

Department of Planning &
Environment

**Penrith Lakes Development
Corporation**

**S4.55 (1A) VENM/ENM
Importation Modification:
Submissions Report**

Issue | 20 June 2018

This report takes into account the particular
instructions and requirements of our client.

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Contents

	Page
1 Introduction	1
1.1 The proposal	1
1.2 Purpose of this report	1
1.3 Next steps	1
2 Submissions received	3
2.1 Respondents	3
2.2 Response to Submissions	4
3 Conclusion	8

1 Introduction

1.1 The proposal

Penrith Lakes Development Corporation (PLDC) applied for a S4.55 (1A) modification of the existing consents to import Virgin Excavated Natural Material (VENM) and Excavated Natural Material (ENM) to the Penrith Lakes Scheme (hereafter referred to as the 'Scheme') in order to fulfil the approved final landforms. The Modification Application sought to modify the existing consents (DA 2 MOD 8, DA3, MOD 7 & DA4, MOD 12) to permit the importation of an additional 300,000 tonnes of VENM/ENM.

A separate modification application had been lodged prior which seeks to modify the existing consents to increase the permitted importation of VENM/ENM from eight (8) million tonnes to thirteen (13) million tonnes (referred to as the Related Modification Application). The Related Modification Application was lodged under section 4.55 (2) of the Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act).

This S4.55 (1A) Modification Application is an interim measure to permit the current scaled back operations to continue for an additional 6-week period whilst the Related Modification Application to increase the VENM/ENM importation from 8 million tonnes to 13 million tonnes is considered and assessed by the Department of Planning and Environment (DP&E). It was submitted to DP&E on 17 May 2017.

DP&E sent the Modification Application to Penrith City Council, RMS and EPA for their review and comment.

1.2 Purpose of this report

This Submissions Report has been prepared by Arup on behalf of PLDC in accordance with Section 115Z (6) (Environmental assessment and public consultation) of the EP&A Act. This report documents the following:

- A list of submissions received during the comment period.
- Responses to submissions during the comments period.

1.3 Next steps

DP&E will, on behalf of the Minister for Planning, review the environmental assessment report and this submissions report. Once the DP&E has completed its assessment, a draft assessment report will be prepared for the Secretary of DP&E, which may include recommended conditions of approval.

The assessment report will then be provided to the Minister for Planning for consideration. The Minister for Planning may then approve the project (with any conditions considered appropriate) or refuse to grant approval.

The Minister for Planning's determination and the Secretary's report will be published on DP&E's website immediately following determination with a copy of the submissions report.

2 Submissions received

2.1 Respondents

DP&E sent the Modification Application to three government bodies for review and comment. Responses were received from all three agencies and additional questions were also submitted by DP&E.

Table 1: Summary of submissions received

Government authorities	Issued Modification Application	Responses
Environmental Protection Agency	Y	1
Roads and Maritime Services	Y	1
Penrith City Council	Y	1
Department of Planning and Environment	Y	1
TOTAL		4

2.2 Response to Submissions

The following section presents the issues raised by each submission and the proponent's response.

Table 2: Submission issues and the proponent's responses

Submission	Issue	PLDC Response
EPA	<p>Sedimentation and dirt tracking by haulage trucks have been a recurring issue for a number of years resulting in a number of complaints. The EPA has used a range of regulatory actions in attempts to resolve the issue.</p> <p>A Pollution Reduction Program was placed on the licence and required the licensee to engage an independent and suitably qualified roads management consultant to complete an investigative report on improvement options to reduce the potential of sediment being tracked from the premises. One of the key recommendations of the independent review was to install a jet spray wheel wash and associated drainage pond for Gate 9 at the premises.</p> <p>The licensee stated to the EPA, via email on 3 October 2018, that it would install the wheel wash subject to approval being granted by DP&E by 31 April 2018 and submit a report on the trial wheel wash by 30 May 2018,</p> <p>To date PLDC has not installed a wheel wash at the premise. Further EPA has reasonable grounds to suspect that the tracking of dirt is still occurring at the premises.</p> <p>The EPA does not support continued importation of VENM/ENM at the premises due to the fact PLDC may not be able to comply</p>	<p>As a result of the independent report undertaken by J. Wyndham Prince, PLDC completed the implementation of various improvements to the VENM/ENM importation operation on 24 October 2017. These improvements included the relocation of the existing shaker grids and extension of asphalt seal to internal roads. These additional measures have been considered to be effective in eliminating sediment and dirt tracking off the Penrith Lakes site.</p> <p>In terms of wheel wash facilities on site, PLDC currently utilise shaker grids and a drive through 'wheel bath' to clean the truck wheels prior to leaving site.</p> <p>PLDC is also committed to installing an automated jet spray wheel wash as part of the ongoing VENM/ENM importation project to ensure that PLDC continues to comply with all Environment Protection Licencing requirements.</p> <p>PLDC received advice from DP&E on 11 March 2018 giving 'deemed approval' for the installation of the wheel wash in the Southern Precinct of Lot 4. Since receiving this advice there have been changes in PLDC management which resulted in a delay in response. Following recent discussions with the EPA and a review of relevant communications, PLDC is committed to the jet spray wheel wash as part of the ongoing VENM/ENM importation.</p> <p>The jet spray wheel wash is unable to be constructed immediately as the VENM/ENM importation operation will be complete within four weeks under the existing approved consents. This Modification Application is an interim measure</p>

