

Our Ref: M190009

30 May 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 OF DEVELOPMENT CONSENT
DA2 (REF 86/2720) - PENRITH LAKES SCHEME**

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, formally known as Lot 308, 309 and 310 of DP 752021 ("the site") which is located within the Penrith Lakes Scheme and is subject to Development Consent DA2 (Ref 86/2720). DA2 was granted to Penrith Lakes Development Corporation (PLDC) in 1987 for the purpose of implementing the Penrith Lakes Scheme, and has been subsequently modified several times. DA2 covers a large area of land which includes the site and other land. The site forms part of what was previously land within a mining area and was previously used for tailings disposal.

The current consent allows for the importation of 13 million tonnes of virgin excavated natural material (VENM) at a maximum rate of 3 million tonnes per year.

This Statement of Environmental Effects accompanies a modification application pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for modification of the approved development, namely to specifically allocate 2 million tonne of fill from the overall approved volume of 13 million tonnes to the subject site.

The purpose of this Statement 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. 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. Quarrying activities on the site finished in September 2015 and PLDC has been progressively rehabilitating the site.

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.

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.





PLANNING INGENUITY

Suite 210, 531-533 Kingsway
Miranda NSW 2228
P 02 9531 2555

Suite 6, 65-67 Burelli St
Wollongong NSW 2500
P 02 4254 5319





Under the amended 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. Another 1,330HA of unzoned land is likely to be the subject of future land use planning following the completion of flood investigations and consultation with the community.

2. 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. 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.

DA3 was approved in June 1995 and allows for extraction in the north east area of the Scheme (not relevant to the subject site). DA4 was approved in September 1998 and allows for extraction within the Scheme area to the west of Castlereagh Road (not relevant to the subject site).

The areas subject to the various consents are shown in Figure 1.

The DA2 consent, which is proposed to be modified by this application, has been subject to eight previous modification applications. The modifications which are of relevance to the current modification are summarised below:

- DA2 MOD 4 / DA3 MOD 3 – approved 5 Feb 2014 – additional fill with up to 3 million tonnes of VENM to be imported to the Scheme at a rate of 1 million tonnes each year for a period of 3 years (late 2012 – late 2015). The modification also amended the areas requiring VENM, the source of VENM and other minor changes.
- DA2 MOD 5 / DA3 MOD 4 – approved 30 Apr 2015 – increase amount of VENM / ENM imported to 8 million tonnes, expand the source of VENM / ENM to include sites anywhere in Sydney and change timing of importation of VENM / ENM.
- DA2 MOD 6 / DA3 MOD 5 – approved 6 Nov 2017 – extend operating hours for the approved importation of 8 million tonnes VENM.
- DA2 MOD 7 – approved 8 Jan 2019 – increase amount of VENM imported to 13 million tonnes at a maximum rate of 3 million tonnes per year. Approved by Land and Environment Court (Appeal No. 18/31892).
- DA 2 MOD 8 – approved 28 Aug 2018 – allowing for the importation of an additional 300,000 tonnes of VENM/ENM as an interim measure while Modification 7 was being determined. Modification 7 was approved prior to this modification and explicitly incorporates this modification.

As outlined above, the current consent, as modified, allows for the importation of 13 million tonnes of virgin excavated natural material (VENM) at a maximum rate of 3 million tonnes per year across the area covered by DA2.

