

Our Ref: M190009

30 January 2024

Chris Eldred
Senior Planning Officer
Regional Assessments
Department of Planning and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Via email- Chris.Eldred@planning.nsw.gov.au

Dear Ms Niles,

**Amended Statement of Environmental Effects
Proposed Modification of Penrith Lakes Employment Land Subdivision (DA 9876)
Nos. 14-28, 30-68 and 70-98 Old Castlereagh Road, Penrith**

We act as town planning consultants to the applicant of the above development, being Great River New South Wales Pty Limited. This amended Statement of Environmental Effects and the attached Plan of Subdivision are intended to replace those lodged on 31 October, 2023.

Introduction

On 31 March 2022, the Land and Environment Court granted development consent for DA 9876 (*Great River NSW v Minister for Planning and Public Spaces LEC 2021/204069*). The approved development is described as follows:

“Penrith Lakes Employment Lands subdivision and construction works comprising:

- *Torrens title subdivision of three lots into four environmental lots and one residual lot;*
- *Subdivision of the residual lot into 93 Community title lots and one community association lot;*
- *Thirteen (13) development stages;*
- *Earthworks to achieve the final site levels;*
- *Construction of internal roads, including a slip lane to Old Castlereagh Road, footpaths and sharewd pathways and infrastructure to be dedicated to Council;*
- *Landscaping works including removal of 36 trees and certain vegetation and planning of new trees and vegetation; and*
- *Freestanding advertisement signage.*

The development consent relates to the following three (3) existing land parcels shown in **Figure 1**:

- No.14-28 Old Castlereagh Road, Penrith (Lot 3 DP 1263486)
- No. 30-68 Old Castlereagh Road, Penrith (Lot 2 DP 1263486)
- No. 70-98 Old Castlereagh Road, Penrith (Lot 1 DP 1263486)



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Modification of Development Consent

Section 4.56 of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning and Public Spaces, I approve the modification of the development consent referred to in Schedule 1, subject to the conditions in Schedule 2.



Keiran Thomas
Director, Regional Assessments
As delegate of the Minister for Planning and Public Spaces

19 September 2023

SCHEDULE 1

Development consent: DA 9876 granted by the Land and Environment Court on 31 March 2022

For the following:

- Torrens title subdivision of three lots into four environmental lots and one residual lot;
- subdivision of the residual lot into 93 Community title lots and one community association lot;
- thirteen (13) development stages;
- earthworks to achieve the final site levels;
- construction of internal roads, including a slip lane to Old Castlereagh Road, footpaths and shared pathways and infrastructure to be dedicated to Council;
- landscaping works including removal of 36 trees and certain vegetation and planting of new trees and vegetation; and
- freestanding advertisement signage.

This modification application seeks to change the first two dot points of the description of the development from:

- “Torrens title subdivision of three lots into four environmental lots and one residual lot”
- “Subdivision of the residual lot into 93 Community title lots and one community association lot”

To state:

- “Torrens title subdivision of three lots into four environmental lots and 3 residual lots”
- “Subdivision of the 3 residual lots into 93 Community title lots and one community association lot”

Justification

This change is required to facilitate commencement of DA9876 in a manner which is compatible with the current land ownership arrangement.

With regard to (i) above, the attached letter from HFW Australia dated 1 December 2023 provides an explanation. In summary, existing Lots 1 and 2 DP 1263486 are held in the ownership of *NBP Estates Pty Ltd*, and Lot 3 DP 1263486 is held in the ownership of *BFSF3 Pty Ltd*. Consolidation of these three lots is currently problematic due to the ownership being in different entities. Instead, it is intended that the residue land will remain in accordance with the existing arrangement. See Section 2.2 and 2.3 for further explanation.

1.2 Deletion of Condition E38

Condition E38 was included with the determination of Mod 3 to DA9876. It states as follows:

Community Title Subdivision

E38. Prior to the release of any subdivision certificate for the community title subdivision, Lots 204, 205 and 206 are to be consolidated into a single lot. Evidence of the lots registration is to be provided to the consent authority prior to the release of any subdivision certificate for the community title subdivision

Justification

As explained in 2.1 and 2.2 above, the residue land (ie. That part of the site excluding the environmental lots) is under multiple ownerships which does not need to be consolidated prior to the community title subdivision.

