ARUP

Penrith Lakes Development Corporation (PLDC)

PLDC DA Modification

Statement of Support for Modification to DA2

Reference:

| 08 November 2024

Job number 283059-00

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Contents

Executive Summary

Penrith Lakes currently has approval to import up to 13 million tonnes of virgin excavated natural material (VEMN) and excavated natural material (ENM) and fill subject to exemption orders to site from key infrastructure projects around Sydney over a two-year period from June 2024 to June 2026. The associated development corporation (PLDC) is seeking approval to raise the landform across the eastern part of the site to achieve immunity against the 1-in-500 annual recurrence interval (ARI) level, consistent with the flood management plan provisions across the site.

PLDC has excavated and imported material across the central eastern portion of the site since 1987 through the consent of Development Application (DA) 86/2720 (commonly referred to DA2), expanding activities to the northern part of the eastern portion of the site in 1995 through the consent of DA3. Since then, DA2 has been modified 11 times and DA3 has been modified eight times. The last modifications were consented respectively in November 2020 and May 2020. This application supports modifying DA2.

A condition of the consent placed on PLDC is to submit a plan every two years to define its intensions for the coming two years while reporting on the outcome of the previous two years. The last two-year plan was submitted and approved in June 2024. It was prepared against the provisions and consented development, namely the importation of up to 13 million tonnes of material across the extent of DA2 and DA3 (i.e., Lot 4). The approved plan supports the importation of around 800,000 tonnes of material consistent with the residual capacity permitted under the extant modified consents.

Beyond this PLDC is obliged to deliver the Penrith Lakes Scheme as set out in a Deed of Agreement with the NSW Government in 1987. The terms of the Deed identify the commitment on PLDC to repurpose the land for various future commercial, recreational, and public uses, providing a mix of urban living and open space. In the intervening years, PLDC has advanced a series of interim development proposals to support the site's public use. Since 2021, PLDC and the NSW Government have been defining the planning framework and development controls over the site resulting in amendments to the supporting planning instrument, the State Environmental Planning Policy (Precincts -Western Parklands City) 2021 and the corresponding Penrith Lakes Draft Development Control Plan 2021.

Under this policy, as supported by the PLDC Water Management Plan 2020, there is a recognition that there needs to be sufficient flood immunity provided across the eastern portion of the site (i.e., Lot 4) to support future intended development and land uses. To achieve this would require the height of the site to be increased by an average of 1.32 metres across the site and up to 2.98 metres at its greatest height increase relative to the existing ground level. This would provide sufficient immunity to protect these areas from flooding during an extreme rainfall event.

To achieve these levels would involve the importation of up to an additional 9.7 million tonnes of material across Lot 4, while continuing to work, profile, level, and stabilise the land. PLDC is therefore preparing this State Significant Development modification application to further modify the extant consents across Lot

4 (i.e., DA2 and DA3) to achieve the required flood immunity level. If consent is granted this would see a total 22.7 million tonnes of material imported to site.

Under the modification, PLDC would continue to operate the site in accordance with the standing conditions of consent, the consolidated statement of commitment, the wider mitigation measures, and the provisions of the various management plans, planning instruments and development controls over the site. This includes the pollution management measures described in the standing environmental protection licence, which has been in place since 2001 (EPL: 2956).

As an operational site, PLDC has set in place the required environmental management measures and controls to make sure it complies with the above. Under the proposed modification, there would be no material change to the way the site operates. This extends to the site continuing to carry out the same activities, across the same footprint, to the same extent and intensity it has done over previous years. It is not proposing to alter the intensity of rate of importation, alter its working hours, or change its traffic management measures or haulage and access routes to and from site. It would also look to level and manage the import material onsite in accordance with the Water Management Plan, meaning that overland flows would continue to be directed and channelled towards the Lakes in the western portion of the site.

This means there would be no effective change in the nature, location, or intensity of any impacts. The only residual impact would be an increase in overall duration of any managed residual impacts onsite to account for the site's extended use for importing material. The only other outcome would be a marginal increase in the overall landform and profile, which would not be visible from the periphery of the site given the relative topography and intervening landform. This negates the modification having any additional material impact on the receiving environment.

The one issue that remains is that in stabilising the site to prevent windblown dust and erosion, and to control sediment discharge, PLDC has used a mix of native and endemic grasses. Further, there has been a degree of self-seeding that has taken place across the site resulting in the introduction of a native vegetation cover that is consistent with Cumberland Red Gum Riverflat Forest (Plant Community Type 4025). While this is the case, legal advice sought from Minter Ellison (refer to **Appendix A**) notes that clearance is permitted under the extant consents pursuant to section 2.8 of the NSW *Biodiversity Conservation Act 2016.* If this is the case it removes the need to assess the biodiversity impact as part of this modification application, in accordance with the Biodiversity Assessment Methodology (BAM).

The application to modify the extant consents is being made under section 4.55 of the NSW *Environmental Planning and Assessment Act 1979.* This document provides the required information to allow the determining authority (in this case the Minister) to consider the matters under section 4.15 of the above Act. This document has served to demonstrate the modification would remain to be consistent with all relevant planning instruments, and specifically it is consistent with the planning and development controls and management plans for the site. In proposing to operate the site under the same management framework, and conditions, the modification would remain consistent with the Objects of above Act and the supporting NSW

Environmental Planning and Assessment Regulation 2021, while serving to manage any impacts to a level that is consistent with policy and guidance, and to the satisfaction of the various regulatory authorities.

Finally, the modification is consistent with a permissible interim use for the unzoned portion of the site pursuant to Chapter 5 of State Environmental Planning Policy (Precincts -Western Parklands City) 2021, where the site remains suitable, by virtue of its current operation, to support the ongoing importation of material. In accepting VENM and EMN to site from various key infrastructure projects in Sydney it remains in the public interest. It is on this basis that the modification is justified under the Act.

1. Introduction

This EA has been prepared to support the ongoing importation of (virgin) excavated natural material (VEMN/ENM) at Penrith Lakes, located at 89-151 Old Castlereagh Road. The importation would result in an additional 9.7 million tonnes of material being imported to site, taking the total importation onsite to 22.7 million tonnes. The materials would be imported and levelled across the eastern part of the site, known as Lot 4 in Figure 2-1 resulting in an overall height increase of around 1.32 metres on average across the site. **Appendix B** includes the proposed final profile across Lot 4. In addition, the importation would increase the site's immunity to flooding from an event that would typically occur once every 500 years (called the 500-year average return interval period). This level of immunity would support the site's intended future mixed use, which is being progressed separately under a planning proposal.

The importation of fill material has been used to rehabilitate the site to the approved landforms for the area. Consent currently exists for the importation of 13 million tonnes of fill at a maximum of three million tonnes per year. The existing 13 million tonne fill consent was based upon the extant two-year plan, which was approved on 30 June 2024 against Condition 49C and Condition 41C of DA2 (and its subsequent modifications) and DA3 (and its subsequent modifications) respectively.

This State Significant Development ('SSD') modification application does not seek to alter the environmental management or operational conditions currently applying to the filling operation under DA Consents DA2 and DA3 as previously modified (refer to Section 4.1). The modification seeks to increase the fill volume and amend the existing condition in the following manner:

- DA2 – Amend Condition 49C to read:
  - "49C – The importation of VENM of ENM shall be limited to 22.7 million tonnes at a maximum rate of three million tonnes per year"
- DA3 – Amend Condition 41C to read:
  - "41C – The importation of VENM and ENM shall be limited to 22.7 million tonnes at a maximum rate of three million tonnes per year."

DA2 and DA3 were taken to be an approval under Part 3A of the NSW *Environmental Planning and Assessment Act 1979*. Under the then Section 8J 'transitional provisions' of the NSW *Environmental Planning and Assessment Regulation 2000*, the scheme was deemed to be SSD. With the coming into force of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (Transitional Provisions Regulation), modifications under the former Section 75W no longer apply. However, under Schedule 2, Clause 3BA (6) of this regulation, modifications of a development that was previously a transitional Part 3A project requires the consent authority only to be satisfied that the development as proposed to be modified is substantially the same development as last modified under Section 75W.

This assessment will support an application to further modify the above SSD consent in accordance with Section 4.55 of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act). Given that PLDC functions as a single operation across DA2 and DA3, this SSD application considers the importation of an additional 9.7 million tonnes of VENM and ENM on site to have an integrated environmental impact across site areas relevant to modifying DA2 and DA3. This SSD application supports the proposed modification to condition 41C of DA3 with a separate corresponding application submitted in support of DA2 for administrative purposes but the impact assessment component of this report shall be considered as an integrated application from here on in and is identical to that described in the DA3 modification application.

This assessment is structured as follows: Section 1 to Section 6 present an overview of the proposal, details key concerns raised, and explains the legal context of the proposal. Section 7 to Section 8 focus on identifying and evaluating in-situ constraints, detailing their impacts, and suggesting any environmental management measures. The concluding remarks and justifications are found in Section 8 to Section 10.

This document has been prepared to help the NSW Department of Planning, Housing and Infrastructure (DPHI) and Minister discharge their obligations under Part 4 of the EP&A Act. It has been prepared in accordance with the State significant development guidelines – preparing a modification report (July 2021) and follows the recommended structure of a modification report as outlined in Table 1.

