

Our Ref: M190009

13 August 2019

NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Michelle Niles

**STATEMENT OF ENVIRONMENTAL EFFECTS
SECTION 4.55(1A) MODIFICATION APPLICATION TO DA2, DA3 AND DA4
14-278 OLD CASTLEREAGH ROAD, PENRITH**

1. INTRODUCTION

We act on behalf of Great River NSW Pty Ltd, the applicant for this modification application for land at 14-278 Old Castlereagh Road, known as Lot 308, 309 and 310 of DP 752021 ("the site") which is located within the Penrith Lakes Scheme.

The modification application seeks to modify DA2, DA3 and DA4 to allocate 800,000 tonnes of VENM/ENM of the total approved 13 million tonnes across the Penrith Lakes Scheme specifically to the subject site, being the amount of VENM/ENM required to complete the landform on the site in accordance with the approved 2013-2015 Two Year Plan. In addition, the modification seeks to modify the consent conditions to ensure that material which is subject to a site specific resource recovery order and exemption as issued by the EPA can be imported for use on the site.

The purpose of this Statement of Environmental Effects is to address the planning considerations associated with the modification, and specifically to assess the likely impact of the development on the environment in accordance with the requirements of Sections 4.55 and 4.15 of the EP&A Act.

2. BACKGROUND TO MODIFICATION

In consultation with the Department, the modification application has been amended from that originally submitted (on 30 May 2019) which sought to modify only DA2 to allocate 2 million tonnes of fill from the total approved 13 million tonnes to the subject site. The primary change to the modification application as originally submitted is to amend the volume of VENM/ENM to 800,000 tonnes, being the amount required to complete the landform in accordance with the approved 2013-2015 Two Year Plan, and to seek changes to the relevant consent conditions across DA2, DA3 and DA4 which all include a condition related to the total volume of fill for the Penrith Lakes Scheme.

This Statement replaces the previously submitted Statement of Environmental Effects.

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 Limited (PLDC). The Scheme is located on a 1,940 hectare site within the Nepean River floodplain that is being progressively transformed from a sand and gravel quarry into a water-oriented recreation park and other lands suitable for rural tourism or employment uses.

In 1987, the Government entered into a Deed of Agreement with the PLDC in relation to the Penrith Lakes Scheme. The Deed provided for the dedication of land by PLDC to Government following the end of extraction activities and the completion of site rehabilitation works.



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Quarrying activities in the Penrith Lakes area finished in September 2015 and PLDC has been progressively rehabilitating the site.

Extraction and rehabilitation activities at Penrith Lakes have historically been governed by the *Sydney Regional Environmental Plan No. 11 – Penrith Lakes Scheme* (SREP 11). In 2012, SREP 11 was renamed *State Environmental Planning Policy (Penrith Lakes Scheme) 1989* (Penrith Lakes SEPP) and in January 2017 the SEPP was amended.

Under the 2017 amendment to the SEPP, the Penrith Lakes Scheme allows for approximately 80HA of waterways, 110HA of parklands, 118HA of environmental area, 33HA of employment area and 52HA of tourism area. The amendment rezoned the area in the south-eastern corner of the Penrith Lakes Scheme area to employment land, which is the location of the subject site, as shown in **Figure 1**.



Figure 1 Employment zoned land under the Penrith Lakes SEPP (site outlined in red)

4. APPLICATION HISTORY

Several development applications (DAs) have been approved to implement the Penrith Lakes Scheme, with provision under the *Sydney Regional Environmental Plan No. 11 – Penrith Lakes Scheme* for the submission of sequential DAs for the progressive release of extraction areas.

DA1 was approved in July 1982 for interim extraction while detailed planning schemes for the Scheme were completed.

