

Modification 3 Penrith Lakes Employment Lands Subdivision

Modification Assessment Report (DA9876-Mod-3)

September 2023





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Published: September 2023

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Preface

This assessment report provides a record of the Department of Planning and Environment's (the Department) assessment and evaluation of modification 3 of the Development Application for the Penrith Lakes Employment Lands Subdivision located at 14-98 Old Castlereagh Road, Castlereagh lodged by Great River NSW Pty Ltd. The report includes:

- an assessment of the modification against government policy and statutory requirements, including mandatory considerations
- a demonstration of how matters raised by the community and other stakeholders have been considered
- an explanation of any changes made to the modification during the assessment process
- an assessment of the likely environmental, social and economic impacts of the modification
- an evaluation which weighs up the likely impacts and benefits of the modification, having regard to the proposed mitigations, offsets, community views and expert advice; and provides a view on whether the impacts are on balance, acceptable
- a recommendation to the decision-maker, along with the reasons for the recommendation, to assist them in making an informed decision about whether the consent should be modified and any conditions that should be imposed.

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1 Introduction

1.1 The Proposal

On 31 March 2022, Great River NSW Pty Ltd (the applicant) sought and was granted consent for 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.

The applicant now proposes to modify the approval/consent in relation to the Torrens Title subdivision lot layout, to enable the subdivision of the environmental lands whilst retaining the existing lot layout for the residual lots.

1.2 Project location

The subject site is located at 14-98 Old Castlereagh Road, Castlereagh in the Penrith City local government area (LGA) and within the Western Sydney region of NSW (see

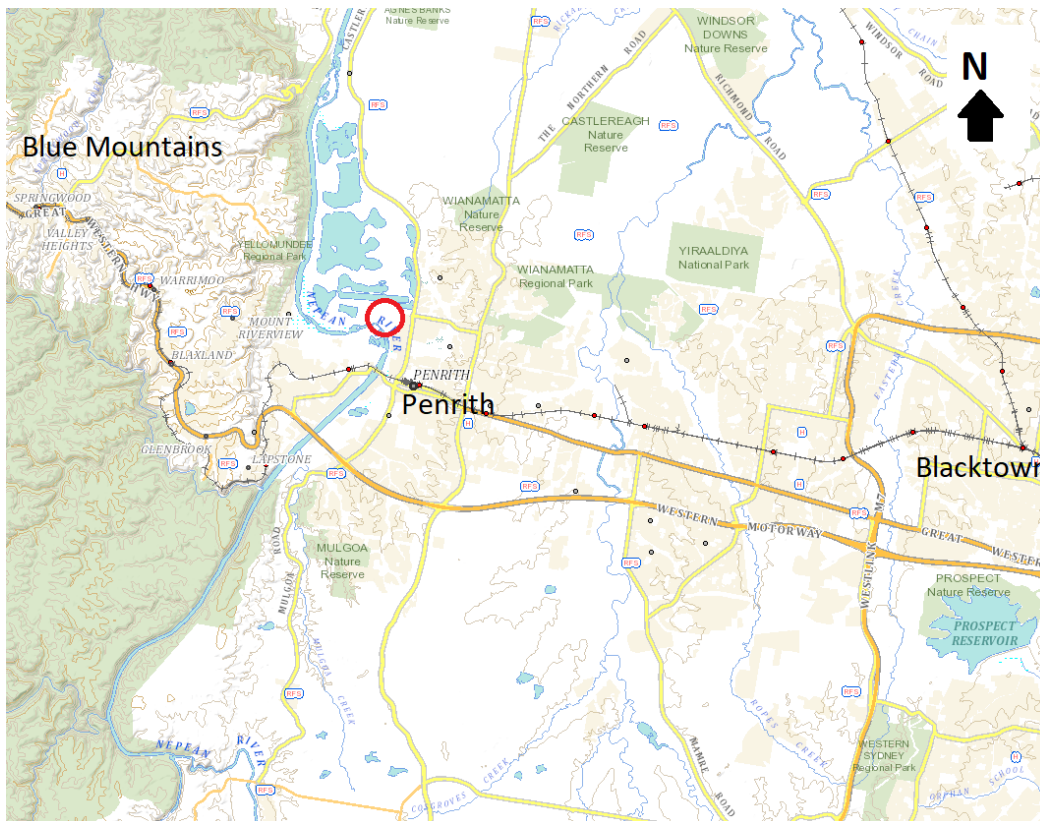


Figure 1 and Figure 2).

