

Department of Planning, Housing and Infrastructure

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)



# Modification 1 Penrith Lakes Employment Lands Subdivision and Works

Modification Assessment Report (DA9876-Mod-1)

January 2024



# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

---

Published by NSW Department of Planning, Housing and Infrastructure  
[dpie.nsw.gov.au](https://dpie.nsw.gov.au)

Modification 1 Penrith Lakes Employment Lands Subdivision and Works  
(DA9876-Mod-1) Assessment Report

Published: January 2024

## Copyright and disclaimer

© State of New South Wales through Department of Planning, Housing and Infrastructure 2024. Information contained in this publication is based on knowledge and understanding at the time of writing, January 2024, and is subject to change. For more information, please visit  
[dpie.nsw.gov.au/copyright](https://dpie.nsw.gov.au/copyright)

# Preface

This assessment report provides a record of the Department of Planning, Housing and Infrastructure's (the Department) assessment and evaluation of modification 1 of the Development Application for the Penrith Business Park located at 14-98 Old Castlereagh Road, Castlereagh lodged by Great River NSW Pty Ltd. The report includes:

- an assessment of the modification against government policy and statutory requirements, including mandatory considerations
- a demonstration of how matters raised by the community and other stakeholders have been considered
- an explanation of any changes made to the modification during the assessment process
- an assessment of the likely environmental, social and economic impacts of the modification
- an evaluation which weighs up the likely impacts and benefits of the modification, having regard to the proposed mitigations, offsets, community views and expert advice; and provides a view on whether the impacts are on balance, acceptable
- a recommendation to the decision-maker, along with the reasons for the recommendation, to assist them in making an informed decision about whether the consent should be modified and any conditions that should be imposed.

# Contents

|   |           |
|---|-----------|
| <b>Preface.....</b>                                   | <b>i</b>  |
| <b>1 Introduction.....</b>                            | <b>1</b>  |
| 1.1 Project location.....                             | 1         |
| 1.2 Penrith Lakes Scheme.....                         | 3         |
| 1.3 Related projects and works.....                   | 4         |
| <b>2 Proposed modification.....</b>                   | <b>6</b>  |
| <b>3 Statutory context.....</b>                       | <b>7</b>  |
| 3.1 Scope of modification and assessment pathway..... | 7         |
| 3.2 Mandatory matters for consideration.....          | 7         |
| <b>4 Engagement.....</b>                              | <b>9</b>  |
| 4.1 Department's engagement.....                      | 9         |
| 4.2 Notification of the modification.....             | 9         |
| 4.3 Response to submissions.....                      | 11        |
| 4.4 Request for further information.....              | 11        |
| <b>5 Assessment.....</b>                              | <b>13</b> |
| 5.1 Deletion of Condition C23(b).....                 | 13        |
| <b>6 Evaluation.....</b>                              | <b>18</b> |
| <b>7 Recommendation.....</b>                          | <b>19</b> |
| <b>8 Determination.....</b>                           | <b>20</b> |
| <b>Glossary.....</b>                                  | <b>21</b> |
| <b>Appendices.....</b>                                | <b>22</b> |
| Appendix A – List of referenced documents.....        | 22        |
| Appendix B – Statutory considerations.....            | 22        |
| Appendix C – Recommended instrument of refusal.....   | 23        |

# 1 Introduction

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 consent to delete condition C23(b) being the requirement for a left turn deceleration lane at the intersection of Castlereagh Road and Lugard Street.

## 1.1 Project location

The subject site is located at 14-98 Old Castlereagh Road, Castlereagh in the Penrith City local government area (LGA) and within the Western Sydney region of NSW (see