Table 1 Recommended structure of a modification report

Section heading	Associated relevant section in this assessment
Executive summary	Executive Summary
Introduction	Section 1
Strategic context	Section 6
Description of modifications	Sections 4 – 5
Statutory context	Section 6
Assessment of impacts	Section 7
Justification of modified project	Section 10

2. Site description

Extraction of sand and gravel from the Penrith-Castlereagh floodplain, on the Nepean River, began on a large scale in the 1950s, progressing for three decades in a 'piecemeal', haphazard fashion for much of the residential and business developments in the Sydney Metropolitan Area over the past fifty years.

At the request of Penrith City Council, and in acknowledgement of a growing concern over the rehabilitation of the existing quarrying operations, the then State Planning Authority (now DPHI) undertook a Regional Environmental Study (RES) for the area. The aim of the study was to examine the feasibility of coordinating the extraction and rehabilitation activities of the separate companies and to create a regional water-orientated recreation resource in the former quarry areas. PLDC was the resultant body, commencing operation in 1980, to coordinate the site. Quarrying operations have now ceased at the site and the ongoing focus is on land rehabilitation.

The Penrith Lakes site is a constructed landscape established as a water management system to regulate flood water associated with the Nepean River and adjoining landscape at the foot of the Blue Mountains. The Lakes are the result of final rehabilitation and landform shaping of extraction voids post cessation of extractive activities.

The site is located approximately 50 kilometres northwest of the Sydney Central Business District (CBD), 30 kilometres northwest of the Parramatta CBD and three kilometres north of the Penrith CBD. It covers of 1,940 hectares of floodplain (refer to Figure 2-1). It is bordered by the Blue Mountains escarpment to the west, with the Nepean River running along the western and southern boundaries, while the flat floodplain is sharply contrasted by Castlereagh Escarpment to the northeast. To the east lies Cranebrook Village, with further urban settlements to the south and southwest.

Also of note are the Sydney International Regatta Centre (SIRC) Lakes, and the nearby Penrith White Water Rafting facility which were both used as part of the Sydney Olympic Games. They are still used extensively by the public for similar events and recreational purposes.

Except to the west, the boundaries of the site are dominated by low-to-medium density housing. Poplars – old slab cottage, pise house and garden is in the middle of the site, it is referenced in the Penrith Local Environmental Plan 1991 (Inventory no. CR8). It appears to have no current scheduling or listing, but it holds intrinsic historic value and is fenced off and excluded from any activities either carried out currently or included in the proposal application. McCarthys Cemetery and Trees are in the southern end of the site. It is registered on the State Heritage Inventory (Item: 2260049) as being the earliest known burial ground set aside for burials with Catholic rites in Australia (refer to Figure 2-1). As with the Poplars, the Cemetery is protected from any development activity currently taking place onsite and does not form part of the proposed modification.

Figure 2-1 Site layout

3. Environmental management

The following section sets out the current environmental management measures in place onsite. These will continue to be adopted under the modified consent.

3.1 Conditions of consent

The site is currently managed in accordance with Construction Environmental Management Plan (CEMP), which sets out the provisions for environmental management, engagement and dealing with incidents, emergencies and unexpected finds. Under the Plan consent and licence conditions and a broad range of other ongoing management procedures are in place across the site to prevent and mitigate any environmental impacts including, but not limited to:

- Water quality monitoring
- Dust suppression and monitoring
- Safe egress via approved haulage routes
- Revegetation
- Drainage, land rehabilitation and erosion control
- Noise monitoring
- Monitoring of fish stock, and management of European carp.

The management plan provides the mechanism to discharge the various conditions of consent, consolidated statement of commitment, wider mitigation measures, and provisions of the various management plans, planning instruments and development controls over the site (refer to Section 5).

3.2 Environmental protection

PLDC operations are governed by four principal operational approvals, being the consent conditions contained and the controls set out in the site's environment protection licence (EPL: 2956)

PLDC undertakes monitoring and reporting in accordance with the consent conditions and EPL reporting requirements (annual returns) detailing all monitoring results and any non-conformances. The main complaints relate to the trucking of mud offsite via the nominated entry and exit points (refer to Figure 5-1). These have been handled through the EPA under the EPL.

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4. Consent and modification history

The following section summarises the consent history onsite.

4.1 Consent history

Consent to import VENM and ENM to site has been granted under various modifications dating back to 2009. Table 4-1 summarises the consent history over the site since 1982 with Figure 4-1 showing the areas associated with different application together collectively forming the Penrith Lakes. Figure 4-2 shows land ownership across the site (blue areas correspond with PLDC owned land, which are the subject of this modification application).

Table 4-1 Summary of sequential DAs for extraction and rehabilitation

Consent date	DA No	Description
July 1982	DA1	For interim extraction while detailed planning studies of the scheme were completed
Feb 1987	DA2 (DA 86/2720)	For extraction in accordance with SREP11, in the central area of the scheme
Nov 1989	DA2 Modification (Rowing Lake)	To modify DA2 and extract additional funds to construct the rowing course
June 1995	DA3	For extraction in accordance with SREP 11 in the northeast area of the scheme
June 1995	DA3 (Modification 1)	For extraction in accordance with SREP 11 in the northeast area of the scheme
September 1998	DA4	For extraction in accordance with SREP 11 within the scheme area to the west of Castlereagh Road
April 2005	DA Pioneer Plant	For extraction in accordance with SREP 11 in the southeast area of that scheme
October 2005	DA4 modifications (Camenzuli)	For extraction in accordance with SREP 11 in the northwest area of the scheme
February 2006	DA2 modification (DC Prototype Trial)	For dynamic compaction prototype trial in the eastern section of the Precinct A
December 2006	DA2 (Modification 1)	For dynamic compaction prototype trial
December 2006	DA2 (Modification 2)	For dynamic compaction operations
June 2009	DA2 (Modification 3) DA3 (Modification 2) DA4 (Modification 1)	For importation of VENM from 2009-2012
February 2014	DA2 (Modification 4) DA3 (Modification 3) DA4 (Modification 2)	For importation of VENM from 2012-2015
April 2015	DA2 (Modification 5) DA3 (Modification 4) DA4 (Modification 3)	For importation of VENM from 2015-2018
November 2017	DA2 (Modification 6) DA3 (Modification 5) DA4 (Modification 4)	Extension of operation hours
May 2018	DA2 (Modification 7)	For importation of VENM from 2015-2018

Consent date	DA No	Description
	DA3 (Modification 5) DA4 (Modification 5)	
August 2018	DA2 (Modification 8) DA3 (Modification 7)	For importation of VENM from 2015-2018
January 2019	DA3 (Modification 6)	-
February 2020	DA2 (Modification 9)	Importation of material subject to site specific Resource Recovery Order and Exemptions issued by the NSW EPA
February 2020	DA2 (Modification 10)	Importation of spoil from the M4-M5 Link and Sydney Metro tunnels onto the site
April 2020	DA3 (Modification 8)	-
November 2020	DA2 (Modification 11)	Importation of an additional 3.35 million tonnes of fill and for 24 hour/ 7 days per week operating hours for the Sydney Metro tunnel and M4-M5 tunnel.

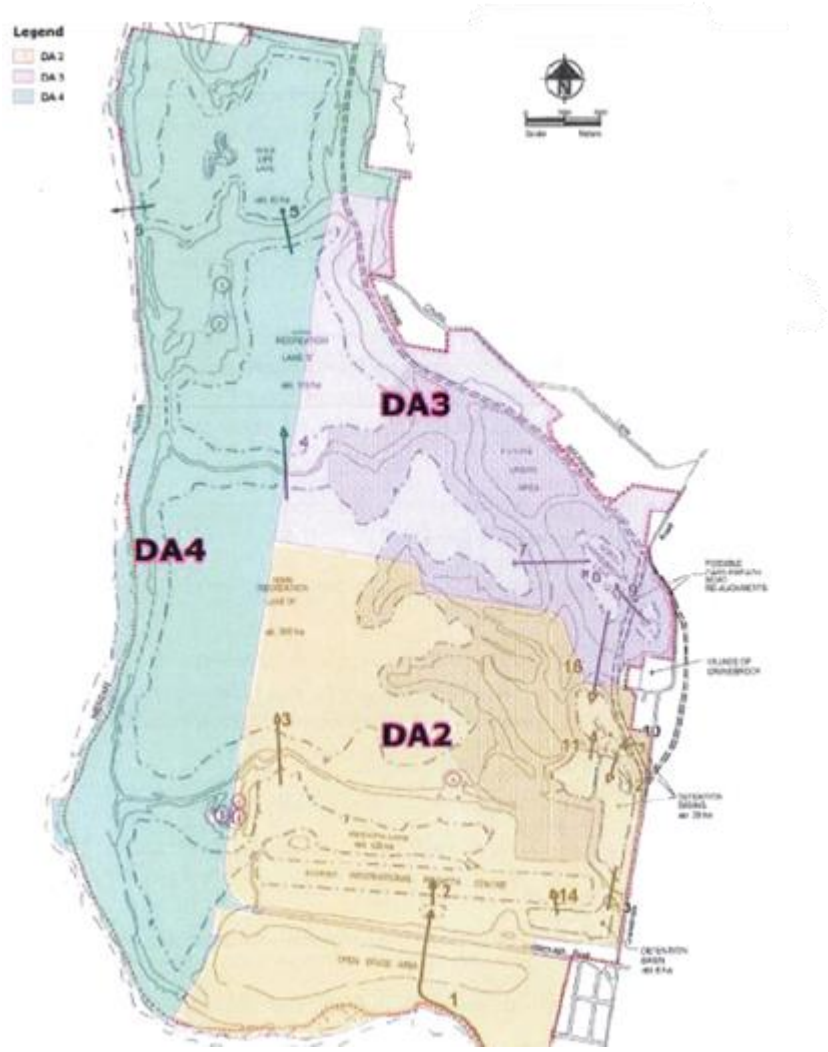

Figure 4-1 Areas associated with different development applications, together forming Penrith Lakes Scheme.

