

Our Ref: M190009

19 January 2023

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

**STATEMENT OF ENVIRONMENTAL EFFECTS
SECTION 4.56 MODIFICATION OF DEVELOPMENT CONSENT DA9876
14-98 OLD CASTLEREAGH ROAD, PENRITH**

1) INTRODUCTION

We act on behalf of Great River NSW Pty Ltd, the applicant for the approved development application DA9876, which was approved by the Land and Environment Court on 31 March 2022. The consent is for *“the Torrens title subdivision of three lots at 14-98 Old Castlereagh Road, Castlereagh, into four environmental lots and one residual lot, and the subdivision of the residual lot into 93 Community title lots and one community association lot, across 13 development stages with associated earthworks, road works and landscaping”*.

This Statement of Environmental Effects accompanies a modification application pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) for modification of the approved development consent to delete condition C23(b) and its requirement to provide a left turn deceleration lane from Castlereagh Road to Lugard Street. As shown in the traffic impact report prepared by *McLaren Traffic Engineering*, the lane is unnecessary given that the development will have no material effects on traffic at this point and that local roads can easily accommodate any additional traffic generated by the development.

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 4.56 and 4.15 of the EP&A Act.

2) SITE DESCRIPTION

The subject site is located at 14-98 Old Castlereagh Road, adjacent to the North Penrith industrial precinct and in the south-eastern corner of the Penrith Lakes Scheme area, and is formally known as Lot 1, 2 and 3 DP 1263486. The site has a total area of approximately 49HA. The site is identified in the aerial image provided at Figure 2.

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 existing industrial development. The Nepean River is located to the south-west of the site. To the west of the site, and further north, is other land within the Penrith Lakes Scheme.

The subject site was previously used as a tailings pond for the Scheme. Rehabilitation works are currently underway on the site.



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Figure 1. Aerial image indicating subject site

3) APPLICATION HISTORY

This modification application seeks to amend DA9876 which was approved by the Land and Environment Court on 31 March 2022, for “*the Torrens title subdivision of three lots at 14-98 Old Castlereagh Road, Castlereagh, into four environmental lots and one residual lot, and the subdivision of the residual lot into 93 Community title lots and one community association lot, across 13 development stages with associated earthworks, road works and landscaping.*”

4) DESCRIPTION OF PROPOSED MODIFICATION

It is proposed to modify DA9876 to delete condition C23(b) of the development consent.

Condition C23 sets out some required local road improvements that must be carried out prior to the commencement of any substantive construction. The applicant does not contest the conditions requiring a left turn deceleration land from Old Castlereagh Road to Road 3 (Condition C3(a)) or the shared pedestrian and cycle path (Condition C23(c)). However, the applicant seeks to remove the requirement to build a left turn deceleration lane at the intersection of Castlereagh Road and Lugard Street (Condition C23(b)) as there is no demonstrated material benefits associated with this lane.

An analysis of the future level of service of the intersection of Castlereagh Road and Lugard Street both with and without the required lane has been undertaken by *McLaren Traffic Engineering*. In their traffic report *McLaren Traffic Engineering* show that the level of service at this intersection is unchanged whether or not a left turn lane is added. Accordingly, the lane is not required and Condition C23(b) should be deleted.

4.1 AMENDMENT TO CONDITIONS

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).

C23. Prior to the commencement of construction for each stage referred to in (a)-(c) below, the Applicant must submit plans and technical specifications for that stage, to the satisfaction of the relevant roads authority, for the following works:

*(a) left turn deceleration lane from Old Castlereagh Road to the approved northern entry road (Road 3) at Stage 6; **and***

~~*(b) left turn deceleration lane from Castlereagh Road to Lugard Street at Stage 9; and*~~

(eb) shared pedestrian and bicycle pathway on the south side of Lugard Street from the site to Castlereagh Road to be delivered in Stage 1.

5) STATUTORY CONSIDERATION

5.1 SECTION 4.56 OF THE EP&A ACT 1979

Section 4.56 of the EP&A Act contains provisions relating to the modification of a development consent given by the Land and Environment Court. Sub-clause (1) states:

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

(a) 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

(b) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, and

(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

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development 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

(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.

The proposal is subject to a section 4.56 modification. The proposal does not require a new development application as the proposal is substantially the same as that approved by the LEC in *Great River NSW Pty Ltd v Minister for Planning and Public Spaces [2022]* as detailed in the following section.

