PLANNING INGENUITY

STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed batter works, removal of trees and revegetation works adjacent to Old Castlereagh Road.

14-98 Old Castlereagh Road, Penrith

Prepared for: Great River NSW Pty Ltd

REF: M190009
DATE: 29 May 2024

Contents

FIGURES

1. Introduction

We act on behalf of Great River NSW Pty Ltd, the Applicant for this development application. We have prepared and submitted this development application (DA) for proposed batter works including the removal of trees and revegetation works adjacent to Old Castlereagh Road. This DA relates to the site with address 14-28, 30-68 and 70-98 Old Castlereagh Road, Penrith. The site is legally identified as Lots 1, 2 and 3 DP 1263486.

Development Consent DA9876 applies to the site and was approved by the Land and Environment Court on 31 March 2022. The consent approved *"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"*. DA9876 has been modified several times since its initial approval in 2022. Works approved with DA9876 have commenced.

The development the subject of this application is intended to operate concurrent with DA9876.

This Statement of Environmental Effects (SEE) addresses the planning issues associated with the development proposal and assesses the likely impact of the development on the environment in accordance with the requirements of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application has been made pursuant to the provisions of Chapter 5 of *State Environmental Planning Policy (Precincts - Western Parkland City) 2021* (Western Parkland City SEPP) which directs development within the Penrith Lakes Scheme area. According to the Western Parkland City SEPP, the consent authority for the proposal is the Minister for Planning.

2. Site Analysis and Context

2.1 THE SITE

The subject site is located at Nos. 14-28, 30-69 and 70-98 Old Castlereagh Road, Penrith. The site is adjacent to the North Penrith industrial precinct and is in the south-eastern corner of the Penrith Lakes Scheme area. The lots comprising the site are legally identified as Lots 1, 2 and 3 DP 1263486. The site has an area of approximately 49 hectares. The site is identified in the aerial image provided at **Figure 1**. Works presently underway at the site are related to rehabilitation and subdivision in accordance with DA9876 which was approved by the Land and Environment Court on 31 March 2022.

The site contains a strip of trees adjoining Old Castlereagh Road. This vegetation was originally planted to provide screening from the road reserve into the site when it was formerly used as a quarry and tailings pond.

A total of 458 trees are located in close proximity to the northern boundary of the site, as depicted in **Figure 2**.

Overhead power lines are within the public road reserve of Old Castlereagh Road and parallel to the northern boundary of the site (see **Figure 3**).

Figure 1. Aerial image indicating the site outlined dashed yellow (Source: Nearmap aerial photo taken 12 November 2023)

Figure 2. Aerial image indicating trees along Old Castlereagh Road circled dashed yellow (Source: Nearmap aerial photo taken 12 November 2023)

Figure 3: View looking west along Old Castlereagh Road with the subject site on the left side of the photo showing the strip of vegetation to be removed and proximity to power lines (Source: Google Maps Feb 2023)

2.2 SURROUNDING DEVELOPMENT

The site is bounded to the:

- North by – Old Castlereagh Road, rural residential lots and Penrith Regatta Centre; and
- South by – Nepean River; and
- East by – Land used for light industrial purposes; and
- West by – Vacant land part of the Penrith Lakes Scheme.

3. Description of the proposal

3.1 BACKGROUND

This development application is to be considered in conjunction with active consent DA9876 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"*.

DA9876 will result in rehabilitation of the former quarry and tailings dam, earthworks and installation of roads and essential services to create an industrial subdivision to be known as Nepean Business Park. These approved works include filling and levelling of the site and installation of batters to optimise the developable land within the new lots.

DA9876 applied a Vegetation Management Plan (VMP) dated 8 February 2021 to the strip of vegetation along the northern site boundary. The batter and earthworks approved in the vicinity of this same vegetation was designed to maintain a clearance from the vegetation to enable it's retention. The retention and management of the vegetation is specifically noted in the approved plans and VMP listed in Condition A1 to DA9876.

Ecologists from RPS Group and Arborists from Australian Tree Consultants Pty Ltd inspected and reported on the 458 trees in close proximity to the northern boundary of the site and have recommended a superior strategy for the vegetation and the development of the site in comparison to the potential outcomes from implementing DA9876, This superior strategy is the subject of this development application.

The proposal has been discussed with Penrith Council and with Endeavour Energy in August and September 2023. Both Council and Endeavour Energy are in favour of replacing the existing trees with new vegetation due to the poor condition of existing trees and the risks to the safety or the road and power line infrastructure (as described in the Arborists Report dated 27 July 2023).

3.2 THE PROPOSAL

Ecologists from RPS Group and Arborists from Australian Tree Consultants Pty Ltd inspected and reported on the 458 trees in close proximity to the northern boundary of the site. The consulting ecologists and arborists support:

- the removal of all vegetation with the exception of two (2) hollow bearing trees in close proximity to Old Castlereagh Road; and
- earthworks to change the finished ground surface levels including the installation of improved fill materials and soils; and
- new landscaping, new stormwater management and new site contouring; and
- ongoing management of the vegetation including weed management and maintenance of vegetation viability.

These works will improve the ecological value of the vegetation within the site by improving:

- the diversity of species and the diversity of floristic structure;
- the long term health and vitality of plants;
- connectivity with other vegetation within the site as well as established vegetation on adjoining and nearby land;
- the efficient use of the remainder of the site for industrial land uses;
- management of weeds;

- stormwater quality; and
- the quality and safety of the streetscape of Old Castlereagh Road.

3.2.1 Tree Removal

Of the 458 existing trees, 456 are proposed to be removed. Two (2) hollow bearing trees are to be retained in the interim. In the longer term it is anticipated that the health of these two (2) hollow bearing trees will decline due to the extent of earthworks and changes to drainage within their root zones. However, the decline will be slow and the replacement vegetation will more than compensate for their eventual decline. The vegetation removal is examined in detail in the Streamlined Biodiversity Development Application Report (SBDAR) prepared by RPS Group dated 9 June 2023.

Figures 4 through **6** depict all trees on site for removal. Figure 7 shows the location of the hollow bearing trees to remain.

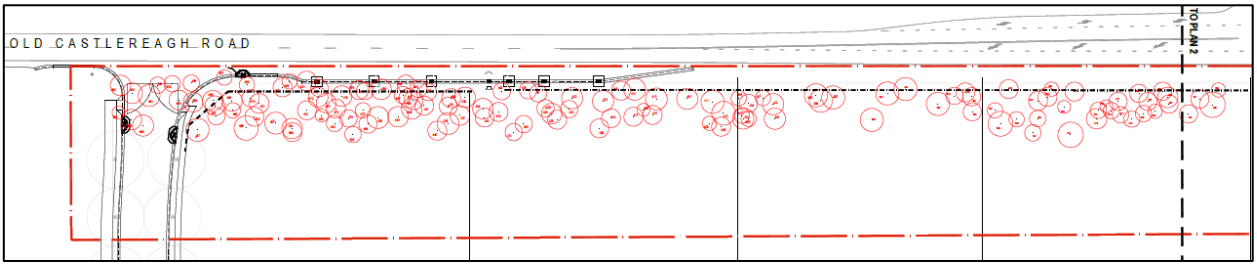

Figure 4. Existing trees for removal (shown in red) – western portion (Source: Tree Survey by Australian Tree Consultants 27 July 2023)