The same outcome sought by Condition E38 will be achieved by the following steps:

- (i) Implementation of the DA for subdivision concurrently lodged for the subdivision adjusting the boundaries between Lot 2 and Lot 3 DP 1263486.
This will create three lots in a configuration which allows Stage 1 of the community title subdivision to be contained within proposed Lot 2.
- (ii) Implementation of the Community title Subdivision Stage 1 as approved with DA9876.
This will create:
 - Stage 1 Community Lots; and
 - a Community Association lot which will contain roads and utilities plus a residue community title lot; and
 - Three residue lots.

The three residue lots will apply to the remainder of the site (ie. excluding the environmental lots, stage 1 community lot and community association lot). The community title will override and supersede any Torrens title lots that existed prior to the registration of Stage 1 of the community title and will not require prior consolidation. Thus, reducing the importance of the Torrens title subdivision scheme.

Therefore, Condition E38 is not required.

This pattern of subdivision will continue throughout the stages of the Community title subdivision such that the residue land (which will be subject to future stages) will be temporarily created as three community lots. The community lots that encompasses the residue land will be progressively subdivided under Community title consistent with DA9876 and the approved staging plan. No consolidation of Torrens allotments is required.

1.3 Amend Condition A1

Condition A1 to DA9876 lists all the approved plans and documents which comprise the development consent.

It is requested the reference to the Modification Report prepared by Planning Ingenuity dated 16 June 2023 be updated, refer below:

- (xxv) Modification Report 'Proposed Modification of Penrith Lakes Employment Land Subdivision (DA 9876) Nos. 14-28, 30-68 and 70-98 Old Castlereagh Road, Penrith' Prepared by Planning Ingenuity dated 16 June 2023

To state:

- (xxv) Modification Report 'Proposed Modification of Penrith Lakes Employment Land Subdivision (DA 9876) Nos. 14-28, 30-68 and 70-98 Old Castlereagh Road, Penrith' prepared by Planning Ingenuity dated 30 January 2024

There is no intended modification to the plans referenced in Condition A1. The Torrens title Plan of Subdivision (in red) remains relevant despite this modification.

- A1. The development may only be carried out:
- (a) in compliance with the conditions of this consent;
 - (b) in accordance with any written directions of the Planning Secretary in accordance with the Condition A2;
 - (c) in accordance with the SEE;
 - (d) in accordance with the approved plans in the table below:

Civil Plans prepared by <i>Ensfire Solutions Pty Ltd</i>			
Dwg No.	Rev	Name of Plan	Date
200044-DA-C01.01	3	COVER SHEET AND DRAWING SCHEDULE	4/11/2021
200044-DA-C01.21	2	GENERAL NOTES AND LEGENDS – SHEET 1	17/12/2020
200044-DA-C01.22	2	GENERAL NOTES AND LEGENDS – SHEET 2	17/12/2020
200044-DA-C01.31	5	STAGING PLAN	4/11/2021
200044-DA-C01.41	5	GENERAL ARRANGEMENT PLAN	4/11/2021
200044-DA-C01.42	1	ZONE OVERLAY PLAN	4/11/2021
200044-DA-C01.91	2	TORRENS TITLE SUBDIVISION PLAN	2/03/2022
	3		27/04/2023

1. Matters for Consideration

1.1 Section 4.56(1)

Section 4.56(1) of the EP&A Act provides for a consent authority to modify a consent where:

- *It is satisfied that the development to which the consent as modified relates is substantially the same development for which the consent was originally granted and before the consent was modified (if at all), and*
- *It has notified the application in accordance with the regulations, if the regulations so require, or 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*
- *It has notified, or made reasonable attempts to notify each person who made a submission in respect of the relevant application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*

- *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.*

The proposal as modified is substantially the same development as original approved with DA9876. All other approved plans and documents remain valid and the modifications do not change the works and management of impacts as required in any way. The outcome of the development is, in all ways, the same as originally approved with the only changes being technical and administrative changes in facilitating the release of a subdivision certificate for Stage 1 of the community title subdivision.