5.1.1 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 that approved by the LEC and the consent authority can therefore consider the application pursuant to Section 4.56 of the EP&A Act.



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 4.56 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 proposed modifications pertain only to the deletion of part of one condition and will not lead to any substantial changes in terms of approved physical works on-site under DA9876. Accordingly, the proposed amendment will not result in any additional environmental impacts over those already approved. As detailed in the traffic report prepared *McLaren Traffic Engineering*, the left turn deceleration lane from Castlereagh Road to Lugard Street does not generate any material benefits in terms of traffic generation and the performance of the intersection of Lugard Street and Castlereagh Road is unchanged whether or not a left turn lane is built.

In terms of quantitative assessment, the development as modified will be substantially the same to that which has been granted approval. The proposal is limited to the deletion of Condition C23(b) and will not change the approved subdivision pattern, landscape plans or alter the scope or quantum of earthworks.

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.

5.2 SECTION 4.15 OF THE EP&A ACT 1979

Section 4.56(1A) 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.

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

The original application was assessed under *State Environmental Planning Policy (Penrith Lakes Scheme) 1998* (Penrith Lakes SEPP) and found to be satisfactory. However, 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 site is zoned Employment and Environment under the Western Parkland City SEPP. Accordingly, Clause 5.7 of the Western Parkland City SEPP provides that the Minister is the consent authority for the proposed modification.

The proposed modification does not impact upon compliance with the relevant SEPP provisions, which were found to be satisfied with granting of the original development application.

5.2.2 PENRITH LAKES DEVELOPMENT CONTROL PLAN

The Penrith Lakes Development Control Plan – Stage 1 (PLDCP) has been finalised and guides development on employment zoned land at Penrith Lakes. Section 4.8 *Access and Movement* of the PLDCP provides controls concerning movement of traffic within and outside the precinct. Of relevance are controls 7) and 9) which are reproduced below:



7) The road network must be designed to allow efficient access* to key destination nodes throughout Penrith Lakes, providing appropriately planned access and egress intersections to the adjoining major road network of Castlereagh Road to distribute traffic demands.

....

9) Roads shall be designed in accordance with the following principles:

- a) Road and lane widths must allow for two-way movement and turning movements of vehicles, including consideration for buses, heavy vehicles, garbage trucks and emergency vehicles;
- b) Verge widths must be sufficient to meet the requirements for utilities, street tree planting, footpaths, shared paths and urban design outcomes;
- c) Adequate* turning paths must be provided for all vehicles at intersections and for property access; and
- d) Sufficient width must be provided for drainage functions and water-sensitive urban design measures.

[*our underline]

Control 7) requires new roads to provide 'efficient access' to destinations in the precinct. According to the traffic advice prepared by McLaren Traffic Engineering, access from Castlereagh Road to Lugard Street is provided at essentially the same level of performance with and without the required lane. As such, the removal of the turning lane will not impact to the efficiency of access to the precinct.

Control 9) sets some principles that dictate the design of roads in the precinct. The removal of the turning lane will continue to align with these principles for the following reasons:

- a) The proposal will not impede two-way movement on either Castlereagh Road or Lugard Street. The traffic report has based its assumptions on a split of both light and heavy vehicles and found that movement through the intersection is not substantially changed with or without the lane
- b) The provision of a turning lane from Castlereagh Road to Lugard Street would require the reduction of the verge width approaching Lugard Street.
- c) The traffic report shows that adequate turning paths are provided for vehicles entering Lugard Street from Castlereagh Road regardless of whether a left turn deceleration lane is provided.
- d) The modification will not impact drainage patterns or approved water sensitive urban design measures.

Importantly the proposal will continue to be compatible with the objectives in section 4.8 of the PLDCP as detailed in the following table:

| Table 1 Objectives for Access and Movement (s.4.8 of the PLDC) | |
|--|---|
| Column Heading | Column Heading |
| a) Facilitate access and future connections between adjoining precincts. | Efficient access between the precinct and wider area is unchanged regardless of whether a turning lane is added |

