevant to the proposed modification.

Table 2 | Summary of relevant modifications to DA2

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD3	Allow the importation of up to 3m tonnes of VENM to the site over a three year period (2009-2011).	Department	96(2)	4 July 2009
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.	Department	75W	5 February 2014
MOD 5	Allow the importation of ENM, increase the amount of VENM and ENM imported from 3 million tonnes to 8 million tonnes at a rate of up to 3 million 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.	Department	75W	30 April 2015
MOD 7	Increase the amount of VENM and ENM imported to the site by 4.7 million tonnes (DA2) to a total of 13 million tonnes.	Land and Environment Court	4.55(2)	8 January 2019
MOD 8	Increase the amount of VENM and ENM imported to DA2 site by 0.3 million tonnes to a total of 8.3 million tonnes.	Department	4.55(1A)	28 August 2018
MOD 10	Allow the importation of spoil from the M4-M5 Link and Sydney Metro tunnels consistent with the relevant EPA Resource Recovery Orders and Exemptions.	Department	4.55(1A)	10 February 2020

It is noted that MOD 4 identified the Employment Lands as a 'potential fill area' under DA2. While subsequent modifications to DA2 increased the amount of fill that can be imported to specific areas of the DA2 site (but not the Employment Lands), it did not amend the classification of the Employment Lands as a 'potential fill area'. Therefore, subject to a Two Year Plan permitting the placement of fill on the Employment Lands, rehabilitation works on the Employment Lands site could use fill approved after MOD 4.

Two Year Plans

The conditions of consent under DA2 include the 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. The Applicant, or those acting on the development consent, are required to submit Two Year Plans to provide detailed plans for works to be carried out in the subsequent two years, in accordance with the development consent, 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. The approved 2020 Two Year Plan included proposed changes to the landform of the employment lands. Changes to the quantity of fill sought to be imported to the employment lands under this modification are correlated to the needs of creating the landform within the Two Year Plan.

2 Proposed modification

2.1 Modification

The modification request (DA2 MOD11) lodged under section 4.55(2) of the EP&A Act seeks approval to:

- allow the importation of an additional 3.35 million tonnes of Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) and/or material subject to a site specific resource recovery order and exemption as issued by the EPA from time to time.
- allow fill and rehabilitation works on the subject site to operate on a 24 hour basis, 7 days a week.

The Applicant notes that site specific Resource Recovery Orders and Exemptions are issued by the EPA under Clauses 91 - 93 of the *Protection of the Environment Operations (Waste) Regulation 2014*, for material which could be used as engineering fill or for use in earthworks. These Orders and Exemptions include conditions which control the type of waste material that could be used and how it must be used.

2.2 Proponent's Justification

The proponent has requested the modification on the following basis:

- a cap of structural fill (utilising imported materials and materials that originated on site) is required across the site
- additional fill is needed to achieve the approved final landform and ensure the site is capable of future development
- the anticipated volume of fill to create the approved site levels is based on the best estimate of settlement rates during rehabilitation. Therefore the 3.35 million additional fill volume requested includes a 3 million tonne anticipated requirement, plus 200,000 tonnes to allow for variance in the settlement rate and a contingency of 150,000 tonnes.
- fill will be sourced from public infrastructure projects in the Sydney region, principally the WestConnex project. The WestConnex approval allows for 24 hour tunnelling and spoil haulage (subject to not exceeding noise criteria). Therefore, an extension of operating hours would allow for alignment with fill supplies.

3 Statutory context

3.1 Scope of modifications

Section 4.55(2) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify a development consent. The matters for consideration have been considered in **Table 3**.

Table 3 | Section 4.55(2) matters for consideration

Section 4.55(2) Evaluation	Consideration
(a) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The Department has reviewed the scope of the modification application and considers that the application is substantially the same development as originally approved as it:</p> <ul style="list-style-type: none"> • would not significantly increase the environmental impacts of the original DA as modified • does not seek to amend other components of the consent related to maximum rate of fill, access points, haulage routes or source of fill • would not involve any further disturbance outside the already approved disturbance areas for the project • would enable implementation of the approved 2020 Two Year Plan with regard to landform
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body that the Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	<p>The modification does not require consultation with any other Minister, public authority or approval body. Notwithstanding, the Department has consulted with relevant State government authorities, surrounding landowners and Council in relation to the modification application (refer to Section 4 of this report).</p>
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification of advertising of applications for modifications of a development consent, and	<p>The modification request was notified in accordance with the <i>Environmental Planning and Assessment Regulations 2000</i> (refer to Section 4 of this report).</p>

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

The Department received a total of 40 submissions comprising five submissions from public authorities and 35 submissions from the general public (including five objections). Details of concerns raised are provided in **Section 4** and details of consideration of issues is provided in **Section 5** of this report.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(2) of the EP&A Act, can be assessed and determined under that section and does not require a new development application.

