



STATEMENT OF ENVIRONMENTAL EFFECTS

Section 4.56 Modification Application to a court approved Torrens and community title subdivision (DA9876)

14-98 Old Castlereagh Street,
Penrith

Prepared for: The property owners of 14-98 Old Castlereagh Road, Penrith

Ref: M190009

DATE: 13 December 2024





Contents

1.	INTRODUCTION	2
2.	SITE ANALYSIS AND CONTEXT	3
2.1	The Site	3
3.	DETAILS OF THE PROPOSED MODIFICATION	4
3.1	Background.....	4
3.2	Proposed Modification	4
4.	ENVIRONMENTAL PLANNING ASSESSMENT	8
4.1	Section 4.56.....	8
4.2	Statutory and Policy Compliance	9
	4.2.1 State Environmental Planning Policy (Precincts – Western Parkland City) 2021	10
	4.2.2 Penrith Lakes Development Control Plan 2021 (PLDCP 2021)	10
4.3	Impacts on Natural & Built Environment	10
	4.3.1 Natural Environment.....	10
	4.3.2 Built Environment.....	10
	4.3.3 Flora & Fauna Impacts	11
	4.3.4 Traffic and Parking Impacts	11
	4.3.5 Amenity Impacts	11
4.4	Economic & Social Impacts	11
4.5	The Suitability of the Site	11
	4.5.1 Parking and Access.....	11
4.6	The Public Interest	11
5.	CONCLUSION.....	12

FIGURES

Figure 1	Aerial image indicating subject site outlined in blue (Source: <i>Nearmap</i>)	3
Figure 2	CT Plan of Subdivision indicating private ownership of internal roads (Source: <i>Enspire Solutions</i>)	5





1. Introduction

We act on behalf of the Applicant to modify the approved subdivision application (DA9876) at 14-98 Old Castlereagh Street, Penrith (the site).

On 31 March 2022, DA 9876 was approved by the Land & Environment Court NSW for the following:

- Torrens title subdivision of three lots into four environmental lots and one residual lot;
- subdivision of the residual lot into 93 Community title lots and one community association lot;
- thirteen (13) development stages;
- earthworks to achieve the final site levels;
- construction of internal roads, including a slip lane to Old Castlereagh Road, footpaths and shared pathways and infrastructure to be dedicated to Council;
- landscaping works including removal of 36 trees and certain vegetation and planting of new trees and vegetation; and
- freestanding advertisement signage.

DA 9876 has been modified several times since approval was granted in March 2023. The most recent modification (DA 9876-Mod 4) sought the deletion of Condition E38 requiring the consolidation of lots prior to community title subdivision and was approved by the Minister's delegate in February 2024.

Pursuant to Section 4.56 the *Environmental Planning & Assessment (EP&A) Act, 1979*, it is proposed to modify DA9876 to change all internal roads in the subdivision from being publicly dedicated to private ownership, to be managed under the community title scheme.

The modification would result in no change to the physical aspects of the DA9876. It is therefore of minimal environmental impact and would satisfy the test of being substantially the same as the original consent under Section 4.56 of the EP&A Act.

The modification seeks to delete Condition No. B6, B7, B17, E32, E33, E35 and E39 associated with DA9876. It is further requested Condition No. A1, B8 and E12 be modified. Therefore, removing the requirement for internal roads to be dedicated to Council. An updated community title plan depicting road ownership has been prepared by *Enspire Solutions* and should supersede the plans referenced in Condition No. A1 to the extent of any inconsistency.

The purpose of this Statement is to address the planning issues associated with the development proposal and specifically to assess the likely impact of the development on the environment in accordance with the requirements of s.4.15 of the EP&A Act.

This Statement is divided into five sections. The remaining sections include a locality and site analysis; a description of the proposal; an environmental planning assessment; and a conclusion.

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. 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 Penrith Lakes Scheme. Approved rehabilitation works are currently underway on the site. The lots comprising the site are legally identified as Lots 1, 2 and part lot 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 DA987, intended to be modified under this application.