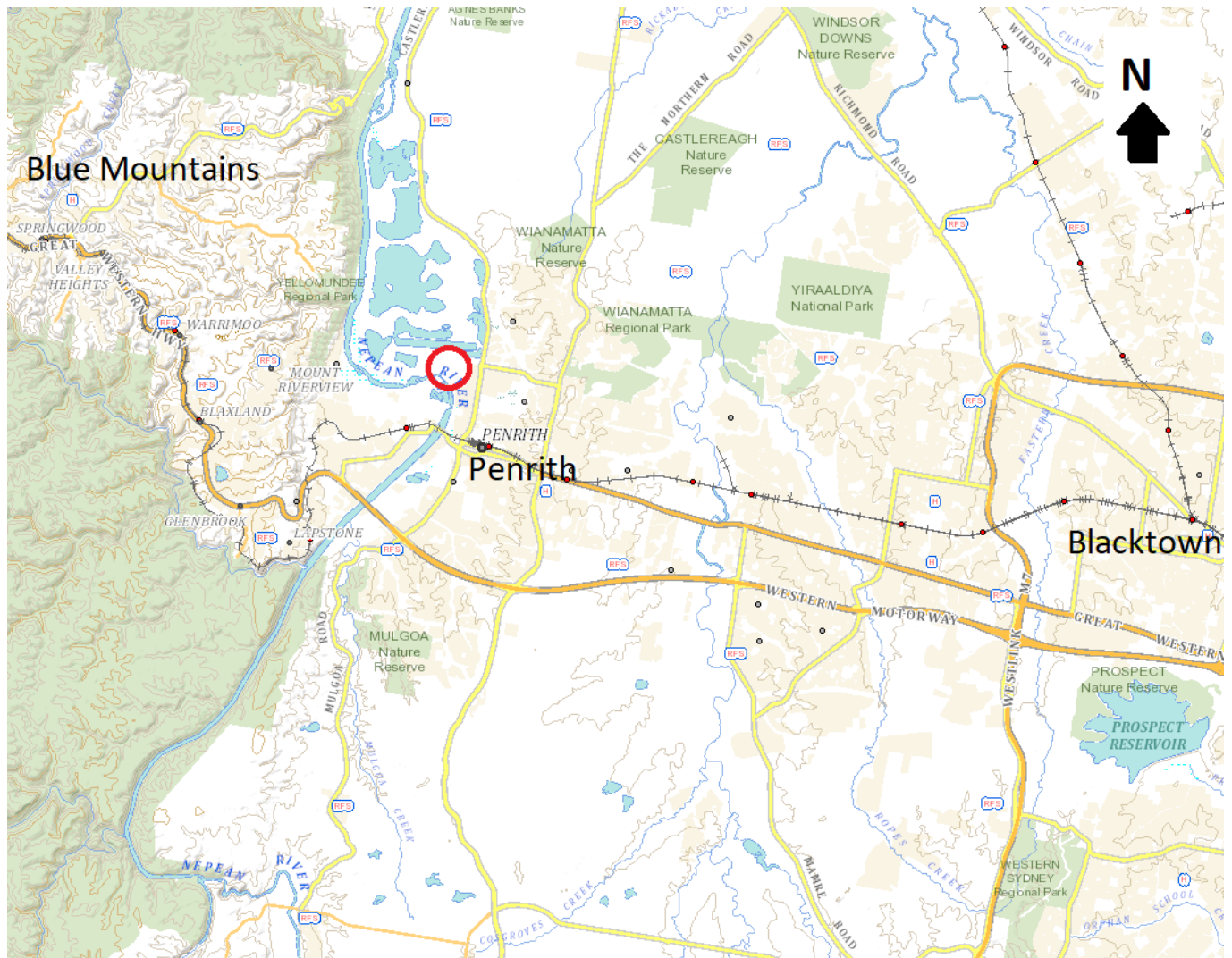
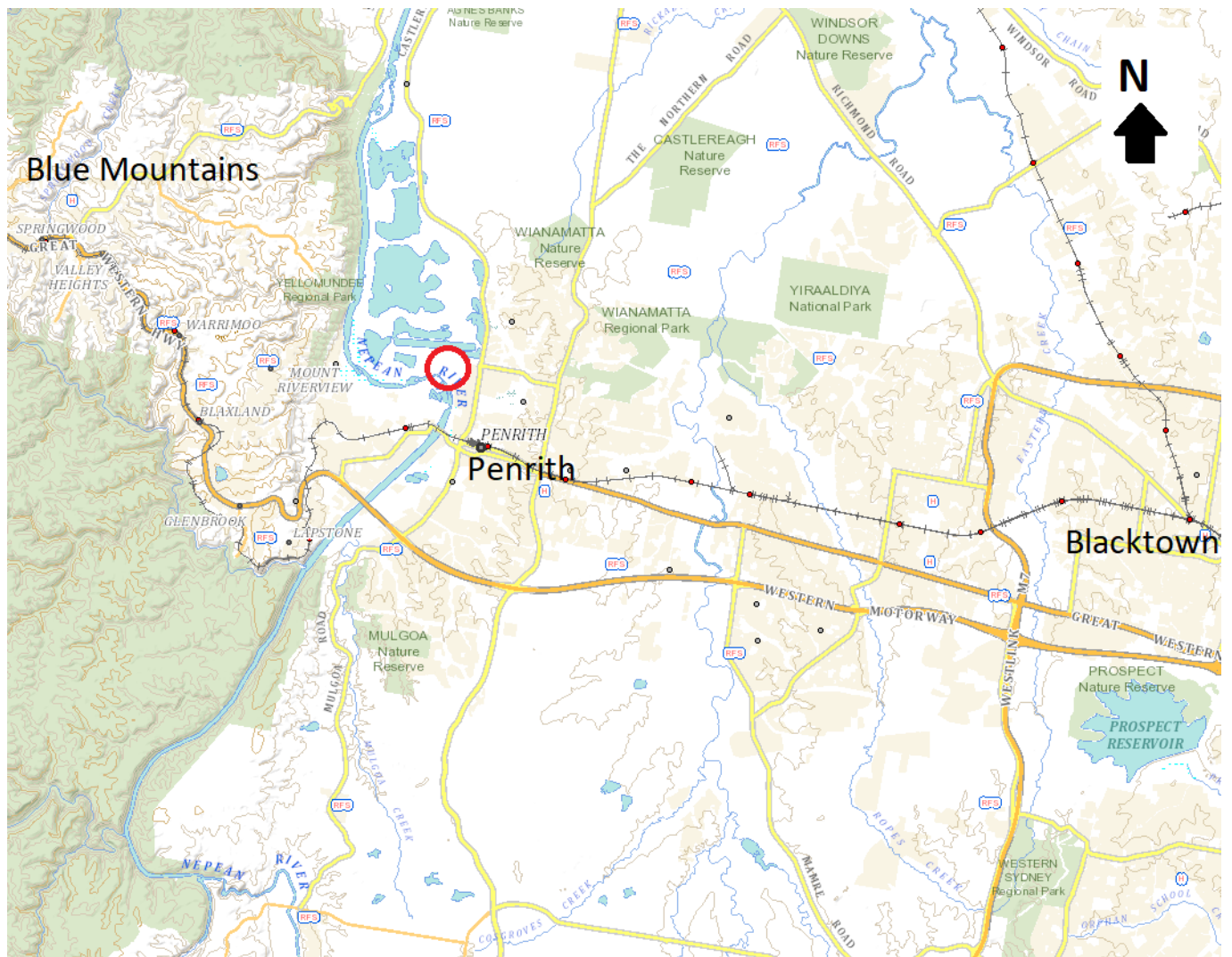


Figure 1 and Figure 2).