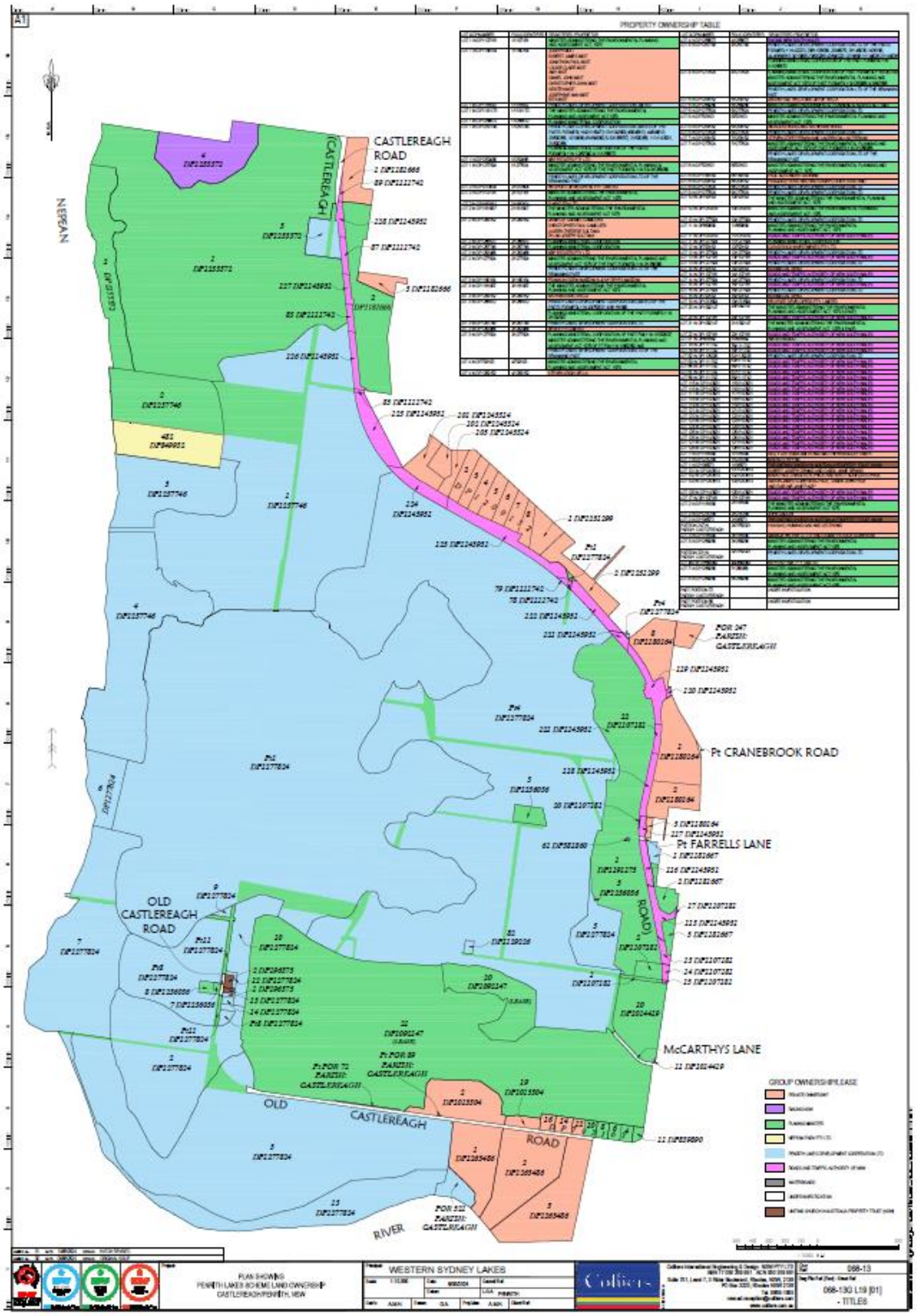

Figure 4-2 Site layout indicating land ownership across the site

5. Proposed modification

PLDC has continued to operate under its consolidated conditions to provide flood immunity to the 1-in-100 ARI with supplementary conditions approved under the latest two-year plan. These conditions include PLDC importing approximately 800,000 tonnes of material site (i.e., bringing the total importation up to 13 million tonnes).

This SSD modification application seeks to modify DA2 (Modification 12) and DA3 (Modification 9) by supporting the importation of 9.7 million tonnes of material across Lot 4 (refer to **Appendix B**) to increase the overall levels on average 1.32 metres on average across the site and up to 2.98 metres in certain locations relative to the existing ground level. This would increase the flood immunity to the 1-in-500 ARI, consistent with the flood management plan (refer to section 7.1.1). In doing so, a total of 22.7 million tonnes of VENM and ENM would be imported across Lot 4 under both consents (as modified).

Under the proposed modification to DA2 and DA3, activities related to the site and onsite will remain the same. PLDC does not propose to change hours of operation (6am to 9pm Monday to Friday and 6am to 3pm Saturday) pursuant to condition 31A/condition 36BB, with truck movements, volumes and accesses arrangements (including timings) being consistent with the extant consent, including the use of Gate 1, Gate 2, and Gate 3 as required and the associated transport (haulage) routes along Andrews Road, Old Castlereagh Road, Castlereagh Road, and Cranebrook Road (Condition 40A) being used as the primary mode of approach and departure to the site depending on active part of the site at the time and the approach to site as shown below in Figure 5-1.

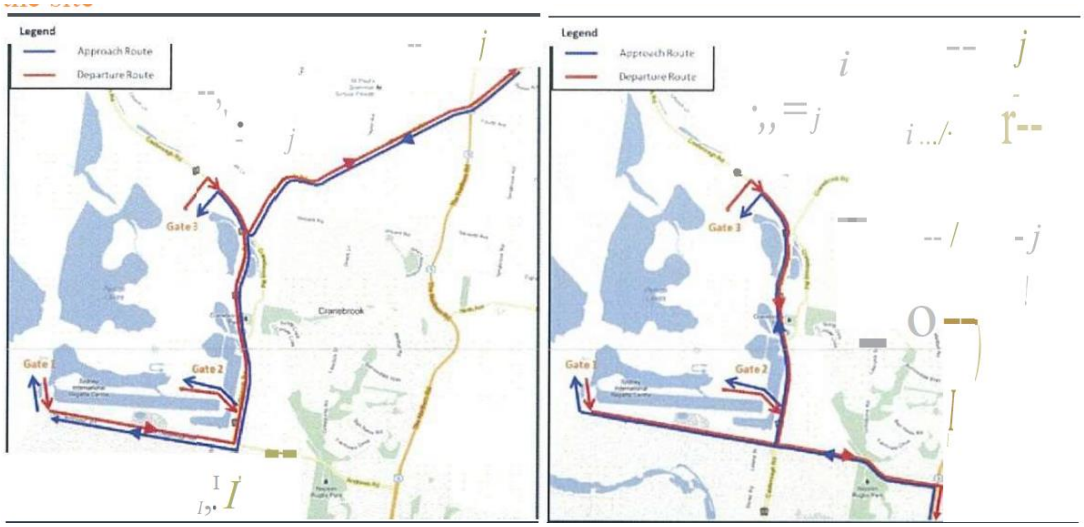

Figure 5-1 Approved VENM and ENM transport routes from the north (left map) and south (right map) of the site

Major exporters will continue to sample and classify material as VENM and ENM in accordance with their obligations as a generator (refer to section 6.2.1) and the material will be imported to site at the same rate on average per year. The same footprint will be developed under the modification as per the extant consents (as modified). This means there would be no operational change in the extent, location, frequency, intensity, or type of activity onsite.

6. Strategic and statutory context

This section sets out the strategic and statutory context for the proposed modification.

6.1 Strategic context

The site currently operates under consents issued by the Minister for Planning. The two relevant consents relating to Lot 4 (and the therefore the modification application) were originally consented in February 1987 (DA2) and June 1995 (DA3, refer to Table 4-1 above). Since then, consent has been granted to modify DA2 11 times and DA3 eight times to expand operations at site and allow for the ongoing importation of material from various key infrastructure projects around the metropolitan area. Consent of the current modification was granted in in November 2020 and May 2020 respectively. The site is currently working under consolidated conditions relating to this modification and the original consent.

A precinct plan was established in 1989 following the site's original consent in 1982. This sets out provisions for Penrith Lakes in relation to quarry rehabilitation, flood control and development, and was previously known as SEPP (Penrith Lakes Scheme) 1989. The SEPP was consolidated as Chapter 5 of SEPP (Precincts-Western Parkland City) 2021 (WPC SEPP) on 1 March 2022 and retains all previous previsions and directives (refer to section 6.2.2).

In accordance with the above, Penrith Lakes supports two key strategic functions.