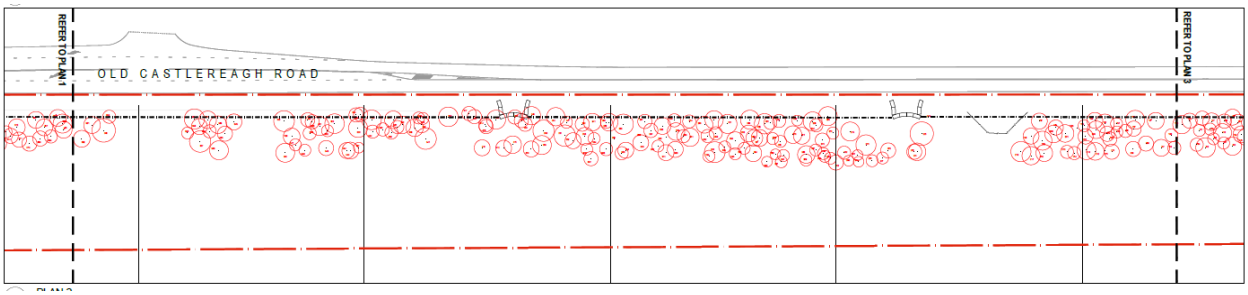

Figure 5. Existing trees for removal (shown in red) – centre portion (Source: Tree Survey by Australian Tree Consultants 27 July 2023)

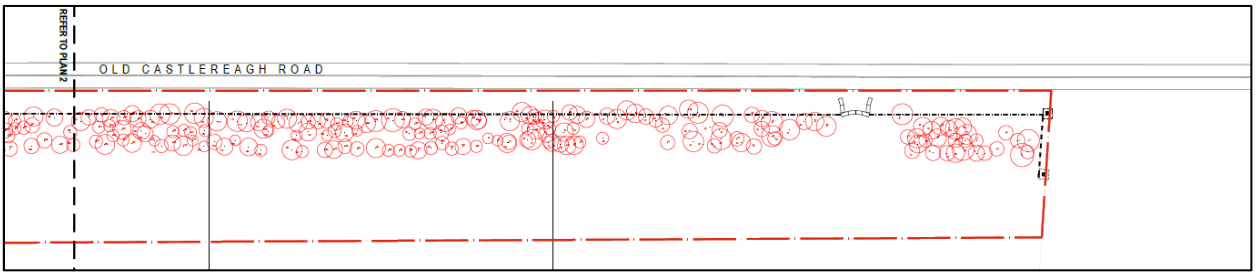

Figure 6. Existing trees for removal (shown in red) – eastern portion (Source: Tree Survey by Australian Tree Consultants 27 July 2023)

Figure 7: Location of two (2) hollow bearing trees to remain (Source: BDAR Streamlined Assessment dated 9 June 2023)

3.2.2 Batter and Earthworks

The earthworks will occur adjacent to the northern site boundary and will be contoured along the northern edge to match the boundary with Old Castlereagh Road. For a width of 3.85m from the boundary with the road, the ground surface levels will be contoured to create a 100mm deep grassed swale to manage surface water runoff. Along the southern edge the surface levels will be finished to match the approved finished levels internal to the new lots as approved with DA9876.

The earthworks include changes in ground surface levels within the site to accommodate a slip lane approaching the new vehicle entry/exit access in Old Castlereagh Road. The construction of the slip lane and change to the site boundary as a result of road dedication is part of DA9876.

The plan view and sections of earthworks are detailed in the plans prepared Enspire Project Reference 200044-DA-BAT submitted with this development application. The spatial extent of the batter is shown in **Figure 8**. Examples of the earthworks in profile section are included in **Figures 9 and 10**.

The batter grade is 1:2.5 across the northern extent of the site. The maximum depth of fill is approximately 6.8m.

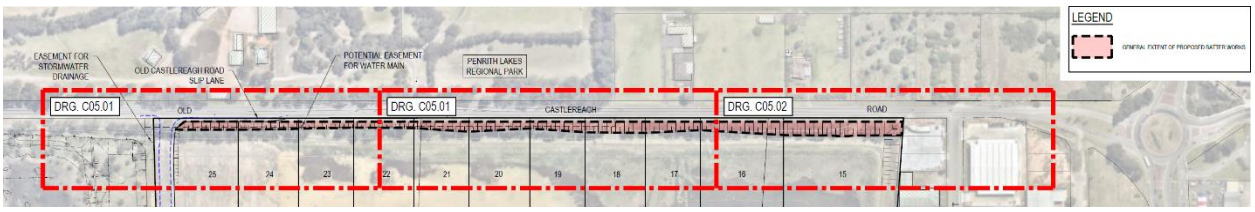

Figure 8. Spatial extent of proposed batter (Source: Enspire Project Reference 200044-DA-BAT-C01.41)

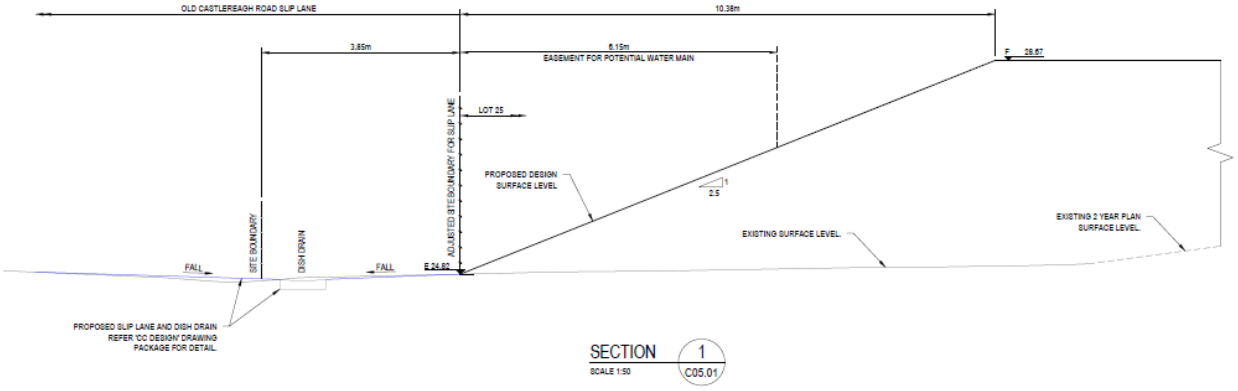

Figure 9: Example of cross section being Section 1 (Source: Enspire Project Reference 200044-DA-BAT-C06.21)

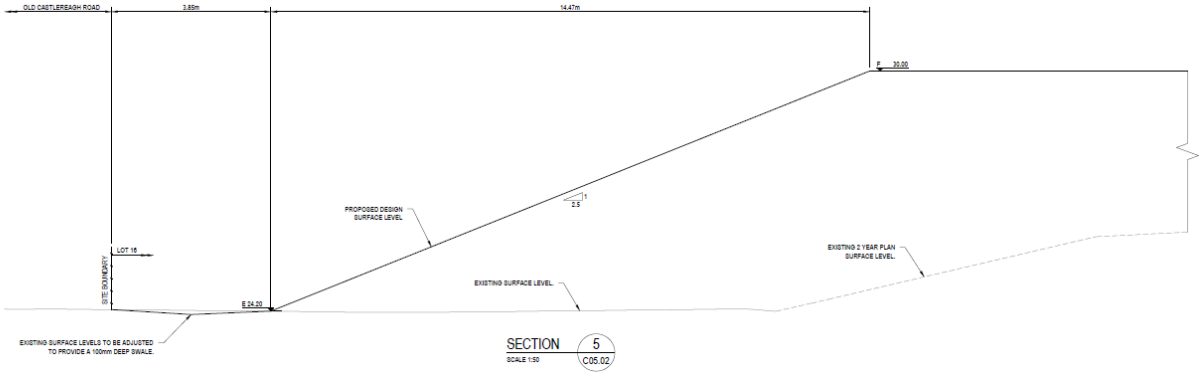

Figure 10: Example of cross section being Section 5 (Source: Enspire Project Reference 200044-DA-BAT-C06.23)

3.2.3 Management of the Works Pre-, During and Post-Construction

The SBDAR prepared by RPS Group dated 9 June 2023 includes recommendations for pre, during and post-construction works to minimise flora, fauna and habitat impacts and optimise long term benefits of establishing the new vegetation. These works include:

- A suitably qualified Project Ecologist to be engaged during vegetation clearing to undertake a pre-clearing inspection of the site;
- A two-stage clearing protocol should be utilised under the supervision of a suitably qualified Project Ecologist. Stage 1 is intended to disturb the clearing area in order to encourage any resident fauna to leave prior to Stage 2 habitat removal.
- A VMP to manage the restoration of the site at the completion of works. The VMP should include revegetation works with locally indigenous individuals of PCT 4025 - Cumberland Red Gum Riverflat Forest (DPE 2023a) and ongoing weed control.
- Hygiene protocols implemented to prevent the spread of weeds or pathogens between infected and uninfected areas of the Subject Land.
- A site-specific Erosion and Sediment Control Plan and spill management plan.