The site is legally known as Lots 1, 2 and 3 in Deposited Plan 1263486. It is irregular in shape and has an area of approximately 49 hectares. The site is bound by Old Castlereagh Road to the north, existing industrial developments and Lugard Street to the east, existing industrial developments and the Nepean River to the south and vacant land associated with the Penrith Lakes Scheme to the west. The site is highly disturbed and has recently been filled in the course of rehabilitation works,

which are occurring on the site following its previous use as a tailings pond for quarrying. The works are expected to take between 1 and 3 years to complete.

The site is located in the Penrith Lakes Scheme and is zoned as 'employment' under *State Environmental Planning Policy (Precincts - Western Parkland City) 2021* (Western Parkland SEPP).

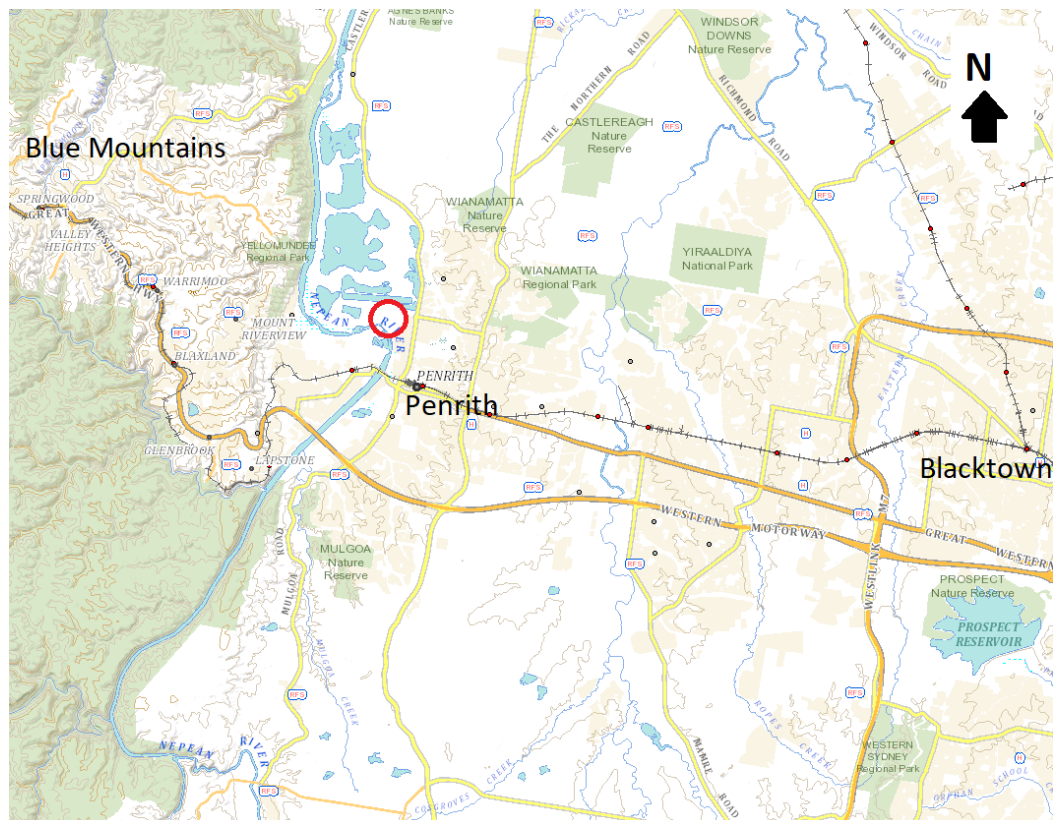


Figure 1 | Regional context map, subject site highlighted in red (Source: ePlanning Spatial Viewer)



Figure 2 | Local context map (Source: NearMap)

1.3 Penrith Lakes Scheme

The Penrith Lakes Scheme (the Scheme) is a 30-year quarrying and rehabilitation proposal being undertaken by the Penrith Lakes Development Corporation (PLDC) in accordance with a Deed of Agreement, dated 11 August 1987 (amended 14 August 1989), with the NSW Government. The extent of the Scheme is identified in **Figure 3**.