The site is legally known as Lots 1, 2 and 3 in Deposited Plan 1263486. It is irregular in shape and has an area of approximately 49 hectares. The site is bound by Old Castlereagh Road to the north, existing industrial developments and Lugard Street to the east, existing industrial developments and the Nepean River to the south and vacant land associated with the Penrith Lakes Scheme to the west. The site is highly disturbed and has recently been filled in the course of rehabilitation works, which are occurring on the site following its previous use as a tailings pond for quarrying. The works are expected to take between 1 and 3 years to complete.

The site is located in the Penrith Lakes Scheme and is zoned as 'employment' under State Environmental Planning Policy (Precincts - Western Parkland City) 2021 (Western Parkland SEPP).





**Figure 1 |** Regional context map, subject site highlighted in red (Source: ePlanning Spatial Viewer)





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

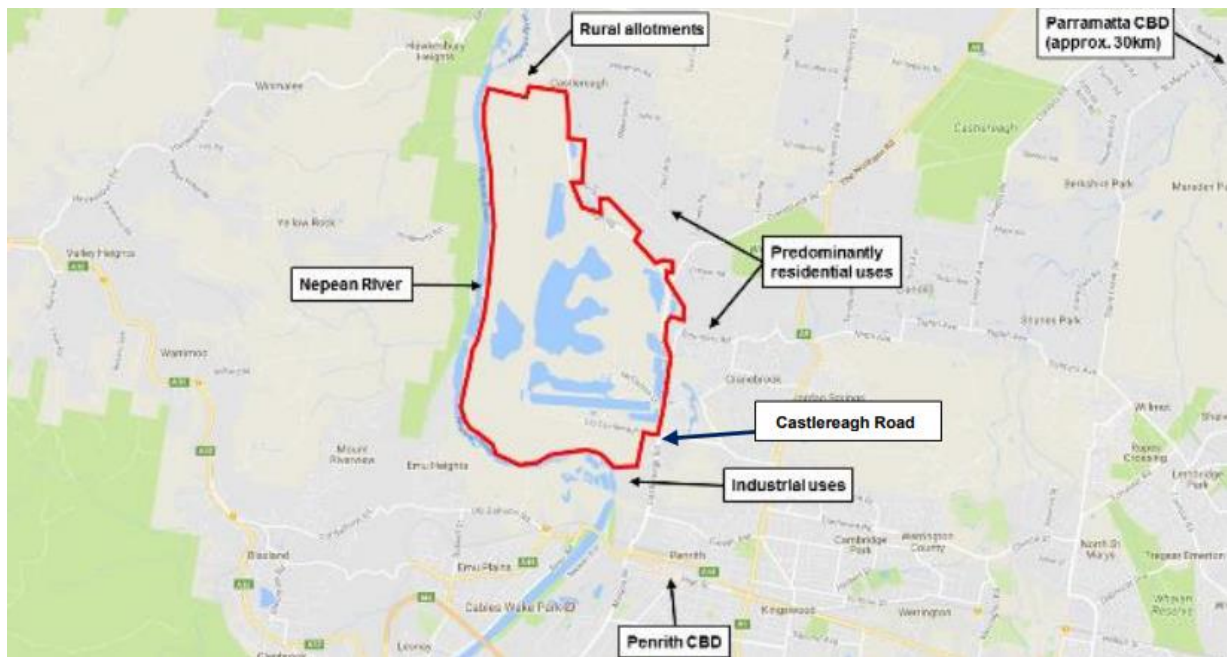
## 1.2 Penrith Lakes Scheme

The Penrith Lakes Scheme (the Scheme) is a 30-year quarrying and rehabilitation proposal being undertaken by the Penrith Lakes Development Corporation (PLDC) in accordance with a Deed of Agreement, dated 11 August 1987 (amended 14 August 1989), with the NSW Government. The extent of the Scheme is identified in Figure 3.

The Scheme is located within the Nepean River floodplain. It is being transformed from a sand and gravel quarry into a water-oriented recreation park, with land suitable for rural, tourism and employment uses. Quarrying activities on the site ceased in September 2015. Since then, PLDC has been progressively rehabilitating the site.

Development on the Penrith Lakes site is governed by the Western Parkland SEPP. The Penrith Lakes Scheme comprises approximately 80 ha of waterways, 110 ha of parklands, 118 ha of environmental area, 33 ha of employment area and 52 ha of tourism area, and 1,330 ha of unzoned land subject to future land use planning, following the completion of flood investigations and community consultation.





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

## 1.3 Related projects and works

### 1.3.1 Approval history

On 31 March 2022, development consent was granted by Land and Environment Court (LEC) for the development of the Nepean Business Park under DA9876.