3.2.4 Revegetation Works

The proposed revegetation works are detailed in the Landscape Plan prepared by Architectus submitted with the development application. A total of 282 trees are proposed for planting along the batter. Species include the Sydney

Golden Wattle, Rough Barked Apple, Blue Box and Prickly Paperback**.** Planting further includes a variety of trees, shrubs and groundcovers. Refer to **Figures 11 to 13** for indication of the proposed replacement tree planting plan.

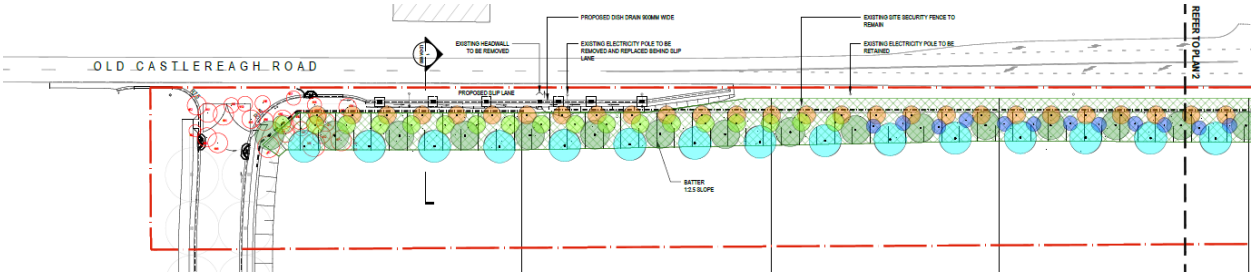

Figure 11. Landscaping works – western portion

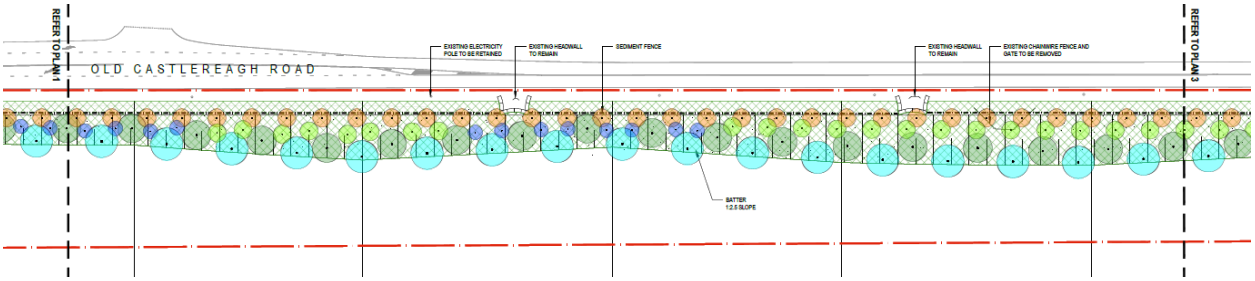

Figure 12. Landscaping works – central portion

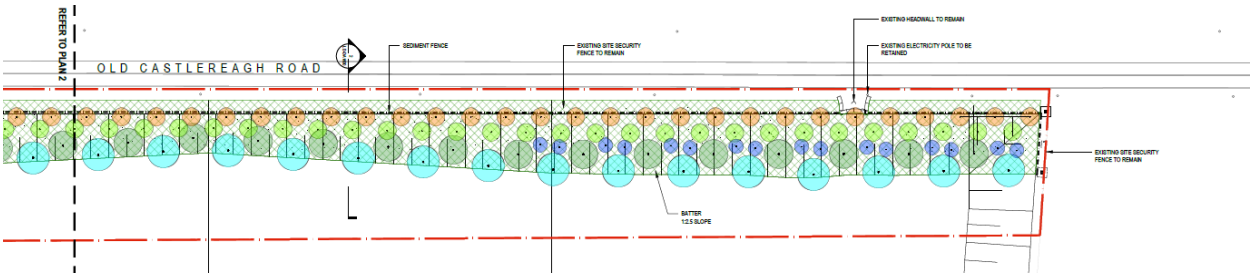

Figure 13. Landscaping works – eastern portion

4. Environmental Planning Assessment

4.1 STATUTORY AND POLICY COMPLIANCE

4.1.1 Biodiversity Conservation Act 2016

A Streamlined Biodiversity Assessment Report (SBDAR) has been prepared in accordance with the *Biodiversity Conservation Act 2016* (BC Act) by RPS Group. The report is dated 9/06/2023 and is submitted with the development application. The site contains native vegetation mapped in accordance with the *Biodiversity Conservation Act 2016*. However, the vegetation the subject of this application is not mapped as having biodiversity values.

The threshold for vegetation clearing above which the Biodiversity Assessment Methods and offsets scheme apply is 0.5 ha or more (DPE 2020a) for this site. The proposal will clear approximately 1.33 ha of native planted vegetation.

The planted native vegetation within the site is potentially suitable for a range of threatened fauna species; however, no incidental sightings or evidence (e.g. scats., stick nests) of threatened species were identified during the site assessment and the quality and fragmentation of the habitat is such that species impact assessments identified the proposal will not have a significant impact.

Habitat connectivity was identified as a potential matter for protection and enhancement and the management and mitigation strategies of the SBDAR aim to improve habitat connectivity.

The revegetation will be an improvement to species diversity, habitat diversity and connectivity.

No offsets are required.

The following mitigation measures are recommended for minimising the direct impacts of the proposed development on biodiversity.

Removal of threatened species habitat and habitat features

A suitably qualified Project Ecologist should be engaged during vegetation clearing to undertake a pre-clearing inspection of the site. The preclearing inspection will include:

- Targeted searches for any new threatened species (with focus on Cumberland Plain Land Snails and threatened flora not previously surveyed);
- Demarcation of fauna habitat; and
- Demarcation of Priority Weeds listed under the *Biosecurity Act 2015*.

A two-stage clearing protocol should be utilised under the supervision of a suitably qualified Project Ecologist. Stage 1 is intended to disturb the clearing area in order to encourage any resident fauna to leave prior to habitat removal.

Impacts to native vegetation

A VMP will be prepared to manage the restoration of the site at the completion of works. The VMP should include revegetation works with locally indigenous individuals of PCT 4025 - Cumberland Red Gum Riverflat Forest (DPE 2023a) and ongoing weed control.

Weeds and Pathogens

Hygiene protocols should be implemented to prevent the spread of weeds or pathogens between infected and uninfected areas of the Subject Land.

Erosion and sediment impacts

A site-specific Erosion and Sediment Control Plan is recommended detailing the measures and controls to be applied to minimise erosion and sediment control risks. These may include: runoff, diversion and drainage points; sediment basins and sumps; scour protection; stabilising disturbed areas as soon as possible, fencing and swales; and staged implementation arrangements. The Plan will also include arrangements for managing wet weather events, and working with high surface water levels, including monitoring of potential high-risk events (such as storms) and specific controls and follow-up measures to be applied in the event of wet weather.

