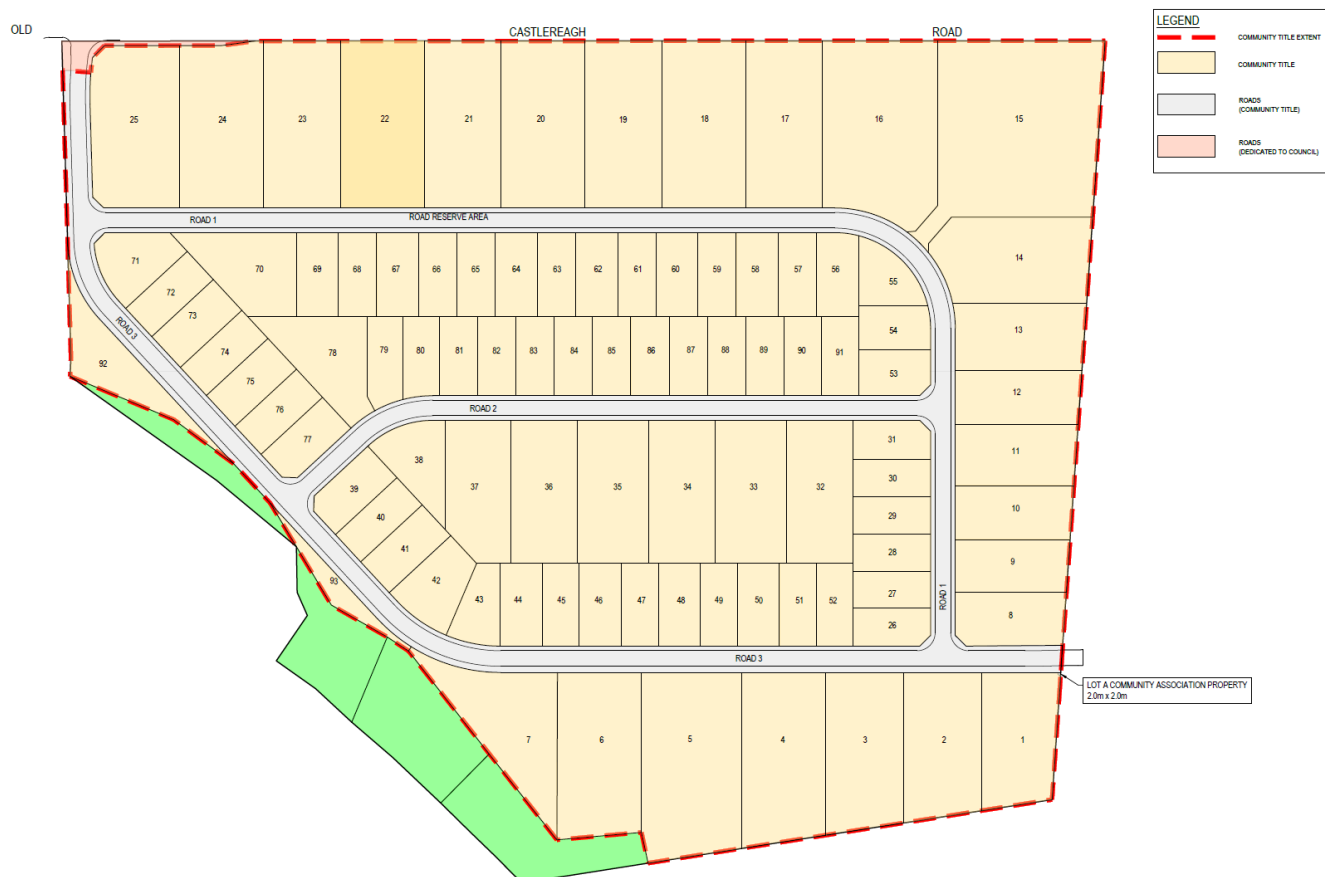


Modification 6 of Penrith Lakes Employment Lands Subdivision

Modification Assessment Report (DA9876-Mod-6)

May 2025





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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Modification 6 of Penrith Lakes Employment Lands Subdivision (DA9876-Mod-6) Assessment Report