The site supports the ambitions of the State Infrastructure Plan 2023-24 by providing a location to import the overburden (additional materials) generated from the development of many of the State's key infrastructure projects such as the various Metro schemes and prior to that WestConnex. Its operation is critical to making sure there is a suitable location to dispose of additional materials that cannot be reused elsewhere locally.

The site also plays a role in being a key piece of regional open space in the Western Parkland City, with plans of it to become a destination to play, relax, work and visit. Penrith Lakes is governed by the Chapter 5 WPC SEPP.

In the coming years the site's role will continue to expand and evolve, with an active planning proposal in place to offer a mix of commercial and recreational spaces through the development of a revised precinct plan designed to foster economic development while enhancing quality of life. This is consistent with the aims of the Government's strategic plans that focus on sustainable development, economic growth, and community well-being. Under the precinct plan the site will also support the Western Sydney City Deal, which aims to drive growth in the area through improved infrastructure, economic opportunities, and community services. Again, the site's planned future will contribute to this policy by providing job opportunities, boosting local businesses, and offering recreational amenities that are essential for the region's growth. The ongoing importation of material onsite to increase its final height to deliver the required flood immunity therefore unpins the site's future proposed development.

In terms of environmental policy, Penrith Lakes also aligns with the NSW Government's focus on sustainability and environmental management. The development includes significant water management features, green spaces, and initiatives to minimise environmental impacts, thus supporting the broader environmental goals of the State.

Overall, Penrith Lakes is a key component in the NSW Government's strategic planning for balanced regional development, economic growth, and environmental sustainability.

6.2 Statutory context

The following section describes the relevant statutory requirements for the proposed modification.

6.2.1 NSW legislation

The following NSW legislation is relevant to the proposed modification.

Environmental Planning and Assessment Act 1979

The SSD modification application serves to modify the extant consents DA2 and DA3 as modified (refer to Table 4-1). The modification supports the ongoing development of the site pursuant to definitions under Section 1.5.

Modification of consents

PLDC has prepared an application in accordance with section 4.55 of the Act to further modify the consent to allow the ongoing importation of material to site. The consent authority (in this case the Minister, refer to section 6.2.2) may modify the consent providing it has discharged its obligations under section 4.55(2) of the Act. A key element for the Minister is in determining whether to modify the consent is whether "the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)".

The definition of 'substantially the same' has been tested under case law including to mean 'essentially or materially having the same essence' in terms of the consented development and modified consent. This involves considering the elements of the consented development that would be modified and their impacts. In the case of the proposed modification, VENM/EMN would continue to be imported to site via the same haulage route and access points at the same rate as the current consent (refer to section 3). The material would be managed, handled, placed, levelled, and stabilised in same locations across the same areas of the site, using the same methods as per the approved consent. This therefore makes the development and its implementation consistent with proposed modification. The only material differences would be the overall import volume increasing by 9.7 million tonnes, the overall height across the site increasing on average by 1.32 metres, and the modification supporting the ongoing importation of material for a longer-period than conceived in the extant consents. Despite these changes, their impact would be negligible for the reasons discussed in section 7, to the point that the development and modification would be substantially the same.

There are two more legal tests of the above. The first is in the words and phrases of the term 'substantially the same' within the context of how the modification is described. In this case, the proposal to modify the consent to continue importing VENM and EMN to the same location onsite is consistent with the terms,

definition and form of consent currently in place onsite therefore demonstrating this test. The second legal test is the relative significance or weight to the difference in facts between the consent and modification. In this case, the fact that the modification is for the same activity in the same location and there is no significant or material difference in the site's operation or impacts means the modification is substantially the same as the consented development (as modified).

Evaluation of applications

In applying to further modify the consent, PLDC has prepared this report to allow the Minister (as the consent authority) to consider the matters under section 4.15 of the Act as required under section 4.55(3) of the same Act. Table 6-1 below shows where these mattes have been addressed in this document.

Table 6-1 | Matters for consideration and evaluation

Matter	Description of relevance to modification
(a) the provisions of:	
(i) any environmental planning instrument	Refer to section 6.2
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)	Refer to section 6.2
(iii) any development control plan	The only development control plan over the site is being introduced to satisfy the requirement of the WPC SEPP to make sure it is in place before development consent is granted on land un an urban release area. This modification application covers the part of the site, which is unzoned and therefore outside of the provisions of this DCP. Development on this land is therefore provisioned under the WPC SEPP.
(iii-a) any planning agreement that has been entered into under Section 7.4 of the Act, or any draft planning agreement that a developer has offered to enter under Section 7.4 of the Act.	This modification application is not reliant on the provisions of any (voluntary) planning agreement, complying development certificate, or requires an EPI to be changed as per Section 7.4 of the Act.
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)	This report sets out the specific issues or considerations (prescribed matters) that must be addressed or considered when making decisions relating to the proposed modification. Specifically, section 7 of the report identified the specific environmental impacts, showing that with the implementation of the measures in section 8 that the residual impacts would be consistent with the consented development. This section shows the proposed modification to be consistent with strategic policy and it complies with the required legislation and instruments governing development onsite to support the importation of VENM and ENM . Finally, the report demonstrates that the project continues to be consistent with the Objects of the Act, the principles of ecologically sustainable development, and continues to be in the public interest from the perspective of indirectly servicing key infrastructure projects in Sydney and ultimately helping deliver the long-term vision for the Penrith Lakes Scheme.
(b) the likely impacts of that development, including environmental impacts on both the natural and built	Refer to section 0

Matter	Description of relevance to modification
environments, and social and economic impacts in the locality	
(c) the suitability of the site for the development	PLDC is obliged to deliver the Penrith Lakes Scheme as set out in a Deed of Agreement with the NSW Government in 1987. The terms of the Deed identify the commitment on PLDC to repurpose the land for various future commercial, recreational, and public uses, providing a mix of urban living and open space. The Deed was supported by the precursor to the WPC SEPP, in stating that all forms of interim development on the unzoned land (i.e., Lot 4) would be permitted with consent providing it does not interfere with the Penrith Lakes Scheme or the area's use as a public recreational lake system. The proposed modification is therefore consistent with this definition. Further, the site is suitable for the for the importation of VEMN/ENM by virtue that this activity is currently taking place onsite. As described in section 7, the land has the capacity, infrastructure, and management protocol in place to import an additional 9.7 million tonnes of material to site without any adverse impact on the surrounding environment, therefore making the site suitable for the development proposed under the modification.
(d) any submissions made in accordance with this Act or the regulations	Refer to section 4.1
(e) the public interest	The modification remains the public interest as it would continue to support and service the ongoing key infrastructure projects in Sydney, while also indirectly supporting the future delivery of the Penrith Lakes Scheme itself a project which includes various open space and public amenity.

Environmental Planning and Assessment Regulation 2021

This application has been prepared in accordance with requirements of Section 98 of the NSW Environmental Planning and Assessment Regulation 2021 and in accordance with the content requirements set out under Section 99 and Section 100 of the Regulation as accounted for in the State significant development guidelines – preparing a modification report (July, 2021).

While Section 98(2) of the Regulation requires anyone lodging a (SSD) modification application to do so with the consent of the landowner, Section 101 of the Regulation includes exceptions for Penrith Lakes Development Corporation specifically relating to the two applications which this application is seeking to modify (i.e., DA2 and DA3). Specifically, as PLDC is only modifying part of the land to which DA2 and DA3 apply, it only needs to offer consent from itself (refer to Appendix D) as the owners of those parts of the land to which the modification relates as shown in Figure 4-2.

Biodiversity Conservation Act 2016

The NSW *Biodiversity Conservation Act 2016* aims to protect and enhance the State's biodiversity, ensuring the conservation of native species, ecological communities, and natural habitats. The Act establishes processes for identifying and listing threatened species and ecological communities. It outlines how to develop and implement recovery plans and threat abatement plans to address factors contributing to their decline. It also introduces a biodiversity offsetting mechanism, which requires developers to compensate for

environmental impacts by improving or protecting other areas of biodiversity. This helps to offset the negative effects of development on natural environments.

Where a development impacts on the biodiversity values of specific species above a certain threshold or trigger, then it must enter the offset scheme. The applicant is required to prepare a biodiversity development assessment report (BDAR) to evaluate the scale and nature of the impact on local biodiversity including native plants, animals, and ecological communities. The BDAR is also used to identify any significant impacts on threatened species, endangered ecological communities, and their associated habitats. If the BDAR confirms that the development has an unavoidable impact on biodiversity, then it proposes suitable offsets.

Biodiversity Conservation (Savings and Transitional) Further Amendment Regulation 2018

The above Amendment is part of the regulatory framework for biodiversity conservation. Its purpose is to adjust existing regulations to accommodate changes in legislation and ensure a smooth transition to new biodiversity conservation measures. While it served to set out various transitional arrangements and saving provisions, the relevance to the proposed modification was a series of regulatory adjustments. Key was the introduction of section 30A (2) of the Regulation, which modified section 7.17 of the NSW *Biodiversity Conservation Act 2016.* In this case is requires the Minister (as the consent authority) to decide if a proposed modification would increase the impact on biodiversity values and whether a BDAR is needed. This applies regardless of whether the original project was approved under the NSW *Biodiversity Conservation Act 2016* or former planning provisions.