Minimise risk from spills

All fuels, chemicals and other hazardous materials will be stored in a roofed, fire protected and impervious bunded area at least 50 m from waterways, drainage lines, basins, flood-affected areas or slopes above 10%. Bunding design will comply with relevant Australian Standards and should generally be in accordance with relevant guidelines.

4.1.2 SECTION 4.15 OF THE EP&A ACT 1979

Part 4 of the EP&A Act states that in determining a development application for 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 development application against the relevant provisions of Section 4.15(1) is provided in the following sections of this Statement.

4.1.2.1 State Environmental Planning Policy (Precincts – Western Parkland City) 2021 [Section 4.15(1)(a)]

Chapter 5 of the State Environmental Planning Policy (Precincts – Western Parkland City) 2021 (Western Parkland City SEPP) applies to the proposal.

The aims of Chapter 5 of the Western Parkland City SEPP are 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 Minister is the consent authority for the development application.

The land the subject of this DA is within the Employment Zone and Environment Zone under the Western Parkland City SEPP, (refer **Figure 14**).

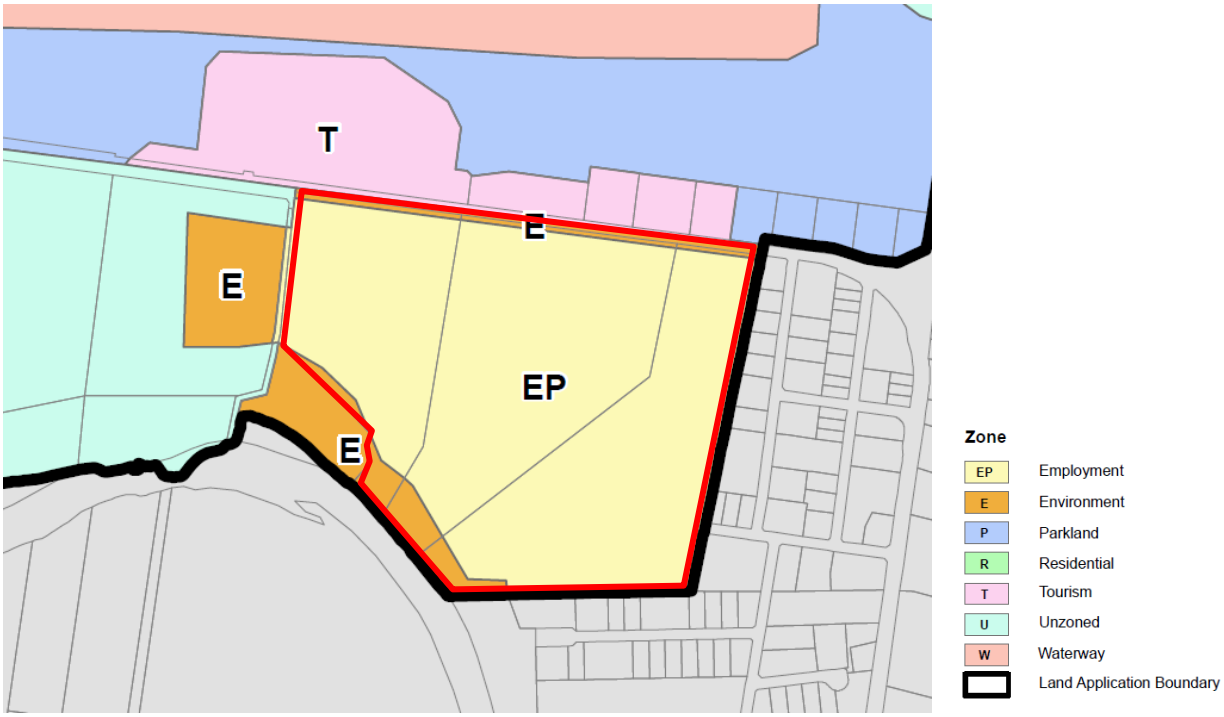

Figure 14. The site zoning (site outlines in red) (Source: NSW Spatial Viewer accessed December 2023)

The objectives for all development in the Employment Zone and Environment Zone are shown below.

Employment

1 Objectives of zone

- *To provide a range of office and light industrial uses and to provide employment opportunities relating to health, high order technology, culture and sports.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To provide for a range of higher order job opportunities including health, cultural and high technology industries.*
- *To incorporate appropriate water quality management measures to ensure that development does not detrimentally impact on the implementation of the Penrith Lakes Scheme and the operation and use of olympic legacy infrastructure, including the Sydney International Regatta Centre and the Penrith Whitewater Stadium.*
- *To encourage the development of business incubators, and other employment opportunities relating to tourism and water-based sport and recreation.*

Environment

1 Objectives of zone

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic value.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To protect, manage, restore and enhance the ecology, hydrology and scenic values of riparian corridors and waterways, wetlands, groundwater resources, biodiversity corridors, areas of remnant indigenous vegetation and dependent ecosystems.*
- *To allow for low impact passive recreational and ancillary land uses that are consistent with the retention of the natural ecological significance.*

The existing vegetation is not Olympic legacy infrastructure. The SBDAR notes the vegetation was planted in the 1970's and 1980's as a visual screen to the former quarry and tailings ponds on the site.

The stormwater management of the works will be integrated with the approved stormwater management systems for the broader site as approved with DA9876.

The works will facilitate more efficient and effective use of the new industrial community title lots approved with DA9876 and are therefore consistent with providing employment opportunities.

The works will improve the ecological quality of the vegetation and habitat within the site and improve habitat connectivity which is consistent with the objectives for the Environment Zone.

The proposed works can best be defined as *environmental protection works*, defined by the Standard Instrument as:

environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.

The work will protect the northern edge of the site with the installation of a stable battered slope and grassed swale to the road edge. The work will also replace planted native vegetation and poor quality soils with higher quality soils and a diversity of planting compatible with the locally endemic Plant Community Type (PCT) 4025 – Cumberland Red Gum Riverflat Forest.

Environmental protection works are permitted with consent in both the Employment Zone and Environment Zone.

The proposed development aligns with the objectives of the Employment zone by:

- Not compromising the employment opportunities for the site as the proposal is for an improved batter and revegetation that falls largely within the existing tree line on site.
- The proposed development would have no long-term impact on water quality.

The proposed development aligns with the objectives of the Environment zone by:

- Restoring an area of ecological, scenic and aesthetic value in revegetating the corridor with more appropriate plant species that will ultimately elevate the characteristics of the site.
- Despite extensive tree removal proposed, the ecological impacts are minor and temporary due to the extensive replanting proposed.

Clause 5.26 of the Western Parkland City SEPP establishes key requirements for applications involving the removal of trees or vegetation.

The clause requires:

> *"(3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by—*
> *(a) development consent, or*
> *(b) a permit granted by the council".*

The proposed works include the removal of existing trees and vegetation on site, and therefore Clause 5.26 applies. This application seeks development consent for removal of trees and vegetation.

Clause 5.27 outlines additional provisions for development on land zoned Employment.

This clause requires:

> *"Development consent must not be granted for development on land zoned Employment unless the consent authority has considered the following—*
> *(a) a water quality management plan and water operations plan for the Penrith Lakes Scheme that are endorsed by the Planning Secretary as being appropriate for the Scheme,*
> *(b) a traffic and transportation plan that includes proposals about the management of traffic impacts caused by the development,*
> *(c) whether a stable foundation exists or can be developed for the development,*
> *(d) whether the existing development platform (including subgrade) is or can be adequately protected from scour by the discharge of a 1:100 ARI (average recurrence interval) flood event,*
> *(e) whether the proposed development appropriately allows for potential differential settlement given the existing geotechnical conditions and the proposed foundation and for the geotechnical conditions present at the site to prevent excessive total and differential settlement.*

A portion of the proposed works fall within the Employment Zone. The proposed revegetation works will have no measurable impact on water quality, traffic, foundational stability, flooding or geotechnical site conditions. The works will be undertaken concurrent with the site works approved with DA9876 and not change construction traffic, site and environmental management. The earthworks engineering will be conducted in the same manner as earthworks approved for DA9876 to achieve a stable foundation for future development. Stormwater via the proposed grassed swale will be connected to the approved stormwater management systems within the site.

