

Annexure A

Penrith Lakes Development Corporation Ltd
v
Independent Planning Commission

Conditions of Consent

The Land and Environment Court of New South Wales modifies the consent referred to in Schedule 1, subject to the conditions in Schedule 2.

SCHEDULE 1

Development consent:	DA 4 granted by the Minister for Urban Affairs and Planning on 9 September 1998
For the following:	Development for the purposes of implementing the Penrith Lakes Scheme
Applicant:	Penrith Lakes Development Corporation (PLDC)
Consent Authority:	Land and Environment Court of New South Wales
The Land:	Penrith Lakes Scheme
Modification:	DA 4 MOD 11: the modification is for the importation of an additional five million tonnes of Virgin Excavated Natural Material and/or Excavated Natural Material to the site.

SCHEDULE 2

The consent is modified as follows:

- (a) Proposed Development is amended by the insertion of the **bold and underlined** words / numbers as follows:

Development as described in the development application identified as DA 4 and its supporting papers for the purposes of implementing the Penrith Lakes Scheme as defined in Schedule 1 of *Sydney Regional Environmental Plan No. 11 – Penrith Lakes Scheme* on land described in, and identified on the plan, attached at Schedule B, and subsequently modified by:

- Modification Application and accompanying noise assessment dated June 2004, and prepared by Wilkinson Murray Pty Ltd;
- Modification Application and accompanying SEE dated March 2005, and prepared by Arup Pty Ltd (which was subsequently modified by the supplementary noise information prepared by Arup Pty Ltd, and dated 22 August 2005);
- Modification Application DA4 MOD 3 and accompanying SEE titled *Penrith Lakes Development Corporation, Importation of VENM* dated 22 December 2008, including the response to submissions dated 12 May 2009;
- Modification Application DA4 MOD 4 and accompanying Environmental Assessment titled *Section 75W Application – Flood Discharge Pipe Construction at Penrith Lakes* dated November 2010, including the Supplementary Report titled *Wildlife Lake Section 75W – Weir and Flood Outlet Pipe Supplementary Report* dated 6 December 2010, and the response to submissions dated 21 January 2011;
- Modification Application DA4 MOD 5 and accompanying Environmental Assessment titled *Section 75W Application – Wildlife Lake Weir at Penrith Lake* dated November 2010, including the response to submissions dated 21 January 2011, and
- Modification Application DA4 MOD 6 and accompanying Environmental Assessment titled *Modification to DA4 Penrith Lakes Scheme* dated 30 June 2011.
- Modification Application DA4 MOD 7 and accompanying Environmental Assessment titled *Modification to DA4 Penrith Lakes Scheme* dated 28 November 2011
- Penrith Lakes Development Corporation – Importation of VENM Modification Section 75W Application: Environmental Assessment (ARUP, 30 August 2012).
- Modification Application DA 4 MOD 9 and accompanying Environmental Assessment titled *Penrith Lakes Development Corporation, Importation of VENM and ENM Modification*, dated 25 September 2014 including the response to submissions dated 13 January 2015.
- Modification Application DA4 MOD 10 and accompanying Environmental Assessment titled *Penrith Lakes Development Corporation, Section 75W Amendment Application - Importation ENM/VENM Summary Report*, dated 1 December 2015, including Submissions Report dated 1 March 2017 updated on 12 April 2017.
- **Modification Application DA4 MOD 11 and accompanying Environmental Assessment titled Statement of Support for Section 4.55(2) Modification Application to DA 02, DA 03 and DA 04, dated May 2018, including response to submissions dated 28 September 2018 and the following plans:**

<u>Plan Number</u>	<u>Plan Name</u>	<u>Revision</u>	<u>Date</u>
<u>110088/CC200</u>	<u>Cover Sheet, Index and Notes</u>	<u>C</u>	<u>n.d</u>
<u>110088/CC201</u>	<u>Setout Plan</u>	<u>C</u>	<u>29/10/18</u>
<u>110088/CC202</u>	<u>Engineering Plan</u>	<u>C</u>	<u>29/10/18</u>
<u>110088/CC203</u>	<u>Channel Long Section</u>	<u>C</u>	<u>29/10/18</u>
<u>110088/CC204</u>	<u>Channel Cross Sections Sheet</u>	<u>C</u>	<u>29/10/18</u>
	<u>1</u>		
<u>110088/CC205</u>	<u>Channel Cross Sections Sheet</u>	<u>C</u>	<u>29/10/18</u>

