



Planning Assessment Report

Application to Modify Development Consent

DA 085-04-2004 MOD 1 modifying DA 085-04-2004

1 SUMMARY

This report is an assessment of a Modification Application (DA 085-04-2004 MOD 1), under section 96(1A) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) that was lodged by Peter Eccleston Planning Pty Ltd on 3 August 2009.

The original application, DA 085-04-2004 approved the use of the land at 153 Castlereagh Road, Sydney International Regatta Centre (SIRC), Castlereagh for recreation purposes which is defined as a pastime, diversion, exercise, occupation, pursuit or other activity affording relaxation, refreshment, consolation, amusement or enjoyment, which may include commercial activities, including movie screenings, trade shows and concerts, for a period of five years from the date of the consent granted.

The subject application, DA 085-04-2004 MOD 1 seeks to modify the development consent by proposing to remove Condition A3 – *Use for a nominated period*, which would result in the permanent use of the land for recreational purposes.

It is recommended that the application be conditionally approved to modify the condition to allow for an additional five years so that future land uses proposed for the site and surrounding area are not restricted in their scope.

1.1 *The proposed modifications*

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

- Delete Condition A3 - *Use for a nominated period*
"In order that the development of the land is undertaken in an orderly and coordinated manner, the use of the land for the recreational purposes permitted by this consent shall cease after a period of 5 years from the date of commencement of this consent"

The removal of Condition A3 would result in the permanent use of the site for recreation purposes. As discussed in Section 3, a modification of the condition to allow operations for a further five years is considered more appropriate than the deletion of Condition A3.

1.2 *Site Details*

The site has the real property description of Lot 1 DP 1013504 and is known as the Sydney International Regatta Centre (SIRC), Castlereagh Road, Penrith. The site is bounded by Castlereagh Road to the south and west; Cranebrook Road to the east; and quarries and Quarry Road to the north. The site is within the local government area of Penrith. Located within the site are two lakes, informal recreation areas, various administration buildings, pavilion, grandstand, boatsheds, sealed and unsealed car parking areas. The land is owned by the Minister administering the Environmental Planning and Assessment Act, 1979; see Figure 1.



Figure 1: Location Map

1.3 Relevant development approvals

On 20 October 2004, DA 085-04-2004 was approved by the Minister Assisting the Minister for Infrastructure and Planning. The approval granted consent for the use of the SIRC for recreation purposes for a period of five years from the date of the consent.

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 SREP, except as provided by the EP&A 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 Assisting the Minister for Infrastructure and Planning on 20 October 2004.

3 CONSIDERATION

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

Section 96(1A) of the EP&A 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 site permanently for recreational purposes. Existing conditions of consent ensure that the site will be managed in an environmentally sensitive manner during the period of the consent. Given that the proposed

modification relates to the continued use of the existing consent, the subject modification is considered to be 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 for recreational purposes and therefore the works are considered substantially the same development.

- *Whether notification has occurred and any submissions have been considered; and*

A public consultation period of 14 days was required under Penrith City Council's *Penrith DCP 2006*. The application was publicly exhibited from 9 to 25 September, including the erection of site notices at all entrances to the site. Four submissions were received from Penrith City Council, NSW Police, Penrith Lakes Development Corporation (PLDC), Department of Transport and Infrastructure (DTI), and are detailed further at Section 4.

- *Any relevant provisions of Section 79C(1).*

The relevant provisions of section 79C (1) of the EP&A 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.

Condition A3 – Use for a nominated period was imposed as a condition of consent to ensure that use of the site does not conflict with the potential land uses of surrounding sites (in particular the Penrith Lakes Scheme), given the changing nature of the locality and the need to monitor any negative impacts that arose from the approval.

Submissions received from the four public agencies did not identify any negative impacts resulting from the use of the site for recreational purposes and were generally supportive of the use of the site for recreational purposes. However, the Department of Transport and Infrastructure have raised concerns regarding opportunities to enhance safe pedestrian and cycle access, implementation of a package of measures to encourage non-car transport modes and access arrangements during events. Given that the applicant is not seeking to intensify the use of the site and is only seeking to continue existing recreation operations, it is considered that the travel and access arrangements for the site do not require revision with this modification.

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 Development) 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 structure plans for Penrith Lakes have nominated the subject area for different land uses such as high rise development, employment uses, open space and sporting fields, it is considered inappropriate to remove Condition A3 – *Use for a nominated period*. This would result in the permanent use of the land for recreation purposes, which may result in land use conflicts with future potential surrounding land uses.

Due to the potential conflict, the deletion of the condition is not supported. Instead, it is considered appropriate and reasonable to modify the condition to allow the use of the site for recreational purposes for a further five years. The Department has also consulted with the Department's Office of Strategic Lands (OSL) regarding the implication of deleting Condition A3 in the context of the surrounding lands. The OSL is supportive of imposing a time limited condition considering the on -going investigations into future land uses in the locality. The modification will allow the use of the site to be re-evaluated at this time.

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

The site is considered suitable for recreational uses for a further five years as it is consistent with the SREP objectives, utilises existing infrastructure (e.g. the lakes, pavilions, grandstand, etc) and there has been no record of any negative impacts arising from the current activities. As such, Condition A3 - *Use for a nominated period* shall be modified to allow recreational uses for a further five years while the land use of surrounding land is being investigated and greater certainty is sought.

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 recreation operations at the subject site are consistent with 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. The application was publicly exhibited from 9 to 25 September 2009. Furthermore, under the *Penrith DCP 2006*, it was also required to notify persons who previously made submission(s) to the development application. Submissions were previously received from Penrith City Council and NSW Police.

The Department included in its notification referral to four Government agencies for comment: Penrith City Council, NSW Police, PLDC, and DTI. Comments were received from all four of the Government Agencies and comments were discussed earlier in Section 3.3 of this report.

5 CONCLUSION

The Department has assessed the proposal against the objects of the EP&A Act and the provisions of section 79C of the EP&A 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 A3 – *Use for a nominated period* to allow the use of the subject site for recreation purposes for a further five 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

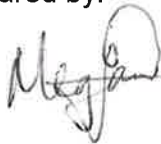
Under the instrument of delegation dated 4 March 2009, the Minister has delegated to the Executive Director her functions under section 96(1A) of the EP&A Act relating to modifying development consents, such as that proposed.

7 RECOMMENDATION

It is recommended that the Executive Director 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*:

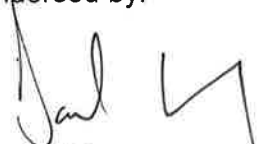
- a) **approve** the application to amend Condition A3 – *Use for a nominate period* of the Consent DA 085-04-2004; and
- b) **sign** the Instrument of Approval at **TAG A**.

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