

# Modification 4 Penrith Lakes Employment Lands Subdivision

Modification Assessment Report (DA9876-Mod-4)

February 2024





# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure 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: February 2024

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# Preface

This assessment report provides a record of the Department of Planning, Housing and Infrastructure (the Department) assessment and evaluation of modification 4 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.

# Contents

<b>Preface.....</b>	<b>i</b>
<b>1 Introduction.....</b>	<b>1</b>
1.1 The Proposal .....	1
1.2 Project location.....	1
1.3 Penrith Lakes Scheme.....	2
1.4 Related projects and works .....	3
<b>2 Proposed modification .....</b>	<b>6</b>
2.1 Modification overview.....	6
2.2 Applicant's justification .....	6
<b>3 Statutory context.....</b>	<b>7</b>
3.1 Scope of modification and assessment pathway .....	7
3.2 Mandatory matters for consideration .....	7
<b>4 Engagement.....</b>	<b>11</b>
4.1 Department's engagement .....	11
4.2 Notification of the modification .....	11
<b>5 Assessment.....</b>	<b>13</b>
5.1 Torrens Title Subdivision.....	Error! Bookmark not defined.
<b>6 Evaluation.....</b>	<b>15</b>
<b>7 Recommendation.....</b>	<b>16</b>
<b>8 Determination .....</b>	<b>17</b>
<b>Glossary.....</b>	<b>18</b>
<b>Appendices.....</b>	<b>19</b>
Appendix A – List of referenced documents .....	19
Appendix B – Submission.....	19
Appendix C – Notice of Modification.....	19

# 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 to remove the need for the consolidation of lots prior to the Community Title subdivision taking place.

## 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).



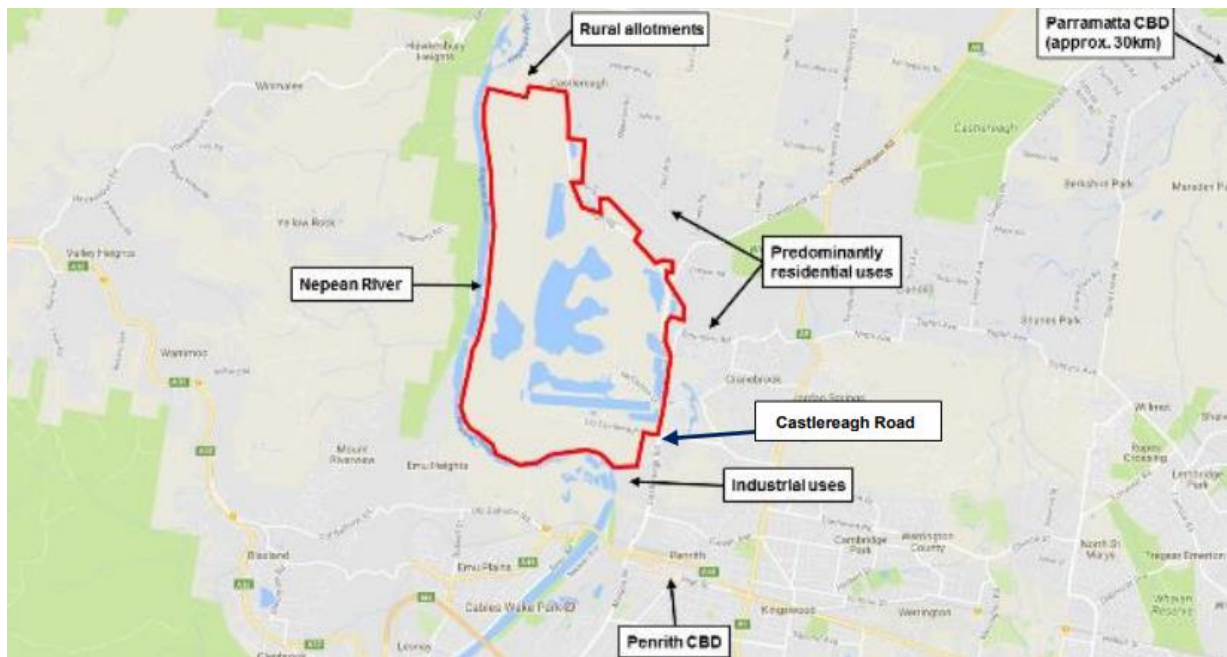
**Figure 2 |** Local context map (Source: NearMap)

### 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 lot
- 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 have been 3 modification requests to the development consent (**Table 1**)