1.2 Section 4.15

The proposed modification of **DA9876** described above has been considered having regard to Section 4.15 of the EP&A Act 1979 as follows:

Table 1 Section 4.15 Matters for Consideration		
EP&A Act, 1979.	Matters for Consideration	Comments
S 4.15(1)(a)(i)	<p>The provisions of any:</p> <ul style="list-style-type: none"> - environmental planning instrument, - any proposed instrument that has been the subject of public consultation under the Act, - any development control plan, - any planning agreement that has been entered into under section 7.4, or any draft planning agreement and - the Regulations (to the extent that they prescribe matters for the purpose of this paragraph) <p>that apply to the land to which the development application relates.</p>	Satisfactory – the proposed are consistent with the relevant environmental planning instruments that apply to the site as detailed in Section 3.3.
S 4.15(1)(b)	Likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.	Satisfactory – the proposed modifications are administrative and do not change the approved works or management of impacts.
S 4.15(1)(c)	The suitability of the site for the development,	Satisfactory – the proposed modifications do not alter the suitability of DA9876.
S 4.15(1)(d)	Any submissions made in accordance with this Act or the regulations.	<p>Any submissions will be considered in response to notification.</p> <p>We note that Penrith Council made a submission to the previous notification and a response to this submission will be provided under separate cover.</p>
S 4.15(1)(e)	The public interest.	Satisfactory – the proposed modifications do not change compliance with adopted environmental planning instruments and do not change the management of impacts as required by DA9876.

The proposed modification is administrative and does not introduce any new impacts to the approved development or the surrounding locality and does not impede the development methodology or outcome.

1.3 State Environmental Planning Policies

STATE ENVIRONMENTAL PLANNING POLICY (PRECINCTS – WESTERN PARKLAND CITY) 2021 [SECTION 4.15(1)(A)]

The original application DA9876 was assessed under *State Environmental Planning Policy (Penrith Lakes Scheme) 1998* (Penrith Lakes SEPP) and found to be satisfactory. Since 3 March 2022, the Penrith Lakes SEPP has been superseded by *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* (Western Parkland City SEPP) with the provisions of the former SEPP being integrated into Chapter 5 of the new SEPP. Chapter 5 of the Western Parkland City 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. The proposal has no impact on heritage and Olympic legacy infrastructure.

Clause 5.7 of the Western Parkland City SEPP provides that the Minister is the consent authority for the proposed application.

The site contains land in zones Employment and Environment under the Western Parkland City SEPP.

The subdivision as modified remains consistent with the objectives for development in the Employment Zone because it facilitates the delivery of DA9876 which will result in a community title subdivision to accommodate the future Nepean Business Park. The subdivision is also consistent with the objectives of the Environment Zone because it facilitates the delivery of DA9876 which includes the creation of new lots containing the land in the Environment Zone adjacent to the Nepean River. This land will be subject to a vegetation management plan.

The subdivision as modified is permitted with consent in accordance with Clause 5.18 of the Western Parklands City SEPP.

Clause 5.27 outlines additional provisions for development on land zoned Employment. The subdivision as modified will have no change to the approved impacts on the site and therefore is considered appropriate.

Clause 5.28 outlines additional provisions for development on land zoned Environment. The subdivision as modified will have no change to the approved impacts to the site, as the modifications are administrative. It is therefore consistent with Clause 5.28.

Overall, the proposed development is considered consistent with the provisions of the Western Parklands City SEPP, Chapter 5 – Penrith Lakes Scheme.

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021 [SECTION 4.15(1)(A)]

Chapter 4 to State Environmental Planning Policy (Resilience and Hazards) 2021 requires the consent authority to be satisfied that the site is suitable for the proposal with consideration to the potential for contamination. Approved remediation works are currently underway to make the site suitable for works approved with DA9876. The subdivision as modified does not change any approved works and does not change the current and approved use of the site and the validity and implementation of approved development. The site is considered suitable.

STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 [SECTION 4.15(1)(A)]

The modified consent does not propose any change to approved works. As such, there would be no change to the approved impacts to the existing ecological and biodiversity values of the site. There will be no change to the approved works affecting the flow of surface and groundwater through the site and no changes to the approved impacts to the Hawkesbury Nepean catchment. The subdivision as modified is consistent with the provisions of the SEPP.

2. Conclusion

The modification of DA9876 is consistent with the provisions of Section 4.56(1) and Section 4.15 to the EP&A Act, 1979 and consistent with the applicable EPIs.

The modified development will be substantially the same as the original approval of DA9876. Modifications are administrative and necessary for the implementation of the consent.

Having regard to the minor and essential nature of the proposed changes, the modification is worthy of approval.

Should you require any further information, do not hesitate to contact me on (02) 9531 2555.

Yours faithfully,



Sophie Perry
Director
Planning Ingenuity Pty Ltd.