Clause 5.28 outlines additional provisions for development on land zoned Environment.

This clause requires:

"Development consent must not be granted for development on land zoned Environment unless the consent authority has considered the following—

(a) whether the development is consistent with a plan of management (if any) for the Penrith Lakes Scheme that is endorsed by the Planning Secretary as being appropriate for the Scheme,

(b) an Aboriginal cultural heritage assessment for the land (being a written report detailing the results of the assessment and recommendations for actions to be taken before, during and after an activity to manage and protect Aboriginal objects and declared Aboriginal places identified by the investigation and assessment) that has been prepared by a suitably qualified person".

The proposed works are within the Environment zone. There is no Plan of Management applicable to the site. Further, an Aboriginal Cultural Heritage Assessment (ACHA) is not required because the ACHA associated with DA9876 concluded there is low potential for Aboriginally significance places or items within the proposed disturbance footprint.

Section 5.6 to the Western Parkland City SEPP lists miscellaneous provisions. Those relevant to the application are discussed as follows:

Section 5.33 Heritage

The SEPP aims to conserve the significance of heritage items.
There is a heritage item of local significance adjoining the north east corner of the site being Item 261 that applies to the alignment of the road (see **Figure 15**). This development application will have no impact to the road alignment. The quality of the vegetation will be improved within the streetscape which is a positive impact to the visual quality of the road environment.

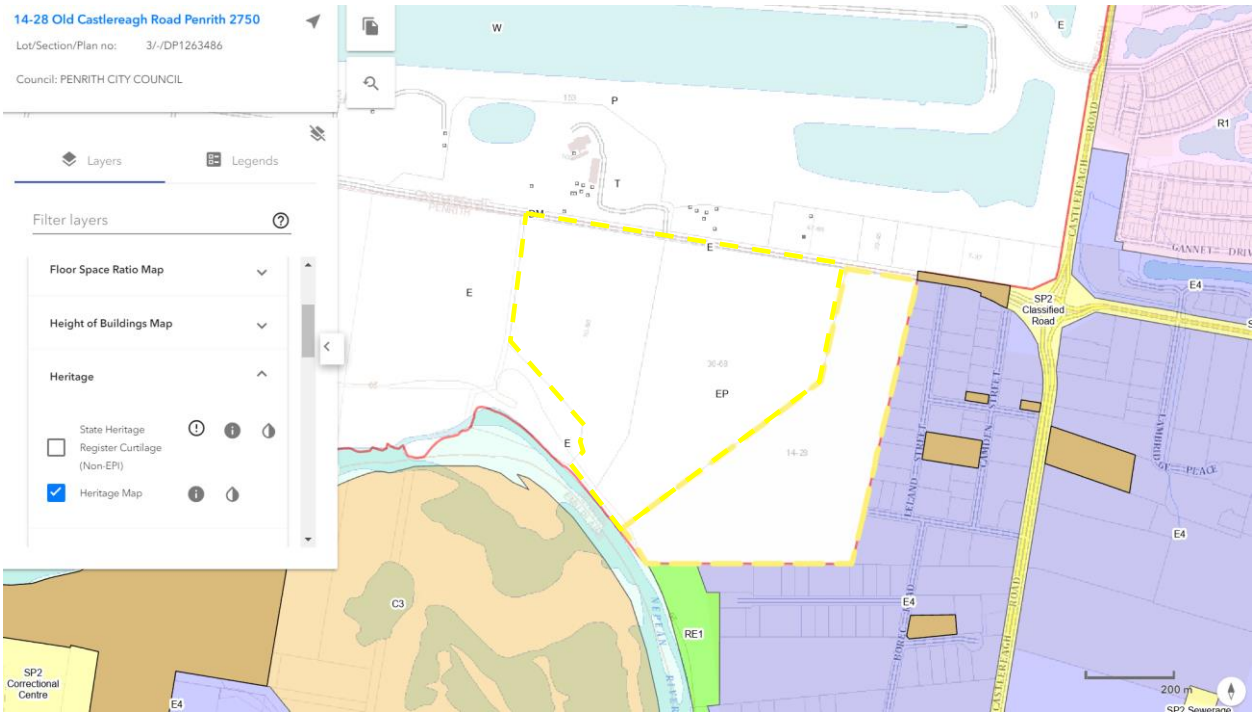

Figure 15: Extract from heritage map for land outside SEPP Western Parklands City. Site outlined dashed yellow. Heritage items coloured orange. (Source: NSW Spatial Viewer accessed December 2023)

Earthworks

The objective of Section 5.36 is to ensure earthworks will not have a detrimental effect on environmental functions and processes, neighbouring land uses, cultural or heritage items or features of surrounding land.

Section 5.36 requires the consent authority to consider the specific matters listed in the following table. The table includes a response specific to the consideration of this development proposal. As demonstrated in the table, the proposal is consistent with the requirements for appropriate management of earthworks.

Matter for consideration in Section 5.36	This proposal	Complies? Yes / No
(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,	The fill will be emplaced and engineered in the same manner as the current earthworks approved with DA9876 to ensure the soil is stable and suitable for future industrial development within the new community title lots including pre-loading and monitoring for differential settlement. The engineering plans prepared by Enspire Project Ref. 200044-DA-BAT-C05.01 indicate the stormwater will be directed to the stormwater management system approved with DA9876 including a grassed swale between the toe of the new batter and the boundary with Old Castlereagh Road which will direct stormwater to the approved system.	Yes
(b) the effect of the development on the likely future use or redevelopment of the land,	The works will improve the quality and longevity of the vegetation along this section of Old Castlereagh Road and reduce the risk to road and electricity infrastructure currently posed by the existing poor quality vegetation. The works will also enhance the quality of the streetscape. The works will increase the efficient use of the new community title lots approved with DA987 by enhancing the quality of the earthworks and landscaping along the northern edge of the site and improving the standard of engineering works to	Yes

	create developable land within the new community title lots. The proposal will also reduce the maintenance burden on the future community title which would have resulted from implementing the VMP on poor quality vegetation.	
(c) the quality of the fill or the soil to be excavated, or both,	All fill will meet the classifications for Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM) as defined by the NSW EPA Waste Classification Guidelines. The soils and materials used in landscaping works will comply with Australian Standards.	Yes
(d) the effect of the development on the existing and likely amenity of adjoining properties,	The batter and landscaping will effectively screen the industrial subdivision from Old Castlereagh Road and properties on the opposite side of the road. All stormwater runoff will be directed to the stormwater management infrastructure approved with DA9876.	Yes
(e) the source of any fill material and the destination of any excavated material,	All fill will meet the classifications for Virgin Excavated Natural Material (VENM) or Excavated Natural Material (ENM) as defined by the NSW EPA Waste Classification Guidelines. The soils and materials used in landscaping works will comply with Australian Standards. Records can be maintained on site regarding the source of materials and this data managed by the Principal Certifier.	Yes
(f) the likelihood of disturbing relics,	An ACHAR approved with DA9876 indicated there was a low likelihood of Aboriginal relics or other historic relics occurring on this part of the site. Therefore it is highly unlikely that relics will be disturbed.	Yes

	The works will import fill and do not require excavation.	
(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,	The site adjoins the Nepean River. However, the works footprint the subject of this application is well separated from the river and erosion and sediment control details are included in the engineering plans prepared by Enspire Project Ref. 200044-DA-BAT-C03.21 and site stabilisation details included in the Landscape Plan.	Yes
(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	Imported materials will be VENM or ENM. Soil erosion and sediment controls will be installed prior to the commencement of work and maintained until site surface stabilisation has been achieved. Stormwater will be directed to the system approved with DA9876.	Yes

Flood Planning

The objectives of Section 5.38 are:

> *"(a) to minimise the flood risk to life and property associated with the use of land,*
>
> *(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
>
> *(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
>
> *(d) to enable the safe occupation and efficient evacuation of people in the event of a flood,*
>
> *(e) to protect the operational capacity of emergency response facilities and critical infrastructure during flood events."*

Section 5.38 states that development consent must not be granted on land below the probable maximum flood level unless the consent authority is satisfied that the development achieves the requirements listed in the following table. As noted in the table, the development satisfies all requirements of Section 5.38(2).

