



Planning Assessment Report

Application to Modify Development Consent

DA 175-06-2002 MOD 2 modifying DA 175-06-2002

1 SUMMARY

This report is an assessment of a Modification Application (DA 175-06-2002 MOD 2), under section 96(1A) of the *Environmental Planning and Assessment Act 1979* (the Act) that was lodged by Peter Eccleston Planning Pty Ltd on 21 January 2009.

The original application, DA 175-06-2002 approved the use of the land at 153 Castlereagh Road, Sydney International Regatta Centre (SIRC), Castlereagh as a skydiving landing area for a period of two years from the date of the consent granted. A modification application (MOD 095-09-2004) was then lodged to delete Conditions 2.1 – *Sunset Clause* and 4.1 & 4.2 – *Monitoring*. These conditions were varied, not removed; details of which are discussed further in Section 1.1 of this report.

The subject application, DA 175-06-2002 MOD 2 seeks to modify the development consent by proposing to remove Condition 2.1 – *Sunset Clause* which would result in the permanent use of the land as a skydiving area.

It is recommended that the application be approved to retain the 3 year time limited consent so that future land uses proposed for the site are not restricted in their scope.

1.1 *The proposed modifications*

The applicant is seeking to modify the approved development as follows: -

- Delete Condition 2.1 – *Sunset Clause* that reads
"Approval for the use of the site as a skydiving landing area shall lapse and the proposed development referred to in this consent shall cease (including the removal of associated works used in connection with that development) on 19 November 2009"

The removal of Condition 2.1 – *Sunset Clause* shall result in the permanent use of the land as a skydiving landing area.

1.2 *Site Details*

The site used by 'Simply Skydive' for the use as a skydiving landing area has the real property description of Lot 1 DP 1013504, with a street address of Sydney International Regatta Centre (SIRC), Castlereagh Road, Penrith. The location of the primary landing site is bordered by Castlereagh Road to the South, SIRC Race Lake to the north and SIRC open space parking lots to the east and west. The site is within the local government area of Penrith. The primary landing site is a large flat grassed area with minimal tree coverage and a marquee (30m x 36m) on the site. The land is owned by the NSW Office of Strategic Lands; see Figure 1.



Figure 1: Location Map

1.3 Relevant development approvals / modifications

On 19 November 2002, DA 175-06-2002 was approved by the Director for Urban Assessments. The approval granted consent for the use of the identified land at SIRC to be used as a skydiving landing area for a period of five years from the date of the consent. The proposal also comprised of the erection of a marquee 30m x 36m which would be used to undertake activities ancillary to the skydiving business such as a sheltered area for packing parachutes, editing and dubbing skydiving videos, briefing, administration, waiting and daily storage. Two 6m x 3m toilets were also approved to be located beside the marquee.

On 3 November 2004, MOD 095-09-2004 was approved by the Director for Urban Assessments. The modification approval proposed the removal of two conditions. Condition 2.1 – *Sunset Clause* detailed that the consent would cease at the expiration of five years from the date of the consent. This would have resulted in the permanent use of the site as a skydiving landing area. Instead of removing the condition, it was modified to restrict the operation for an additional two years only (to 19 November 2009). Condition 4.1 – *Monitoring* required the applicant to submit monitoring reports in relation to noise. This condition was not removed due to the possible land use changes within the area over the next five years which may then require the need for noise monitoring.

2 STATUTORY FRAMEWORK

The subject site is located within the boundary of *Sydney Regional Environmental Plan 11 – Penrith Lakes Scheme*. Council is the consent authority for the purposes of the SEPP, except as provided by the Act. However, the Minister for Planning or delegate is the consent authority for modifications to consents granted by the Minister. Therefore, the Minister or delegate is the consent authority for the subject application as the original application was granted by the Minister for Planning on 11 November 2002.

3 CONSIDERATION

3.1 *Assessment under section 96 of the Environmental Planning and Assessment Act 1979 (the Act)*

Section 96(1A) of the Act requires the following matters to be assessed in respect of all applications which seek modifications to approvals:

- *Whether the proposed modification is of minimal environmental impact;*

The proposed modification relates to the use of the subject land as a permanent skydiving landing site. Existing conditions of consent ensure that the site will be managed in an environmentally sensitive manner during the use of the consent. Given that the proposed modification relates to the continued use of the existing consent, the subject modification is considered of minimal environmental impact.

- *Whether the development to which the consent as modified relates is substantially the same development;*

The proposed modification still relates to the use of the land as a skydiving landing area and therefore the works are considered substantially the same development.

- *Whether notification has occurred and any submissions have been considered; and*
- *Any relevant provisions of Section 79C(1).*

A notification period of 14 days was required under Penrith City Council's *Penrith DCP 2006*. One submission was received from Penrith Lakes Development Corporation (PLDC), detailed further at Section 4. The relevant provisions of section 79C (1) of the Act are addressed below.