Published: May 2025

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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 6 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

Preface.....	i
1 Introduction.....	1
1.1 The proposal.....	1
1.2 Project location.....	1
1.3 Penrith Lakes Scheme.....	3
1.4 Related approvals and works.....	4
2 Proposed Modification	6
2.1 Modification overview.....	6
3 Statutory context.....	7
3.1 Scope of modification and assessment pathway	7
3.2 Mandatory matters for consideration	7
4 Engagement.....	11
4.1 Department’s engagement	11
4.2 Notification of the modification	11
4.3 Response to Submissions.....	12
5 Assessment.....	13
5.1 Alteration of the dedication of internal roads from public to private	13
6 Evaluation	19
7 Recommendation	20
8 Determination	21
Glossary.....	22
Appendices	23
Appendix A – List of referenced documents.....	23
Appendix B – Submission	23
Appendix C – Notice of Modification	23

1 Introduction

1.1 The proposal

On 31 March 2022, Great River NSW Pty Ltd (the applicant) 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 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.

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 site is zoned '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 site is located in the Penrith Lakes Scheme (the 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 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.

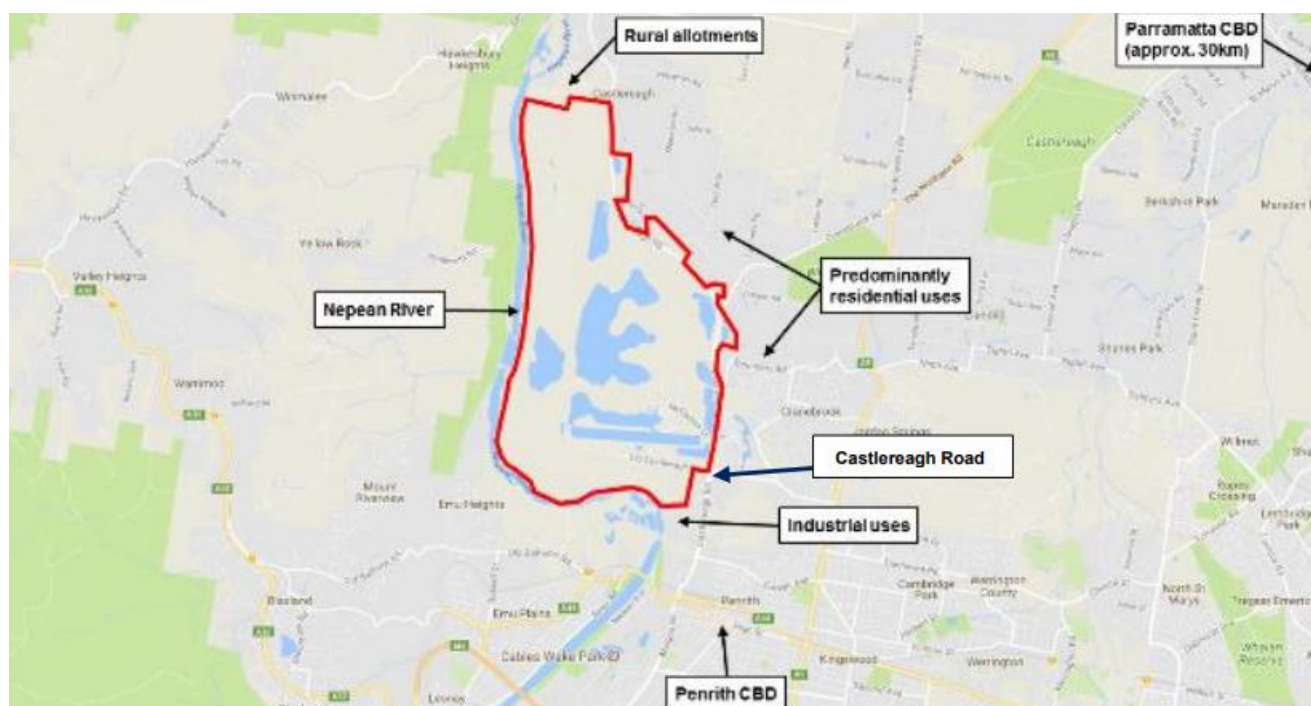


Figure 3 | Penrith Lakes Scheme boundary outlined in red (Source: Google Maps)

1.4 Related approvals 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).

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 5 modification requests to the development consent (Table 1).