The consent included approval for:

- Torrens Title Subdivision of the site into 5 lots including four environmental lots and one residual lots
- 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.

Condition C23 of the development consent required certain road works to be undertaken by the applicant as part of the subdivision works:

*C23. Prior to the commencement of construction for each stage referred to in (a)-(c) below, the Applicant must submit plans and technical specifications for that stage, to the satisfaction of the relevant roads authority, for the following works:*

*(a) left turn deceleration lane from Old Castlereagh Road to the approved northern entry road (Road 3) at Stage 6;*

*(b) left turn deceleration lane from Castlereagh Road to Lugard Street at Stage 9; and*

(c) shared pedestrian and bicycle pathway on the south side of Lugard Street from the site to Castlereagh Road to be delivered in Stage 1.

The condition was imposed as part of the court determination. The upgrade to the Castlereagh Road, Lugard Street intersection to provide the left turn deceleration lane was agreed upon by the traffic experts for both the Applicant and the Minister (GHD as expert) as part of the joint conferencing in the LEC proceedings:

*"The remaining issues concerning the local traffic network relate to the intersections of Castlereagh Road and Lugard Street, and Old Castlereagh Road and Road 3 of the proposed development.*

*Both Great River and the Minister agree that this resolved by agreed conditions for certain road works to be carried out at those two intersections."*

### 1.3.2 Previous Modifications

The development consent has been modified once, with two modifications currently under assessment (Table 1)

**Table 1 | Summary of Modifications**

| Modification | Description   | Decision maker | Type | Date                       |
|--------------|---|----------------|------|----------------------------|
| <b>Mod 2</b> | Modification to allow for 24/7 construction works                             | Department     | 4.56 | Under Assessment           |
| <b>Mod 3</b> | Modification to Torrens Title Subdivision                                     | Department     | 4.56 | Approved 19 September 2023 |
| <b>Mod 4</b> | Modification to remove lot consolidation prior to Community Title Subdivision | Department     | 4.56 | Under Assessment           |

## 2 Proposed modification

The applicant seeks to delete condition C23(b) from the development consent. The condition requires the provision of a left turn deceleration lane at the intersection of Castlereagh Road and Lugard Street.

*C23. Prior to the commencement of construction for each stage referred to in (a)-(c) below, the Applicant must submit plans and technical specifications for that stage, to the satisfaction of the relevant roads authority, for the following works:*

*(a) left turn deceleration lane from Old Castlereagh Road to the approved northern entry road (Road 3) at Stage 6;*

*~~(b) left turn deceleration lane from Castlereagh Road to Lugard Street at Stage 9; and~~*

*(c) shared pedestrian and bicycle pathway on the south side of Lugard Street from the site to Castlereagh Road to be delivered in Stage 1.*

The applicant has justified the modification by stating that the deceleration lane is unnecessary given that the development will have no material effects on traffic at this point and that local roads can easily accommodate any additional traffic generated by the development. The modification was supported by technical advice from a traffic engineer.

## 3 Statutory context

### 3.1 Scope of modification and assessment pathway

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

**Table 2 |** Permissibility and assessment pathway

| Consideration                | Description   |
|------------------------------|---|
| <b>Scope of modification</b> | <p>Modification by consent authorities of consents granted by the Court</p> <p>The Department has reviewed the scope of the modification and considers that it can be characterised as a modification of a consent granted by the court, therefore falls under the scope of 4.56 of the EP&amp;A Act.</p> <p>The Department is satisfied the proposed modification is within the scope of section 4.56 of the EP&amp;A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.56 of the EP&amp;A Act rather than requiring a new development application to be lodged.</p> |
| <b>Consent Authority</b>     | <p>The Minister continues to be the consent authority under section 5.7(a) of the Western Parkland SEPP and has the capacity to modify the consent of the project.</p>  |
| <b>Decision-maker</b>        | <p>Under clause 5.7(a) of the Western Parkland SEPP, the Minister is the consent authority for development applications on land within the unzoned land and Employment, Environment, Parkland, Tourism or Waterway zones.</p> <p>In accordance with the Minister's delegation dated 9 March 2022, the Director, Regional Assessments may determine the application as:</p> <ul style="list-style-type: none"><li>• Council has not made an objection</li><li>• there are less than 15 public submissions in the nature of objection</li><li>• a political disclosure statement has not been made.</li></ul>   |

### 3.2 Mandatory matters for consideration

#### 3.2.1 Matters of consideration required by the EP&A Act

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



by the consent authority for the granting 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   |
|--|---|
| <b>Environmental planning instruments, proposed instruments, development control plans &amp; planning agreements</b> | <p>The Department's considers that the proposed modification does not satisfy the requirements of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP). Further consideration of the TI SEPP and other EPIs has been undertaken at <b>Appendix B</b>.</p> <p>The modification does not alter any previous assessment of the DCP.</p> |
| <b>EP&amp;A Regulation</b>   | <p>The application satisfactorily meets the relevant requirements of the EP&amp;A Regulation, including the procedures relating to applications and public participation procedures for a modification.</p>   |
| <b>Likely impacts</b>  | <p>The modification report, RtS and SRtS has not demonstrated that the removal of condition C23(b) would have acceptable impacts. This is discussed in detail at <b>Section 6</b>.</p>  |
| <b>Suitability of the site</b>   | <p>The modification does not alter the suitability of the site for the development.</p>   |
| <b>Public submissions</b>  | <p>Consideration has been given to the submissions and advice received during the exhibition period. See <b>Sections 4</b>.</p>   |
| <b>Public interest</b>   | <p>The proposal is considered to not be in the public interest, as discussed in <b>Sections 5 and 6</b>.</p>  |

## 4 Engagement

### 4.1 Department's engagement

In accordance with the EP&A Regulation the Department made the modification application publicly available on the Department's website on 1 March 2023 and also forwarded the application to Penrith City Council and Government Agencies on 1 March 2023 for comment as well as to all persons who made a submission on the original application in accordance with clause 4.56(1)(b) of the EP&A Act.