	<u>2</u>		
<u>110088/CC206</u>	<u>Scour Protection Plan</u>	<u>C</u>	<u>29/10/18</u>
<u>110088/CC207</u>	<u>Cut and Fill Plan</u>	<u>C</u>	<u>29/10/18</u>
<u>110088/CC208</u>	<u>Stormwater Management Plan & Notes</u>	<u>C</u>	<u>29/10/18</u>

- (b) Schedule A Condition 14B is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~stuck-out~~ words/numbers as follows

14B Prior to the commencement of VENM and ENM importation in accordance with MOD 5 11, PLDC shall notify the EPA and Department regarding the sources of VENM and ENM including documentation that material has been classified in accordance with the Waste Classification Guidelines, Part 1 Classifying Waste, EPA 2014 and the requirements of the EPA 2014 Excavated Natural Material Order and Excavated Natural Material Exemption.

- (c) Insert the following conditions after Condition 14B of Schedule A

14C Within 1 month of commencement of VENM and ENM importation in accordance with MOD 11, PLDC shall implement erosion and sediment control measures on site, in accordance with the relevant requirements in the latest version of the *Managing Urban Stormwater: Soils and Construction guideline*. These erosion and sediment control measures shall to be inspected and maintained by PLDC for the duration of VENM and ENM importation on the site.

14D. PLDC must submit updated plans of the flowpath between Duralia Lake and Lake A. The updated plans must:

- be submitted to and approved by the Secretary prior to issue of the construction certificate or commencement of works associated with DA4 MOD 11;
- be prepared by a suitably qualified and experienced person;
- make reference to the geotechnical requirements as set out in the Northern Lot 4 Precinct Two Year Plan (dated November 2015), particularly sections 3.2.4 and 4.4.1, in relation to the western transition of the flowpath between Duralia Lake and Lake A between RL21.0m AHD to the operating level of Lake A;
- ensure the Duralia Lake and Lake A flowpath transitions are consistent with the transitions from the Lakes and flowpath up to the finished ground levels to the north and south of the flowpath, at typically RL24.m/RL24.5m;
- include on the Scour Protection Plan, plan number 110088/CC206 Rev C dated 29/10/18, a note referencing drawing PLDC – 11862 Rev B Northern Lot 4 Precinct – Two Year Plan.

PLDC must carry out the development in accordance with any updated plans approved by the Secretary under this condition.

- (d) Schedule A Condition 32 is amended by the insertion of the **bold and underlined** words / numbers as follows:

32 The Applicant shall ensure that the development described in DA4 MOD9, and **DA4 MOD10 and DA4 MOD11** complies with the hours of operation set out in Table 22:

Monday to Friday	Saturdays	Sundays and Public Holidays
6:00 am to 9:00 pm	6:00am to 3:00pm	No work

Table 2 – Hours of Operation

- (e) Insert the following condition after Condition 36A of Schedule A:

Noise and Dust Management Plans

- 36B PLDC shall prepare and implement a Noise Management Plan (NMP) and a Dust Management Plan (DMP) for VENM and ENM importation approved under DA4 MOD 11 to the satisfaction of the Secretary. The NMP and DMP must:
- (a) be submitted to the Secretary within three months of commencement of works associated with DA 4 MOD 11;
 - (b) be prepared in consultation with Council and the EPA;
 - (c) verify that the project meets the relevant noise and air quality criteria in the approval and EPL;
 - (d) if any non-compliances occur, describe the measures that would be implemented to ensure compliance with the relevant conditions of this approval and the EPL; and
 - (e) outline procedures to manage responses to any complaints or issues raised by the owners of affected residences.
- The NMP and DMP must be approved prior to importation of 9.5 million tonnes of VENM and ENM.
- PLDC must carry out the development in accordance with any NMP and DMP approved by the Secretary under this condition.

- (f) Insert the following conditions after Condition 43A of Schedule A:

- 43B (1) PLDC shall investigate the need for road upgrades on the section of Castlereagh Road between McCarthy's Lane and Nepean Street to accommodate the VENM and ENM importation approved under DA4 MOD 11. The assessment shall:
- (a) be prepared by a suitably independent and qualified expert;
 - (b) be prepared in consultation with Penrith City Council and the RMS;
 - (c) establish any road upgrades and traffic management measures required to address all road pavement and traffic safety issues associated with VENM and ENM importation in accordance with MOD 11 on this section of road.

The assessment shall be submitted to the Secretary for approval prior to importation of 9 million tonnes of VENM and ENM to the site.