Specifically, proposed modifications that result in direct or indirect impacts on biodiversity values not assessed and authorised in the original approval are considered to increase impacts. This includes:

- Impacts to different biodiversity values to those assessed in the original approval
- Expanded impacts

In the case of the existing environment, it contains ecological values, which trigger the threshold for entry into the Biodiversity Offset Scheme (refer to section 7.1.3). This would therefore trigger the above provisions, as specifically it would result in impacts to “different biodiversity values to those assessed in the original approval”.

Defence under the BC Act

Despite the above, advice sought from Minter Ellison (refer to **Appendix A**) advocates that PLDC has the authority to clear the native vegetation onsite as it is necessary for the carrying out of the importation of fill in accordance with the extant consent onsite (DA2 and DA3 and the mechanism of the two-year plan). This ‘defence’ is consistent within the meaning and definition of section 2.8 of the NSW *Biodiversity Conservation Act 2016*. Under this scenario, it would assume the baseline condition onsite as being cleared of its current ecological values, with the clearing taking place under the existing consent without the mechanism for a resulting offence under Division 1 of the NSW *Biodiversity Conservation Act 2016*. It would also follow that the modification application itself does not trigger either bullet point above removing the requirement to assess the impact in accordance with the Biodiversity Assessment Methodology.

Currently, this application has been lodged without a supporting BDAR under the above legal advice. However, if the above consent does not allow for the permitted clearing of native vegetation, PLDC would relodge, supplement, or work under a condition, to discharge its obligations under the NSW *Biodiversity Conservation Act 2016* in accordance with the Biodiversity Assessment Methodology.

Biosecurity Act 2015

The NSW *Biosecurity Act 2015* is designed to provide a comprehensive framework for managing biosecurity risks. Its primary purpose is to protect the State's environment, economy, and public health from biosecurity threats, which include pests, diseases, and other harmful biological agents. It is a requirement of anyone supplying VENM and ENM to demonstrate adequate biosecurity protocol that prevents the transfer of pests and pathogens in the ENM and VEMN transferred to site. This is in addition to the protocol adopted by PLDC to manage biosecurity risks and threats onsite. These requirements and protocol would not need updating or adjusting under the modification application.

Protection of the Environment Operations Act 1997

The NSW *Protection of the Environment Operations Act 1997* regulates emissions to air, water, and land. It offers an integrated system to regulate specific types of activities and installations that have the potential to cause environmental harm because of their operations. The NSW Environment Protection Authority (EPA) administers the Act and has the power to issue clean up notices if it reasonably suspects that a pollution incident has occurred or is occurring. In legislating for environmental protection, the Act schedules a series of activities that present a higher risk of causing pollution to the extent that they need to operate under an environmental protection licence (EPL). PLDC has held an EPL since 2001 (EPL: 2956) due to the pollution risk of it crushing, grinding or separating more than 30,000 tonnes of sand, rock, gravel and/or minerals each year as per Schedule 1(16) of the Act. The licence was last varied under in 2021. As the proposed modification would see the ongoing level of activity onsite continue it would not affect the EPL.

Protection of the Environment Operations (Waste) Regulation 2014

The site operates under the resource recovery order and exemption made under the above Regulation which allows ENM (and VENM) to be important to site without the site needing to hold a waste management and disposal licence. Specifically, the resource recovery order is made under section 93 of the Regulation. Critically, it places an obligation on the generator to sample and test the material to demonstrate it meets the requirements and definition of EMN in line with the order. PLDC also asks to see the recordkeeping of this testing prior to accepting the material onsite. Under the modification, the importation of ENM and VENM would continue in accordance with the above order and requirements placed on the generator. PLDC would not need to adjust its operations or the transfer notice and recordkeeping requirements it places on generators looking to import material to site.

Waste Avoidance and Resource Recovery Act 2001

The NSW *Waste Avoidance and Resource Recovery Act 2001* underpins the NSW Government's Waste Avoidance and Resource Recovery Strategy 2014. The Act legislated for the waste hierarchy, prioritising avoidance in place of reuse and recovery, over disposal. Despite the site providing for the disposal of EMN and VEMN across Sydney, in doing so, it indirectly supports its future commercial, and recreational use by

establishing an area of clean and levelled fill therefore providing a proxy level of effective reuse for the material.

Water Management Act 2000

The NSW *Water Management Act 2000* provides for the conservation, management, and protection of water resources. It also provides for protecting and enhancing the environmental qualities of waterways and their catchments. The Act provisions for the approval of the use of water (section 89), management of works (section 90), and certain activities (section 91). In the case of the proposed modification, it would continue to involve carrying out a controlled activity in the form of land disturbance within 40 metres of waterfront land (in this case the lakes).

6.2.2 Environmental planning instruments

Environmental planning instruments (EPIs) serve a critical role in managing land use and development to ensure environmental protection and sustainable growth. The main purposes of an EPI is to regulate land use, protect the environment, guide development, and implement policy. The following EPI is key to the proposed modification.

State Environmental Planning Policy (Precincts - Western Parkland City) 2021

The main purpose of the WPC SEPP is to facilitate and streamline the development and management of land within the Western Parkland City region, while supporting growth, promoting infrastructure connectivity, and facilitating innovation and economic opportunities. As noted in section 6.1 above, Chapter 5 of the WPC SEPP specifically sets out to facilitate the orderly and opportunistic development of Penrith Lakes. It does this under five aims as listed below, describing how the proposed modification is consistent with these aims.

Table 6-2 | Aims of Chapter 5 of the WPC SEPP

Aims	Consistency
Provide a development control process that ensures that environmental and technical matters are considered in the implementation of the Penrith Lakes Scheme.	The proposed modification extends the consent that was established in 1987 as an interim development of the unzoned land that extends across the central part of the site (see below this table). In importing fill to achieve a 1-in-500 immunity level, the modification also indirectly supports the site's long-term commercial and recreational use (as part of the Penrith Lakes Scheme) to be consistent with this aim of the EPI.
Identify and protect items of the environmental heritage	As noted in section 0, further noting that the two identified heritage items onsite the Poplars and McCarthys Cemetery and Trees (refer to section 0) are protected and do not form part of the extent consent or proposed modification. Their heritage values would continue to be protected in accordance with the standing commitments and mitigation measures adopted under the standing consent.
Identify certain land that may be rezoned for employment, environmental, parkland, residential, tourism and waterway purposes and land that will be rezoned as unzoned land,	The proposed modification does not require any rezoning of the land; however, it indirectly supports the future proposed rezoning under the Penrith Lakes Scheme as described above by providing increased flood immunity.
Permit interim development that will not detrimentally impact on the implementation of the Penrith Lakes Scheme,	The continued importation of material is consistent with the long-term interim use of the site while indirectly supporting the long-term strategy for the Penrith Lakes Scheme.

Aims	Consistency
Ensure that the implementation of the Penrith Lakes Scheme does not detrimentally impact on the ongoing and use of Olympic legacy infrastructure, including the Sydney International Regatta Centre and the Penrith Whitewater Stadium.	The proposed modification is outside of the footprint of the Sydney International Regatta Centre and the Penrith Whitewater Stadium. It also has no indirect impact on either the site's visual amenity or aesthetics for the reasons described below in section 7.

Development within the boundary of the Penrith Lakes site, as defined by the structure plan, is controlled under section 5.2 of the WPC SEPP. The extant consents allow for interim development on the unzoned part of the site consistent with section 5.13(2) of the WPC SEPP. The proposed modification would be consistent with this provision of the SEPP and the interim use of the land by not adversely affecting the implementation of the Penrith Lakes Scheme. Consistent with the above consent, the modification would be permitted with the consent of the Minister as provisioned under section 5.7 WPC SEPP.

Following its amendment in 2023, section 5.38 of the WPC SEPP sets in place strong flood evacuation measures for development on land below the level of a probable maximum flood level within the site. This is reinforced by the need to ideally make sure that any future development across the site is flood immune (i.e., above these levels). This is the rationale for proposing to increase the average height of the land by 1.32 metres at a maximum height of 2.98 metres in some areas to make sure that future development is flood immune.

In proposing to increase the flood immunity (height) across the site, it was important to be consistent with the provisions of section 5.38(2) of the WPC SEPP in making sure that this would:

- Be compatible with the flood function and behaviour on the land
- Not significantly adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties

As described in section 7.1.1 below, by providing the immunity onsite in a way that is consistent with the PLDC Water Management Plan: Stage 1, it would ensure compatibility with the flood function and behaviour of the land and the above provisions of the WPC SEPP, in specifically directing overland flows towards the lakes, with the capacity of the lakes being sufficient to compensate for the increased immunity onsite without impacting surrounding land or development.

State Environmental Planning Policy (Planning Systems) 2021

The Planning Systems SEPP is part of the NSW effort to streamline and consolidate various planning policies to make the system more accessible and user-friendly through theme-based focus areas. It includes provisions for state and regional development, including the declaration of state significant development (SSD) and the designation of the Independent Planning Commission as the consent authority for certain developments. Section 8 of Chapter 4, Schedule 2 of the Planning Systems SEPP makes specific mention that "development on land identified as being within the Penrith Lakes Site on the *State Significant Development Sites Map* if the development is for the purposes of extraction, rehabilitation or lake formation (including for the purposes of associated infrastructure on land located within or outside that Site)." As such,

the importation of an additional 9.7 million tonnes of material being imported to site, taking the total importation onsite to 22.7 million tonnes of VENM/ENM, and the associated modifications to DA2 and DA3 have been assessed as SSD.