Requirement of Section 5.38	This proposal	Satisfied? Yes / No
(a) is compatible with the flood function and behaviour on the land, and	The Flood Investigations and Flood Evacuation Response Plan approved with DA9876 indicate the Flood planning level is 26.8m AHD (being the 1 in 100 year ARI of 25.8m AHD plus 1m). The probably maximum flood level is 32.6m AHD.	Yes

	The batter works shown in the engineering plans by Enspire indicate finished ground levels adjacent to Old Castlereagh Road will be compatible with the existing road edge levels and the provision of a 100mm deep grassed swale 3.8m wide to convey stormwater away from the batter toe and the road edge. The southern face of the earthworks will be matches to the approved ground surface levels within the community title lots as approved with DA9876 which have been demonstrated to be compatible with the flood dynamics of the locality. Surface water management will be integrated with the stormwater infrastructure approved with DA9876.	
(b) will not significantly adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and	Water management will be integrated with the stormwater infrastructure approved with DA9876 and this directs stormwater into the site and does not change flood dynamics and affectation for adjoining land.	Yes
(c) will not significantly adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of evacuation routes for the Hawkesbury-Nepean Valley floodplain in the event of a flood, and	The works do not change the requirements of the approved Flood Evacuation Response Plan (FERP) approved with DA9876,	Yes
(d) incorporates appropriate measures to manage risk to life in the event of a flood, and	No additional measures required.	Yes
(e) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and	Soil erosion and sediment controls are included in the engineering plans submitted with the DA. Earthworks will be stabilised in accordance with the Landscape Plan.	Yes

(f) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.	No additional flood risk and no additional flood impacts will result from the development.	Yes

Section 5.38(3) applies to the erection of a building and therefore does not apply to this development application.

Key Vistas and View Corridors

Section 5.38A has the following objectives:

"(a) to recognise, protect and enhance the natural, visual and environmental qualities of Penrith Lakes,

(b) to ensure development is appropriate for the location and minimises impacts on key views."

Section 5.38A requires the consent authority to consider the following in deciding whether to grant development consent:

"(a) is located and designed to minimise its visual impact, including views to and from Castlereagh Road, the Nepean River, the Regatta Lake, environmental heritage items and the Blue Mountains, and

(b) contributes to the scenic quality of the Penrith Lakes Scheme."

The existing vegetation proposed to be removed by this application was planted to provide a visual screen from Old Castlereagh Roa. The planting occurred in the 1970's and '80's according to the Arborist Report and SBDAR submitted with the application. Therefore view lines and vistas across the site have been screened from Old Castlereagh Road for several decades. Therefore there are no key views or vistas across the site from Old Castlereagh Road.

DA9876 approved the construction of a vehicle entry/exit to Old Castlereagh Road and a slip lane approaching the site from the east as well as earth batters beyond the line of the existing vegetation adjacent to the road. All of these approved works are underway. These works further screen any limited glimpses from Old Castlereagh Road into the site.

This proposal does not change the approved road works. It will improve the quality of the vegetation along the southern side of the roadway and therefore improve the visual quality of the vegetation adjacent to, and visible from, the road corridor.

This proposal does move the northern edge of the earth batter closer to the boundary with the road reserve. The proposed dense planting on the batter slope will not change the long term outcome anticipated from the works approved with DA9876.

In the short term, the proposal will require the removal of the vegetation and earthworks in close proximity to the road edge. This will have a temporary impact to the visual quality and outlook from the road and for rural residential properties on the northern side of the road.

Overall the development proposal will be consistent with the objectives of Section 5.38A in that the works will enhance the natural qualities of the northern edge of the site with the installation of high quality locally endemic landscaping and the visual screening of future industrial development. There will be no detrimental impacts to existing key views and vistas.

4.1.2.2 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. Remediation works approved with DA9876 are currently underway to make the site suitable for the approved subdivision. This proposal will follow the same procedures for importation and compaction and pre-loading of materials as DA9876 with only materials meetings the EPA Guidelines for Virgin Excavated Natural Materials and Excavated Natural Materials being imported to the site and used in the filling works. Manufactured soils suitable to support high quality, long term

growth of the new vegetation will be added to the landscaped area. The site is considered suitable for the proposed use and the works will be suitably stabilised during and post construction. There will be no risk to the health of humans or the environment as a result of the works.

4.1.2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021 [Section 4.15(1)(a)]

Chapter 2 and Chapter 6 of State Environmental Planning Policy *(Biodiversity and Conservation) 2021* (Biodiversity and Conservation SEPP) apply to the proposed development.

Chapter 2 – Vegetation in Non-Rural Areas

Approval is being sought in accordance with Part 2.2 of the Biodiversity and Conservation SEPP to permit the clearing of vegetation and associated revegetation works.

A Streamlined Biodiversity Development Application Report (SBDAR) prepared by RPS Group and dated 9 June 2023 has been submitted with the application. The SBDAR demonstrates that a greater biodiversity benefit will be achieved from removal of the existing vegetation, with the exception of two (2) hollow bearing trees, and replacement with high quality soils and new vegetation which is structurally and floristically representative of the local Plant Community Type (PCT) 4025 Cumberland Red Gum Riverflat Forest.

The SBDAR notes that retention of the 2 hollow bearing trees will be short term with the eventual decline of the trees being more than compensated by the managed growth of the new vegetation.

The SBDAR considered the option of avoiding impacts to the planted vegetation and is consistent with the Arborist's Report which found that the majority of existing trees are in declining health due to poor plant selection, planting arrangements and degraded soil. The trees represent a risk to the safe operation of the road and overhead electricity infrastructure with weak structure and falling trees and limbs highly likely.

The SBDAR recommends management options to result in an overall improvement to the quality, vitality and connectivity of the vegetation and habitats that will be created from the new landscaping works. Specific recommendations of the SBDAR are detailed in Section 4.1.1 above.

Chapter 6 – Water Catchments

The site is within the Hawkesbury-Nepean River catchment which is a regulated catchment for the purpose of the SEPP.

The relevant provisions of the SEPP are set out in Part 6.2 – Development in Regulated Catchments (clauses 6.6 to 6.10) and these are considered in the following table:

Table SEPP (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

Clause	*Criteria*	*Comment*
6.6 Water quality and quantity	In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following— (a) whether the development will have a neutral or beneficial effect on the quality of water entering a waterway,	(a) Soil erosion and sediment controls are detailed in the engineering plans prepared by Enspire submitted with the DA. The construction site management will occur concurrent with the works approved with DA9876 and the same site protection measures will be implemented to protect the quality and quantity of water flowing into the Nepean River adjacent to the site.