Table 1 | Summary of Modifications

Modification	Description	Decision maker	Type	Date
Mod 1	Delete condition related road upgrade works	Department	4.56	Refused - 10 January 2024
Mod 2	Modification to allow for 24/7 construction works	Department	4.56	Withdrawn
Mod 3	Torrens Title Subdivision amendment	Department	4.56	Approved – 19 September 2023
Mod 4	Remove the need for the consolidation of lots prior to the Community Title subdivision taking place	Department	4.56	Approved – 13 February 2024
Mod 5	Demolish and replace fence to Lot 12. Defer the delivery of the deceleration lane to Stage 11	Land and Environment Court	4.55(8)	Approved – 29 August 2024



Figure 4 | Approved torrens title subdivision (as per Mod 3). Environmental lots in green (Source: DA9876-Mod-3 Stamped Plans)

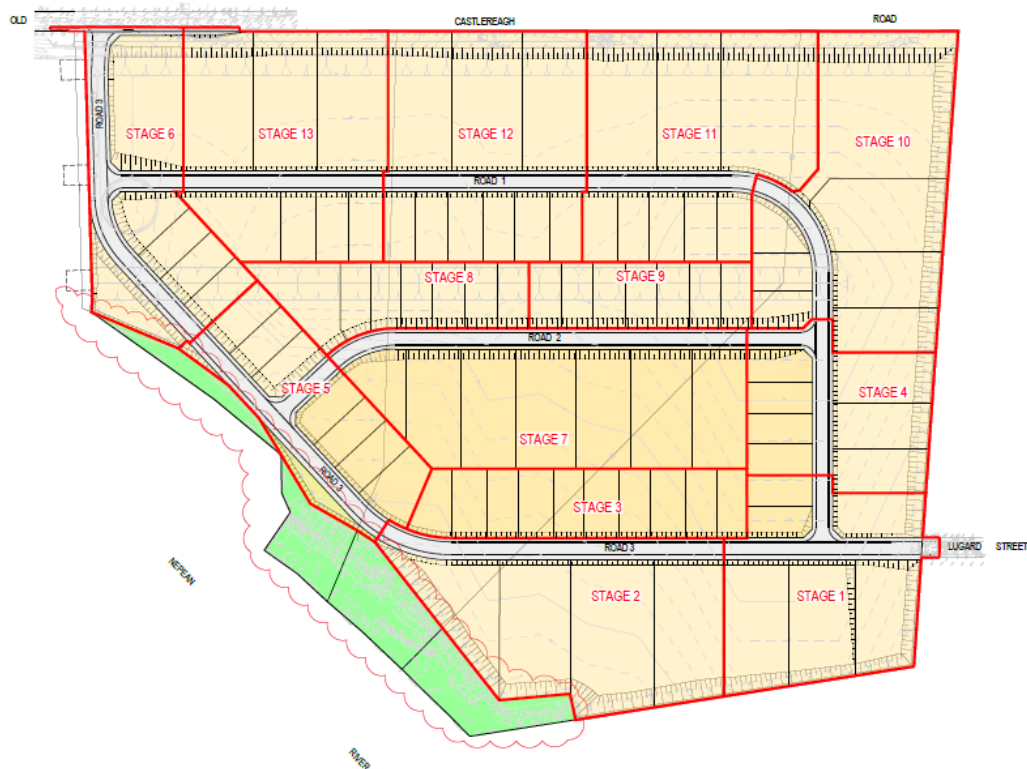


Figure 5 | Approved community title subdivision (Source: DA9876 Stamped Plans)

2 Proposed Modification

2.1 Modification overview

The applicant seeks to 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.

The applicant has stated that there are no proposed physical changes to the internal road layout. Though, a revised plan by *Enspire Solutions* has been prepared depicting the modified road ownership (refer to Figure 6).

