

Our Ref: M190009

28 March 2025

NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

STATEMENT OF ENVIRONMENTAL EFFECTS
SECTION 4.55(1A) MODIFICATION OF DEVELOPMENT CONSENT NO. 23/17598
14-29 AND 30-68 OLD CASTLEREAGH ROAD, PENRITH

1) INTRODUCTION

We act on behalf of Great River NSW Pty Ltd, the applicant for the approved development application DA23/17598, which was approved by The Minister for Planning and Public Spaces (The Department) on the 25 March 2024. The consent is for a boundary adjustment between Lot 2 and Lot 3 DP 1305088.

This Statement of Environmental Effects accompanies a modification application pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act) for modification of the approved development to enable a boundary adjustment to Lot 2 and 3 DP 1305088.

The purpose of this Statement is to address the planning considerations associated with the modification and specifically to assess the likely impact of the development on the environment in accordance with the requirements of Sections 4.55(1A) and 4.15 of the EP&A Act.

2) SITE DESCRIPTION

The subject site is Lot 2 DP 1305088 (No.14-29) Old Castlereagh Road and Lot 3 DP 1305088 (No.30-68) Old Castlereagh Road, North Penrith (see Figure 1). The site area is 36.833 hectares.

The land is adjacent to the North Penrith industrial precinct and within the south-eastern corner of the Penrith Lakes Scheme area. The site is bounded to the north by Old Castlereagh Road, with rural residential properties located on the northern side of Old Castlereagh Road. To the east and south-east is an area of existing industrial development. The Nepean River is located to the south-west of the site. To the west of the site, and further north, is other land within the Penrith Lakes Scheme. The subject site was previously used as a tailings pond for the Penrith Lakes Scheme. Approved rehabilitation works are currently underway on the site.

3) HISTORY

DA23/17598 was approved by The Department on the 25 March 2024 for 'a boundary adjustment between Lot 2 and 3 DP 1263486, with Lot 2 increasing by 10.1ha and Lot 3 decreasing by 10.1ha'. The stamped plan associated with DA23/17598 is depicted in **Figure 1**. At the time of approval, the legal description of the site was Lot 2 and 3 in DP 1263486. However, following the registration of the boundary adjustment (DA23/17598), the DP was amended with the site now legally described as Lot 2 and 3 in DP 1305088.

Also relevant to the site is DA9876, 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.'



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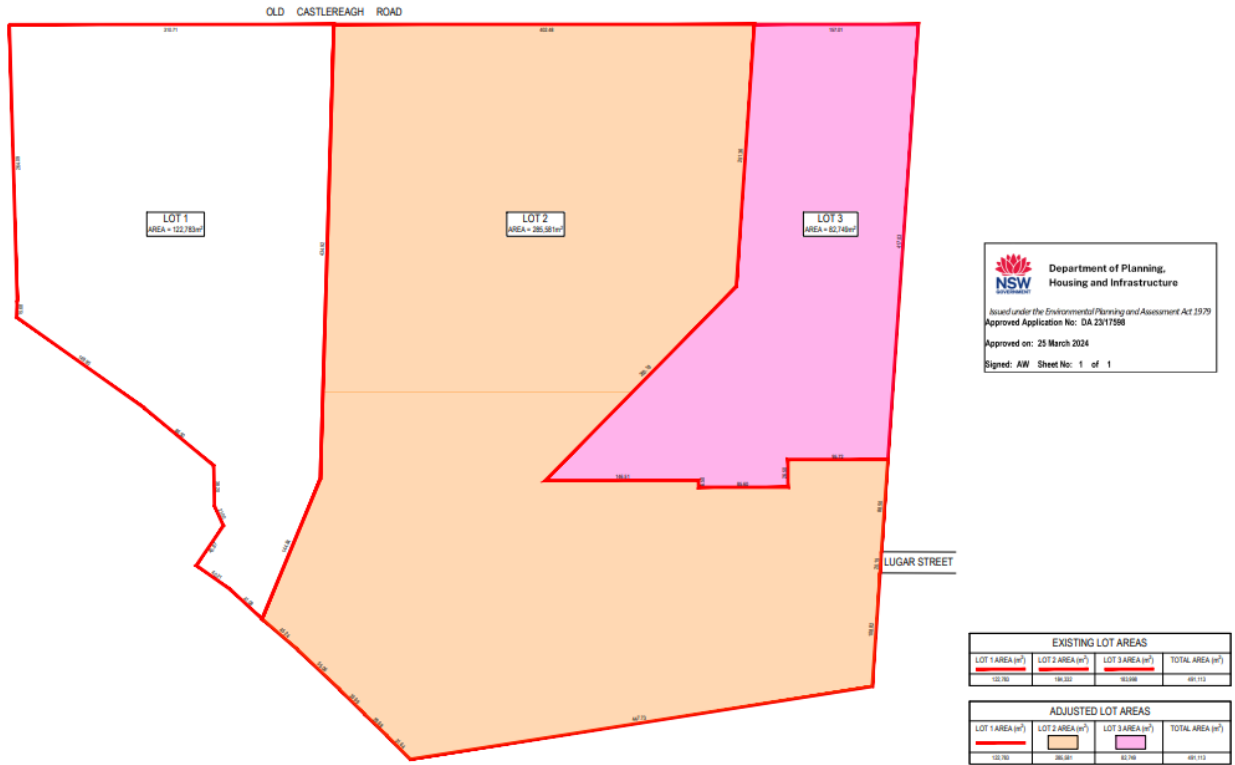