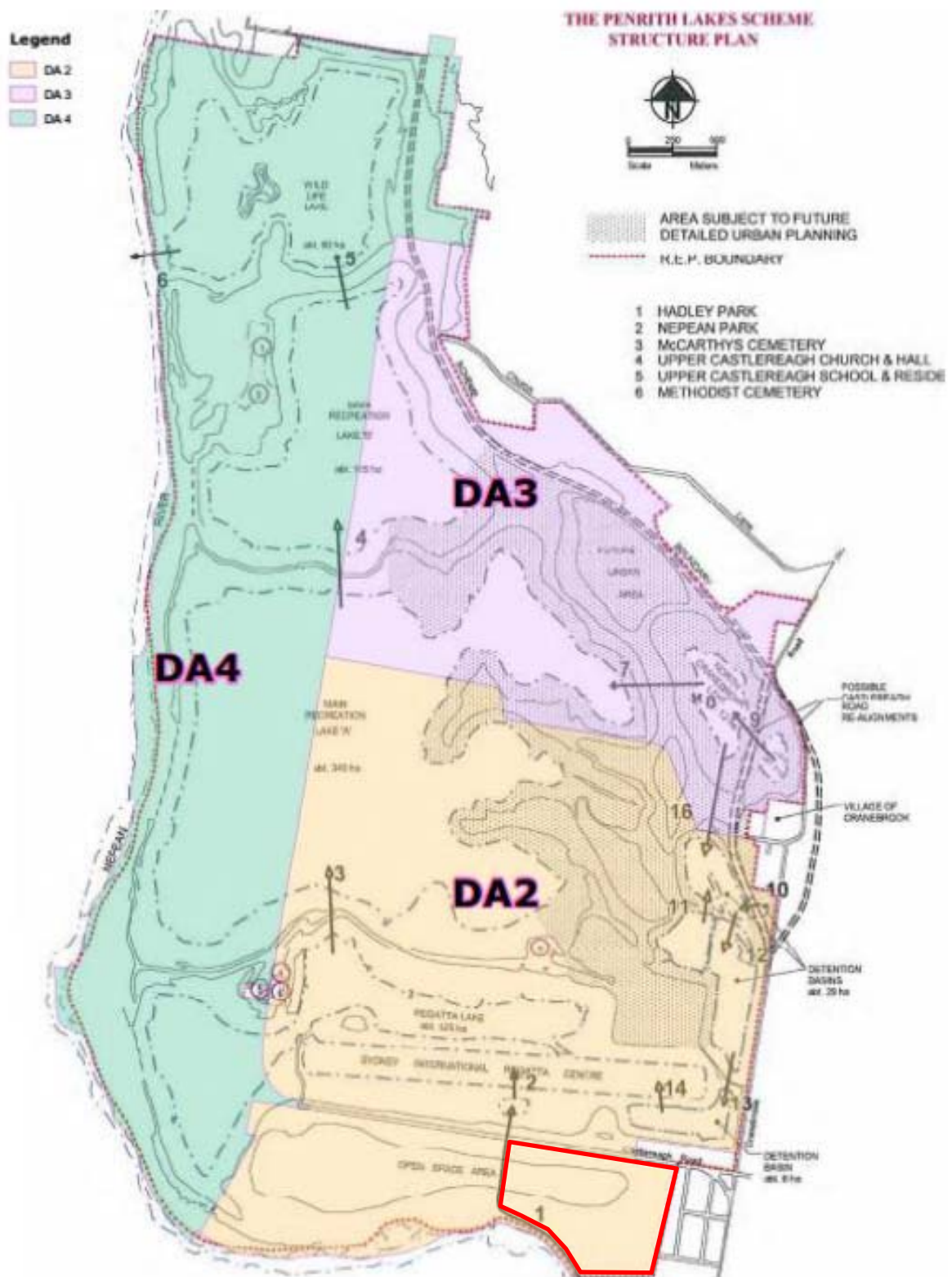
DA2 was granted to PLDC on 24 February 1987 for extraction in the central area of the scheme and for the continued extraction and rehabilitation on land included in the DA1 consent.

DA3 was approved in June 1995 and allows for extraction in the north east area of the Scheme.

DA4 was approved in September 1998 and allows for extraction within the Scheme area to the west of Castlereagh Road.

The subject site is within the area covered by the DA1 consent and is subsequently covered by DA2. There is no expiry date on the DA2 consent.

The areas subject to the various consents are shown in **Figure 2**.