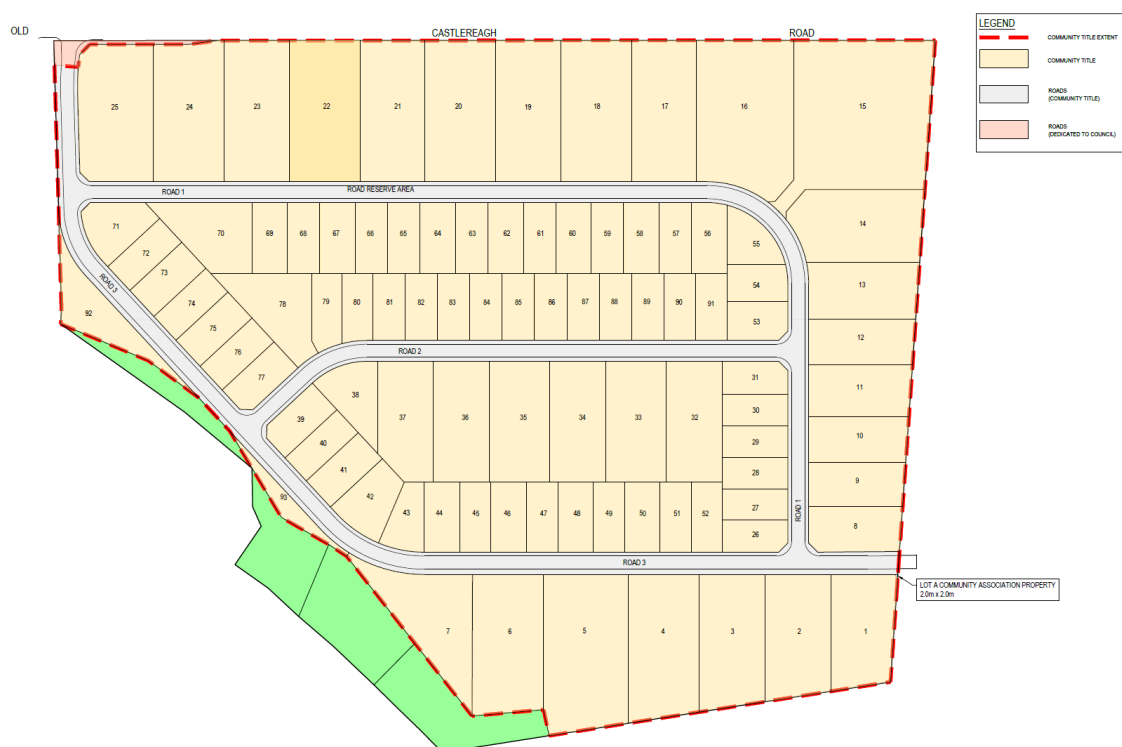


Figure 6 | CT Plan of Subdivision indicating private ownership of internal roads (Source: *Enspire Solutions*)

3 Statutory context

3.1 Scope of modification and assessment pathway

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

Table 2 | Permissibility and assessment pathway

Consideration	Description
Scope of modification	Modification by consent authorities of consents granted by the Court Under section 4.56 of the EP&A Act, a consent authority may modify a consent granted by the Court, where applied for by the applicant. The Department has reviewed the scope of the modification and considers that it falls under the scope of section 4.56 of the EP&A Act. The Department has considered the provisions of section 4.56 and is satisfied the proposed modification is within the scope and does not constitute a new development application. Accordingly, the application should be assessed under section 4.56 of the EP&A Act.
Consent Authority	While the original consent was granted by the Court, 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.
Decision-maker	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. In accordance with the Minister's delegation dated 9 March 2022, the Director, Regional Assessments may determine the application as: • Council has not made an objection • there are less than 15 public submissions in the nature of objection • a political disclosure statement has not been made.

3.2 Mandatory matters for consideration

3.2.1 Matters of consideration required by the EP&A Act

In determining the modification, the consent authority must take into consideration such of the matters referred to in section 4.15(1) of the EP&A Act as are of relevance to the development the

subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The Department's consideration of these matters is shown in Table 3 below.