Figure 1 Aerial image indicating subject site outlined in blue (Source: Nearmap)

The site is located between Old Castlereagh Road to the north and Nepean River and Crown Land to the south. The site is mapped as containing biodiversity values and is bushfire prone. Existing vegetation on site that has not been disturbed by the ongoing civil works is limited to mature trees that line Old Castlereagh Road and vegetation along the bank of the Nepean River. No permanent buildings or structures currently exist on the site.



3. Details of the Proposed Modification

3.1 BACKGROUND

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

DA9876 has been modified several times in the past, the most recent modifications are provided in the table below.

Table 1 Historical Modifications to DA9876

Modification	Status	Description
MOD 3	Approved – 19 September 2023	The modification seeks to amend the Torrens Title subdivision of the lot to retain the existing ownership pattern once the environmental lands are subdivided.
MOD 4	Approved - 13 February 2024	The modification seeks to delete Condition E38 to remove the requirement to consolidate lots prior to the Community Title Subdivision.

3.2 PROPOSED MODIFICATION

Pursuant to Section 4.56, it is proposed to modify the approved development to alter the dedication of internal roads from public to private. This would result in all internal roads within the subdivision being retained in private ownership and managed under the community title scheme.

There are no proposed physical changes to the internal road layout. However, a revised plan by *Enspire Solutions* has been prepared depicting the modified road ownership (refer to **Figure 2**).



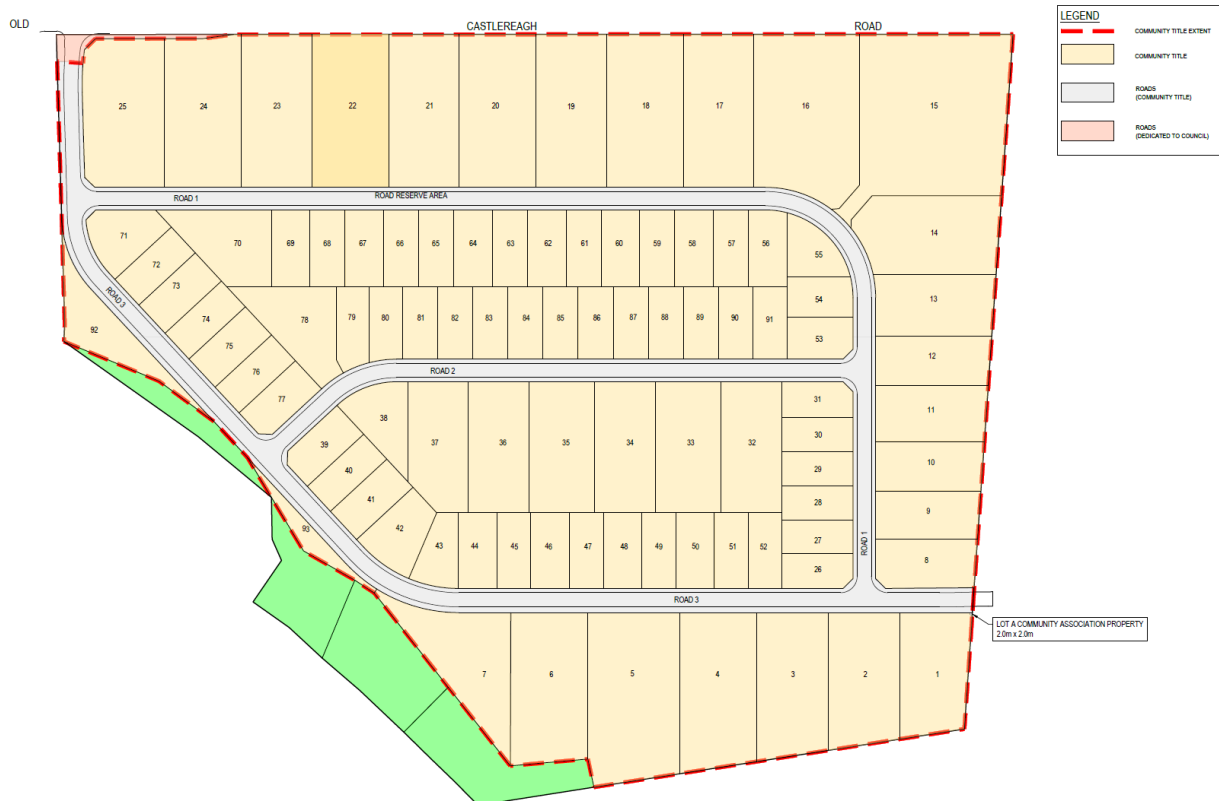


Figure 2 CT Plan of Subdivision indicating private ownership of internal roads (Source: *Enspire Solutions*)

In light of the proposed modification to internal road ownership, the following conditions of consent under DA9876 are requested to be modified (refer to Table 2).