The total volume of VENM/ENM approved for the Penrith Lakes Scheme is included as a condition of consent on DA2, DA3 and DA4. Consequently, whilst the subject site is located within the area covered by DA2, the Department advises that the amendment of the condition related to the total approved volume of VENM/ENM requires the modification of all three consents.

The current consents, as modified, allows for the importation of 13 million tonnes of VENM/ENM at a maximum rate of 3 million tonnes per year.

5. SITE DESCRIPTION

The subject site is located at 14-278 Old Castlereagh Road in the south-eastern corner of the Penrith Lakes Scheme area, and is formally known as Lot 308, 309 and 310 of DP 752021. The site has a total area of approximately 46.89HA. The site is identified in the aerial image provided at **Figure 3**.



Figure 3 Aerial image indicating subject site (outlined in red)

The site is bounded to the north by Old Castlereagh Road, with rural residential properties located on the northern side of Old Castlereagh Road. To the east and south-east is an area of industrial development. The Nepean River is located to the south-west of the site. The section of riverfront land immediately adjoining the Nepean River is currently being subdivided and dedicated to the NSW Government and no works are proposed on this part of the land. To the west of the site is other land within the Penrith Lakes Scheme.

The subject site was previously used as a tailings pond for the Scheme. The site has an unsealed haulage road which runs across the southern part of the site and connects to Lugard Street.



6. DESCRIPTION OF PROPOSED MODIFICATION

It is proposed to modify DA2, DA3 and DA4 to specifically allocate 800,000 tonnes of VENM/ENM from the overall approved volume of 13 million tonnes to the subject site. This is the amount of fill required to complete the landform approved by the 2013-2015 Two Year Plan (refer to **Attachment 1**). It is estimated that the rehabilitation will take approximately three years to complete.

A letter from PLDC is provided with this Statement (refer to **Attachment 2**) which identifies that PLDC will only require 11 million tonnes of the approved 13 million tonnes of VENM/ENM and approves the reallocation of the surplus to the subject site. It is noted that this application only seeks to allocate 800,000 tonnes of the surplus 2 million tonnes.

A minor amendment to the consents is also sought to clarify that material which is subject to a site specific resource recovery order and exemption as issued by the EPA from time to time can be imported for use on the site.

The modification will require changes to conditions of consent as identified below. Recommended revised text is provided where appropriate (deletions shown with strikeout and insertions with bold underline).

- DA2
 - Amendment of Condition 49C:

*“49C The importation of VENM and ENM shall be limited to 13 million tonnes at a maximum rate of 3 million tonnes per year. **800,000 tonnes of the total 13 million tonnes is to be allocated to the land at 14-278 Old Castlereagh Road (Lot 308, 309 and 310 of DP 752021). The material imported onto lots 308, 309 and 310 of DP 752021 may include material which is subject to a site specific resource recovery order and exemption as issued by the EPA from time to time.**”*
- DA3
 - Amendment of Condition 41C:

*“41C The importation of VENM and ENM shall be limited to 13 million tonnes at a maximum rate of 3 million tonnes per year. **800,000 tonnes of the total 13 million tonnes is to be allocated to the land at 14-278 Old Castlereagh Road (Lot 308, 309 and 310 of DP 752021). The material imported onto lots 308, 309 and 310 of DP 752021 may include material which is subject to a site specific resource recovery order and exemption as issued by the EPA from time to time.**”*
- DA4
 - Amendment of Condition 48C:

*“48C The importation of VENM and ENM shall be limited to 13 million tonnes at a maximum rate of 3 million tonnes per year. **800,000 tonnes of the total 13 million tonnes is to be allocated to the land at 14-278 Old Castlereagh Road (Lot 308, 309 and 310 of DP 752021). The material imported onto lots 308, 309 and 310 of DP 752021 may include material which is subject to a site specific resource recovery order and exemption as issued by the EPA from time to time.**”*

The modifications do not seek the amendment of remaining environmental management and operational conditions under DA2, DA3 and DA4.

In terms of any additional conditions of consent that may be imposed, it is highlighted that as employment land, the subject site is not part of the land within the Penrith Lakes Scheme which is to be dedicated by PLDC to Government and rather is in private ownership. Therefore, any conditions of consent which are relevant to the proposed modification will need to be specific to the subject site and/or subject modification.