Submission	Issue	PLDC Response
	<p>with the licence operating conditions at all times, with respect to the tracking of sediment and direct from the premises.</p> <p>The EPA does not support PLDC's modification request to modify three development approvals to allow for the importation of an additional 30,000 tonnes of VENM/ENM at the premises until a wheel wash has been installed at the premises.</p>	<p>for scaled back importation of VENM/ENM of up to 300,000 tonnes until the Related Modification Application is assessed.</p> <p>The installation of an automated jet spray wheel wash is considered a significant investment of infrastructure (over \$250,000 capital cost). Due to the location on site, a self-contained setup would also need to be adopted with a water header tank and generator for power which would require additional time and investment for installation and setup. As such, PLDC consider it reasonable that installation of the jet spray wheel wash will be contingent upon the assessment and approval of the additional 5 million tonne Related Modification Application.</p> <p><i>Note: The Response from EPA stated 30,000 tonnes of VENM/ENM. We have assumed this to be a typo and that the responses provided still hold for the 300,000 tonnes stated in the Modification Application.</i></p>
Roads and Maritime Services	Roads and Maritime has reviewed the proposed development and has no objections to this application, subject to the existing traffic and transport conditions of consent for the development being maintained.	Noted
Penrith City Council	<i>Planning matters</i>	
	The proposed modification application appears to relate to a part of the Penrith Lakes Scheme which is currently 'unzoned' due to unresolved flooding and evacuation constraints. Given this, concern is raised that the timing of this application may be premature.	Noted.
	Clarification is sought regarding the relationship between the approved landform levels pursuant to two year plans, and the flood planning level set in State Environmental Planning Policy (Penrith Lakes Scheme) 1989. The application would appear to seek consent for additional fill to comply with the approved land form levels. However, it also appears that the application is seeking further revision to the approved land form levels to potentially address new flood planning level requirements outlined within the SEPP. This requires clarification from the Department as it would appear that	<p>Landform levels for Northern Lot 4 precinct were lodged by PLDC in November 2015 and were approved by the Minister on 20 October 2016, both dates being well before consideration of amendment to SEPP (Penrith Lakes Scheme) 1989 on 20 January 2017.</p> <p>The proposed VENM/ENM importation is required to achieve the approved 2-Year Plan for the Northern Precinct of Lot 4 and fortuitously the landform at these levels will conform to the SEPP 2017 requirement for the landform to be constructed at least 1 metre above the 100-year ARI flood event level.</p>