### 4.2 Notification of the modification

#### 4.2.1 Summary of advice received from government agencies

The Department received advice from 1 government agency on the modification report and note that a further 3 agencies have no objection.

A summary of the agency advice is provided in **Table 4**. A link to the full copy of the advice is provided in **Appendix A**.

**Table 4 | Summary of agency advice**

| Agency       | Advice summary   |
|--------------|--|
| <b>TfNSW</b> | <p>Modification Application</p> <p>TfNSW provided the following comments:</p> <ul style="list-style-type: none"> <li>• The SIDRA model files were not provided for review by TfNSW</li> <li>• There seems to be a major error in the models which has affected the results and therefore the conclusions made</li> <li>• The report is misleading in that it as does not clearly indicate the change in left turn movement values such as changes in queue lengths and changes in delays to all movements</li> <li>• TfNSW disagrees that with the Traffic advice that there would be no network benefits with the left turn lane that the developer has been conditioned to provide as: <ul style="list-style-type: none"> <li>– The current traffic signal operation allows the left turn into Lugard Street to operate during two phases of the traffic signal cycle and therefore the additional left turn lane would allow for these vehicles to enter Lugard Street in approximately 80% of the total cycle time</li> <li>– The left turn lane allows for the storage of left turning vehicles when pedestrians cross Lugard Street in A phase and therefore still allow for two through lanes northbound in Castlereagh Road</li> </ul> </li> </ul> |

The following agencies raised no concerns or provided no comment:

- NSW Rural Fire Service
- Environmental Protection Authority
- Endeavour Energy.

#### 4.2.2 Summary of council submissions

Penrith City Council provided comments on the project.

A summary of the issues raised by council is provided in Table 5 below.

**Table 5 | Summary of issues raised by council**

| Council              | Submission summary   |
|----------------------|--|
| Penrith City Council | <p>Mod Application</p> <ul style="list-style-type: none"><li>- Council did not comment on or inform the original development consent.</li><li>- Council wish to review the TfNSW comments prior to responding.</li></ul> <p>RtS</p> <ul style="list-style-type: none"><li>- Council wish to review the TfNSW comments on the RtS prior to responding.</li></ul> <p>Subsequent RtS Submission</p> <ul style="list-style-type: none"><li>- Council concur with advice provided by TfNSW.</li></ul> |

#### 4.2.3 Summary of Public Submissions

No public submissions were received.

### 4.3 Response to submissions

Following the public exhibition period, the Department asked the applicant to respond to the advice received from government agencies on 6 April 2023. A further RFI was issued on 18 April 2023 requesting the applicant to address the inconsistencies in the traffic report including the land use split and traffic generation.

The applicant provided a RtS package that comprised a revised traffic report and model to the Department on 1 June 2023 (see **Appendix A**).

The Department published the submissions report on the NSW planning portal and forwarded the submissions report to relevant government agencies and Penrith City Council for comment on 9 June 2023.

### 4.4 Request for further information

On 17 August 2023, the Department issued a Request for Information (RFI) to the applicant. The RFI highlighted that:

- the Department did not support the proposed modification.
- there was no justification provided for the traffic distribution amendments made in the traffic model



- the significant reduction in queue length with the turning lane in place signifies an improvement in the intersection operation.
- use of alternative traffic distribution for 'sensitivity testing' is not supported.

The applicant provided a response to the RFI on 16 October 2023. The RFI response included a revised traffic modelling report with revised traffic distribution.

The Department published the submissions report on the NSW planning portal and forwarded the submissions report to TfNSW for comment on 20 October 2023.

## 4.5 Independent Advice

The Department sought independent traffic advice from GHD during the assessment of the application. GHD were the traffic experts in the LEC proceedings and had previously prepared a comprehensive traffic assessment for the development (the GHD report).

GHD reviewed:

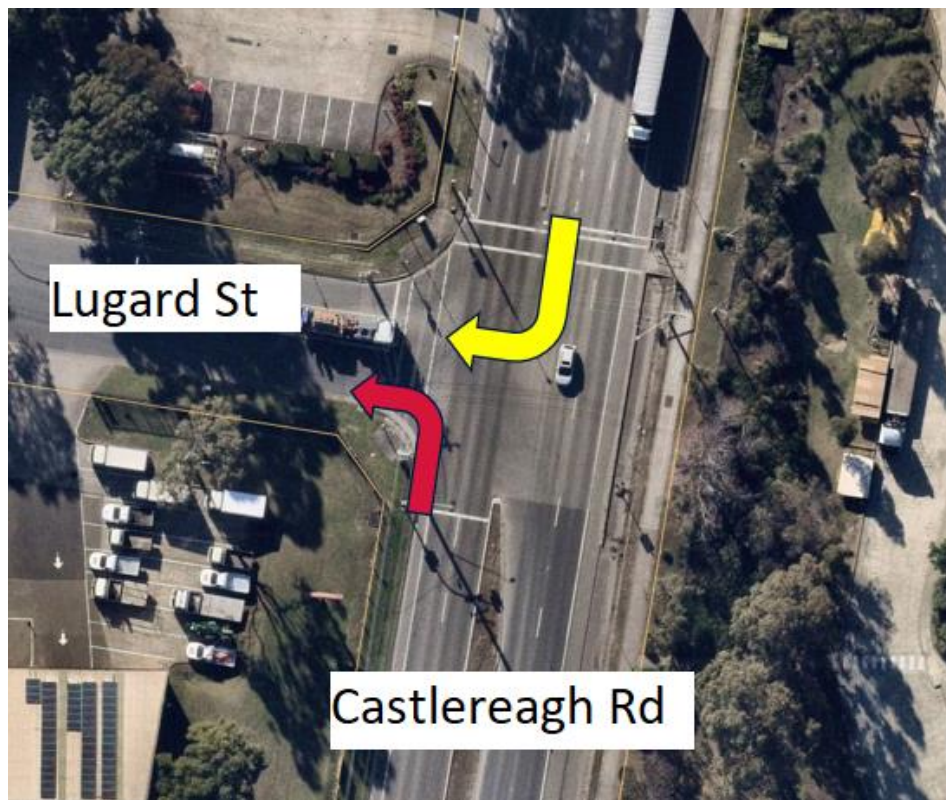
- the applicant's traffic report submitted with the Development Application (dated 18 January 2023)
- the applicant's response to submissions and request for information (dated 1 June 2023)

## 5 Assessment

The Department has considered the SEE, Council comments, the RtS and supplementary RtS in its assessment of the development. The Department considers the key assessment issue is the deletion of Condition C23(b) and its potential traffic impacts.

### 5.1 Deletion of Condition C23(b)

The applicant has sought a modification to the development consent to delete condition C23(b). The condition requires the provision of a deceleration lane at the intersection of Castlereagh Road and Lugard Street as outlined in Figure 4.



**Figure 4** | Intersection of Castlereagh Road and Lugard Street. Deceleration left turn lane (Red) and southbound right turn lane (Yellow) (Source: Nearmaps as annotated)

The applicant's modification report included advice from a traffic engineer, and traffic modelling that concluded that the provision of the deceleration lane would have no benefit to the intersection operation. The advice was based on traffic modelling utilising a 25% traffic distribution turning left into Lugard Street (red movement in Figure 4). The report also utilised different traffic generation rates to those utilised as part of the previous LEC proceedings (rates from the GHD report). The applicant cited disagreement with the assumptions made around the traffic generation for the use of the two rates, noting that no agreement was established as part of the LEC proceedings.

On review of the advice, TfNSW provided advice that outlined:

- the SIDRA model files were not provided for review by TfNSW.
- there seems to be a major error in the models which has affected the results and therefore the conclusions made.
- the report is misleading in that it as does not clearly indicate the change in left turn movement values such as changes in queue lengths and changes in delays to all movements
- TfNSW disagrees that with the Traffic advice that there would be no network benefits.

Council advised that they wish to review the final TfNSW comments prior to responding to the modification.

The Department sought independent advice on the traffic report. The advice was largely consistent with the advice provided by TfNSW, and also noted:

- The traffic modelling departs from the assumptions agreed upon in the LEC joint conferencing, including changes to the traffic generation and traffic distribution
- The modelling is isolated to a single intersection
- The decrease in the queue length as a result of the inclusion of the left turn lane results in an improvement in the intersection.

The Department requested the applicant address the issues raised by TfNSW as well as other issues around land use split and traffic generation.

The applicant provided an RtS responding to the TfNSW comments that comprised a revised traffic report. The revised report provides responses to the TfNSW comments and a revised traffic model utilising both the applicant's revised traffic rates and the GHD rates. This report utilised a 30% traffic generation turning left into Lugard Street.

The revised report concluded that *'there is no clear and obvious benefit that would result from the addition of the left turn lane. Conversely, there are disbenefits as outlined above in addition to the disruption of traffic flows along Castlereagh Road that would occur during construction'*. Further to this, the report outlined that the provision of the left turn lane would have an adverse impact on the efficiency of the right turn southbound traffic movement into Lugard Street (Identified in yellow in Figure 4).

The RtS documents were forwarded to TfNSW for review.

TfNSW provided further advice dated 16 August 2023:

- TfNSW disagree with the traffic distribution provided in the analysis and is of the opinion that 50 to 70% of development traffic would use Castlereagh Road.

- TfNSW agrees with DPE's comments that the traffic impact assessment of the modification should use the land use percentage spilt and GFA spilt recommended in the GHD report
- The impact of queuing of not providing the left turn is significant with queues of 84.6m in the AM peak and 136.1m in the PM peak, based on trip distribution of 30% turning left (which TfNSW consider an underestimation)
- The provision of the left turn lane would reduce queue for the left turn by 74% in the AM and 94% in PM. This is due to the traffic signal phasing which allows the left turn movement to be given a green signal when Lugard Street is given a green signal.