Table 3 | Matters for consideration

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

Matter for consideration	Department's assessment
d) any submissions made in accordance with this Act or the regulations,	All matters raised in submissions have been summarised in Section 4 of this report and given due consideration as part of the assessment of the development in Section 5 of this report.
e) the public interest.	The Department considers the modification to be in the public interest (refer to Section 5).

3.2.2 Objects of the EP&A Act

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

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

Object	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The modification does not alter any physical works on site, and as such, there are no change to the social and economic welfare of the community or the management, development and conservation of natural and other resources as a result of this modification.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The Department is satisfied the modified development can be carried out in a manner that is not inconsistent with the principles of ESD.
(c) to promote the orderly and economic use and development of land,	The proposed modification seeks to alter the dedication of internal roads from public to private (community title), which will still facilitate the orderly and economic use of land.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities,	The Department considers the modification would not result in unacceptable environmental impacts.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The modification does not alter the previous considerations of built and cultural heritage.
(g) to promote good design and amenity of the built environment,	The modification does not seek to alter any aspects of the subdivision design.

Object	Consideration
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The modification does not seek to alter any aspects of the subdivision construction.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department referred the development to the relevant Council and invited them to comment. The Department has given due consideration to their comments.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department notified the application as outlined in Section 4.

4 Engagement

4.1 Department's engagement

In accordance with the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) the Department made the modification application publicly available on the Department's website on 4 February 2025 and forwarded the application to Council 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 proposed modification. 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	Supports the proposal to change the approved public roads to private roads within a community title subdivision scheme. Suggests condition amendments: • Condition A1 to be modified to include reference to the updated community title plan depicting road ownership • Condition B6, B8, E12, E35, and E39 are suggested to be amended with alternative wording • Condition B7 and B17 are recommended to be retained • Condition E32 and E33 are agreed to be deleted • additional conditions to: ○ ascertain and appropriately capture requirements for street lighting assessment, design and approval given the roads are no longer intended to be dedicated as a public road. ○ ascertain and appropriately capture requirements and processes for street naming.

4.2.2 Summary of Public Submissions

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

4.3 Response to Submissions

Following notification, the Department asked the applicant to respond to the advice received from Penrith City Council (Council) on 17 February 2025.

In response, the applicant provided a Response to Submissions (RtS) report to the Department on 21 March 2025 that addressed the comments made by Council (see **Appendix B**).

The Department published the submissions report on the NSW Planning Portal and forwarded the submissions report to Council for comment. On 11 April 2025, Council responded clarifying that they have reviewed the RtS, and raise no objections to the proposal within the RtS (see **Appendix B**).

5 Assessment

5.1 Alteration of the dedication of internal roads from public to private

The modification seeks 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.

The applicant has requested to delete Conditions No. B6, B7, B17, E32, E33, E35, and E39 and modify Conditions No. A1, B8, and E12 associated with DA9876.

The Department has reviewed the modification application, Council submissions, and the RtS response. The Department considers that the alteration of the dedication of internal roads from public to private ownership is acceptable for the following reasons:

- the modification does not alter the approved subdivision layout, nor the proposed staging
- the modification results in no change to the physical aspects of the DA9876, it is therefore considered to be substantially the same as the approved development, and
- the modification does not introduce any adverse built or natural environment impacts over and above the approved development and remains in the public interest.

The proposed changes to the conditions, comments and responses from both Council and the applicant, along with the Department's considerations regarding the condition modifications, are summarised in **Table 6** below.