3.2 Consent authority

The Minister for Planning and Public Spaces is the consent authority for the application under section 4.5(c) of the EP&A Act. However, under the Minister's delegation dated 9 March 2020, the Director, Regional Assessments, may determine the application as:

- the modification application has not been referred by the Planning Secretary to the Independent Planning Commission
- a political disclosure statement has not been made
- there are ten or less public submissions in the nature of objections

3.3 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of DA2. The Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

3.4 State Environmental Planning Policy (Penrith Lakes Scheme) 1989

An assessment of the relevant provisions of SEPP PLS is provided in **Appendix B**.

4 Engagement

4.1 Department's engagement

The Department notified the modification request for 15 days between 29 November 2019 to 13 December 2019. The request was made publicly available on the Department's website as well as notified to surrounding land owners, occupiers, Council and relevant State agencies.

The Department received submissions from Council, EPA, Water and Natural Resources Access Regulator, Sydney Water and Transport for NSW (**Table 4**). The Department's Environment, Energy and Science Group, WaterNSW, Crown Lands and Primary Industries advised they did not have any comments. 35 public submissions were received with 30 (or 85%) in support of the modification and 5 raising concerns.

4.2 Public Authority Submissions

The issues raised by public authorities are summarized in **Table 4** below.

Table 4 | Summary of initial Public Authority Submissions

Penrith Council

- fill is proposed beyond the existing area zoned employment into unzoned land and this aspect should comprise a separate development application
- any agreed mechanisms regarding the quality of fill material accepted must remain relevant and suitable to this modification
- further noise assessment is required to determine the level of impact during the night time period and identify amelioration measures, otherwise restriction of work areas during the night time period may be appropriate
- a quantitative air quality assessment is required that outlines specific mechanisms to ensure nearby residential properties are not adversely impacted
- existing consent conditions regarding sediment and erosion control measures should be reviewed to ensure suitability and relevance to the current proposal
- construction access off Lugard Street is not supported due to the increased number of truck movements within the existing industrial subdivision leading to operational constraints on existing industrial premises. Also, pavements within the existing industrial estate are not adequate to cater for increased laden truck volumes.
- a third access point envisaged under previous MOD applications should be constructed and an upgrade of the two rural land type roads on Castlereagh Road between McCarthy's Lane and Nepean Street is required to cater for additional truck movements
- justification for the volume of fill has not been provided or explained sufficiently

(Note: Council comments relating to final landform have been excluded as this aspect was removed from MOD 11 and considered as part of the 2020 Two Year Plan)

EPA

- recommends a condition that all materials imported to the site must either be VEMN or material which meets the requirements of the relevant resource recovery orders and exemptions
- the Environmental Protection License (EPL) over the Penrith Lakes site was varied to remove the Employment Lands site (Lots 308, 309 and 310 DP 752021) and as such, the EPA is not the appropriate regulatory authority.

DPIE – Water and Natural Resources Access Regulator

- no comments made regarding fill volume or hours of operation

(Note: additional information was requested to address landform matters, although this is no longer part of the modification request)

Sydney Water

- no comments on the modification request although provided advice that the capacity available for the Penrith Lakes Scheme requires further investigation and identifies potential servicing options.

Transport for NSW

- Additional information outlined in Attachment A – Traffic Impact Assessment comments are required to enable informed comment on potential impacts.

4.3 Public Submissions

The Department received 35 public submissions in response to exhibition of the modification request. The majority of submissions (30 or 85%) were in the nature of support, with all but being a form letter. There were two (2) different form letters that raised the following benefits:

- creation of local jobs
- rehabilitation of a degraded quarry site
- addresses the shortage of employment land in western Sydney and will provide sites for local business to expand
- promote local business activity
- enable extension of the Great River Walk

Key concerns raised in the five (5) letters of objection include:

- change of land use to industrial that will generate noise and industrial waste
- dust impacts for local residents inside and outside of homes, pools and vehicles generating frequent cleaning, potential health impacts and pollution of water tanks
- truck noise along the haulage route
- traffic safety impacts due to volume of heavy trucks with trailers and dangerous driving by truck drivers, particularly when entering and exiting Gate 1 across lanes of oncoming traffic.