The Scheme is located within the Nepean River floodplain. It is being transformed from a sand and gravel quarry into a water-oriented recreation park, with land suitable for rural, tourism and employment uses. Quarrying activities on the site ceased in September 2015. Since then, PLDC has been progressively rehabilitating the site.

Development on the Penrith Lakes site is governed by the Western Parkland SEPP. The Penrith Lakes Scheme comprises approximately 80 ha of waterways, 110 ha of parklands, 118 ha of environmental area, 33 ha of employment area and 52 ha of tourism area, and 1,330 ha of unzoned land subject to future land use planning, following the completion of flood investigations and community consultation.

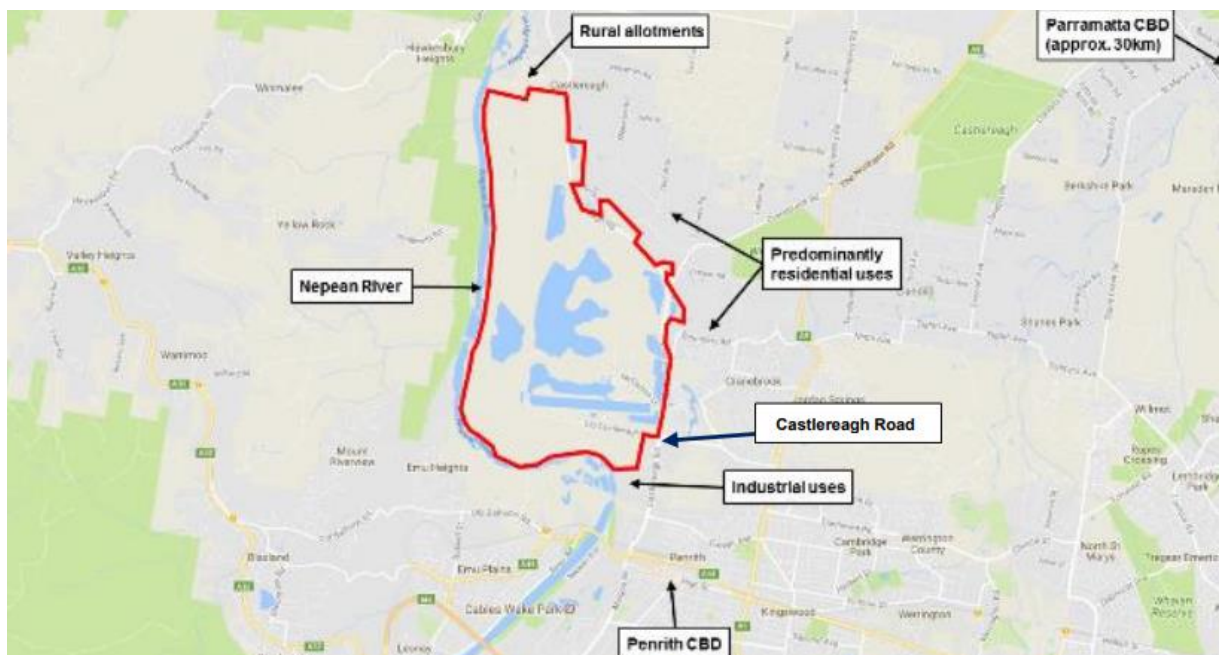


Figure 3 | Penrith Lakes Scheme boundary outlined in red (Source: Google Maps)

1.4 Related projects and works

1.4.1 Approval history

On 31 March 2022, development consent was granted by Land and Environment Court for the development of the Penrith Lakes Employment Lands Subdivision DA9876.

The consent included approval for:

- Torrens Title Subdivision of the site into 5 lots including four environmental lots and one residual lots
- Community Title Subdivision of the residual lot into 93 lots and 1 community title lot across 13 stages.
- Construction of associated roads, stormwater, earthworks and landscaping

The Torrens Title Subdivision of the site and Community Title lot layout are identified in **Figure 4** and **Figure 5** below.