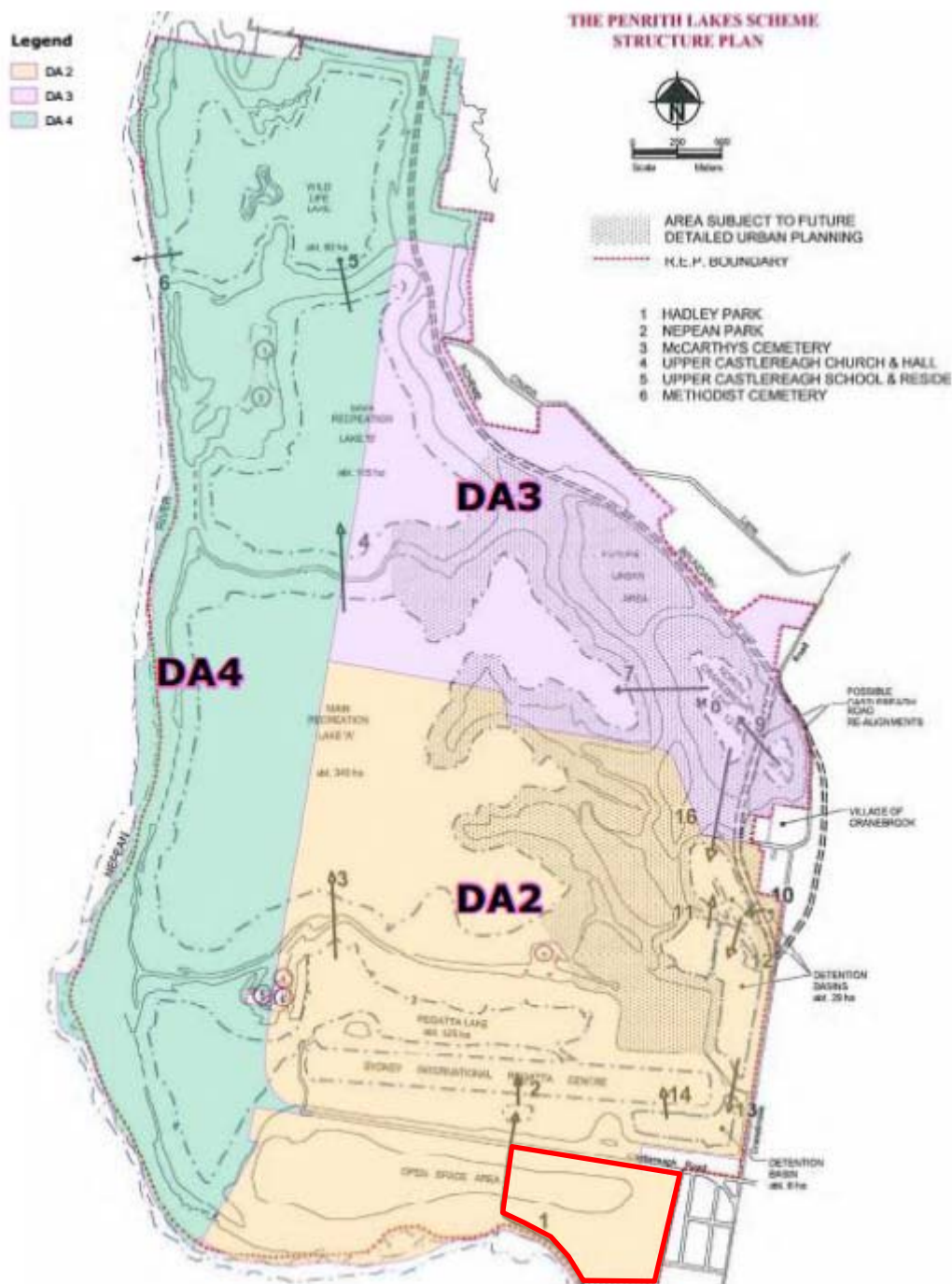


Figure 1 Development consents with the Scheme area, showing location of subject site (red outline)

3. 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 2**. The subject site was previously used as a tailings pond for the Scheme.



Figure 2 Aerial image indicating subject site (outlined in red)

The site is bounded to the north by Old Castlereagh Road, with other parts of the Penrith Lakes Scheme located north of the 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 is not part of the application. To the west of the site is other land within the Penrith Lakes Scheme which is unzoned.

The majority of the site is zoned as 'employment' land under the *State Environmental Planning Policy (Penrith Lakes Scheme) 1989*, with areas to the periphery of the site being unzoned, as shown in Figure 3. In its current state, the site is not suitable for employment land uses and rehabilitation is required to improve the ground conditions to a suitable standard.



Figure 3 Zoning of the site as 'employment' land and unzoned (site outlined in red)

3. APPLICATION OF EXISTING CONSENT TO THE SITE

The existing DA2 consent allows for the import of 13 million tonnes into the Penrith Lakes Scheme at a maximum of three (3) tonnes per year.

Condition 11 of DA2 requires the submission of detailed plans at two yearly intervals of works to be carried out within the subsequent two years ("two year plans"). These two year plans identify, and allow for the approval of, the final land forms across Penrith Lakes.

A two year plan specifically covering the subject site was submitted to the Department on 17 May 2019. This provides details of the proposed rehabilitation of the site to ensure it is suitable for employment land uses.

Therefore, approvals are in place (or are in process) which allow for the rehabilitation of the site, including required fill. However, neither DA2 or the two year plan specifically allocate the volume of fill to be used on the subject site. This application seeks to be specific in that regard in order to create certainty for both our client and the consent authority.

4. DESCRIPTION OF PROPOSED MODIFICATION

It is proposed to modify DA2 such that the subject site is specifically allocated 2 million tonnes of fill, out of the total approved 13 million tonnes, for the exclusive use on the subject site. As the only site within the Scheme which is zoned for employment uses, a level of certainty is required regarding the volume of fill that is available to make the land suitable for employment uses.

A letter from PLDC is provided with this submission 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 2 million tonnes to the subject site.

The proposed modification is only for the reallocation of fill which is already approved under DA2. The impacts associated with the remediation and fill activities themselves have been assessed and approved under DA2 and relevant conditions of consent imposed. That assessment, and those conditions, remain current in that the site circumstances have not changed.