Figure 1: Stamped plan associated with DA23/17598

This modification application will have no impact on the implementation of, and final form of DA9876.

4) DESCRIPTION OF PROPOSED MODIFICATION

It is proposed to modify DA23/17598 to amend the boundary alignment between Lot 2 and 3 in DP 1305088. The proposed boundary alignment is depicted in **Figure 2**. The proposed modification will result in a change to lot sizes and dimensions. A comparison of lot areas is demonstrated in Table 1.

Despite the boundary adjustment, both Lot 2 and 3 will maintain an identical frontage to Old Castlereagh Road to that approved under DA23/17598. It can therefore be assured that suitable access from a public road is maintained to both lots.

Table 1 Lot Area Comparison

	DA23/17598 (m ²)	Proposed Modification (m ²)
Lot 2	285,581	332,244
Lot 3	82,749	36,086

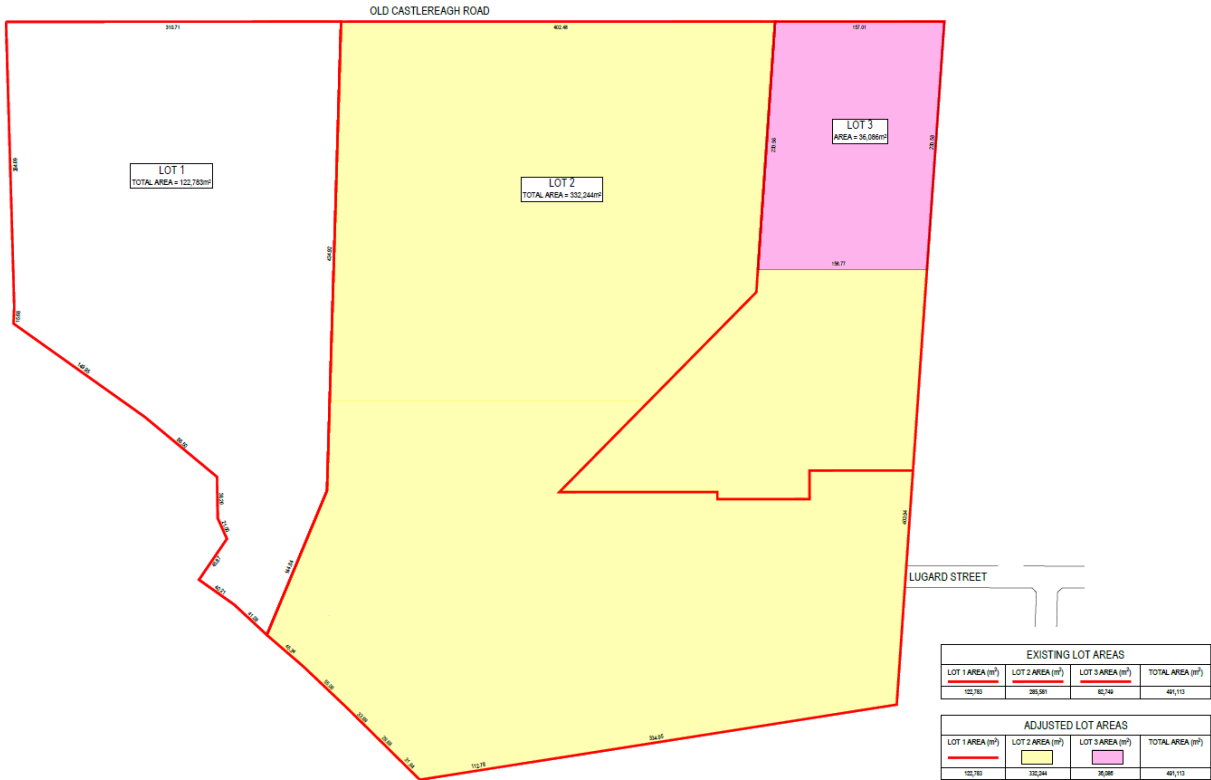


Figure 2: Proposed boundary adjustment to Lots 2 and 3 DP 1305088

5) AMENDMENT TO CONDITIONS

To allow for the proposed boundary adjustment, Condition A2 of DA23/17598 will require modification to reflect the updated plans and statement of environmental effects.