Table SEPP (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments		
	(b) whether the development will have an adverse impact on water flow in a natural waterbody,	(b) The proposed works will not increase runoff or change water flow into the Nepean River. The stormwater runoff from the development footprint will be directed into the approved stormwater management system being installed in accordance with DA9876.
	(c) whether the development will increase the amount of stormwater run-off from a site,	(c) No. There will be no change to the impervious area and no increase in runoff.
	(d) whether the development will incorporate on-site stormwater retention, infiltration or reuse,	(d) Yes. The works are integrated into the approved stormwater management system.
	(e) the impact of the development on the level and quality of the water table,	(e) Only VENNM and ENM materials will be used. Compaction of the fill will be required to meet pre-loading and settlement conditions for future construction. These works are the same as those approved with DA9876.
	(f) the cumulative environmental impact of the development on the regulated catchment,	(f) The revegetation will enhance the biodiversity within the site and improve habitat connectivity which will have positive cumulative impacts.
	(g) whether the development makes adequate provision to protect the quality and quantity of ground water.	(g) The proposal will have no new impacts in comparison to those considered acceptable with the approval of DA9876.
	Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied the development ensures— (a) the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and (b) the impact on water flow in a natural waterbody will be minimised.	See the Neutral or Beneficial Effect assessment completed by Enspire and submitted with the DA. This demonstrates no detrimental impacts to the Nepean River catchment.
6.7 Aquatic ecology	In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the following— (a) whether the development will have a direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation, (b) whether the development involves the clearing of riparian vegetation and, if so, whether the development will require—	The proposed development will not have any unreasonable impacts on aquatic ecology with the works well separated from the river foreshore and no negative impacts to water quality. The development will have positive impacts to habitat connectivity which will improve biodiversity.

Table SEPP (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

	(i) a controlled activity approval under the *Water Management Act 2000*, or (ii) a permit under the *Fisheries Management Act 1994*, (c) whether the development will minimise or avoid— (i) the erosion of land abutting a natural waterbody, or (ii) the sedimentation of a natural waterbody, (d) whether the development will have an adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area, (e) whether the development includes adequate safeguards and rehabilitation measures to protect aquatic ecology, (f) if the development site adjoins a natural waterbody—whether additional measures are required to ensure a neutral or beneficial effect on the water quality of the waterbody.	The Landscape Plan includes a weed management plan which will reduce the risk of weeds in the catchment. The works are more than 40m from the top of the bank of the Nepean river and a Controlled Activity Approval is not required. The development does not require a NSW Fisheries Permit. The development incorporates soil erosion and sediment controls as detailed in the engineering plans by Enspire. The development will have no impact on a watercourse, wetlands or aquatic ecology.
	Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following— (a) the direct, indirect or cumulative adverse impact on terrestrial, aquatic or migratory animals or vegetation will be kept to the minimum necessary for the carrying out of the development, (b) the development will not have a direct, indirect or cumulative adverse impact on aquatic reserves, (c) if a controlled activity approval under the *Water Management Act 2000* or a permit under the *Fisheries Management Act 1994* is required in relation to the clearing of riparian vegetation—the approval or permit has been obtained, (d) the erosion of land abutting a natural waterbody or the sedimentation of a natural waterbody will be minimised, (e) the adverse impact on wetlands that are not in the coastal wetlands and littoral rainforests area will be minimised.	The proposed development will have no impact to water quality and volume of flow within the catchment.
6.8 Flooding	In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider the likely impact of the development on periodic flooding that benefits wetlands and other riverine ecosystems.	The site is subject to flooding and will have no impact on the flooding regime within the broader catchment.

Table SEPP (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments		
	(2) Development consent must not be granted to development on flood liable land in a regulated catchment unless the consent authority is satisfied the development will not— (a) if there is a flood, result in a release of pollutants that may have an adverse impact on the water quality of a natural waterbody, or (b) have an adverse impact on the natural recession of floodwaters into wetlands and other riverine ecosystems.	
6. 9 Recreation and public access	In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consider— (a) the likely impact of the development on recreational land uses in the regulated catchment, and (b) whether the development will maintain or improve public access to and around foreshores without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation.	The proposed development will have no adverse impact on any recreational land use within the Regulated Catchment.
	Development consent must not be granted to development on land in a regulated catchment unless the consent authority is satisfied of the following— (a) the development will maintain or improve public access to and from natural waterbodies for recreational purposes, including fishing, swimming and boating, without adverse impact on natural waterbodies, watercourses, wetlands or riparian vegetation, (b) new or existing points of public access between natural waterbodies and the site of the development will be stable and safe, (c) if land forming part of the foreshore of a natural waterbody will be made available for public access as a result of the development but is not in public ownership—public access to and use of the land will be safeguarded.	The development footprint does not impact any public access to the Nepean River for any recreational purpose.
6.10 Total catchment management	In deciding whether to grant development consent to development on land in a regulated catchment, the consent authority must consult with the council of each adjacent or downstream local government area on which the development is likely to have an adverse environmental impact.	The development will have no impact to downstream local government areas.

Overall, the proposal is consistent with the matters for consideration in Chapter 6 to the SEPP.

4.1.2.4 State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 – Infrastructure

The development application has been assessed against the provisions of Chapter 2 with regard to potential impacts on utility and transport infrastructure.

The table below provides the detailed consideration of the relevant provisions of the Policy and demonstrates compliance.

Table 1 Consideration of Impacts on Infrastructure

Clause	Response
2.48 Development likely effects on an electricity transmission or distribution network	As the proposed works will be within 5m of exposed overhead power lines, referral of the application to Endeavour Energy is required.
2.77 Development adjacent to pipeline corridors	The proposed development is not located adjacent to any pipeline corridors.
2.99 Development in or adjacent to rail corridors	The proposed development is not located adjacent to any railway corridors.
2.119 Development in or adjacent to road corridors and road reservations	As Old Castlereagh Road is no longer a Classified Road, referral to Transport for NSW is not required.
2.163 Development adjacent to water supply infrastructure	The site is not adjacent to the Upper Canal or the Warragamba Pipelines.

4.1.2.5 PENRITH LAKES DEVELOPMENT CONTROL PLAN – STAGE 1

The Penrith Lakes Development Control Plan – Stage 1 (PLDCP) was made by the Department of Planning and Environment and has applied to the site since November 2021.

The DCP guides development on employment zoned land at Penrith Lakes. The sections of the DCP that apply to the site and proposed development are:

- 3.4 Tree Preservation
- 3.6 Bushfire Management
- 4.4 Landscaping and Open Space
- 1.8 DCP Variations

Section 5.4.8 Employment Precinct - Landscaping and Open Space has not been separately addressed in this SEE because the relevant controls are identical to those in Section 4.4 Landscaping and Open Space. The relevant controls of these sections have been reproduced below:

Section 3.4 Tree Preservation

The DCP requires:

The protection of trees or other vegetation with a height exceeding 3.5m, canopy spread more than 4m and primary trunk diameter greater than 400mm measured 1m above ground level. As well as any tree or vegetation that is part of a heritage item or heritage conservation area. The DCP also requires a tree replacement offset at a rate of 2:1 (new to existing).

The trees proposed to be removed are protected by Clause 5.2.6 of the Western Parkland City SEPP. An Arborist Report has been obtained to assess the condition of existing trees and provides recommendations for tree removal and replacement. The Arborists Report and the SBDAR recommend a strategy for removal of vegetation, restoration of soils and new landscaping of superior quality, diversity and compatibility with the site conditions for the long term.

A total of 456 trees are proposed for removal. A total of 479 trees are proposed to be planted (loss is offset by replacement planting at a rate of 1.05:1. This does not comply with Section 3.4(2) of the Penrith Lakes Development Control Plan which requires a replacement rate of 2:1. A variation to this standard can be considered in accordance with Section 1.8 to the DCP. The variation is requested on the grounds that the proposal meets the objectives of the control which are to:

> *"a) Prescribe the trees or other vegetation characteristics that are protected by Clause 5.26 (Preservation of trees or vegetation) of the SEPP*
>
> *b) Protect existing trees and vegetation and ensure that any new development accounts for existing vegetation in the design and construction of the development."*

As demonstrated in Section 4.1.1 and Section 4.1.2 of this SEE, the proposal meets the requirements of the BC Act and the B Biodiversity and Conservation SEPP and is therefore consistent with Objective (a).