4.4 Response to submissions and additional information

On 21 August, 2020 the proponent provided a Response to Submissions (RtS) to respond to the issues raised in submissions (**Appendix A**). The Department made the RtS publicly available on its website.

The RtS included the following additional information:

- Submissions Report
- acoustic advice from RAPT Consulting
- advice from Transport and Traffic Planning Associates
- revised Traffic Impact Assessment (dated February 2020)
- advice from GCA Engineering Solutions regarding fill volume

The RtS was publicly notified for 15 days from 4 to 18 September 2020. The RtS was made publicly available on the Department's website, was referred to Council and relevant agencies and notified to adjoining landowners and occupiers.

In response to notification of the RtS:

- TfNSW advised that its comments had been excluded from the Submissions Report. The proponent subsequently responded to the TfNSW submission and provided an updated

Traffic Impact Assessment (dated September 2020). This information was forwarded to TfNSW and Council for comment. TfNSW subsequently advised that the additional information addresses TfNSW initial concerns and it therefore supports the modification.

- the EPA, DPIE Water and the Department's Resilient Places team made no comment.
- Council's comments regarding additional fill and 24 hour operations include:
 - further noise assessment should be undertaken when details of the works program are known and it may be appropriate to restrict work areas during the night
 - a reiterated request that a quantitative assessment of air quality impacts be undertaken, or strict controls implemented through the approval to manage dust
 - site access should be limited to Old Castlereagh Road and State roads only to minimise adverse impacts on local businesses due to additional heavy vehicle traffic
 - pre and post development dilapidation reports and requisite remediation should be required to address the impact of additional heavy traffic on local roads
 - timing of intersection upgrades by TfNSW in the vicinity should be confirmed and considered with respect to timing and implications of additional heavy traffic generated by the proposal
- no further public submissions were received

5 Assessment

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

- modification application and associated documents (**Appendix A**)
- original Environmental Assessment and conditions of approval, as modified
- submissions received on the proposal
- relevant EPI's, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key assessment issues associated with the proposal are traffic and vehicular access, noise, dust and 24 hour operations. The import of an additional 3.35 million tonnes of fill is estimated to take up to two years to complete based on 24 hour operations and subject to market supply of materials. Therefore, additional heavy traffic, noise and dust will impact local businesses and residents over the long term and need to be adequately addressed. All other assessment issues are considered in **Table 4** below.

5.1 Traffic and Vehicular Access

The site access points approved under DA2 are via Old Castlereagh Road (Gate 1) and an unsealed track that runs along the southern part of the site and connects with Lugard Street on the eastern boundary (**Figure 4**).