Council reviewed the advice issued by TfNSW and concurred with their advice. Council maintained that the left turn lane would mitigate the impact of the development on traffic flow and queueing on the road network.

The Department issued an RFI on 17 August 2023 outlining that the Department did not support the deletion of C23(b), there was no justification for the differing traffic distribution provided and that the provision of the left turn lane results in a significant improvement in the intersection operation through the reduction in queue lengths.

In response to the RFI, the applicant provided further traffic advice to address the issues raised by the Department and TfNSW. This including further modelling for traffic distributions of 50% and 70% turning left into Lugard Street.

The report concluded that given there is no significant decrease in the delay associated with the intersection, the addition of the left turn lane would not have a benefit. The applicant cited section 4.2.2 of the RTA Guide to Traffic Generating Development in support of the modification that states:

*"The best indicator of the level of service at an intersection is the average delay experienced by vehicles at that intersection. For traffic signals, the average delay over all movements should be taken."*

The Department referred the revised modelling to TfNSW who responded by stating that TfNSW reiterates the previous advice and that TfNSW does not support the modification to remove development consent condition 23(b).

### 5.1.1 Department's Considerations

The Department has reviewed the applicant's modification request, supporting documentation and RtS as well as advice received from TfNSW and Council. In addition, the Department sought an independent review of the traffic advice and modelling.

The Department notes that the applicants traffic report includes two rates of traffic generation, those used in the GHD Report (as part of the LEC proceedings), and alternative rates which generate



69% less vehicle movements than the GHD rates. The traffic report details that the alternative rate is for 'sensitivity testing'.

The Department considers the industry standard traffic rates (being the GHD rates that are reflective of the RMS Technical Direction rates) rather than the alternative rates should be utilised for the modification.

The Department considers that the applicant's traffic modelling has not demonstrated that the left turn deceleration lane would not have any benefit on the operation of the intersection. The Department notes that the traffic modelling is isolated to the intersection of Lugard Street and Castlereagh Road, and has not considered any impacts of the removal of the turning lane on other intersections (particularly intersections on Castlereagh Road to the south of Lugard Street).

The provision of a standalone turning lane would improve through traffic flows by removing turning vehicles from the lefthand northbound lane. Further to this, the applicant's traffic model highlights that the queue length for the left turn lane would significantly reduce. Table 6 below provides a summary of the intersection results for left turn movements extrapolated from the applicant's traffic modelling reports.

**Table 6 | Castlereagh Road and Lugard Street Left Turn intersection results (Source: Extrapolated from applicant's traffic modelling).**

| Case                    | AM Peak                |                     |                  | PM Peak                |                     |                  |
|-------------------------|------------------------|---------------------|------------------|------------------------|---------------------|------------------|
|                         | Left Turn Demand (veh) | Left Turn Delay (s) | Queue length (m) | Left Turn Demand (veh) | Left Turn Delay (s) | Queue length (m) |
| <b>No LT Lane (30%)</b> | 607                    | 6.4                 | 84.6             | 110                    | 6.1                 | 136.1            |
| <b>LT Lane (30%)</b>    | 607                    | 6.2                 | 22.4             | 110                    | 8.1                 | 8.6              |
| <b>No LT Lane (50%)</b> | 975                    | 6.4                 | 73               | 169                    | 6.2                 | 156              |
| <b>LT Lane (50%)</b>    | 975                    | 6.4                 | 54               | 169                    | 8.1                 | 4.8              |

As can be seen in both the AM and PM peak for both the traffic distribution of 30% and 50% using Lugard Street, there is a significant reduction in queue lengths for vehicles turning left in both the AM and PM peak periods. This represents a significant number of vehicles removed from the

through traffic lanes on Castlereagh Road, ensuring an improvement in northbound through traffic movements. It is noted that there does appear to be a disproportionate queue length for the 50% traffic distribution in the AM.

With respect to the applicant's point for the Guide to Traffic Generating Development, and the intersection delay being the best measure, the Department notes that the delay is only one measure of an intersection's performance, and that all performance indicators should be considered in assessing intersection performance. This is reinforced in section 4.2.2 of Guide to Traffic Generating Development:

*"Any particular assessment should take into account site-specific factors including maximum queue lengths (and their effect on lane blocking), the influence of nearby intersections and the sensitivity of the location to delays"*

In this instance, the queue lengths associated with the removal of condition C23(b) reduce through traffic to a single lane, thereby compromising the efficiency of that traffic movement, likely having flow on impacts to intersections to the south of Castlereagh Road and Lugard St.

The Department considers that the deletion of condition C23(b) cannot be supported as:

- the removal of the left turn deceleration lane would result in a reduced performance of the intersection and the surrounding road network
- There is an identified benefit by providing the left turn lane through the significant reduction in queue lengths
- The reduced queue lengths removes vehicles from the 'through' traffic lanes, improving the efficiency of through traffic
- The revised traffic distribution provided by the applicant has demonstrated that the problem is exacerbated with increases in traffic distribution
- TfNSW and Council are not supportive of the deletion of condition C23(b)
- The removal of Condition C23(b) is not in the public interest as there is an identified disbenefit from the removal of the requirement to provide the left turn lane.

## 6 Evaluation

The Department's assessment has considered the relevant matters and objects of the EP&A Act, including the principles of ecologically sustainable development (Sections Error! Reference source not found. & 5) and advice from government agencies, local council and public submissions (Section 4).