The modification will require the amendment of condition of consent 49C, recommended as follows (inserted text shown in bold):

*“49C The importation of VENM and ENM shall be limited to 13 million tonnes at a maximum rate of 3 million tonnes per year. **2 million 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).**”*

In addition, condition of consent 36BB regarding approved hours of operation will need to be amended to insert reference to the subject modification.

No other conditions of consent require amendment.

6. SUPPORTING DOCUMENTS

A letter from PLDC is submitted with the application which approves the reallocation of 2 million tonnes of fill from the overall scheme specifically to the subject site.

Due to the nature of this modification application, which seeks only to reallocate a portion of the approved volume of fill to the subject site, it does not require any supporting specialist reports. Those reports submitted with prior applications and lead to approval of the original application and a series of modifications would not be changed by the current proposal. This is verified within section 7.3.3 of this Statement which considers the likely impacts of the proposed modification.

7. STATUTORY CONSIDERATION

7.1. MODIFICATION OF TRANSITIONAL PART 3A PROJECT

DA2 was taken to be an approval under Part 3A of the EP&A Act. Under the then Section 8J ‘Transitional provisions’ of the *Environmental Planning and Assessment Regulation 2000*, the 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 4 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(1A) of the EP&A Act 1979.

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 under DA2.

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 remediation and fill activities. The proposed modification seeks only to specifically allocate a portion of the approved volume of fill to the subject site. The remediation and fill activities to be undertaken on the subject site will otherwise be in accordance with the conditions of consent imposed under DA2, including adherence to haulage routes, hours of operation, provision of a traffic and VENM management plan, monitoring of fill and all other conditions.

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. 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.

7.3.1. 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 specific matters to be considered for development for the purposes of implementing the Penrith Lakes Scheme.

The modification request is consistent with the matters for consideration as:

- The allocation of fill facilitates the implementation of the approved landform plans for the scheme;
- The modification remains consistent with the structure plan;
- The modification does not affect the approved operational conditions or environmental protection conditions;
- The requirements of Schedule 2 of the SEPP have been included with this application; and
- Ongoing monitoring of air quality and truck movements will continue.

7.3.2. 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 allocation of VENM which is already approved under DA2. The fill material is uncontaminated and, accordingly, further assessment is not required.

7.3.3. LIKELY IMPACTS OF THE DEVELOPMENT [Section 4.15(1)(b)]

7.3.3.1. TRAFFIC AND ACCESS

The approved haulage routes and rate of truck movements per day will continue as per the current approvals. Access points for the VENM/ENM importation have already been approved 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.

7.3.3.2. NOISE AND VIBRATION

Noise impacts associated with truck movements delivering VENM to the site have been assessed as part of the environmental assessment for DA2 MOD 6, which approved the extension of operating hours for the then approved importation of 8 million tonnes VENM, 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, which allowed for a total of 13 million tonnes of VENM, 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.

7.3.3.3. AIR QUALITY

The proposed modification will not result in any additional potential for air quality issues as it merely reallocates the existing volume of fill approved by DA2. 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.

7.3.3.4. WATER QUALITY

The subject site is located in proximity to the Nepean River and as such there is potential for filling activities to result in sediment entering the river. However, the proposed modification will not result in any additional potential for water quality issues over and above that already assessed and approved by DA2 as it merely reallocates the existing volume of approved fill.

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

7.3.3.5. SOILS, GEOLOGY AND CONTAMINATION

The current landfill activities are subject to conditions to ensure that land filling 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.

7.3.4. 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 consent and subsequent modifications. The proposed modification does not amend the landfilling activities which are capable of operating in accordance with conditions and site management requirements to ensure that potential environmental and amenity impacts are managed and mitigated.

7.3.5. THE PUBLIC INTEREST [Section 4.15(1)(e)]

The application is in the public interest of allowing for the rehabilitation of the site consistent with the existing approvals.

8. CONCLUSION

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 seeks only to specifically allocate a portion of the approved volume of fill to the subject site. The remediation and fill activities to be undertaken on the subject site will otherwise be in accordance with the operational and environmental protection conditions of consent imposed under DA2, including adherence to haulage routes, hours of operation, provision of a traffic and VENM management plan and monitoring of fill.

The development as modified does not amend the application of any provisions of the Penrith Lakes SEPP and will not result in any adverse impacts over and above those already assessed and approved under DA2 (as modified).





Accordingly, we respectfully request that the Minister approve the modification of the development consent, as described within this document. We trust the information provided is adequate and the modification requested clear. However, if you have any questions or wish to discuss the content of the modification application, please do not hesitate to contact our office.

Yours faithfully,
Planning Ingenuity Pty Ltd

Jeff Mead
DIRECTOR