Table 2 Proposed Modification to DA9876

Condition of Consent	Intended Modification and Justification
Condition A1 - The development may only be carried out: (a) in compliance with the conditions of this consent; (b) in accordance with any written directions of the Planning Secretary in accordance with the Condition A2; (c) in accordance with the SEE; <u>(d) in accordance with the approved plans in the table below:</u>	It is requested this condition be <u>modified</u> . The modified community title plan by <i>Enspire Solutions</i> dated 10/10/24 should replace the plans referenced in Conditions A1 to the extent of any inconsistency
Condition B6 - Prior to issue of the first Construction Certificate or Subdivision Works Certificate, a public domain plan, prepared by a suitably qualified person and in consultation with Council, must be submitted to the satisfaction of the Planning Secretary. The public domain plan must detail the design, maintenance and management (including pedestrian management) of streets.	It is requested this condition be <u>deleted</u> . The roads will be in private ownership and managed under the CT scheme. A public domain plan, submitted to Council, is no longer necessary.
Condition B7 - Prior to the issue of any relevant Construction Certificate or Subdivision Works Certificate for footpath or public domain works, the Applicant must demonstrate to the Certifier that the streetscape design and treatment meets the	It is requested this condition be <u>deleted</u> . As above, there is no longer need for a public domain plan.

Table 2 Proposed Modification to DA9876

requirements of the Public Domain Plan approved in B6, including addressing pedestrian management.

<p>Condition B8 - Prior to the issue of any relevant Construction Certificate or Subdivision Works Certificate for roadworks and access (if any), the Applicant must submit, and receive approval of, design plans to be prepared to the satisfaction of the relevant roads authority.</p>	<p>It is requested this condition be <u>modified</u>. The applicant should no longer require approval from the relevant road's authority.</p> <p>Recommended rewording: Prior to the issue of any relevant Construction Certificate or Subdivision Works Certificate for roadworks and access (if any), the Applicant must submit design plans to be prepared to the satisfaction of the relevant Certifier.</p>
<p>Condition B17 - Prior to issue of the first Construction Certificate or Subdivision Works Certificate, updated stormwater documentation, prepared by a suitability qualified person, must be submitted to the satisfaction of the Planning Secretary that</p> <p>(a) identifies details of how drainage infrastructure will be constructed to enable discharge of stormwater from the site to the adjoining Southern Wetlands in accordance with the stormwater management strategy for the site; or</p> <p>(b) if required, details of temporary measures to manage stormwater generated from the development should the Southern Wetlands not be operational.</p>	<p>It is requested this condition be <u>deleted</u>.</p> <p>Updated stormwater documentation should not be required to the satisfaction of the Planning Secretary given the internal roads and drainage assets will no longer become public assets.</p>
<p>Condition E12 - Prior to issue of the relevant Subdivision Certificate for that stage or commencement of operation of that stage, the Applicant must complete the construction of all internal roads of that stage to the satisfaction of Council.</p>	<p>It is requested this condition be <u>modified</u>.</p> <p>Council will no longer be burdened by the internal roads. Roads will be constructed to the satisfaction of a certifier.</p> <p>Recommended rewording: Prior to issue of the relevant Subdivision Certificate for that stage or commencement of operation of that stage, the Applicant must complete the construction of all internal roads of that stage to the satisfaction of a Certifier</p>
<p>Condition E32 – Dedication of internal roads All internal roads must be constructed by the Applicant and dedicated to Council as public roads following registration of the Plan of Subdivision. Upon dedication and at the end of the maintenance period Council will be responsible for the on-going maintenance of the roads. The dedication must be at no cost to Council.</p>	<p>It is requested that this condition be <u>deleted</u>.</p> <p>Dedication of the internal roads to Council is no longer intended. Internal roads to be privately owned and managed under the community title scheme.</p>
<p>Condition E33 – Dedication of Stormwater Drainage Systems The stormwater drainage system must be constructed by the Applicant and dedicated to Council following registration of the Plan of Subdivision. Upon dedication and at the end of the maintenance period Council will be responsible for the on-going maintenance of the stormwater drainage system. The dedication must be at no cost to Council.</p>	<p>It is requested this condition be <u>deleted</u>.</p> <p>Given the roads are to be privately owned, the drainage systems within the roads will also need to be placed in private ownership. The stormwater drainage systems to be privately owned and managed under the community title scheme.</p>
<p>Condition E35 - Complete construction of all subdivision works covered by the Subdivision Works Construction</p>	<p>It is requested this condition be <u>deleted</u>.</p>