Table 1 Objectives for Access and Movement (s.4.8 of the PLDC)

| | |
|---|--|
| b) Minimise vehicular access points from Old Castlereagh Road. | Not relevant to this modification |
| c) Improve permeability and pedestrian access between precincts, the Nepean River and recreation areas. | The applicant does not seek to remove conditions related to pedestrian access and movement |
| d) Provide new road connections and walking and cycling connections to service development and minimise conflict between pedestrians and vehicles. | As above |
| e) Regulate the key characteristics of new roads to provide traffic safety and efficient traffic flow, appropriate parking, appropriate pedestrian and cycle paths, and suitable verge and road reserve widths in accordance with each road's function and use within the general road hierarchy. | Flow of traffic through and safety of the relevant intersection is unchanged as a consequence of this modification. |
| f) Ensure public safety from criminal elements by considering the NSW Police 'Safer By Design' or 'Crime Prevention Through Environmental Design' principles and protocols. | The performance of the local road network against CPTED principles is unchanged. |
| g) Minimise construction and maintenance costs and avoid the need for future property acquisition to provide for public roads. | Removal of the lane will reduce construction and maintenance costs |
| h) Maintain flexibility to allow for future changes in land-use patterns. | The changes will not restrict future changes in land-use patterns |
| i) Ensure noise from all road and traffic sources is within acceptable limits. | The removal of a lane will have no impact on the level of noise generated from the local road network |
| j) Incorporate appropriate traffic-calming measures. | As shown in the traffic report, the lane required under Control C23(b) does not yield any material benefits in terms of traffic calming. |

Accordingly, the proposed hours are considered to meet the objectives and applicable controls of the relevant section of the PLDCP and the proposal is entirely reasonable in the given context.

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

The original application was assessed under *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP No. 55) which included provisions that 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. On 3 March 2022, SEPP No. 55 was superseded by *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP). The provisions of SEPP No. 55 have been integrated into Chapter 4 of the Resilience and Hazards SEPP and are unchanged. When DA9876 was determined, it was found to be satisfactory in regards to these provisions, and the subject modification does not amend the proposed works and does not require further consideration of contamination.



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

5.2.4.1 TRAFFIC

It is noted that previous modelling, prepared by *GHD*, was used to justify the imposition of Condition C23(b). Assessment of the *GHD* modelling has shown that it is based on false assumptions. The gross floor areas used by *GHD* to calculate the performance of local roads are inconsistent when comparing AM and PM peak periods and as such the findings of their report appear unreliable. A new assessment of the performance of the intersection of Castlereagh Road and Lugard Street has been undertaken by *McLaren Traffic Engineers* using correct figures. The report came to the following conclusion:

the intersection of Castlereagh Road / Lugard Street performs at a LoS (Level of Service) "B" under future conditions whether or not a left turn deceleration lane is constructed for the left turn into Lugard Street from Castlereagh Road. Examining more closely the performance of the local road, there is no noticeable difference in performance between the two layouts.

The results of the traffic study show that the impact of the left turn lane on traffic is negligible at best and as such is an unnecessary requirement. Accordingly, the relevant condition should be removed.

5.2.5 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. The proposed modification does not alter the nature of the approved activities under the consent, which will continue to operate in accordance with the consent conditions to ensure that potential environmental and amenity impacts are managed and mitigated. As detailed in the traffic report, existing access arrangements from Castlereagh Road to Lugard Street are sufficient and the upgrades required under Condition C23 do not yield any improvements in terms of safety or level of service.

5.2.6 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. Given that the proposed modification does not result in additional environmental or amenity impacts over those already approved, it is in the public interest.

6) CONCLUSION

It is proposed to delete Condition C23(b) of the consent for DA9876 to remove the requirement for a left turn deceleration lane from Castlereagh Road to Lugard Street. As has been detailed in this report and the traffic report prepared by *McLaren Traffic Engineering*, the required lane does not generate any material benefits in terms of traffic movement or safety and as such the condition should be removed.

In accordance with Clause 4.56(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed modification will result in a development that is substantially the same as that approved under DA9876. The proposed modifications are limited to the removal of a single turning lane and do not alter the subdivision pattern, landscaping or earthworks activities approved under DA9876. With the exception of the condition 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 DA9876 which ensure the management and mitigation of all potential environmental impacts.

The proposal is in line with the provisions in chapter 5 of *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* and those of *State Environmental Planning Policy (Resilience and Hazards) 2021*. The changes





to the road layout will not lead to any impacts on the local road network and meet the controls in section 4.8 of the *Penrith Lakes Development Control Plan- Stage 1*.

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

ATTACHMENTS

1. Traffic Study prepared by *McLaren Traffic Engineering*