**Table 1** | Summary of Modifications

Modification	Description	Decision maker	Type	Date
<b>Mod 1</b>	Delete condition related road upgrade works	Department	4.56	Refused
<b>Mod 2</b>	Modification to allow for 24/7 construction works	Department	4.56	Withdrawn
<b>Mod 3</b>	Torrens Title subdivision amendment	Department	4.56	Determined



**Figure 4 |** Approved Torrens Title Subdivision (as per Mod 3) Environmental Lots in Green (Source: DA9876-Mod-3 Stamped Plans)



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

## 2 Proposed modification

### 2.1 Modification overview

The applicant seeks to remove the requirement to consolidate the Torrens Title lots 204, 205 and 206 prior to the release of the first subdivision certificate for the community title subdivision.

Condition E38 was imposed as part of Mod 3, requiring Lots 204, 205 and 206 to be consolidated into a single lot prior to the release of the first subdivision certificate for the community title subdivision.

The applicant is seeking to delete Condition E38.

### 2.2 Applicant's justification

The applicant has stated that the requirement to consolidate the residual Torrens Title lots is not required due to the separate ownership of the lots. The approved sequence of subdivision and consolidation (as approved by Mod 3 and required by Condition E38) creates issues regarding the ownership of the residual lots that prevents the subdivision from proceeding.

The removal of the requirement to consolidate the 3 lots prior to the issue of the first subdivision certificate for the community title subdivision would enable the Community Title subdivision to proceed as approved.

## 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
<b>Scope of modification</b>	<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&amp;A Act.</p> <p>The Department is satisfied the proposed modification is within the scope of section 4.56 of the EP&amp;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&amp;A Act rather than requiring a new development application to be lodged.</p>
<b>Consent Authority</b>	<ul style="list-style-type: none"><li>• 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.</li></ul>
<b>Decision-maker</b>	<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"><li>• Council has not made an objection</li><li>• there are less than 15 public submissions in the nature of objection</li><li>• a political disclosure statement has not been made.</li></ul>

### 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
<p>a) the provisions of:</p> <p>i.) any environmental planning instrument, and</p>	<p>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.</p>
<p>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</p>	<p>Not applicable</p>
<p>iii.) any development control plan, and</p>	<p>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.</p>
<p>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</p>	<p>The Applicant has not entered into a planning agreement under Section 7.4 of the EP&amp;A Act.</p>
<p>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,</p>	<p>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.</p>
<p>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,</p>	<p>The Department has considered the likely impacts of the development in detail in <b>Section 5</b> of this report. The Department concludes that all environmental impacts can be appropriately managed and mitigated through the existing conditions of consent.</p>

Matter for consideration	Department's assessment
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 <b>Section 4</b> of this report and given due consideration as part of the assessment of the development in <b>Section 5</b> of this report.
e) the public interest.	The Department considers the proposal to be in the public interest (refer to <b>Section 5</b> ).

### 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
<b>(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,</b>	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>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</b>	The Department is satisfied the modified development can be carried out in a manner that is not inconsistent with the principles of ESD.
<b>(c) to promote the orderly and economic use and development of land,</b>	The proposal involves a modification to the Torrens Title layout to facilitate the orderly and economic use of land.

Object	Consideration
<b>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities,</b>	The Department considers the modification would not result in unacceptable environmental impacts.
<b>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</b>	The modification does not alter the previous considerations of built and cultural heritage.
<b>(g) to promote good design and amenity of the built environment,</b>	The modification does not seek to alter any aspects of the subdivision design.
<b>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</b>	The modification does not seek to alter any aspects of the subdivision construction.
<b>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</b>	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.
<b>(j) to provide increased opportunity for community participation in environmental planning and assessment.</b>	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 23 November 2023 and also forwarded the application to Council on 23 November 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 Table 5 below.

Table 5 | Summary of Council Submission

Council	Submission summary
Penrith City Council	<p>Mod Application</p> <p>Council provided a submission on the application providing comments:</p> <ul style="list-style-type: none"><li>• The proposed modification complicates future subdivision of the site for a number of reasons, primarily associated with there being separate lot owners for the 3 existing lots:</li><li>• rights of carriageway over temporary turning heads between stages (including owner's consent from the separate lots owner) will be required. It must be demonstrated that each and every stage can operate independently in terms of access, entry and exit in a forward direction, manoeuvring, servicing and stormwater management</li><li>• Any drainage infrastructure constructed outside the extent of road to be dedicated as public road will require the creation of suitable drainage easements</li><li>• The proposed community title lots/staging do not align with existing lot boundaries, meaning singular lots will need to be created that bridge two existing land parcels.</li><li>• Owner's consent would also need to be resolved during works for matters such as diversion swales to sediment basins on-site that cross lot boundaries</li></ul>

#### 4.2.2 Summary of Public Submissions

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

### 4.3 Response to Submissions

Following the public exhibition period, the Department asked the applicant to respond to the advice received from government agencies on 11 December 2023.