There are two modifications that are currently under assessment (**Table 1**)

Table 1 | Summary of Modifications

Modification	Description	Decision maker	Type	Date
Mod 1	Delete condition related road upgrade works	Department	4.56	Under Assessment

Modification	Description	Decision maker	Type	Date
Mod 2	Modification to allow for 24/7 construction works	Department	4.56	Under Assessment



Figure 4 | Approved Torrens Title Subdivision Environmental Lots in Green (Source: DA9876 Stamped Plans)

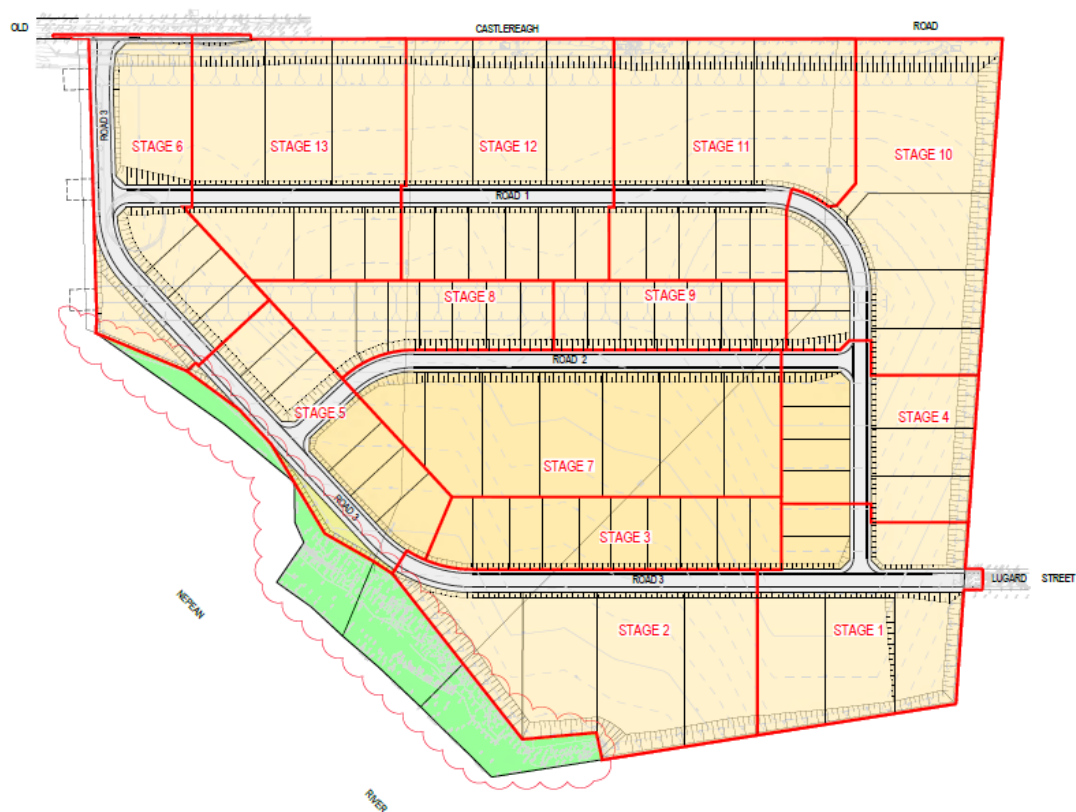


Figure 5 | Approved Community Title Subdivision (Source: DA9876 Stamped Plans)

2 Proposed modification

2.1 Modification overview

The applicant seeks to alter the Torrens Title subdivision lot layout to enable the subdivision of the environmental lands whilst retaining the existing lot layout for the residual lots.

The existing lot layout, approved lot layout and proposed lot layout are outlined in **Figure 6**.



Figure 6 The existing lot layout, approved lot layout and proposed lot layout (Source: Applicant's Documentation and ePlanning Spatial Viewer)

2.2 Applicant's justification

The applicant has stated that the amended Torrens Title lot layout is required due to the existing lots being in separate ownership. The approved sequence of subdivision and consolidation creates issues regarding the issue of new titles over the three separately owned residual lots, which must be resolved prior to their consolidation into a single lot. The proposed subdivision plan, as modified, seeks to modify the method of the consolidation of the residual land in the approved subdivision without delaying the titling of the future environmental land. Consolidation will occur at the time of the ultimate Community Title subdivision in accordance with the approved plans.

3 Statutory context

3.1 Scope of modification and assessment pathway

Details of the legal pathway under which modification is sought and are provided in **Table 2** below.