7. STATUTORY CONSIDERATION

7.1 MODIFICATION OF TRANSITIONAL PART 3A PROJECT

For the purposes of modification, DA2, DA3 and DA4 were taken to be approvals under Part 3A of the EP&A Act under the then Section 8J 'Transitional provisions' of the *Environmental Planning and Assessment Regulation 2000*, as the Penrith Lakes Scheme was deemed to be State Significant Development (SSD).

With the coming into force of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (Transitional Provisions Regulation), modifications under the former Section 75W no longer apply. Under Schedule 2, Clause 3BA (6) of this regulation, modifications of a development that was previously a transitional Part 3A project requires the consent authority only to be satisfied that the development as proposed to be modified is substantially the same development as last modified under Section 75W.

7.2 SECTION 4.55(1A) OF THE EP&A ACT 1979

Section 4.55 of the EP&A Act contains provisions relating to the modification of a development consent. Sub-clause (1A) relates to 'modifications involving minimal environmental impact' and states the following:

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied 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*
- (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 or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

As outlined above, Clause 3BA(6) of the Transitional Provisions Regulation stipulates that for modifications under s4.55(1A), the consent authority must only be satisfied that the development is substantially the same development as last modified under Section 75W. This is addressed in section 7.2.1 below.

7.2.1 SUBSTANTIALLY THE SAME DEVELOPMENT

The proposed modification described at Section 6 of this Statement will result in a development that is substantially the same as the development as last modified under Section 75W and the consent authority can therefore consider the application pursuant to Section 4.55(2) of the EP&A Act.

The proposal does not increase the intensity of activity at the site or the wider Penrith Lakes Scheme area, and merely specifies where a portion of the already approved volume of fill is to be used. The proposal as modified is capable of complying with the operational and environmental protection conditions imposed by the consents.



In reaching this conclusion, we have been guided by the judgment handed down in *Moto Projects (No 2) Pty Ltd V North Sydney C [1999] NSWLEC 280* (17 December 1999), which outlines principles for determining whether a Section 4.55 application is 'substantially the same' as an originally issued development consent. The assessment of 'substantially the same' needs to consider qualitative and quantitative matters.

In terms of qualitative assessment, the development as modified will have no impact over and above that already approved which sets out the overall volume of fill for the Penrith Lakes Scheme and imposes conditions of consent to manage the rehabilitation and fill activities. The proposed modification seeks only to specifically allocate a portion of the approved volume of fill to the subject site. The rehabilitation and fill activities to be undertaken on the subject site will otherwise be in accordance with the conditions of consent imposed under the consents and the approved Two Year Plan 2013-15.

In terms of quantitative assessment, the development as modified will be substantially the same to that which has been granted approval as the volume of fill is not amended with only a portion being specifically allocated to the subject site.

As such, the modification proposed by this application is considered to result in a development that is substantially the same as the development for which consent was originally granted.

7.3 PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997

The *Protection of the Environment Operations Act 1997* (POEO Act 1997) regulates emissions to air, water, and land. It offers an integrated system to regulate specific types of activities and installations that have the potential to cause environmental harm as a result of their operations. The NSW Environmental Protection Authority (EPA) is the regulatory authority that administers the POEO Act 1997, and has the power under the Act to issue clean up notices if it reasonably suspects that a pollution incident has occurred, or is occurring. Council also has certain authority under the POEO Act 1997 in relation to pollution incidents.

The proposed fill and rehabilitation works on the subject site do not require a licence under the POEO Act 1997.

The proposed fill to be imported will be virgin excavated natural material (VENM), excavated natural material (ENM) or material which is subject to a site specific resource recovery order and exemption as issued by the EPA from time to time under Clause 93 of the *Protection of the Environment Operations (PoEO) (Waste) Regulation 2014* and is able to be applied to land as engineering fill or for use in earthworks.

7.4 SECTION 4.15 OF THE EP&A ACT 1979

Section 4.55(3) of the EP&A Act states that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

An assessment of the proposed modification against the relevant provisions of Section 4.15(1) is provided in the following sections of this Statement.