- (2) If road upgrade works are required under condition 43B(1), PLDC shall provide those road upgrades on the above section of Castlereagh Road between McCarthy's Lane and Nepean Street, prior to importation of 9.5 million tonnes of VENM and ENM to the site, to the satisfaction of the RMS.

Note: these works must be provided at no cost to Penrith City Council or RMS and all required separate approvals required for the road works must be obtained from the relevant authority

- 43C (1) PLDC shall prepare a precondition road survey in accordance with RMS specifications for the haulage roads identified in Condition 42A. The precondition road survey must be prepared by a suitably qualified and experienced person within 1 month of commencing importation of VENM and ENM to the site approved under DA4 MOD 11. A copy of the precondition road survey shall be submitted to the Department, RMS and Council within 1 week of the date of the precondition road survey.
- (2) Further dilapidation reports shall be undertaken by PLDC for haulage roads identified in Condition 42A on a four monthly basis for the duration of works associated with DA4 MOD 11, with a final post-dilapidation report prepared at the completion of works. A copy of each dilapidation report shall be submitted to the Department, RMS and Council.

(3) PLDC shall rectify any deterioration of the road pavement as a result of the VENM and ENM importation approved under DA4 MOD 11, that adversely affects the existing road users during the works. At completion of the works, a final post-dilapidation report shall be carried out. All maintenance and permanent repairs will be carried out within six months of completion of works, to a condition equivalent to that identified in the precondition road survey, and prior to the release of any occupation certificate for works approved under DA4 MOD 11, to the satisfaction of the relevant authority.

Note: these works must be provided at no cost to Penrith City Council or RMS and all required separate approvals for the road works must be obtained from the relevant authority.

- (g) Schedule A Condition 48B is amended by the insertion of the **bold and underlined** words / numbers as follows:

48B The Applicant shall ensure that:

- (a) all loaded vehicles entering or leaving the site are covered; ~~and~~
- (b) all loaded vehicles leaving the site are cleaned of materials that may fall on the road, before they leave the site-; **and**
- (c) **the vehicles access points passing through gates 1, 2 and 3 must be sealed from Castlereagh Road to at least 5 metres beyond the gates;**
- (d) **a wheel wash facility must be installed, maintained and operated at gates 1, 2 and 3;**
- (e) **appropriate measures must be put in place at gates 1, 2 and 3 to ensure that all vehicles leaving gates 1, 2 and 3 have their wheels washed before leaving the site. All waste water generated in the washing process must be disposed in a manner that does not pollute waters; and**
- (f) **prior to commencement of VENM and ENM importation in accordance with MOD 11, an automated jet spray wheel wash and associated drainage pond is to be installed, to the satisfaction of the EPA, to ensure that all vehicles have their wheels washed before leaving the site. All waste water generated in the washing process must be disposed in a manner that does not pollute waters.**

- (h) Schedule A Condition 48C is deleted and replaced as follows:

48C The importation of VENM and ENM shall be limited to 13 million tonnes at a maximum rate of 3 million tonnes per year.

- (i) Insert the following conditions after Condition 48C of the Schedule:

Monitoring of Fill

48D PLDC shall:

- 1) keep accurate records of the amount of VENM and ENM imported to the site (on a monthly basis); and
- 2) make these records publicly available on its website at the end of each calendar year.

Road Transport Protocol

49E PLDC shall prepare and implement a Road Transport Protocol, in consultation with Council and RMS. This protocol shall:

- 1) be submitted to the Secretary for approval within three months of commencement of works associated with DA 4 MOD 11;
- 2) include a Traffic Management Plan, which includes:
 - a) procedures to ensure that drivers adhere to the designated haulage routes;

- b) details of procedures for receiving and addressing complaints from the community concerning traffic issues associated with truck movements;
 - c) measures to ensure that the provisions of the Traffic Management Plan are implemented including, but not limited to, driver training in the heavy vehicle drivers' Code of Conduct; and
 - d) procedures for ensuring compliance with and enforcement of the heavy vehicle drivers' Code of Conduct; and
- 3) include a Code of Conduct for heavy vehicle drivers that addresses:
- a) appropriate travelling speeds;
 - b) staggering of truck arrivals and departures to ensure a regular trucking schedule throughout the day;
 - c) instructions to drivers to maintain appropriate distances between vehicles;
 - d) instruction to drivers to adhere to the designated haulage routes;
 - e) instruction to drivers to be properly safety conscious and to strictly obey all traffic regulations; and
 - f) appropriate penalties for infringements of the Code.

PLDC must carry out the development in accordance with any Road Transport Protocol approved by the Secretary under this condition.

**End of modification
(DA4 MOD 11)**