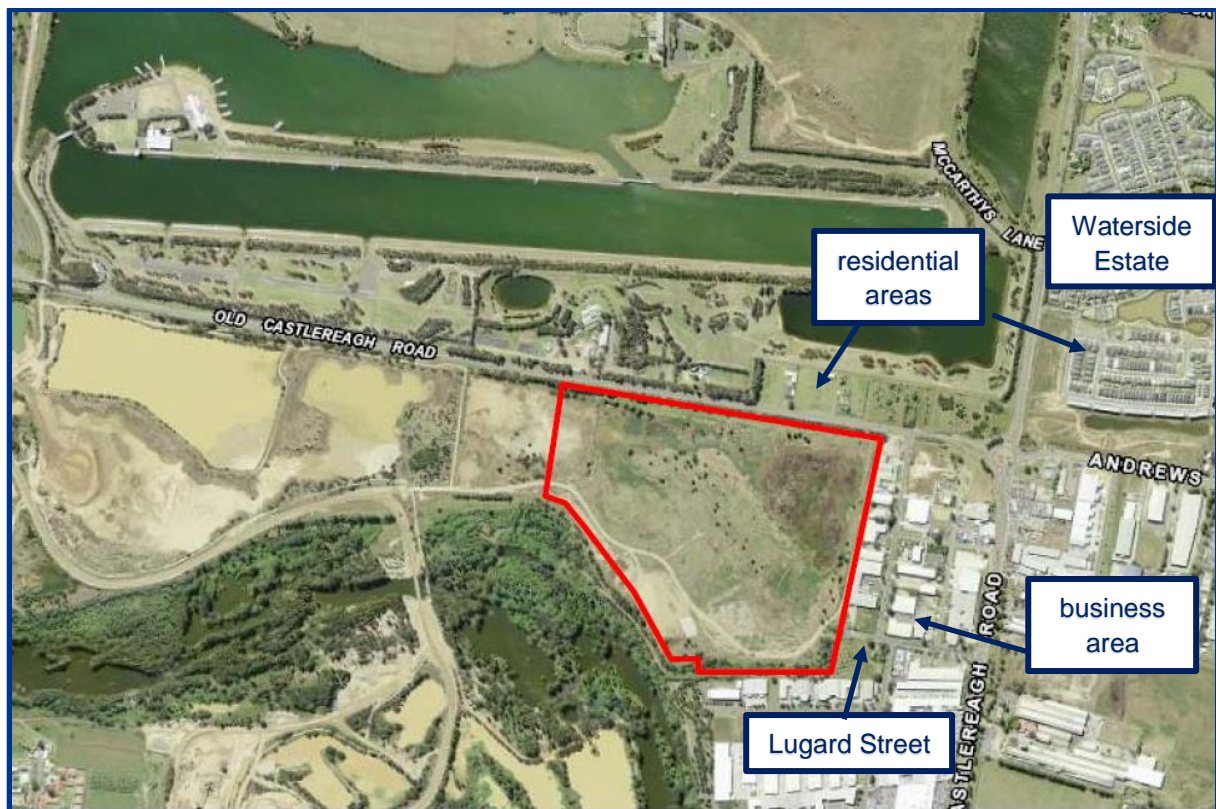


Figure 4 | Local street network with the site outlined in red (Source: Mod 11 application documents)

Council does not support the use of Lugard Street for site access, although use of this access point has already been approved under DA2. Furthermore, use of the Lugard Street access point is important in mitigating truck noise impacts during the evening and night time period for residential properties on Old Castlereagh Road.

The Traffic Impact Assessment estimates that the proposal would generate up to 32 truck movements per hour during the daytime (16 at each access point) and 10 truck movements per hour during the evening/night, given 24 hour operations. This compares with an estimated 58 truck movements per hour based on conservative operating hours of 11 hours per day and working only 264 days of the year. The Traffic Impact Assessment calculated that the level of service at both access intersections would not be adversely impacted. The report indicated that traffic impacts would be acceptable and no road or intersection upgrades or treatment are necessary given ample road reserve capacity will remain.

Council raised concern over the maintenance of local road assets and a condition is recommended requiring pre and post works dilapidation reports and remediation works if necessary. Council also indicated that the section of road between McCarthy's Lane and Nepean Street is substandard and requires upgrade given existing and proposed vehicle movements. Condition 46B requiring investigation by PLDC of the need for a road upgrade in this location was applied under MOD 7 and is therefore a matter that needs to be referred to the Compliance Team.

TfNSW has no concerns with traffic or access.

5.2 Dust

The principle dust sources will include bulk earthworks, wheel generated dust and wind erosion from exposed surfaces. The Air Quality Impact Assessment indicated that air quality impacts would be minor and could be controlled by measures outlined in the report and existing dust management measures required under DA2

Council indicated that a quantitative air quality assessment should be undertaken, although the Department considers the submitted Air Quality Assessment Report provides adequate information at this stage. Three public submissions, including a resident of the Waterside Estate to the NE of the site (**Figure 4**), raised concern with existing dust issues that would be exacerbated by the proposal. To address potential air quality impacts, it is recommended that a Dust Management Plan be prepared in consultation with council and submitted to the Department for approval within one month of commencement of works.

5.3 Noise

Noise impacts will include construction noise and traffic noise. Only one public objection raised traffic noise and none mentioned construction noise. The nearest potentially affected residences are located at 39 and 47 to 65 Old Castlereagh Road (**Figure 4**). The acoustic report recommended that although traffic noise would not significantly increase noise levels, night time vehicle access should be restricted to the Lugard Street entrance to minimize any risk of impacts to residents on Old Castlereagh Road.

The construction noise assessment was undertaken using a worst case scenario with all items of plant operating at once at maximum sound levels. It found that noise levels would not exceed the

maximum recommended level of 70dB(A) for offices/retail and 75dB(A) for industrial premises. The *Interim Construction Noise Guidelines* (July 2009) maximum noise goal of 47dB(A) for residential noise during day would not be met in the eastern quadrant (**Figure 5**) with an estimated reading of 52dB(A). The sleep disturbance goal of 47 dB(A) is also not expected to be complied with in the eastern quadrant. Although, the report indicates that the worst case scenario is unlikely and doesn't reflect typical construction activities.