7.4.1 SEPP (PENRITH LAKES SCHEME) [SECTION 4.15(1)(A)]

State Environmental Planning Policy (Penrith Lakes Scheme) 1998 (Penrith Lakes SEPP) aims to permit the implementation of the Penrith Lakes Scheme through development controls to protect heritage, identify land for future land uses, and ensure the ongoing operation of Olympic legacy infrastructure.

Section 6 of the SEPP provides that the Minister is the consent authority for the proposed modification as it relates to unzoned land and land zoned employment.





Clause 8 provides for development for the purposes of implementing the Penrith Lakes Scheme to be carried out, with development consent, on land to which the Policy applies and includes matters for consideration which must be undertaken when a consent authority determines a development application. This is not relevant to the subject modification which is in reference to an existing development consent.

7.4.2 SEPP NO. 55 – REMEDIATION OF LAND [SECTION 4.15(1)(A)]

The provisions of *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP No. 55) require the consent authority to consider whether land is contaminated and if it is contaminated whether it can be made suitable for the proposed purpose.

The modification request is for the use of VENM, ENM or material which is subject to a site specific resource recovery order and exemption as issued by the EPA from time to time. The fill material is uncontaminated and, accordingly, further assessment is not required. As identified in Section 7.4.3.4 of this Statement, the rehabilitation activities are subject to conditions to ensure that the import of fill is undertaken in compliance with geotechnical and contamination management requirements.

7.4.3 LIKELY IMPACTS OF THE DEVELOPMENT [SECTION 4.15(1)(B)]

7.4.3.1 VEHICULAR ACCESS AND TRAFFIC

The approved haulage routes and rate of truck movements per day will continue as per the current approvals.

It is noted that PLDC anticipate completing importation and rehabilitation of the wider Penrith Lakes Scheme area in the first quarter of 2020. Therefore, there will be an overall reduction in total truck movements associated with the Scheme.

Access points for the site have already been approved under DA2 and include the use of the Gate 1 entry on Old Castlereagh Road and the Lugard Street gate.

The ongoing implementation of the Construction Traffic Management Plan and the measures within ensure that the impacts are managed and there will be no significant adverse environmental impacts.

The proposed modification does not alter haulage rates, daily truck volume, or access and therefore has no impact over and above that already approved

7.4.3.2 NOISE AND VIBRATION

Noise impacts associated with truck movements delivering fill to the site have been assessed as part of the environmental assessment for DA2 MOD 6 / DA3 MOD 5 / DA4 MOD 10, which approved the extension of operating hours for the then approved importation of 8 million tonnes of VENM/ENM, and are the basis for the current noise control measures applying to the site operations. The existing operations include mitigation measures included in the Traffic Noise Management Plan which is supported by periodic noise monitoring of site landfilling activities.

The environmental assessment for DA2 MOD 7 / DA3 MOD 6 / DA4 MOD 11, which allowed for a total of 13 million tonnes of VENM/ENM, assessed that the current operational characteristics would continue in terms of maximum truck movements, access locations and hours of operation. The environmental assessment of the acoustic impacts concluded that the additional volume of fill material would have a low to negligible impact subject to the continued implementation of the existing regime of noise management and mitigation measures.

The proposed modification does not alter any operational aspects of the approved development and does not impact on the ability to comply with the conditions of consent which ensure that potential noise impacts are appropriately managed and mitigated.



7.4.3.3 AIR QUALITY

The proposed modification will not result in any additional potential for air quality issues as it merely reallocates a portion of the volume of fill approved by DA2, DA3 and DA4. The development as modified will continue to be subject to conditions of consent requiring compliance with levels of dust emissions, watering of unsealed roads and monthly air quality monitoring.

7.4.3.4 SOILS, GEOLOGY AND CONTAMINATION

The proposed fill to be imported will be virgin excavated natural material (VENM), excavated natural material (ENM) or material which is subject to a site specific resource recovery order and exemption as issued by the EPA from time to time under Clause 93 of the *Protection of the Environment Operations (PoEO) (Waste) Regulation 2014* and is able to be applied to land as engineering fill or for use in earthworks.