Existing

A2. The development may only be carried out:

- (a) in compliance with the conditions of this consent;
- (b) in accordance with all written directions of the Planning Secretary;
- (c) in accordance with the approved plans in the table below:

Subdivision Plan prepared by Enspire Solutions Pty Ltd			
Dwg No.	Rev A	Name of Plan	Date
SK0066-200044-00	A	LOT 2 AND LOT 3 BDY ADJUSTMENT	27/11/2023

(d) generally in accordance with the following documents:

- (i) Statement of Environmental Effects Development Application for a Subdivision at 14-29 And 30-68 Old Castlereagh Road, Penrith prepared by Planning Ingenuity dated 13 December 2023

(ii) Additional Information Response DA 23/17598 Nepean Business Park – Boundary Adjustment at 14- 28 and 30-68 Old Castlereagh Road, PENRITH (PAN 399 381) prepared by Planning Ingenuity dated 7 February 2024.

Modified

A2. The development may only be carried out:

- (a) in compliance with the conditions of this consent;
- (b) in accordance with all written directions of the Planning Secretary;
- (c) in accordance with the approved plans in the table below:

Subdivision Plan prepared by Enspire Solutions Pty Ltd			
Dwg No.	Rev	Name of Plan	Date
SK0139-200044-00	1	LOT 2 BOUNDARY ADJUSTMENT	24/02/2025

(d) generally in accordance with the following documents:

(i) Statement of Environmental Effects s4.55(1A) Modification for a Boundary Adjustment at 14-29 And 30-68 Old Castlereagh Road, Penrith prepared by Planning Ingenuity dated 17 March 2025

~~(ii) Additional Information Response DA 23/17598 Nepean Business Park – Boundary Adjustment at 14- 28 and 30-68 Old Castlereagh Road, PENRITH (PAN 399 381) prepared by Planning Ingenuity dated 7 February 2024.~~

6) STATUTORY CONSIDERATION

5.1 SECTION 4.55(1A) OF THE EP&A ACT 1979

Section 4.55(1A) of the EP&A Act contains provisions relating to the modification of a development consent that is of minimal environmental impact. Sub-clause (1A) states:

(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and
- (b) 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
- (c) it has notified the application in accordance with—
 - (i) the regulations, if the regulations so require, or
 - (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
- (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.

Subsections (1), (2) and (5) do not apply to such a modification.

The proposal is subject to a section 4.55(1A) modification. The proposal does not require a new development application as the proposal is substantially the same as that approved under DA23/17598. Given the boundary adjustment relates to a paper subdivision, with no physical works, there is no environmental impact.

5.1.1 SUBSTANTIALLY THE SAME DEVELOPMENT

The proposed modification described at **Section 4** of this Statement will result in a development that is substantially the same as that approved under DA23/17598.

In reaching this conclusion, we have been guided by the judgment handed down in *Moto Projects (No 2) Pty Ltd V North Sydney C [1999] NSWLEC 280* (17 December 1999), which outlines principles for determining whether a Section 4.55 application is 'substantially the same' as an originally issued development consent. The assessment of 'substantially the same' needs to consider qualitative and quantitative matters.

In terms of qualitative assessment, the proposed modifications pertain only to a boundary adjustment and will not lead to any changes in terms of physical works, particularly given there are no physical works approved under DA23/17598. Accordingly, the proposed amendment will not result in any discernible impacts which will be consistent with those DA23/17598.

In terms of quantitative assessment, the development as modified will be substantially the same to that which has been granted approval. The proposal is limited to a boundary adjustment and will remain to result in the same number of lots when compared to DA23/17598. Further, the boundaries associated with Lot 2 and 3 that address Old Castlereagh Road will be retained as existing. This will ensure adequate street frontage and access is provided to each lot.

The legal description of the site has been altered from that of DA23/17598, due to the former registration of the approved boundary adjustment. The change to the deposited plan from DP 1263486 to DP 1305088 is inconsequential and has no material impact.

As such, the modification proposed by this application is considered to result in a development that is substantially the same as the development for which consent was originally granted.

5.1.2 MINIMAL ENVIRONMENTAL IMPACT

The approved development under DA23/17598 is purely for a paper subdivision with no associated physical works. The proposed boundary adjustment, in keeping consistent with the original consent, does not propose any physical works. Therefore, there is no environmental impact.