To address potential construction noise impacts, it is recommended that a Noise Management Plan be prepared in consultation with Council and be submitted to the Department for approval within one month of the commencement of works. It is also recommended that condition 36C be amended to include noise limits for residential development on Old Castlereagh Road and the adjoining industrial area.



Figure 5 | Noise assessment quadrants (Source: RAPT Consulting, February 2020)

5.4 24 Hour Operation

Fill will be sourced principally from the WestConnex project which allows for 24 hour tunnelling and spoil haulage (subject to not exceeding noise criteria). The proponent seeks to extend the current approved operating hours (i.e. 6am to 9pm Monday to Friday and 6am to 3pm Saturday) to align with 24 hour fill supplies and enable fill to be received, placed and compacted 24 hours per day, 7 days per week.

Four of the five submissions that objected to the proposal raised the issue of traffic safety due to the increased volume of additional heavy trucks with trailers and turning movements into and out of the site. According to the submitted Traffic Impact Assessment, enabling 24 hour operations would significantly reduce the number of heavy vehicle movements per hour from 58 to 32. It would also mean fewer heavy traffic movements during peak traffic periods.

No objections were received from Council, agencies or the public specifically regarding 24 hour operation, although it could be assumed that the five public objectors to existing operations and their intensification, would not be in favour of 24 hour operations.

The Department has formed the view that 24 hour operations be permitted, given:

- the non-permanent nature of the extension. The 24 hour operations would only apply to the import, distribution and compaction of fill over an estimated 2 year period
- appropriate conditions would be applied to address noise resulting from night time traffic and site works
- traffic congestion would be improved by reducing truck movements required during peak traffic periods with 25% of daily tonnage anticipated to arrive between 6pm and 7am
- it would enable more timely development of the Nepean Business Park and creation of significant local employment opportunities, a benefit that was raised in 30 public submissions

Although 24 hour operations are considered acceptable in principle, actual operating hours should be subject to any recommendations of a Dust Management Report and Noise Management Report addressing the need to reduce operating hours if necessary to address noise and dust impacts. The Department is of the view that the Dust and Noise Management reports would suitably address Council concerns and public submissions regarding noise and dust impacts. A condition requiring these reports with a suitable mechanism to override the approved 24 hour operations in the event of non-compliance is recommended. To ensure any dust and noise complaints are addressed, a condition requiring all site works to cease until ameliorative measures are taken, is recommended where a written dust or noise complaint is made to PDLC and/or future owners, by Council or the Department.

Table 4 | Summary of other issues

Issue	Findings	Recommendations
Contamination	<ul style="list-style-type: none"> • It is important to ensure that fill material imported to the site does not contain contaminants. • The EPA recommended that a condition of consent be applied that “all material imported to the site must either be VENM or material that meets the requirements of the relevant resource recovery orders and exemptions, although the existing consent also allows for VEM 	Update existing condition 17CC regarding the source of fill material
Environmental Impacts	<ul style="list-style-type: none"> • The EPA noted that the EPL for the Penrith Lakes Scheme has been varied to exclude the Employment Lands. As such, dust and noise management measures in the EPL do not apply to the Employment Lands. • DA2 contains existing conditions which, if updated, would appropriately manage environmental impacts, including: <ul style="list-style-type: none"> ○ maximum noise limits to residential areas ○ hour of operation for works ○ air quality criteria 	Update existing conditions regarding noise, dust, sediment and erosion control, traffic management and site access

- noise and dust management plans
- erosion and sediment control
- road transport plan
- Subject to compliance with existing and proposed conditions, the Department considers potential environmental impacts will be appropriately mitigated and managed.
- DA2 allows for the removal of all existing vegetation on the site, although trees along Old Castlereagh Road and within river front land dedicated to government will be retained. Following the completion of fill and land forming, 100mm of topsoil and native seed mix will be applied across the entire site in accordance with the Two Year Plan Landscape Plan.