Table 6 | Assessment of proposed modification to conditions of consent

Condition of Consent	Summary of intended modifications and responses	Recommended conditions
Condition No. A1 Terms of Consent	The applicant has proposed to replace the plans referenced in Condition A1 with the modified community title plan by Enspire Solutions dated 10/10/24. Council raised no concerns with the modified Condition A1. The Department considers the amendment to Condition A1 acceptable.	It is recommended that the table in Condition A1 be amended to include the updated Community Title Subdivision Plan.
Condition No. B6 Public Domain Plan and Works	The applicant has proposed to delete Condition B6, as the roads will be in private ownership and managed under the CT scheme, making a public domain plan submitted to Council unnecessary. Council raised a concern with the suggested deletion of Condition B6, stating that a plan of management is still required via a Community Title Management Statement, irrespective of whether the roads are within public or private ownership. Regard should be given to the Registrar General Guideline requirements for a community title scheme, including requirements within Schedule 2 of the Community Land Development Act 2021. In response, the applicant then proposed to modify Condition B6 to state as follows: <i>Civil engineering plans showing the details of the design, maintenance and management of private roads and footpaths which will be accessed by the public shall be submitted with the Subdivision Works Certificate and a copy provided to Council prior to the issue of the Subdivision Works Certificate.</i> The Department considers the proposal acceptable, subject to recommended conditions.	It is recommended that the Condition B6 be amended to require a plan of management via a Community Title Management Statement. Condition B6 should also require a copy of the plan to be submitted Planning Secretary. It is recommended that Condition B6 should also include a note “Regard should be given to the Registrar General Guideline requirements for a community title scheme including requirements within Schedule 2 of the Community Land Development Act 2021.”
Condition No. B7 Public Domain Plan and Works	The applicant has proposed to delete Condition B7 for the same reasons as outlined above, stating there is no longer a need for a public domain plan. Council raised a concern with the suggested deletion of Condition B7 for the same reasons as outlined above. The applicant agreed to retain Condition B7. The Department considers Condition B7 should be retained.	It is recommended that the Condition B7 be retained.

Condition of Consent	Summary of intended modifications and responses	Recommended conditions
Condition No. B8 Roadworks and Access	The applicant has proposed to modify Condition B8, as an approval from the relevant road's authority will no longer be required. The applicant suggested the modified Condition B8 to state as follows: <i>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.</i> Council raised no concerns with the modified Condition B8. The Department considers the amendment to Condition B8 acceptable.	It is recommended that the Condition B8 be amended as per the applicants alternative wording.
Condition No. B17 Updated Stormwater Documents	The applicant has proposed to delete Condition No. B17, stating that 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. Council raised a concern with the suggested deletion of Condition B17, as any plans would still need to be approved in order to ensure compliance with Council's policies and guidelines. The applicant agreed to retain Condition B17. The Department considers Condition B17 should be retained.	It is recommended that the Condition B17 be retained.
Condition No. E12 Roadworks and Access	The applicant has proposed to modify Condition E12, as Council will no longer be burdened by the internal roads and roads will be constructed to the satisfaction of a certifier. Council recommended amending Condition E12 to reflect the following revised wording: <i>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 a suitably qualified Private Certifier.</i> The applicant agreed with the recommended wording of Condition E12. The Department considers the amendment to Condition E12 acceptable.	It is recommended that the Condition E12 be amended with Councils alternative wording.

Condition of Consent	Summary of intended modifications and responses	Recommended conditions
Condition No. E32 Dedication of Internal Roads	The applicant has proposed to delete Condition E32, as the dedication of the internal roads to Council is no longer intended. Internal roads to be privately owned and managed under the community title scheme. Council raised no concerns with the deletion of Condition E32. The Department considers the deletion of Condition E32 acceptable.	It is recommended that the Condition E32 be deleted.
Condition No. E33 Dedication of Stormwater Drainage Systems	The applicant has proposed to delete Condition E33. 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. Council raised no concerns with the deletion of Condition E33. The Department considers the deletion of Condition E33 acceptable.	It is recommended that the Condition E33 be deleted.
Condition No. E35 Complete All Subdivision Works	The applicant has proposed to delete Condition E35, as Council is no longer required to accept the internal roads. Council raised a concern with the suggested deletion of Condition E35 and recommended alternate wording. The applicant agreed to modify Condition E35 to state as follows: <i>Complete construction of all subdivision works covered by the Subdivision Works Construction Certificate(s).</i> <i>Completion of works includes the submission to Council of work as executed drawings plus other construction compliance documentation prior to the registration of the Community Title subdivision. Payment of a maintenance/defects bond to Council in accordance with Council's adopted fees and charges for those works within the public road reserve prior to the registration of the Community Title subdivision.</i> Council raised no issues with this wording. The Department considers the amendment to Condition E35 acceptable.	It is recommended that the Condition E35 be amended with the applicants alternative wording.