The rehabilitation activities are subject to conditions to ensure that the import of fill is undertaken in compliance with geotechnical and contamination management requirements. These conditions include testing of material to be imported prior to it being transported from the source site to ensure that the introduction of contamination is unlikely. These management and monitoring conditions would continue under the proposed modification.

7.4.3.5 WATER QUALITY

The proposed modification will not result in any significant additional potential for water quality issues over and above that already assessed and approved by DA2, DA3 and DA4.

The development as modified will continue to be subject to conditions of consent which require numerous environmental protection measures to protect water quality including installation of erosion and sediment control measures, dust control and monitoring.

The potential environmental impacts are satisfactorily addressed with the continued operation and implementation of the existing environmental control measures.

7.4.3.6 FLORA AND FAUNA

As a result of the historic quarrying activities, the site is a highly disturbed and modified landscape. As a consequence, the site contains limited native species, with vegetation being dominated by introduced grasses and shrubs.

The application of fill to the site is required to rehabilitate the land and will be undertaken in accordance with the existing approvals. The DA2 consent allows for the removal of all existing plant cover on the site. However, the trees to the Old Castlereagh Road boundary and trees within the river front area (in land to be dedicated to the NSW Government) are to be retained. Following completion of the rehabilitation, a minimum 100mm topsoil and native seed mix is to be applied across the entire site.

The proposed modification will allow for the timely rehabilitation of the subject land and subsequent revegetation as part of future development application(s), thus providing a positive impact.

7.4.3.7 FLOODING

The amendment made to the Penrith Lakes SEPP in January 2017 set the flood planning level at a 1:100 average recurrent interval (ARI) flood event plus one metre freeboard.

The proposed rehabilitation is to the levels of the approved Two Year Plan, therefore there is no impact over and above that already considered. Regardless, the site in its present state is above the 1:100 level of 25.5m AHD.

7.4.3.8 VISUAL IMPACTS

The subject modification is concerned with allowing suitable fill for the purpose of land rehabilitation of the subject site. It will provide positive benefits in terms of visual impacts by remediating a large parcel of disused land. The rehabilitation includes landscape treatment with a minimum 100mm topsoil and native seed mix to be applied across the entire site, representing an improvement over the existing state of the land.

7.4.4 SUITABILITY OF THE SITE [SECTION 4.15(1)(C)]

The site has been assessed as suitable for the proposed development by the granting of the initial consents and subsequent modifications. The proposed modification does not alter the nature of the rehabilitation activities which will continue to operate in accordance with the consent conditions to ensure that potential environmental and amenity impacts are managed and mitigated.

7.4.5 THE PUBLIC INTEREST [SECTION 4.15(1)(E)]

The proposed modification will result in a development that is substantially the same as the development that is currently approved and occurring. The application is in the public interest of continuing to rehabilitate Penrith Lakes.

Given the above and the identification that potential environmental and amenity impacts can be managed and operational conditions continue to be complied with, it is considered that the proposed modification is in the public interest.

8. CONCLUSION

It is proposed to modify DA2, DA3 and DA4 to specifically allocate 800,000 tonnes of VENM/ENM from the overall approved volume of 13 million tonnes to the subject site. This is the amount of VENM/ENM required to complete the landform approved by the 2013-2015 Two Year Plan. A minor amendment is also sought to clarify that material which is subject to a site specific resource recovery order and exemption as issued by the EPA from time to time can be imported for use on the site.

In accordance with Clause 3BA(6) of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, the proposed modification will result in a development that is substantially the same as that approved under DA2 as last modified under Section 75W.

The proposed modification does not alter the nature of the rehabilitation activities which are already approved and will not result in any adverse impacts over and above those already assessed and approved under DA2, DA3 and DA4. The proposed modification seeks only to specifically allocate a portion of the approved volume of fill to the subject site. With the exception of the conditions of consent proposed to be modified by this application, the works are capable of complying with all existing environmental and operational conditions of consent imposed under the consents which ensure the management and mitigation all potential environmental impacts.

It will provide positive benefits in terms of visual impacts by remediating a large parcel of disused land.

Accordingly, we respectfully request that the Minister approve the modification of the development consent, as described within this document.

ATTACHMENTS

1. Letter from GCA regarding quantity of fill
2. Letter from PLDC