3.2 *Section 79C 1(a) – The provisions of any environmental planning instrument, draft environmental planning instrument; development control plan; and the regulations*

The application and the likely impacts of the proposed development have been considered, with consideration given to relevant provisions of *Sydney Regional Environmental Policy 11 – Penrith Lakes Scheme*. It is considered that the proposed development complies with the statutory controls and the relevant aims and objectives of this policy.

3.3 *Section 79C 1(b) – likely social, environmental and economic impacts of the proposed development*

Under section 79C 1(b), the consent authority is required to consider the likely impacts of the proposed development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

- *Use of the land as a permanent skydiving landing area*

Sunset clauses were imposed on the previous consents to avoid the possibility of long term land use conflict with future development on surrounding sites (in particular the Penrith Lakes Scheme).

A submission made by the Penrith Lakes Development Corporation (PLDC) expresses similar concerns. They consider it 'prudent to maintain a sunset clause in the development approval until the overall (scheme) land use plan has been determined'.

An application was made to the Department by PLDC on 18 December 2006 for Penrith Lakes to be listed a state significant site under Schedule 3 of *SEPP (Major*

Projects) 2005. The proposed concept plan is currently on hold at PLDC's request while it considers its position on the scheme.

No definitive plan currently exists for the site however considering that previous concept plans for Penrith Lakes have nominated the subject area for different land uses, it is considered inappropriate to remove Condition 2.1 – *Sunset Clause*. This would result in the permanent use of the land as a skydiving landing area which may result in land use conflicts with future possible land uses surrounding the site.

For the abovementioned reason, the deletion of the sunset clause is not supported. The condition shall be modified to restrict the operation to a further 3 years only. This will allow the proposed uses for the subject site to be re-evaluated at this time.

- Noise impacts

The subject land at SIRC has been used as a skydiving landing area for over six years, and in that time no serious noise complaints have been registered with Penrith City Council or the Department. This application is therefore considered appropriate to continue within its existing noise and aircraft movement approvals as stipulated within the existing conditions of consent.

3.4 Section 79C 1(c) – Suitability of the site

Past Structure Plans created by PLDC for the Penrith Lakes Scheme have identified the use of the subject land for various uses such as high rise development, employment uses, open space and sporting fields. Therefore, the site is only considered suitable for the proposed development for a further three years. This is so the PLDC can reassess the subject land use once the consent is due to lapse to be able to identify a suitable land use for the site. As such, Condition 2.1 – *Sunset Clause* shall be amended to reflect this assessment.

3.5 Section 79C 1(d) – Submissions received

Details of consultation, public exhibition requirements and submissions received are detailed under Section 4 of this report.

3.6 Section 79C 1(e) – The public interest

The skydiving operations at the subject site currently provide a tourist attraction to the area and complement the current objectives of the Penrith Lakes Scheme which are to promote the area as a recreational precinct until the extraction processes for sand and gravel on the Castlereagh flood plain are complete. Therefore, this proposal does not contravene the public interest.

4 CONSULTATION / PUBLIC EXHIBITION

The application was required to be notified for 14 days in accordance with Penrith City Council's *Penrith DCP 2006*. Public consultation of the proposed modification was required on the basis that the original development application was notified for 14 days. Furthermore, under the *Penrith DCP 2006*, it was also required to notify persons who previously made submission(s) to the development application.

The Department included in its notification the referral to two Government agencies for comment; Penrith City Council and Penrith Lakes Development Corporation (PLDC). No comments were received from Penrith City Council, however comments were received from PLDC. Comments raised by PLDC were discussed earlier in Section 3.3 of this report.

5 CONCLUSION

The Department has assessed the proposal against the objects of the Act and the provisions of section 79C of the Act and is satisfied that:

- The proposed development as modified is considered to be substantially the same development as that originally approved;
- The proposal would have minimal environmental impact; and
- The amendment of Condition 2.1 – *Sunset Clause* to extend the use of the subject site as a skydiving landing area for a further three years is an acceptable outcome.

On balance, it is considered that the proposed development as modified is acceptable and is recommended for approval.

6 DELEGATION

Under the instrument of delegation dated 4 March 2009, the Minister has delegated to the Director General her functions under section 96(1A) of the Act relating to modifying development consents, such as that proposed.

7 RECOMMENDATION

It is recommended that the Director General in accordance with the Instrument of Delegation issued by the Minister for Planning, on 4 March 2009, pursuant to section 96(1A) of the *Environmental Planning and Assessment Act 1979* and clause 122(2) of the *Environmental Planning and Assessment Regulation 2000*:

- a) **approve** the application to amend Condition B8 of the Consent DA 126-05-2004 (as previously modified by MOD 48-3-2005);
- b) **sign** the Instrument of Approval at **TAG A**; and
- c) **date** the modified condition of consent to the date of signature at **TAG B**.

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8/5/2009.