5.2 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.

5.1.1 STATE ENVIRONMENTAL PLANNING POLICY (PRECINCTS – WESTERN PARKLAND CITY) 2021 [SECTION 4.15(1)(A)]

The original application DA9876 was assessed under *State Environmental Planning Policy (Penrith Lakes Scheme) 1998* (Penrith Lakes SEPP) and found to be satisfactory. 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. DA23/17598 was assessed under this 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 proposal has no impact on heritage and Olympic legacy infrastructure.

Clause 5.7 of the Western Parkland City SEPP provides that the Minister is the consent authority for the proposed application.

The site contains land in zones Employment and Environment under the Western Parkland City SEPP.

The boundary adjustment is consistent with the objectives for development in the Employment Zone because it facilitates the delivery of DA9876 which will result in a community title subdivision to accommodate the future Nepean Business Park. The boundary adjustment is also consistent with the objectives of the Environment Zone because it facilitates the delivery of DA9876 which includes the creation of new lots containing the land in the Environment Zone adjacent to the Nepean River. This land will be subject to a vegetation management plan.

Subdivision is permitted with consent in accordance with Clause 5.18 of the Western Parklands City SEPP.

Clause 5.27 outlines additional provisions for development on land zoned Employment. The proposed modification will have no 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 have no impacts to the site, as no physical works are proposed or required. It is therefore consistent with Clause 5.28.

Both lots retain the same frontage to Old Castlereagh Road and the same connectivity arrangements for all essential services via Old Castlereagh Road as approved by DA23/17598. No easements, restrictions or rights of way are required.

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

5.1.2 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. As stated above, approved remediation works are currently underway to make the site suitable for works approved with DA9876. DA23/17598 and the proposed modification do not include any works and do not change the current use of the site and the validity and implementation of approved development. The site is considered suitable.



5.1.3 STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021 [SECTION 4.15(1)(A)]

The proposed modification does not comprise any physical works. As such, there would be no measurable impact to the existing ecological and biodiversity values of the site. No vegetation will be impacted. There will be no change to the flow of surface and groundwater through the site and no changes to the Hawkesbury Nepean catchment. The proposed subdivision is consistent with the provisions of the SEPP.

5.1.4 PENRITH LAKES DEVELOPMENT CONTROL PLAN

Control 5.4.3 Subdivision Design of the Penrith Lakes Development Control Plan requires a minimum lot size of 1,500m² and a minimum lot frontage of 30m for lots created in the Employment Zone. The proposed lots are 285,581m² and 82,749m² and far exceed the minimum requirement. There is no change to the lot frontages to Old Castlereagh Road, compared to that approved under DA23/17598.

5.1.5 LIKELY IMPACTS OF THE DEVELOPMENT [SECTION 4.15(1)(B)]

There are no works. There are no environmental, economic or social impacts.

5.1.6 SUITABILITY OF THE SITE [SECTION 4.15(1)(C)]

The proposed development is suitable for the site due to its zero impacts and consistency with DA23/17598. In fact, the proposed modification is essential to the facilitation of approved DA9876.

5.1.7 THE PUBLIC INTEREST [SECTION 4.15(1)(E)]

The proposed subdivision does not result in environmental, infrastructure, visual or amenity impacts and is consistent with the adopted provisions of the relevant environmental planning instruments. Therefore, it is in the public interest.

7) CONCLUSION

It is proposed to modify DA23/17598 for the purposes of a boundary adjustment at 14-98 Old Castlereagh Road, Penrith.

DA23/17598 was granted consent on the 25 March 2024 for 'a boundary adjustment between Lot 2 and 3 DP 1263486, with Lot 2 increasing by 10.1Ha and Lot 3 decreasing by 10.1Ha.' The modification seeks to further adjust the boundary between Lot 2 and 3, as demonstrated on the plan by *Enspire*.

The proposal seeks to increase the size of Lot 2 (332,244m²) and decrease the size of Lot 3 (36,086m²). With respect to each lot, the boundary to Old Castlereagh Road will remain consistent.

In accordance with Clause 4.55(1A) of the *Environmental Planning and Assessment Act 1979*, the proposed modification will result in a development that is substantially the same as that approved under DA23/17598 and of minimal impact. The proposed modification is in relation to a paper subdivision, with no physical works intended.

The proposal is in line with the provisions in chapter 5 of *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* and those of *State Environmental Planning Policy (Resilience and Hazards) 2021*.

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





ATTACHMENTS

A. Lot 2 Boundary Adjustment Plan by Enspire dated 24/02/2025



