

Our Ref: M190009

12 May 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 to enable 24 hour construction works and the replacement of fencing on the north-eastern boundary.

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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#### 4.1 AMENDMENT TO CONDITIONS

To allow for 24 hour works Conditions D4, D5 and D6 and D7. Recommended revised text is provided where appropriate (deletions shown with strikeout and insertions with bold underline).

- *D4. Construction, including all works under this consent and the delivery of materials to and from the site, ~~may only be carried out between the following hours:~~ **is permitted to be carried out on a 24 hour basis, 7 days a week.** [Note that this text is consistent with that under DA2 MOD 11]  
(a) ~~Between 7am and 6pm, Mondays to Fridays inclusive; and~~  
(b) ~~Between 8am and 1pm, Saturdays~~*

~~No work may be carried out on Sundays or public holidays~~

- ~~D5. Construction activities may be undertaken outside of the hours in condition D4 if required:  
(a) by the Police or a public authority for the delivery of vehicles, plant or materials; or  
(b) in an emergency to avoid the loss of life, damage to property or to prevent environmental harm.~~
- ~~D6. Notification of such construction activities as referenced in condition D5 must be given to affected residents before undertaking the activities or as soon as is practical afterwards.~~
- *D7. Rock breaking, rock hammering, sheet piling, pile driving and similar activities may only be carried out between the following hours:  
(a) 9am to 12pm, Monday to Friday;  
(b) 2pm to 5pm Monday to Friday; and  
(c) 9am to 12pm, Saturday.*

To allow for the replacement of existing, damaged fencing, the table in Condition A1 must be modified to include the proposed civil engineering plans, prepared by *Enspire Solutions Pty Ltd*, submitted with this application.

#### 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 4.55 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 proposed modifications pertains only to construction hours and will not lead to any changes in terms of physical works under DA9876 other than the replacement of fencing. The new fencing will match existing fencing in height and materiality and as such will give rise to no amenity or visual impacts. Accordingly, the proposed amendment will not result in any additional environmental impacts over those already approved, with the exception of construction activity impacts which will be consistent with those anticipated by "Mod 11" and as discussed further in this Statement.

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 an amendment to the permitted construction hours and will not change the approved subdivision pattern, landscape plans or alter the scope or quantum of earthworks. The impacts of construction will be consistent with "Mod 11". The new fencing has an identical height, form and materiality.

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 4.55(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.

##### 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 3.10 *Trading/Operating hours of premises* of the PLDCP provides controls for construction operations hours stipulating:

1) *Construction works shall generally be restricted to the following hours:*

- a) Monday to Friday, 7 am to 6 pm;*
- b) Saturday, 7 am to 1 pm; and*
- c) Sundays or public holidays, no work.*

The objectives to section 3.10 are as follows:

- a) Ensure that the amenity of adjoining properties, especially residential and rural areas, is preserved.*
- b) Ensure development has the flexibility in trading/operating hours to ensure it is competitive and productive. [our underline].*



Given an existing approval for 24 hour rehabilitation works (DA 2 MOD 11) exists, the impacts of these construction hours have been considered and deemed acceptable. We note that the DCP refers to construction hours being “generally” restricted which suggests a merit-based flexible approach. Despite representing a non-compliance with the control, the proposed 24 hour construction hours meet the objectives of the control as follows:

- a) The accompanying Construction Noise Impact Assessment concludes that the proposed hours will generate noise below required levels subject to the implementation of a Noise Management Plan. This will ensure that the amenity of adjoining properties is preserved.
- b) The change in construction hours have been proposed to decrease the overall construction time, generating a more competitive and productive outcome, and shortening the period of impact.

Accordingly, the proposed hours are considered to meet the objectives of the relevant section of the PLDCP and the proposal is entirely reasonable in the given context. The numeric control should be applied flexibly in light of the objective being met.

### 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**

The impacts of construction traffic on the local road network were considered in the original approval as per *Great River NSW Pty Ltd v Minister for Planning and Public Spaces [2022]*. Commissioner C Gray held that the impacts of the development on traffic had been resolved by conditions of consent imposed by the LEC and the entry into a voluntary planning agreement providing a contribution towards local roads.

The proposed modification does not amend the amount of construction traffic anticipated and approved under the original consent. The introduction of 24 hour operations is expected to mitigate the amount of traffic caused by the development by allowing the arrival of trucks to be staggered over a longer period, and over a shorter construction period.

##### **5.2.4.2 NOISE**

A Construction Noise Assessment report prepared by *RAPT Consulting* is submitted with the application and considers the potential noise impacts associated with the proposed modification.

The approval already allows for standard construction hours, this proposal is to allow for additional operation out of hours (OOH) and therefore OOH construction is assessed.

Acoustic modelling was undertaken using SoftNoise's "Predictor" to predict the effects of construction noise.

The noise levels are representative of the worst-case impact, for a given receiver type and are intended to give an indication of the possible noise levels from construction work when work is at their closest. For most construction activities, it is expected that construction noise levels would frequently be lower than predicted at the most exposed receiver.



The assessment outlined in this report indicates that construction noise management levels will be complied with in most situations. However, there is the potential for exceedances for some receivers assessed in certain situations. A set of standard mitigation measures for construction noise have been provided based on anticipated requirements of the proposal. As such, the removal of condition D4 is acceptable from an acoustics perspective.

#### **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. An approval is already in place for rehabilitation works to be undertaken on the site on a 24 hour basis, indicating that 24 hour works are appropriate.

#### **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. Approval of the modification as requested has the benefit of permitting construction to be completed at an expedited timetable which will limit any potential disruption caused by the development. Given that the proposed



modification does not result in additional environmental or amenity impacts over those already approved, and that operational conditions can continue to be complied with, it is considered that the proposed modification is in the public interest.

## 6) CONCLUSION

It is proposed to modify DA9876 to enable 24 hour construction operations at 14-98 Old Castlereagh Road, Penrith.

There is an existing approval for rehabilitation works on the site to be undertaken on a 24 hour basis (DA 2 MOD 11), demonstrating that works undertaken on a 24 hour basis are appropriate for the site. As outlined in this Statement, the proposed 24 hour working is consistent with the applicable planning requirements and is unlikely to result in any additional impacts over those already considered in the original approval.

The proposal also seeks to replace approximately 36.99m of existing fencing. This new fencing will match the existing fencing in terms of height, form and materiality and therefore gives rise to no new impacts on the amenity of adjacent sites or upon the built or natural environment.

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 approved construction hours and do not alter the subdivision pattern, landscaping or earthworks activities approved under DA9876. 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 DA9876 which ensure the management and mitigation 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 extended construction hours will not lead to any impacts on the local road network and have been shown to not lead to undue levels of noise.

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

## ATTACHMENTS

1. Construction Noise Impact Assessment – Rapt Consulting, Document ID: 2222396\_3, Rev 4, Dated 16/03/2023
2. Civil Engineering Plans:
  - Enspire, Drawing No. 200044-CC-C05.03, Rev 6, Dated 11/05/2023
  - Enspire, Drawing No. 200044-CC-C05.06, Rev 5, Dated 11/05/2023