Submission	Issue	PLDC Response
	the levels in the SEPP are in conflict with the levels established by the Department in the two-year plan approvals.	
	<i>Flooding matters</i>	
	<p>The Penrith Lakes Scheme is an area that is highly sensitive to flooding impacts. The proposed modification does not provide sufficient information in relation to the potential flooding implications as a result of the proposed modified landform and its compliance with the approved Water Management Plan.</p> <p>The application includes an extract of the approved landform plan (Figure 2) and it is noted that the proposed 'Eastern Lakes Floodway', being the connection between Duralia Lake and Main Lake A, does not meet the requirements of the approved Water Management Plan (WMP):</p> <p>The WMP requires the floodway to be 300 metres wide, with a relative level of 22 metres. Any alternative design(s) for this floodway will potentially change the identified flood levels, extents and risk within and around the Scheme.</p> <p>This is a pertinent issue for Council as the modelling that underpins Council's recently completed Nepean River Flood Study adopted an assumed landform based on the principles in the approved WMP. Therefore, the placement of fill and the shaping of the landform is critical to broader flooding characteristics.</p> <p>In addition, it is understood that the NSW Office of Environment and Heritage has not completed its intended risk-based assessment to identify an appropriate flood planning level or levels for the Scheme. This should be completed prior the consideration of any further filling works beyond what is already approved.</p>	<p>The importation of VENM/ENM will be used to construct the landform above the 100-year ARI flood level plus 1 metre. As such the approved landform complies with WMP requirements including, specifically, the formation of the floodway between Duralia and Main Lake A.</p> <p>The floodway will be developed in accordance with Table 3 of the 2012 Water Management Plan – Stage 1 (WMP) approved as a concept plan on 5 November 2013. Table 3 identifies the Duralia to Main Lake Flow Path at a width of 250m to 350m with a crest height at RL22mAHD and grass scour protection. The WMP goes on to advise “<i>The exact location and dimensions of flooding infrastructure may change in the detailed design process</i>”.</p> <p>PLDC understands that the floodway design is significant in Council's Nepean River Flood Study and closer consideration of the proposed Duralia to Main Lake Flow Path was provided by PLDC to Penrith City Council and the Land & Environment Court for Proceedings 10486 of 2014 where on 15 July 2015 the experts jointly agreed there was close agreement between the RMA2 model and the TUFLOW model for an FPL for the site of RL21.93 plus 0.5m or RL22.43 AHD. The approved 2-Year Plan levels are above this agreed FPL.</p> <p>PLDC's experts are finalising subsequent 2018 TUFLOW modelling for the whole of the Penrith Lakes Scheme to inform the detailed design for the proposed Duralia to Main Lake A floodway for its future construction. Detailed design of the floodway will therefore conform to the WMP and SEPP requirements.</p>
	<i>Traffic management</i>	
	The importation of additional fill will result in an increase in vehicle movements in and out of the site and within the local road network. The impacts of the intensification on the condition and capacity of the road network must be considered.	Arup addressed the vehicle movements associated with the additional importation of VENM/ENM in Section 4 of the Modification Application. The proposed vehicle movements will be a continuation of the current vehicle movements which have been successfully operating on the local road network for approximately 3

Submission	Issue	PLDC Response
	<p>It appears that the application is proposing the removal of an approved temporary intersection (Table 2: comparison of Approved and Proposed Concepts). Council's Traffic Engineers have advised that the additional truck movements would require the intersection at the northern end of the site as previously approved, see condition 48A. Condition 48A – Prior to the commencement of importation of VENM or ENM using the northern most access, the road network adjacent to Gate 3 (Castlereagh Road north of Cranebrook Road intersection) shall be upgraded to provide auxiliary left turn treatment for northbound traffic turning onto the site and right turn treatment for southbound traffic in consultation with Penrith City Council and RMS.</p> <p>Castlereagh Road currently provides single lanes north and south with an immediate residential interface to the west being Waterside Estate. The condition of the road, in particular between McCarthy's Lane and Nepean Street, and necessary upgrades to this carriageway should be further considered as part of this application given the continued and increased vehicle load that additional filling activities will provide.</p>	<p>years to deliver a maximum of 3 million tonnes per annum through two approved entry/exit locations.</p> <p>The Related Modification Application provides more detail on the vehicle movements. Arup's assessment notes that: "Truck entry to Site is via two of three DA approved Gates (Gates 1 & 2). The third approved entry point, Gate 3 (Castlereagh Rd north of Cranebrook Rd) intersection, has not been upgraded because RMS has not gazetted the main road so there has been no approval or need to use Gate 3 as an entry point for VENM Import."</p>
	<i>Environmental Management</i>	
	<p>If this modification is approved, existing conditions related to the implementation of dust controls, sedimentation/erosion controls, truck routes, hours of operation, noise management, fill importation protocols and the like need to be retained.</p>	<p>Noted. The Modification Application confirms commitment to existing environmental management measures currently in place on site.</p>
DP&E	<p>DP&E confirmed that where issues raised by Penrith City Council were addressed, there were no further queries at this stage.</p>	<p>Noted. The information provided above responds to the issues raised by Penrith City Council.</p>

3 Conclusion

PLDC have agreed to undertake the following actions as a response to the submissions:

- Reconfirmed commitment to installing an automated jet spray wheel wash contingent upon the assessment and approval of the additional 5 million tonne Related Modification Application.

PLDC confirm their commitment to continue the environmental management measures that are already in place on site including shaker grids and wheel basin for wheel washing and dust mitigation measures.