Table 2 Proposed Modification to DA9876

Certificate(s). Completion of works includes the submission and acceptance by Council of all work as executed drawings plus other construction compliance documentation and payment of a maintenance/defects bond to Council in accordance with Council's adopted fees and charges.

Council is no longer required to accept the internal roads.

Condition E39 – Prior to the issue of any subdivision certificate, any drainage infrastructure constructed outside the extent of road to be dedicated as public road will require a suitable drainage easements and Restriction on the Use of Land pursuant to 88B of the Conveyancing Act 1919 to be shown on the plan of subdivision. Penrith City Council is to be identified as the party to vary or modify the easement or restriction.

It is requested this condition be deleted.

No roads are to be dedicated as public roads.

4. Environmental Planning Assessment

4.1 SECTION 4.56

Section 4.56 of the *Environmental Planning & Assessment Act 1979* contains general provisions relating to the modification of a development consent granted by the Court.

(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.

(1A) 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. 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.

(1B) (Repealed)

(1C) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

(2) After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.

(3) The regulations may make provision for or with respect to the following—

(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,



(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,

(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.

(4) (Repealed)

Section 4.56 of the *Environmental Planning & Assessment Act 1979* contains provisions relating to the modification of development consents issued by the Court, and in essence gives power to a consent authority other than the Court to grant consent to a modification of the original development consent.

DA9876 was approved by the Court. The intention is for the modification to be lodged on the Planning Portal to be assessed by the relevant consent authority. Given the site is located in the Penrith Lakes Scheme in accordance with SEPP (Precincts – Western Parkland City), the consent authority is the Department of Climate Change, Energy, the Environment and Water.

With regard to Section 4.56(1)(b), the modification application would be notified in accordance with the regulations and/or a development control plan.

Section 4.56(1)(a) is satisfied in that the amended proposal is substantially the same development as the development for which the consent was originally granted. This is due to the lack of physical change to the approved development.

In reaching this conclusion, we have considered guidance provided by the Land & Environmental Court Case, *Moto Projects (No. 2) Pty Limited v North Sydney Council* [1999] NSWLEC 280; (1999) 106 LGERA 298, which outlines principles for determining whether a s4.55(2) application is 'substantially the same' as an originally issued development consent. The assessment of 'substantially the same' needs to consider qualitative and quantitative matters. Given the 'substantially the same' test applies also to s4.56 modifications, the findings in *Pty Limited v North Sydney Council* are applicable.

In terms of a quantitative assessment, the proposal will have no impact on the number of lots, size of lots, road layout, road dimensions and extent of civil works required in accordance with DA9876. There is no change to the approved developments compliance with the Western Parklands City SEPP 2021 and Penrith Lakes DCP 2021.

In terms of a qualitative assessment, the relationship of the development with adjoining properties will remain consistent with the approved development. Amenity impacts will remain consistent with the approved development. The inclusion of the internal roads in the community title scheme is not anticipated to hinder future occupants at the site. The performance and structural integrity of the roads is being managed under Condition E26.

The relevant matters of Section 4.15(1) of the EP&A Act are addressed in the sections below.

4.2 STATUTORY AND POLICY COMPLIANCE

The majority of the applicable Environmental Planning Instruments (EPIs) were considered in the assessment of DA9876 by the Court. The proposed modification does not seek to vary the assessment or conclusions of those EPIs. In this regard, the assessment for the following EPI's will not be reconsidered in this application:

- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Transport and Infrastructure) 2021.