6.2.3 Commonwealth legislation

The following Australian Government legislation is relevant to the proposed modification.

Environmental Protection and Biodiversity Conservation Act 1999

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* provides protection of nine Matters of National Environmental Significance (MNES). In terms of the site, the relevant matters of interest are various threatened and ecological communities that are listed and protected due to their critically endangered, endangered or vulnerable status, and species migratory species that are protected under international agreements.

A search of the Protected Matters Search Tool in August 2024 returned the (likely) presence of matters within 10 kms of the site, including 104 threatened, protected and migratory species and ecological communities. While this is the case, the character and nature of the site as an actively managed area, which is used to import material means there is insufficient habitat established to carry any ecological value to the level that its impacts would cause a substantial or significant population or habitat loss or degrade biological or lifecycle activity to the extent that triggers concern under the above Act. This includes any offsite impact to the fragment flying-fox camp along the Nepean River, with the modification having no feasible mechanism to fragment flying-fox habitat critical to the survival of this camp such that this ecological community or its breeding cycles would be placed at risk. This means there is no feasible mechanism to significantly impact any matter protected under the above Act to the extent of either needing to prepare a self-assessment or to refer the proposed modification to the Australian Minister for decision whether its actions should be controlled. This conclusion extends to cumulative impact of the proposed modification in combination with the extant consents as modified.

7. Environmental assessment

This assessment was based on the importation of 9.7 million tonnes of fill into the site to raise the landform across Lot 4 to provide additional flood immunity (refer to **Appendix B**). It also appreciated the nature of the proposed modification and specifically the fact that in importing the material to site it would not affect the site's operation nor its management (refer to section 5), meaning the magnitude and nature of any residual impacts would be unaffected. The only material changes introduced under the modification would be the duration of any impacts, accounting for the continued importation of material, and the impact of increasing the overall height of the site through the importation of material and the impact this would have visually or in terms flood compensation and offsite immunity.

Table 7-1 below summarises how the above relates to the range of environmental factors pertinent to the site and the surrounding area. It shows those factors where the impact of the proposed modification is assessed as having an immaterial (negligible) consequence compared to those factors where the additional activity onsite may be material. The rest of the section expands on the summary.

Table 7-1 Impact summary

Material issues	Immaterial issues
Flooding	Air quality
Aboriginal heritage	Soil, geology and contamination
Biodiversity	Noise and vibration
Landscape and visual amenity	Waste
	Non-Aboriginal heritage
	Traffic and access

7.1 Material issues

The following assesses the materiality of the impact of the proposed modification on the following factors.

7.1.1 Flooding

To manage flooding onsite, PLDC must comply with the 2023 SEPP amendment and increase flood immunity (refer to section 6.2.2) to achieve the objectives set out in the PLDC Water Management Plan: Stage 1 (2012) and the PLDC Water Management Plan: Stage 2 (2020).

The Stage 1 Water Management Plan included detailed descriptions for required flood infrastructure and landform design to manage water levels during both typical flow conditions and flood events, while the amendments to the WPC SEPP defined the aim to make sure any future development across the site was developed on land which was outside of the probable maximum flood level, reflecting the wider issues regionally in the past with the flooding of the Nepean.

The flood management system onsite includes a series of weirs and flow paths between the interconnected lakes that control flood waters within and outside the site. These management controls have continued to service the activities onsite.

In September to November 2024, Water Technology (WT) undertook and assessment of flooding behaviour under existing and developed conditions using the recently released Hawkesbury – Nepean River TUFLOW

hydraulic model which was supplied to WT by Reconstruction NSW under licence. The adopted TUFLOW model was tested, reviewed and simulated for the 10%, 5%, 2%, 1%, 0.5%, 0.2%, 0.1%, 0.05% and 0.02% AEP design flood events. The Probable Maximum Flood was also assessed.

The findings of the Flood Impact Assessment indicate that the inclusion of the proposed earthworks does not result in a fundamental change to flooding behaviour either within the immediate study area or in the wider Nepean River floodplain in all design flood events up to and including the 0.2% AEP. Due to the volume of earthworks which achieves immunity during a 0.2% AEP design flood events, slight changes in water level occur in the 0.1%, 0.05% and 0.02% AEP design flood events. These increases in water level, which do not exceed 50 mm, typically occur to the immediate east and south-east of the site on adjacent properties. The extent of the increases in water level is largest during the 0.05% AEP and diminishes somewhat in the 0.02% AEP design flood event. There are no discernible changes in water level on external properties during the PMF. Given these minor increases which occur in extreme flood events, the model results indicate that there is no fundamental change to the existing flood behaviour at the site.

On the basis of the results of the Flood Impact Assessment completed, it is clear that flood immunity onsite or offsite would not be impacted by the proposed importation of an additional 9.7 million tonnes of VENM and ENM to site based on the predicted flood modelling even under the most extreme scenario. Refer to Appendix C for the detailed Flood Impact Assessment.

7.1.2 Aboriginal heritage

Oral histories of the area talk about the escarpment and the associated lagoons as forming an important meeting or gathering place for different clans of the Darug People. Evidence from archaeological studies carried out previously by PLDC in partnership with the Aboriginal community, supports the idea that large gatherings occurred in this area. There are multiple records on the Aboriginal Heritage Information Management System (AHIMs) sites situated within Lot 4 where the additional imported fill would be used as shown below in Figure 7-1.

Due to extensive market garden farming prior to PLDC activities onsite followed by quarrying and infill, the topsoil layer has been significantly disturbed, greatly compromising the integrity of archaeological discoveries. While the modification would involve importing additional fill across the site including areas where AHIMS have been identified, it would take place across an area that has been extensively modified and impacted. Further, in working and levelling the existing landform to support the future importation, this would only disturb material previously imported material. This therefore removes any risk of impacting known or unexpected finds onsite by virtue of there being no mechanism to physically impact any relict material or original landforms or features with associated or implied archaeological value.

Figure 7-1 AHIMS sites identified within the site and larger extent

7.1.3 Biodiversity

As noted in Section 6.2.1, Minster Ellison has advised that the extant consent onsite under DA2/DA3 supports the clearing vegetation and land to support the importation of VENM and ENM despite its ecological value. This would therefore represent the baseline condition of the existing environment pursuant to the focus of this modification application. That said, for completeness, the following section describes the current ecological condition onsite prior to any clearing under the extant consents.

To facilitate understanding the ecological condition onsite Biosis carried out an investigation over the subject site in July 2024 including undertaking a series of vegetation plots in accordance with the Biodiversity Assessment Methodology (BAM). This involved observing the general condition and composition of vegetation and the collection of standard 20m x 50m vegetation integrity plots. This supplemented a previous assessment carried out in the southern portion of the site in March 2022 to inform preparation of the Penrith Lakes Phase 1 (Southbank) Masterplan. The findings of the former were presented in an email correspondence and summarised into this document.

In both instances, Biosis recorded that the existing flora and fauna values of the site are greatly reduced from original pre-settlement levels due to the level of impact from quarrying, the subject importation of fill, and active management of vegetated areas such as slashing. The site contains limited native flora species with potential threatened flora habitat in the northeast of the site. In the majority, the site is largely dominated by introduced species, in particular grasses and shrubs. As well as a native and endemic vegetation mix planted as part of the site's rehabilitation and stabilisation in accordance with the conditions attached to the various consents as modified. However, over time the site has become subject to self-seeding, likely because of the action of windblow or animal transfer onto the site. This has resulted in an increased diversity of native species and vegetation cover.

In accordance with the BAM, five BAM plots were collected across the site in July 2024. These focused on areas of the site where the vegetation cover (grassland) was in better condition. These plots supplement four plots collected in March 2022 in areas where the vegetation cover (grassland) was in varying condition. A final BAM plot was carried out in 2022 to collect data on regenerated planted trees in the south of the site. All 10 plot locations are shown on Figure 7-2.

Following the onsite assessment, it was concluded that the vegetation cover (grassland) comprised a mix of perennial native grasses throughout with common couch grass *Cynodon dactylon* dominant, in association with Windmill Grass *Chloris trunctata*, Red Grass *Bothriochloa macra*, Weeping Grass *Microlaena stipoides*, and Forest Hedgehog Grass *Echinopogon ovatus*. Native forbs, sedges and twiners were also present, as were annual warm season native grasses *Lachnagrostis filiformis*. Couch grass was the dominant native groundcover, ranging from three to 65 percent within grassland plots, having an average cover of 29 percent. Collectively, grassland classified as plant community type (PCT) 4025 Cumberland Red Gum Riverflat Forest (refer to Figure 7-2).

The percentage of native vegetation across the site was also sufficient that without legal position above to trigger the threshold for entry into the Biodiversity Offset Scheme (BOS) if it was cleared under the modification. This is because the guidelines supporting the BAM state that "all native vegetation is counted in clearing threshold calculations when determining if the Biodiversity Offset Scheme is triggered".

Beyond the immediate site there are a series of other ecological values protected under NSW *Biodiversity Conservation Act 2016* and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. While this is the case, their value and condition exist within the context of the site's current operation. Therefore, while the proposed modification would extend the life of the site in its role in importing fill, it would not result in any change in the magnitude, likelihood, or frequency of indirect impacts offsite that would affect these ecological values or function. It is therefore reasonable to conclude that the ongoing import of material onsite would have no indirect impact offsite.