Filling of unzoned land	<ul style="list-style-type: none"> • Council indicated that MOD 11 should apply to land zoned Employment only and a separate DA be submitted to fill unzoned land. • DA2 allows for rehabilitation works across the entire site and this activity is not specific to any particular future land use. Therefore, it is appropriate for MOD 11 to apply to both Employment land and unzoned land. 	No action required
Economic, employment and community benefits	<ul style="list-style-type: none"> • Thirty public submissions were received in support of the proposal based on local job creation and opportunities for local businesses. The proposal would also help facilitate an extension of the Great River Walk along the southern boundary of the site. • The RtS indicates that the Nepean Business Park is anticipated to create 18,450 direct and indirect jobs, provide \$1.95 billion of economic activity during construction and \$500 million per annum in gross value to the Penrith economy. 	No action required
Lot description	<ul style="list-style-type: none"> • The applicant has advised after lodging the application that the legal description of the site has changed. 	Correctly reference the new lot description in the development consent

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 additional adverse impacts on the environmental quality of the site, as the additional fill would be either VENM, ENM or subject to site specific Resource Recovery Orders and Exemptions and compliance with an importation protocol
- existing and proposed conditions will mitigate and manage environmental impacts to the surrounding area (in relation to noise, dust, sediment and erosion and traffic impacts)
- the proposal continues to facilitate the rehabilitation and reconstruction of the site in accordance with the Penrith Lakes SEPP and Penrith Lakes Scheme Structure Plan
- 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 (**Appendix C**).

7 Recommendation

It is recommended that the 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 11 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 approve the modification
- **modifies** the development consent DA2
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



Lillian Charlesworth
Specialist Planning Officer
Regional Assessments

Recommended by:



Silvio Falato
Team Leader
Regional Assessments

8 Determination

The recommendation is **Adopted** by:

Keiran Thomas

Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Relevant Supporting Information

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10028

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10028

3. Additional information

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10028

Appendix B – 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	The proposed additional fill and hours of operation: <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

Requirement	Departments Comment	Complies
<p>(B) to ensure the satisfactory implementation of the Penrith Lakes Scheme, or</p> <p>(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.</p>		
<p>(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.</p>	<p>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.</p>	Yes
<p>(4) In determining an application to carry out development to implement the Penrith Lakes Scheme, the consent authority shall take into consideration the following matters:</p> <p>(a) the Penrith Lakes Scheme Regional Environmental Study,</p> <p>(b) the recommendations, if any, of such technical working parties as may be established from time to time by the consent authority,</p> <p>(c) the statement of environmental effects accompanying the application,</p> <p>(d) the proposed sequence of extraction and rehabilitation,</p> <p>(e) whether the land is to be dedicated to the Crown and, if not, the proposed control and management of the land,</p> <p>(f) the management and control of water resources including:</p> <p>(i) the source of water in order to fill any lake (including the quality and quantity of water from that source),</p> <p>(ii) water reticulation systems from the Nepean River to any lake, from lake to lake and from any lake to the Nepean River,</p> <p>(iii) the water quality of any lake (including the aquatic ecosystem),</p> <p>(iv) water treatment facilities,</p> <p>(v) water depth of any lake,</p> <p>(vi) flood control,</p> <p>(vii) storm water control,</p> <p>(viii) the effect that development would have upon the quantity and quality of the</p>	<p>The Department has carefully considered the Modification Application and an assessment of the key issues is provided at Section 5.</p>	Yes

Requirement	Departments Comment	Complies
<p>existing groundwater, the level of the existing water table and groundwater movement,</p> <p>(ix) lake usage,</p> <p>(x) staged development of the lakes and their usage during stage development,</p> <p>(xi) the need to monitor the water quality of the lakes having regard to their intended use, and</p> <p>(xii) the effect upon the Hawkesbury/Nepean River system,</p> <p>(g) the rehabilitation and reconstruction of the land including:</p> <p>(i) landscape design,</p> <p>(ii) the structural stability and soil compaction of landforms (including, where appropriate, the land shown on the structure plan as future urban),</p> <p>(iii) the stability and impermeability of the Nepean River embankment,</p> <p>(iv) soil conservation, and</p> <p>(v) revegetation,</p> <p>(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,</p> <p>(i) any item of the environmental heritage listed in Schedule 3,</p> <p>(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</p> <p>(k) the need and frequency to monitor the implementation of the subject development.</p>		
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>The Department has considered the impacts associated with importation of the proposed additional fill and operating hours in Section 5 and recommended new or amended conditions to address potential impacts.</p>	Yes

Requirement	Departments Comment	Complies
(d) the effect of the development on the existing and likely amenity of adjoining properties, (e) the source of any fill material and the destination of any excavated material, (f) the likelihood of disturbing relics, (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area, (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development		

Appendix C – Modification of Development Consent

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10028