Table 2 | Permissibility and assessment pathway

Consideration	Description
Scope of modification	<p>Modification by consent authorities of consents granted by the Court</p> <p>The Department has reviewed the scope of the modification and considers that as it is a modification of a consent granted by the court, it falls under the scope of 4.56 of the EP&A Act.</p> <p>The Department is satisfied the proposed modification is within the scope of section 4.56 of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.56 of the EP&A Act rather than requiring a new development application to be lodged.</p>
Consent Authority	<ul style="list-style-type: none">• The Minister continues to be the consent authority under section 5.7(a) of the Western Parkland SEPP and has the capacity to modify the consent of the project.
Decision-maker	<p>Under clause 5.7(a) of the Western Parkland SEPP, the Minister is the consent authority for development applications on land within the unzoned land and Employment, Environment, Parkland, Tourism or Waterway zones.</p> <p>In accordance with the Minister's delegation dated 9 March 2022, the Director, Regional Assessments may determine the application as:</p> <ul style="list-style-type: none">• Council has not made an objection• there are less than 15 public submissions in the nature of objection• a political disclosure statement has not been made.

3.2 Mandatory matters for consideration

3.2.1 Matters of consideration required by the EP&A Act

In determining the modification, the consent authority must take into consideration such of the matters referred to in section 4.15(1) of the EP&A Act as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The Department's consideration of these matters is shown in **Table 3** below.

Table 3 | Matters for consideration

Matter for consideration	Department's assessment
a) the provisions of: i.) any environmental planning instrument, and	The Department has considered the relevant environmental planning instruments in its assessment of the development. The Department considers that the modification does not alter the previous assessment of the relevant EPIs due to the minor scope of the modification proposed.
ii.) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and	Not applicable
iii.) any development control plan, and	The Department considers the relevant development control plan in its assessment of the development and notes that the modification will not alter compliance with the previous considerations.
iiia.) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and	The Applicant has not entered into a planning agreement under Section 7.4 of the EP&A Act.
iv.) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,	The Department has notified and assessed the development in accordance with all relevant matters prescribed by the regulations, the findings of which are contained in this report.
b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,	The Department has considered the likely impacts of the development in detail in Section 5 of this report. The Department concludes that all environmental impacts can be appropriately managed and mitigated through the existing conditions of consent.
c) the suitability of the site for the development,	The Department considers that the modification does not alter the suitability of the site for the proposed development.
d) any submissions made in accordance with this Act or the regulations,	All matters raised in submissions have been summarised in Section 4 of this report and given due consideration as part of the assessment of the development in Section 5 of this report.
e) the public interest.	The Department considers the proposal to be in the public interest (refer to Section 5).

3.2.2 Objects of the EP&A Act

In determining whether or not to modify the consent, the consent authority should consider whether the modified project is consistent with the relevant objects of the EP&A Act (section 1.3) including the principles of ecologically sustainable development. The Department is satisfied that the modified development does not alter the consistency with the objectives of the EP&A Act and the principles of ecologically sustainable development (ESD).

Table 4 | Consideration of the objects of the EP&A Act

Object	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The modification does not alter any physical works on site, and as such, there are no change to the social and economic welfare of the community or the management, development and conservation of natural and other resources as a result of this modification.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The Department is satisfied the modified development can be carried out in a manner that is not inconsistent with the principles of ESD.
(c) to promote the orderly and economic use and development of land,	The proposal involves a modification to the Torrens Title layout to facilitate the orderly and economic use of land.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities,	The Department considers the modification would not result in unacceptable environmental impacts.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The modification does not alter the previous considerations of built and cultural heritage.
(g) to promote good design and amenity of the built environment,	The modification does not seek to alter any aspects of the subdivision design.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The modification does not seek to alter any aspects of the subdivision construction.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department referred the development to the relevant Council during the notification period and invited them to comment. The Department has given due consideration to their comments.

Object	Consideration
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department notified the application as outlined in Section 4.

4 Engagement

4.1 Department's engagement

In accordance with the EP&A Regulation the Department made the modification application publicly available on the Department's website on 11 August 2023 and also forwarded the application to Council on 11 August 2023 for comment as well as to all persons who made a submission on the original application in accordance with clause 4.56(1)(b) of the EP&A Act.

4.2 Notification of the modification

4.2.1 Summary of council submission

Penrith City Council provided comments on the project.