It also extends that in continuing to manage the site under the standing provisions, it would continue to offer the same ecological value and biological function to any endemic, native, or threatened fauna and flora that incidentally benefit from its use such as supporting the self-seeding of native species, otherwise offering some limited foraging or shelter around the periphery. This means the proposed modification would not unduly affect the biological integrity or ecological diversity of the area as per the ecologically sustainable development principle.

Conclusion

Under the legal advice and direction this would advocate that the, albeit limited, ecological value offered onsite would be removed under the provisions of the extant consent, therefore removing any liability or impact under the NSW *Biodiversity Conservation Act 2016*. This removes the need to prepare a BDAR to support the modification application. It is also the case that the targeted surveys and assessment that would normally follow to inform the above ecological assessment have not been completed. It is also reasonable to assume that in modifying the extant consent it would have no wider material impact on values, threatened species, biological diversity or ecological integrity in the wider environs of the site or the surrounding area, by virtue that the nature, location, extent and intensity of the activities would not change. On this basis, the modification is unlikely to have significant impact on any ecological values that are protected under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*, or the NSW *Biodiversity Conservation Act 2016*. For completeness, the management of runoff in accordance with the flood management plan (refer to section 7.1.1 above) and the wider provisions around erosion and sediment control set as a condition of the extent consent, would prevent any impact on the adjacent lakes, and any associated values protected under the NSW *Fisheries Management Act 1994*.

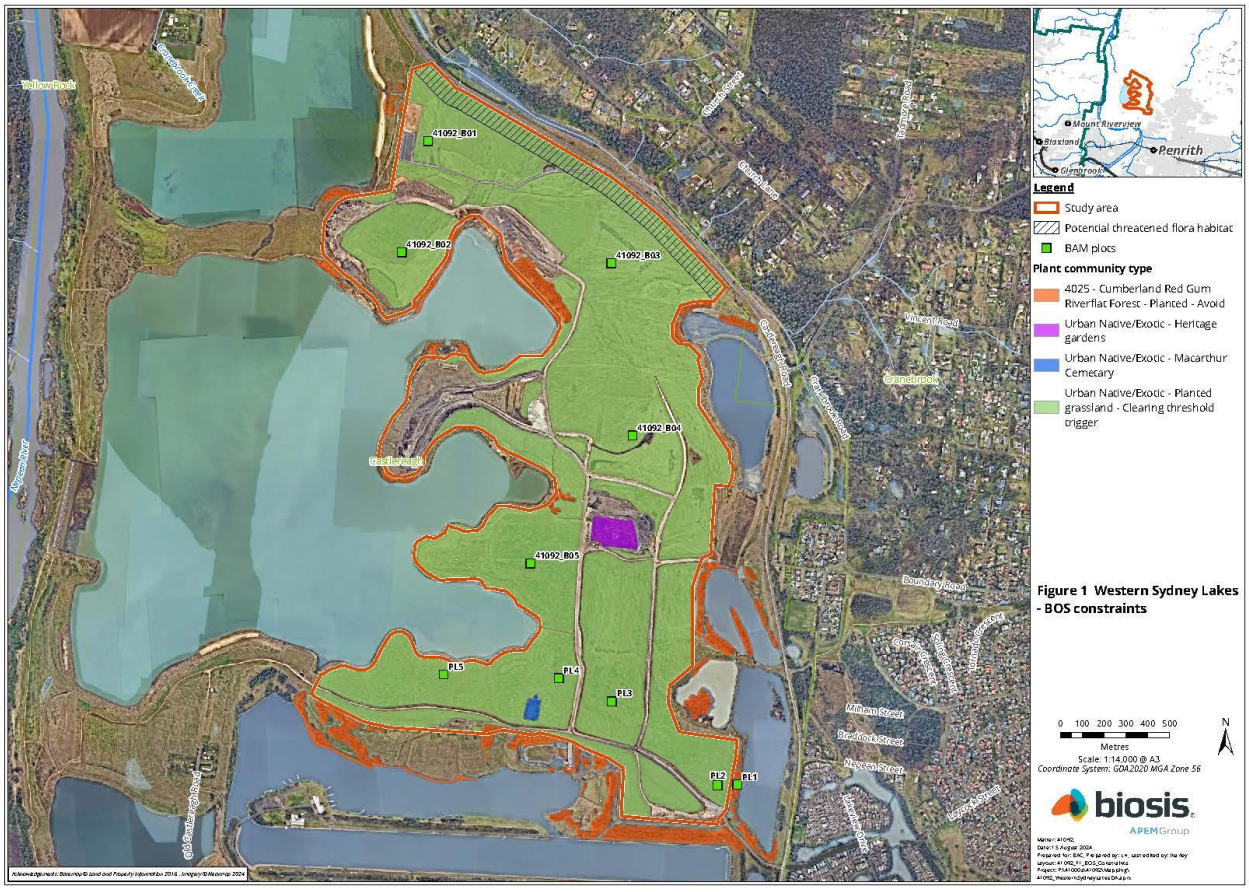

Figure 7-2 BAM plot locations and vegetation mapped onsite

7.1.4 Landscape and visual amenity

The landscape of the site has been altered over time through extraction activities, filling of the areas, lake formation and the construction of roads and other infrastructure. Following extraction for mining purposes, the excavated areas are filled and revegetated with suitable species as described in the previous section. As noted in section 5, the importation of 9.7 million tonnes of fill both continues to support and service demand from several key infrastructure projects in Sydney, while additionally raising the levels of provide flood immunity for future development. The figures in **Appendix B** show the proposed landform change across the extent of Lot 4, which is up to a maximum height of 2.98 metres in certain locations, but generally it would constitute a marginal height increase across site at 1.32 metres, with further local profiling and stabilisation carried out to respond to the natural landform and topography, along with the site's setting in the wider landscape character.

Further, the intervening landscape and topography means that any activity under the modification would be visually contained within the confines of the site, removing any impact on the surrounding landscape character or to visually sensitive receives. The height increase would not affect or alter this relationship or create/extend the visual envelope into the receiving environment. This means there are no receivers local to the site whose views, vistas, or amenity values would be impacted by the proposed modification raising the landform.

As such, there would be no altered or increased visual amenity or landscape character impacts because of the proposed modification, with the same obligations and conditions placed on PLDC to stabilise and rehabilitate the site to the agreed standards and conditions.

7.2 Immaterial issues

The following explains why the environmental impact on the following factors is likely to be immaterial.

7.2.1 Air quality

A key issue for the site is the need to actively and proactively manage exposed fill to prevent windblown dust. This is controlled through compacting exposed areas and with further stabilisation taking place through planting, while dust suppression measures are in place (including wheel washing and road cleaning) on the surfaced roads and access points. These controls are further reinforced through the provisions and conditions set under the EPL (refer to section 3.2), with PLDC needing to lodge annual returns to demonstrate its ongoing performance under the terms of the licence. This means the site currently operates with effective controls in place to managed and prevent dust generation and propagation. Under the proposed modification there would be no change in the rate, extent or scale of importation that would affect the likelihood or scale of dust generation. The marginal height increase across Lot 4 would not be sufficient to increase overall landform exposure, with local profiling preventing any localised change in wind strength and direction, again avoiding any increased potential for dust propagation. This means there would be no material impact under the proposed modification. For completeness, the ability to clear vegetation under the extant consents descried above in section 7.1.3 does not reflect any intent to strip and expose the soils onsite, again removing any dust generation risk.

The continuity of the site's operation would involve the same activities and rate of importation. This means that the rate of vehicle and equipment emissions would be unaffected under the modification, however it is noted that in extending the importation onsite would result in an additive cumulative impact across the consent's life. That said, the nature and scale of any emissions would be insufficient to affect any local air quality goals or triggers, with the site's emissions profile being consistent with any similar commercial/ industrial activity in Sydney.

7.2.2 Soil, geology and contamination

Controls have been put in place as part of the existing operations to ensure that the fill meets the geotechnical and contamination criteria for the site. As noted under section 6.2.1 the generator of any VENM and EMN that is imported to site is responsible for ensuring it meets the classifications set out in the exemption order, with PLDC only accepting materials that are supplied with the required chain-of-custody and recordkeeping. This removes the risk of importing any other fill material, which may be contaminated or contain acid sulfate or sodic/saline soils. It is also the case that any generator needs to execute the required biosecurity protocol to prevent the transfer of weeds, pathogens, or other pest species. These protocols would remain in place under the proposed modification. As such, the potential for any soil or contamination impacts would continue to be negligible. Further, the levelling and profiling of Lot 4 to achieve the landform described in **Appendix B** would only involve handling VENM and ENM building on the current importation of around 13 million tonnes of material. This removes the potential for the modification to impact on relict geology or residual soils in the area. While it is feasible that any site activity could result in a spill or incident there is no major contaminant source onsite (i.e., onsite fuel storage) that could cause contamination under the legal definition of the NSW *Contaminated Land Management Act 1997*. Localised spills would be managed and contained in accordance with current site controls.