As such, the conclusions of the original Development Application remain valid and applicable to the subject application. The modifications compliance with key EPIs has been reassessed, below.

4.2.1 State Environmental Planning Policy (Precincts – Western Parkland City) 2021

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 traditionally the consent authority.

Given the modification does not intend to physically alter the works approved under DA9876, the permissibility of the development remains consistent.

Clause 5.27 outlines additional provisions for development on land zoned Employment. The proposed modification will have no physical impact on the site and therefore is considered appropriate.

Clause 5.28 outlines additional provisions for development on land zoned Environment. The proposed modification will incur no environmental impacts to the site, as no physical works are proposed.

Overall, the proposed development is considered consistent with the provisions of the Western Parklands City SEPP, Chapter 5 – Penrith Lakes Scheme.

4.2.2 Penrith Lakes Development Control Plan 2021 (PLDCP 2021)

In relation to the Penrith Lakes DCP, the proposed modifications will not alter the performance of the approved development against the provisions of the DCP. Specifically, the intended modification to internal road ownership will not alter the extent of compliance with the objectives and controls of Section 5.4.3 – Subdivision Design of the DCP.

4.3 IMPACTS ON NATURAL & BUILT ENVIRONMENT

4.3.1 Natural Environment

The proposal does not give rise to any significant additional environmental impacts beyond those considered and approved as part of the original application. The proposal will maintain compliance with the approved conditions of consent that are imposed to minimise all environmental impacts during construction and upon completion of the development.

As such, the proposed modification is intended to have no impact on the natural environment.

4.3.2 Built Environment

In terms of the relationship between the modified development to the adjoining properties, the proposal will not have an adverse impact on the amenity of adjoining properties given the approved development is for the subdivision of land and the proposed modification would not result in any physical changes to the development.





4.3.3 Flora & Fauna Impacts

The proposed modifications will have no adverse impact on the flora and fauna of the site.

4.3.4 Traffic and Parking Impacts

Despite the proposed modification directly relating to the internal roads under the approved community title scheme, there would be no physical change to the layout or dimensions of these roads. As such, the assessment in terms of capacity, parking, compliance etc under DA9876 with regard to the internal roads remains valid and there will be no additional impacts.

4.3.5 Amenity Impacts

There are no additional amenity impacts as a result of the proposed modification, which exclusively relates to internal road ownership.

4.4 ECONOMIC & SOCIAL IMPACTS

Undertaking the works will have limited economic and social impacts. The majority of civil works associated with DA9876 have commenced, providing short term economic impact through employment generation. Given the proposed modification does not physically alter the development, economic impacts are aligned with those approved under DA9876.

The proposed modification will not have any impact on the social dynamic of the locality.

4.5 THE SUITABILITY OF THE SITE

4.5.1 Parking and Access

The modified proposal will have no parking or traffic implications beyond the approved development.

4.6 THE PUBLIC INTEREST

The proposal, as amended, is considered to be compatible with existing surrounding development and will continue to provide a balance between protecting residential amenity, the natural/built environment, and providing appropriate amenity to the future occupants.

Despite the intended change in internal road ownership from public to private, this is not intended to burden future lot owners within the CT scheme and therefore remains in the public interest.





5. Conclusion

This Statement of Environmental Effects accompanies an application pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which seeks approval for the change of internal road ownership to private under the approved community title scheme at No. 14-278 Old Castlereagh Road, Penrith.

The proposed modification would require the deletion of Condition No. B6, B7, B17, E32, E33, E35 and E39 associated with DA9876. It is further requested Condition No. A1, B8 and E12 be modified. There are no physical changes proposed to DA9876 as part of this modification.

The proposed modification is considered to be substantially the same as the approved development, and it is considered that the modifications will result in the same level of amenity as originally approved.

The modification is consistent with the objectives and controls of the Western Parklands SEPP 2021 and PLDCP 2021 and will not introduce any adverse built or natural environment impacts over and above the approved development. As outlined, the proposal will ensure the development remains in the public interest.

Accordingly, for the reasons outlined in this Statement, we respectfully request the relevant approval authority modify the development consent to incorporate the proposed changes detailed in this report and accompanying plans.