A summary of the issues raised by council is provided in below.

Council	Submission summary
Penrith City Council	<p>Mod Application</p> <ul style="list-style-type: none">- Council sought clarification on the future intentions for the environmental lands and whether they would be dedicated to Council.- Once confirmation was given that the environmental lands are not to be dedicated to Council as part of this application, Council advised that they have no objection.

4.2.2 Summary of Public Submissions

No public submissions were received as a result of the notification.

5 Assessment

5.1 Torrens Title Subdivision

The modification seeks to amend the Torrens Title subdivision of the lot to retain the existing ownership pattern once the environmental lands are subdivided. The modified layout will retain the existing lot layout, minus the environmental lands. The existing lot layout, approved Torrens Title lot layout and proposed Torrens Title lot layout are identified in **Figure 7**, **Figure 8** and **Figure 9**. No changes to the Community Title Subdivision are proposed.

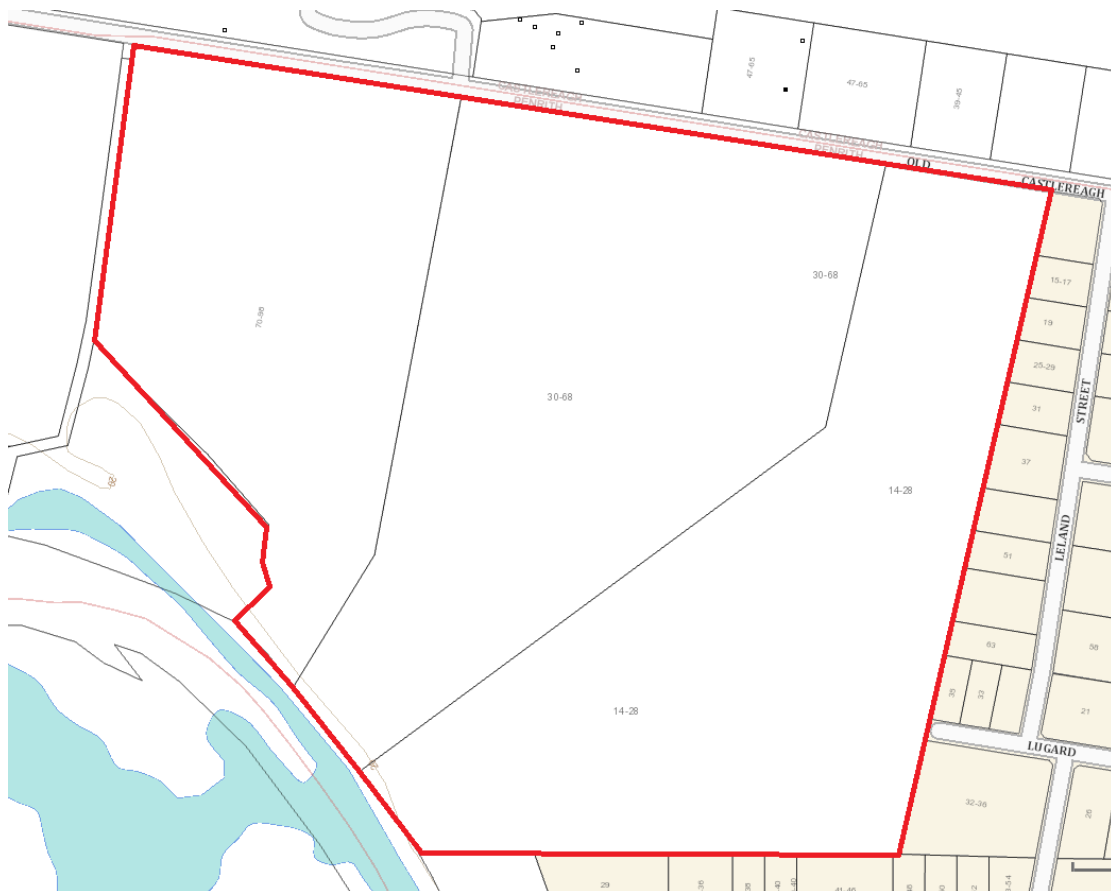


Figure 7 | Existing lot layout of the subject site (Source: ePlanning Spatial Viewer)



Figure 8 | Approved Torrens Title Subdivision Environmental Lots in Green (Source: DA9876 Stamped Plans)



Figure 9 | Proposed modified Torrens Title Subdivision Layout (Source: Applicant's Documentation)

The applicant has stated that the proposed modified layout will allow for the respective financiers for the subject land to take security over the relevant land titles and will allow the project to proceed as intended. The application stated that the three residual lots would be consolidated into a single lot prior to the community title subdivision being registered.