If approved, the modification would result in a decreased efficiency of the Castlereagh Road and Lugard Street intersection.

As considered through this report, the provision of the left turn deceleration lane (as currently approved) would have a significant improvement on the operation of the intersection.

The Department has formed the opinion:

- the left turn deceleration lane is required to ensure the efficient operation of the Castlereagh Road and Lugard Street intersection
- the removal of the requirement to provide the left turn deceleration lane is not supported as it would result in reduced efficiency of the intersection
- changes in traffic light phasing can be used to further improve the intersection operation
- therefore the modification is recommended for refusal because:
  - The modification does not satisfy the matters for consideration contained in section 4.15(1) of the Environmental Planning and Assessment Act 1979, particularly:
    - clause b) the modification has not demonstrated that the traffic impacts of the removal of condition C23(b) are acceptable.
    - clause e) the development is not considered to be in the public interest.
  - The modification does not satisfy the matters for consideration contained in clause 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021 with respect to:
    - clause 2.122(4)(b)(ii)(a) the accessibility to the site is decreased in terms of the efficient movement of people and freight to and from the site as a result of the deletion of condition C23(b)
    - clause 2.122(4)(b)(iii) there is an increase in potential traffic safety and road congestion implications as a result of the deletion of condition C23(b)

## 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 refuse the modification
- agrees with the key reasons for refusal listed in the notice of decision
- **refuses the modification application** for the Nepean Business Park Subdivision (DA9876-Mod-1)
- signs the attached instrument of refusal (**Appendix C**).

Recommended by:



**Chris Eldred**  
Senior Planning Officer  
Regional Assessments

Recommended by:



**Erin Murphy**  
Team Leader  
Regional Assessments



## 8 Determination

The recommendation is adopted by:

A handwritten signature in blue ink, appearing to read 'K T' followed by a long horizontal stroke.

Keiran Thomas

Director

Regional Assessments

# Glossary

| Abbreviation                 | Definition  |
|------------------------------|---|
| <b>Council</b>               | Penrith City Council  |
| <b>Department</b>            | Department of Planning, Housing and Infrastructure          |
| <b>EPA</b>                   | NSW Environment Protection Authority                        |
| <b>EP&amp;A Act</b>          | <i>Environmental Planning and Assessment Act 1979</i>       |
| <b>EP&amp;A Regulation</b>   | Environmental Planning and Assessment Regulation 2021       |
| <b>EPI</b>                   | Environmental planning instrument                           |
| <b>EPL</b>                   | Environment protection licence                              |
| <b>ESD</b>                   | Ecologically sustainable development                        |
| <b>LGA</b>                   | Local government area                                       |
| <b>LEP</b>                   | Local environmental plan                                    |
| <b>Minister</b>              | Minister for Planning and Public Spaces                     |
| <b>Planning Systems SEPP</b> | State Environmental Planning Policy (Planning Systems) 2021 |
| <b>SEARs</b>                 | Planning Secretary's Environmental Assessment Requirements  |
| <b>Secretary</b>             | Secretary of the Department of Planning and Environment     |
| <b>SEE</b>                   | Statement of Environmental Effects                          |
| <b>SEPP</b>                  | State environmental planning policy                         |
| <b>SSD</b>                   | State significant development                               |
| <b>TfNSW</b>                 | Transport for NSW   |

# Appendices

## Appendix A – List of referenced documents

The Department relied upon the following key documents during its assessment of the proposed development:

### Statement of Environmental Effects

<https://www.planningportal.nsw.gov.au/daex/under-consideration/penrith-lakes-employment-lands-subdivision-and-works-da-9876-mod-1>

### Response to Submissions (RtS)

<https://www.planningportal.nsw.gov.au/daex/under-consideration/penrith-lakes-employment-lands-subdivision-and-works-da-9876-mod-1>

### Request for Information

<https://www.planningportal.nsw.gov.au/daex/under-consideration/penrith-lakes-employment-lands-subdivision-and-works-da-9876-mod-1>

### Agency Advice

<https://www.planningportal.nsw.gov.au/daex/under-consideration/penrith-lakes-employment-lands-subdivision-and-works-da-9876-mod-1>

## Appendix B – Statutory considerations

### Environmental Planning Instruments (EPIs)

#### State Environmental Planning Policy (Transport and Infrastructure) 2021

The State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP) aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with relevant public authorities about certain development during the assessment process.

This development is identified as traffic generating development pursuant to clause 2.122 of the SEPP. The Department referred the application to TfNSW for comment as addressed in Section 4 and 5 of this report.

In considering whether to grant consent to the development, the Department is required to consider the following:

1. advice received from TfNSW
2. accessibility of the site, including
  - a. the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and
  - b. the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and
3. any potential traffic safety, road congestion or parking implications of the development

The Department has considered advice received from TfNSW as discussed in Section 4 and 5. Further to this, the impacts on efficiency through the deletion of condition 23(b) and the impacts on road congestion have been significantly addressed in Section 5.

The Department, upon review of clause 2.112 considers that the proposed modification should not be consented to, as discussed throughout this report.

## Appendix C – Recommended instrument of refusal

<https://www.planningportal.nsw.gov.au/daex/under-consideration/penrith-lakes-employment-lands-subdivision-and-works-da-9876-mod-1>