Condition of Consent	Summary of intended modifications and responses	Recommended conditions
Condition No. E39	The applicant has proposed to delete Condition E39, as no roads are to be dedicated as public roads. Council raised a concern with the suggested deletion of Condition E39 and recommended alternate wording. The applicant agreed to modify Condition E39 to state as follows: <i>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 a party to vary or modify the easement or restriction where appropriate.</i> Council raised no issues with this wording. The Department considers the amendment to Condition E39 acceptable.	It is recommended that the Condition E39 be amended with the applicants alternative wording.
Condition No. B10 Outdoor Lighting and new Condition No. E40 Erection of Street Lighting	Council raised a concern regarding traffic management, that in the assessment of the modification, the consent authority is requested to ascertain and appropriately capture requirements for street lighting assessment, design and approval given the roads are no longer intended to be dedicated as a public road. The Applicant agreed that a suitable condition can be imposed regarding street lighting. The Department considers Condition B10, which requires street lighting to be designed in accordance with relevant standards, be retained and new Condition E40 be added.	It is recommended that the Condition B10 be retained and new Condition E40 be added as follows: E40. Erection of Street Lighting Prior to the issue of a subdivision certificate for All Stages, the approved Street Lights must be installed at no cost to Council.

Condition of Consent	Summary of intended modifications and responses	Recommended conditions
Condition No. B24 Proposed Road Names and new Condition No. E41 Erection of Street Signs	Council raised a concern regarding the appropriate requirements and processes for street naming being achieved. The Applicant agreed that a suitable condition can be imposed regarding the requirements for street naming. The Department considers Condition B24, which requires the applicant to submit to Council a request for approval proposed new road names for each new road within the subdivision be retained and new Condition E41 be added.	It is recommended that the Condition B24 be retained and new Condition E41 be added as follows: E41. Erection of Street Signs Prior to the issue of a subdivision certificate for All Stages, street signs for the approved street names must be installed in accordance with AS 1743:2023, at no cost to Council.

6 Evaluation

The Department has reviewed the modification report and assessed the merits of the modification, taking into consideration all environmental issues. The Department's assessment has considered the relevant matters and objects of the EP&A Act, including the principles of ecologically sustainable development and advice from Penrith Council.

The Department's assessment concludes that the proposal is acceptable subject to the recommended conditions, on the basis that:

- it is substantially the same development as originally determined
- it will result in negligible environmental impacts that can be appropriately managed via conditions of consent
- it will negligible additional environmental impacts above the existing approved development
- it will continue to provide employment opportunities for the Western Sydney region

Overall, the Department considers the impacts of the proposed modifications are acceptable and can be appropriately managed or mitigated through the implementation of recommended conditions of consent. Consequently, the Department considers that the modifications are justified and in the public interest, and that the modification 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:



Tony Liu
Planning Officer
Regional Assessments

Recommended by:



Erin Murphy
Team Leader
Regional Assessments

8 Determination

The recommendation is adopted by:

A handwritten signature in black ink, appearing to read "Louise Densmore". The signature is written in a cursive style with a large, stylized initial 'L'.

Louise Densmore

Director

Regional Assessments

Glossary

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

Appendices

Appendix A – List of referenced documents

Modification Report

<https://www.planningportal.nsw.gov.au/daex/under-consideration/nepean-business-park-modification-subdivision-da9876-mod-6>

Updated Subdivision Plan

<https://www.planningportal.nsw.gov.au/daex/under-consideration/nepean-business-park-modification-subdivision-da9876-mod-6>

Appendix B – Submission

The submission can be found here:

<https://www.planningportal.nsw.gov.au/daex/under-consideration/nepean-business-park-modification-subdivision-da9876-mod-6>

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/nepean-business-park-modification-subdivision-da9876-mod-6>