Council sought confirmation about the dedication of the environmental land once it was subdivided. The Department confirmed that the dedication of this land did not form part of this application or modification.

Council then advised that they had no objection to the proposed development.

The Department has reviewed the modification application and comments from Council and considers that the proposed modification to the Torrens Title subdivision will have no impact on the resulting subdivision. The modification does not require any changes to the construction of the subdivision and is a predominantly administrative amendment. The modified Torrens Title lot layout will enable appropriate financing to be obtained by individual lot owners to facilitate the subdivision of the site.

To ensure that the three residual lots are consolidated appropriately prior to the community title subdivision being registered, the Department considers a new condition on the consent is warranted.

The Department recommends that the existing development consent be amended to:

- include the modified subdivision plan and modification documentation.
- include a new condition that requires the consolidation of lots 204, 205 and 206 prior to the issue of a subdivision certificate for the community title subdivision.

6 Evaluation

The proposed modification application seeks to amend the consent for the Penrith Lakes Employment Lands Subdivision. The Department has reviewed the modification report and assessed the merits of the proposal, taking into consideration all environmental issues associated with the proposal have been thoroughly addressed.

The Department's assessment of the proposal concludes that:

- it is substantially the same development as originally determined
- will result in negligible environmental impacts that can be appropriately managed via conditions of consent
- the proposed lot layouts and road networks of the resulting community title subdivision will not change

The proposal is considered to be in the public interest as it would provide public benefits, including:

- continued employment opportunities for the Western Sydney region
- have negligible additional environmental impacts above the existing approved development

Based on its assessment, the Department considers that the modified project is justified and in the public interest, and that the site is suitable for the proposed development. The Department recommends that the modification application for Penrith Lakes Employment Lands Subdivision be approved, subject to the recommended modified conditions of consent.

7 Recommendation

It is recommended that the **Director, Regional Assessments**, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **accepts and adopts** the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **agrees** with the key reasons for approval listed in the notice of decision
- **modifies the consent** for the Penrith Lakes Employment Lands Subdivision (DA9876) as amended, subject to the conditions in the attached instrument of modification.
- signs the attached instrument of modification (**Appendix CError! Reference source not found.**).

Recommended by:



Chris Eldred
Senior Planning Officer
Regional Assessments

Recommended by:



Erin Murphy
Team Leader
Regional Assessments

8 Determination

The recommendation is **adopted** by:

A handwritten signature in blue ink, appearing to read 'K T' followed by a long horizontal stroke.

Keiran Thomas

Director

Regional Assessments

Glossary

Abbreviation	Definition
Council	Penrith City Council
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
EPI	Environmental planning instrument
ESD	Ecologically sustainable development
LEC	Land and Environment Court
LGA	Local government area
LEP	Local environmental plan
Minister	Minister for Planning and Public Spaces
Planning Systems SEPP	State Environmental Planning Policy (Planning Systems) 2021
Secretary	Secretary of the Department of Planning and Environment
SEPP	State environmental planning policy
Western Parkland SEPP	State Environmental Planning Policy (Precincts - Western Parkland City) 2021

Appendices

Appendix A – List of referenced documents

Modification Report

<https://pp.planningportal.nsw.gov.au/daex/exhibition/penrith-lakes-employment-lands-subdivision-mod-3-amendment-staging-subdivision-da9876-mod-3>

Appendix B – Submission

The submission can be found here:

<https://pp.planningportal.nsw.gov.au/daex/exhibition/penrith-lakes-employment-lands-subdivision-mod-3-amendment-staging-subdivision-da9876-mod-3>

Appendix C – Notice of Modification

The notice of modification can be found on the Department of Planning and Environment's website as follows:

<https://pp.planningportal.nsw.gov.au/daex/exhibition/penrith-lakes-employment-lands-subdivision-mod-3-amendment-staging-subdivision-da9876-mod-3>