The SBDAR recommends retention of the two hollow bearing trees whilst new vegetation is established and will eventually compensate for the decline in these two trees by providing a more robust, diverse and locally endemic habitat.

The existing vegetation has been demonstrated in the Arborists report and SBDAR to have low ecological and aesthetic significance and are a risk to the safety of road and electricity infrastructure. The new landscaping will be more compatible with the ecology of the locality and the future development of the site for industrial development.

For these reasons the proposal is consistent with the objectives of DCP Control 3.4(2) despite the numeric non-compliance with the tree replacement ratio.

Section 3.6 - Bushfire Management

The DCP requires development in accordance with the Rural Fires Act, 1997, the RFS 'Planning for Bushfire Protection 2019' and Australian Standard AS3959 – Construction of Buildings in Bushfire Prone Areas. The DCP requires development applications to be accompanied by a bushfire risk assessment report.

The site is mapped as bushfire prone, containing vegetation category 1, 2 and 3. The development footprint is within land identified as vegetation category 3.

The proposed development, which is wholly for revegetation works, is compliant with *Planning for Bushfire Protection 2019.*

A Bushfire Assessment is not required at this time as no buildings or structures are proposed that would require the enforcing of bushfire protection measures. The proposal to replace existing vegetation along the northern boundary of the site is not believed to increase bushfire impacts to the remainder of the site or neighbouring lots.

Section 4.4 - Landscaping and Open Space

The DCP requires a Landscape Plan with a DA which demonstrates the proposal is compatible with the landscaped setting of Penrith Lakes with a sense of openness where existing trees, remnant vegetation and environmentally sensitive features are retained. A 40% tree canopy target applies to the site.

A Landscape Plan has been submitted is part of this Development Application.

The proposed landscaping is consistent with the setting of Penrith Lakes through the provisions improved trees and vegetation adjacent to Old Castlereagh Road. The new landscaping will be more compatible with the road and electricity infrastructure and the long term ecological diversity and connectivity than the current vegetation as demonstrated in the Arborists Report and SBDAR submitted with the DA.

The proposal will be compatible with the objectives in the relevant sections of the PLDCP as detailed in the following table:

Table 2 Objectives Tree Preservation and Landscaping (s.4.8 of the PLDC)	
Tree Preservation	
a) Prescribe the trees or other vegetation characteristics that are protected by Clause 5.26 (Preservation of trees or vegetation) of the SEPP.	Existing tree and vegetation characteristics have been documented in the Arborist Report and BDAR.
b) Protect existing trees and vegetation and ensure that any new development accounts for existing vegetation in the design and construction of the development.	The proposed development has accounted for existing vegetation through extensive re-vegetation works which will be more viable in the long term than the current vegetation.
Bushfire Management	
a) Ensure risks to life and property associated with bushfire are appropriately managed.	No additional risk to life and property expected by proposed development.
b) Minimise the impacts of development in relation to bushfire.	N/A
c) Ensure bushfire risk is managed in connection with the preservation of ecological values.	Bushfire risk is managed whilst ecological values are improved to the site as a result of the revegetation works.
Landscaping and Open Space	
a) Ensure that landscape planning is informed by an understanding of designing with Country.	The proposed landscaping has prioritised native, indigenous species with long term environmental benefit.
b) Ensure the landscaping design contributes to the landscape and cultural character of Penrith Lakes and complements and integrates with the building design.	N/A.
c) Maximise permeable surface areas for stormwater management.	Permeable surfaces are retained with no hardstand surfaces proposed.
d) Provide usable and shaded private and communal open space areas which are welcoming, safe and accessible for workers and visitors.	N/A.
e) Support increasing canopy cover to contribute to the Greater Sydney Region Plan's identified target of 40% tree canopy, to help cool the precinct and increase resilience to a changing climate and urban heat effect, add to the urban canopy and green infrastructure amenity.	Once mature, the proposed planting along the northern site boundary will provide a more dense and consistent canopy than the existing vegetation.

Table 2 Objectives Tree Preservation and Landscaping (s.4.8 of the PLDC)	
f) Create an integrated network of green infrastructure.	N/A.

4.2 IMPACTS ON NATURAL & BUILT ENVIRONMENT

4.2.1 Bushfire

The site is identified as being bushfire prone.

However, since the proposal is not for residential or rural residential purposes, nor a special fire protection purpose, the application is not 'integrated development' under the *Rural Fires Act 1997*.

Section 4.14 of the EP&A Act states that development consent cannot be granted for any purpose on bushfire prone land unless the consent authority:

> *"is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the Regulations) of the document entitled Planning for Bushfire Protection prepared by the Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purpose of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or*
>
> *Has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements"*

Having regard to the minor nature of the proposal and the absence of any habitable component, a Bushfire Assessment is not deemed necessary for the proposed revegetation works.

4.2.2 Earthworks

Earthworks are proposed as detailed in the civil engineering plans prepared by Enspire submitted with the application including proposed sediment and erosion control measures to be implemented, generally in accordance with the "Blue Book".

In particular, the erosion and sediment control measures include sediment fences adjacent to the site boundary and hay bales to protect existing culverts. Earthworks are addressed in detail in Section 4.1.2.1. of this SEE.

4.2.3 Traffic

The proposal will have no impact on traffic. All machinery and vehicles associated with the proposal are the same as those already attending the construction site as approved with DA9876.

4.2.4 Visual Impacts

Visual impacts are addressed in detail in Section 4.1.2.1. of this SEE.

4.2.5 Vegetation and Landscaping

The Arborist Report prepared by Australian Tree Consultants and the SBDAR prepared by RPS Group combine to demonstrate that there are positive environmental, ecological and aesthetic outcomes from replacing the existing vegetation with new landscaping works.

4.3 ECONOMIC & SOCIAL IMPACTS

The proposed development will have no social impacts because the works are temporary and ancillary to the works approved with DA9876.
There will be minor positive economic impacts in terms of additional contracted works and demand for materials.

4.4 THE SUITABILITY OF THE SITE

The site is suitable for the proposed development. The works integrate with DA9876. The proposal removes the risk to road and electricity infrastructure and replaces poor quality vegetation with ecologically superior plantings intended to be maintained in perpetuity.

4.5 THE PUBLIC INTEREST

The proposed development will provide improvements to local ecology and effectively screen the industrial development from Old Castlereagh Road and nearby rural residential properties. Given that the proposed development does not result in additional detrimental environmental or amenity impacts and is consistent with, and compliant with, adopted environmental planning instruments, it is considered to be in the public interest.

5. Conclusion

The proposed development includes vegetation removal, new earthworks and associated stormwater management and new landscaping. The works will remove the risk of poor quality existing vegetation damaging road and electricity infrastructure. The works will improve the efficient use of developable land within the new community title industrial lots and the proposal will improve the long term ecological integrity and quality of the landscaped strip adjacent to Old Castlereagh Road.

The proposed development has been assessed against the requirements of the *Environmental Planning and Assessment Act 1979*, Biodiversity Conservation Act, 2016 and all other relevant planning policies. The minor variation to the Penrith Lakes DCP Stage 1 regarding the tree replacement ratio is justified given the existing planting was poorly installed and the new planting is consistent with the ecological values of the locally endemic PCT 4025 Cumberland Red Gum Riverflat Forest.

The works are entirely acceptable in terms of impacts and management and mitigation strategies and will be well integrated with the works approved with DA9876.

An assessment against Section 4.15 of the *Environmental Planning and Assessment Act 1979* has not resulted in any significant issues arising.

The development application is worthy of the Minister's approval.