The applicant provided an updated Statement of Environmental Effects and a RtS response that addressed the comments made by Council on 5 February 2024 (see Appendix B).

The Department published the submissions report on the NSW planning portal on 11 February 2024.

# 5 Assessment

## 5.1 Deletion of Condition E38

Condition E38 of the development consent requires lots 204, 205 and 206 to be consolidated into a single lot prior to the release of the first subdivision certificate for the community title subdivision.

The modification seeks to delete Condition E38 to remove the requirement to consolidate lots 204, 205 and 206 prior to the release of the subdivision certificate for the community title subdivision.

The applicant has stated that the amended Torrens Title lot layout is required due to the existing lots being in separate ownership and thereby restricting the consolidation of lots. The subdivision and sub-staging would proceed as originally determined,

Council provided a submission on the application providing comments:

- The proposed modification complicates future subdivision of the site for a number of reasons, primarily associated with there being separate lot owners for the 3 existing lots:
  - rights of carriageway over temporary turning heads between stages (including owner's consent from the separate lots owner) will be required. It must be demonstrated that each and every stage can operate independently in terms of access, entry and exit in a forward direction, manoeuvring, servicing and stormwater management
  - Any drainage infrastructure constructed outside the extent of road to be dedicated as public road will require the creation of suitable drainage easements
  - The proposed community title lots/staging do not align with existing lot boundaries, meaning singular lots will need to be created that bridge two existing land parcels.
  - Owner's consent would also need to be resolved during works for matters such as diversion swales to sediment basins on-site that cross lot boundaries.
  - A condition similar to E6 of DA9876 should be included to reinforce Council's comments.

The Department requested the applicant respond to the comments raised by Council.

The applicant provided a RtS that provided the following comments:

- The modification does not include any changes to physical works on the site or arrangements of the road layout. Access, entry and exit in a forward direction, manoeuvring, servicing and stormwater management will take place in accordance with the approval.
- The applicant is supportive of Council enforcing a development consent condition to this effect, suggested wording as follows:

- *Prior to the issue of a subdivision certificate, any drainage infrastructure constructed outside the extent of road to be dedicated as public road will require a suitable drainage easement to be shown on the plan of subdivision.*
- If a new lot were to be created, spanning two former lots, the certificate of title will come back with the ownership listed as the two former owners in the parts formerly owned.
- The applicant notes that the existing condition E6 addresses Council's concerns as it requires evidence that all matters required to be registered on title, including easements, have been lodged for registration or registered at the Land Registry Services to the certifier prior to the release of the subdivision certificate.

The Department has reviewed the modification application, Council submission and the RtS response. The Department considers that the deletion of Condition E38 is acceptable for the following reasons:

- The modification does not alter the approved subdivision layout, nor the proposed staging
- stormwater infrastructure can be protected via the introduction of a new condition requiring easements over the infrastructure
- there is no requirement for community title lots to be wholly within a parent lot, ownership is apportioned at the titling stage of the subdivision
- existing condition E6 requires evidence that all matters required to be registered on title, including easements, have been lodged for registration or registered at the Land Registry Services to the certifier prior to the release of the subdivision certificate. There has been no change to this condition since the initial determination of the application.

The Department considers that a new condition E39 should be imposed that requires all drainage infrastructure that is not located within the public road, to have a suitable easement over it with Council listed as the party to benefit from any easements.

## 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 C**).

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, consisting of the letters 'K' and 'T' followed by a horizontal line.

Keiran Thomas

Director

Regional Assessments

# Glossary

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

# Appendices

## Appendix A – List of referenced documents

### Modification Report

<https://www.planningportal.nsw.gov.au/daex/under-consideration/penrith-lakes-employment-lands-subdivision-and-works-modification-4-da-9876-mod-4>

## Appendix B – Submission

The submission can be found here:

<https://www.planningportal.nsw.gov.au/daex/under-consideration/penrith-lakes-employment-lands-subdivision-and-works-modification-4-da-9876-mod-4>

## Appendix C – Notice of Modification

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

<https://www.planningportal.nsw.gov.au/daex/under-consideration/penrith-lakes-employment-lands-subdivision-and-works-modification-4-da-9876-mod-4>