7.2.3 Noise and vibration

The rate of activity onsite would be unaffected. The same noise generating equipment and machinery would be used in the same locations when the site is operational. This means the activity-based noise generated onsite would be unaffected under the proposed modification. Further, the footprint of the activity onsite would not be affected under proposed modification meaning that there would be no change in the separation distance between onsite noise and the receiving environment. This means noise levels at the nearest receivers would be unaffected. PLDC would additionally manage and control noise in accordance with its consent conditions and EPL, further demonstrating that the site's noise impacts would be adequately and appropriately managed under the proposed modification.

Access to and from site would be maintained in accordance with the extant consent conditions, with material haulage routes and vehicle movements remaining unaffected, both in terms of absolute numbers and daily movements. This means traffic generated noise resulting from the site's operations would be unaffected under the proposed modification. Also, there has been no notable change in ambient noise by virtue of there being no significant noise-generating development or activity in the area, which would have affected the rating noise background level (RBL). This means the relative impact of the traffic generated noise against the RBL would be unaffected, meaning the previous assessments provided in 2014 and referenced in 2018 still stands.

The only impact introduced by the proposed modification would be the prolongation of site and traffic generated noise through the extension of VENM and ENM importation. While this the case, PLDC has demonstrated ongoing compliance with the extant conditions and the requirements of the EPL demonstrating that any impacts can be adequately managed.

7.2.4 Waste

As noted under section 6.2.1 the site imports material in accordance with the EMN resource recovery order removing the need to operate as a waste management facility. Under this order, PLDC receives material that has been tested to make sure it meets the requirements of the order. This process would not change under the modification. Beyond the import of material, the site would continue to operate generating small quantities of various other waste material, which it would continue to handle and manage in accordance with the NSW *Waste Avoidance and Resource Recovery Act 2014* and the NSW *Plastic Reduction and Circular Economy Act 2021* to promote material efficiency and resource recovery over disposal. The rate, volume, and class of waste generated onsite would not be affected under the proposed modification as the type and rate of activity onsite would be unaffected. The only impact would be the ongoing generation of waste beyond the timeframes envisaged by the extant consent. While this is the case, the volumes and types of waste would continue to be marginal and in line with similar commercial and industrial activities of this type taking place in NSW. The site is also located proximal to various markets and facilities that have sufficient capacity to support waste reuse and recovery outcomes.

7.2.5 Non-Aboriginal heritage

As noted in section 0, there are two items of heritage interest onsite, the Poplars (which holds intrinsic heritage value) and the McCarthys Cemetery and Trees, which is on the State Heritage Inventory. The extent and condition of both sites protected from any impact from the current site operations, falling outside of the areas covered under the extant consents. This would continue under the proposed modification. This means there would be no direct impact on either heritage item onsite. While the amenity and setting of both sites has been impacted by the current operations onsite, this has been accounted and mitigated for in the extant consents and conditions. The proposed modification would not increase or alter the magnitude of any impacts already assessed to date, with the current mitigation and management measures continuing to provide for adequate protection. As noted under section 7.1.2, the surficial impact of the proposed modification would impact on imported VENM and ENM, removing the potential for encountering any unexpected archaeology.

7.2.6 Traffic and access

PLDC has consent to haul materials along the roads and access points shown in section 5. Under DA2 MOD 11 (Condition 36BBB), PLDC was permitted to import material to site 24-hours per day, seven days per week, to support the import of material for Sydney Metro continuous tunnelling operations. The exception was only being able to use the Old Castlereagh Road vehicle access (Gate 1) under DA2 MOD 11 to between 7am and to 6pm. The Gate 2 access off Castlereagh Road could operate 24/7 under DA MOD 11 (Condition 46AA). Outside of this express dispensation to operate under extended hours to support the above tunnelling activities, transport movements to and from site are permitted in line with the wider consent conditions around the site's operating hours (i.e., 6am to 9pm Monday to Friday and 6am to 3pm Saturday).

The proposed modification would not look to extinguish the conditions above set by DA2 MOD11, with PLDC continuing to support Sydney Metro as per Condition (a) and (b) of 17CC of DA2 MOD11 and any other site-specific Resource Recovery Order and Exemption issued by the EPA pursuant to Condition (17CC[e]). Outside of this all importation to site in accordance with the general resource recovery order described in section 6.2.1 would occur within the 'standard' operating hours described above.

This means the rate of traffic movements to and from site would be unchanged, with traffic entering and leaving site via the routes identified in Figure 5-1 between 6am to 9pm Monday to Friday and 6am to 3pm Saturday except for the dispensation offered under DA2 MOD11, which allows spoil to be transported to site 24 hours per day. The result of this means there would be no change in the volume and rate of vehicle movements to and from site each day on average. There would also be no change to the site access arrangements, including the restrictions noted above.

This means the traffic impact of the proposed modification would be consistent with the extant consents. There would be no increase in the frequency or intensity vehicle movements along any of the identified haulage and access routes. Further, since modified consent was given to the above, there have been no significant developments that would have generated additional traffic movements along the haulage and access routes identified in section 5. This means the baseline condition in terms of network performance, level of service, and delay (i.e., congestion) and travel times under the proposed modification would be consistent with the extant consents. This means the relative impact of the proposed modification would have no material impact on the area in terms of travel times and congestion.

The only impact introduced by the proposed modification would be the prolongation of activity generated traffic. While this the case, PLDC has demonstrated ongoing compliance with the extant conditions in terms of traffic management and access into and out of the site.

8. Statement of commitments

Table 8-1 documents the measures in place as part of previous consents to avoid, minimise, manage, mitigate, offset and/or monitor impacts identified in the environmental assessment. These management measures would continue during the import of additional material to site as supplemented by PLDC continuing to operate under the extant consolidated conditions, and the requirements and obligations of its EPL. As noted above in 0, as there is no change in extent, nature, magnitude or likelihood any impacts under the proposed modification relative to the extant consents, there is no proposal to introduce or modify any of the standing measures or commitments.

Table 8-1 Environmental management measures relevant to the modification application

Environmental Management or Mitigation Measure		Phase
1.	**Scope and Compliance**	
1.1	PLDC will carry out the importation of VENM and ENM in general accordance with previous consents and approvals for similar activities.	All
2	**Communication and Consultation**	
2.1	PLDC will continue to be responsive to the community's expectations and requests. In particular PLDC will: • Continue to maintain a complaints register for the site; • Follow up each complaint received by identifying the cause of the issue at the site and taking appropriate action; and • Respond to the complainant in a timely and efficient manner regarding the cause of the complaint and how the issue has been resolved.	All
3	**Traffic and Access**	
3.1	Several management measures are to be implemented during the importation period to further mitigate this impact. These are listed below: • Vehicle approach and departure routes to the site will be in accordance with approved routes and restricted to major arterial roads such as the M2, M4 & M7 Motorways, The Northern Road, and Cranebrook Road** • The majority of the VENM AND ENM truck movements are expected to occur outside of the commuter peak hours. **The conditions associated with DA MOD11 will continue to operate	During VENM AND ENM importation
4	**Noise and vibration**	
4.1	The Traffic Noise Management Plan (TNMP) for the VENM and ENM haulage operation will remain in place until importation of VENM and ENM is complete.	During VENM and ENM importation

	Environmental Management or Mitigation Measure	Phase
5	**Air Quality**	
5.1	PLDC will employ the following air quality management measures, which are already required under the existing consolidated conditions and EPL for the site: • The dust deposition gauges located within the site, as well as at Cranebrook Village, will continue to monitor compliance at the site. The results will be incorporated within PLDC programme of environmental reporting and compliance reporting to the EPA. • The interior roads will be suitably maintained, including watering where necessary to minimise dust generation, on internal roads and work areas, with water sourced from the nearest standpipe. • All vehicles within the site have a maximum internal speed limit of 60 kilometres/hour. • Rehabilitation of lands will stabilise soil surfaces and prevent dust generation.	During VENM and ENM importation
6	**Soils, Water and Landform**	
6.1	PLDC will ensure that any material delivered to the site meets and satisfy the requirements of and be delivered with supporting environmental information certifying to PLDC that the material is VENM or ENM as defined in the *Protection of the Environment Operations Act 1997*.	During VENM and ENM importation
6.2	PLDC will ensure validation and certification of the material be undertaken by a suitably qualified environmental consultant in accordance with NSW OEH Waste Classification Guidelines using industry accepted procedures and NATA registered laboratories (for sample analysis) being an environmental consultant acceptable to PLDC.	During VENM and ENM importation
6.3	PLDC will ensure no contamination or corruption of the material occurs enroute between the originating source and the site, as the source company must provide the following information: • Site Address (Street, Suburb) • Description of previous land use and current land use and details of any demolition work (e.g. residential, service station, supermarket etc) at every site where the material is sourced • Brief Description of proposed works (e.g. excavation of basement car park, footings tunnel etc) which has provided or will provide the material • Material type and approximate quantity of VENM and ENM • For VENM, certificate certifying to PLDC that if the material is VENM, it must contain no material that is not VENM including topsoil, building rubble, fill etc • For ENM, certificate certifying to PLDC that if the material is ENM and meets the requirements of either the general ENM resource recovery order or a site-specific resource recovery order and exemption issued by the NSW EPA • Source of material on the site and approximate depth(s) (e.g. all material below 300mm depth)	During VENM and ENM importation
6.4	A statement in the report certifying that material to be received is VENM AND ENM must contain certification as to the following: • Laboratory analysis results included for the material to be delivered to the Site (Minimum of 3 samples required for residential sites from which the material is sourced/Minimum of 10 samples required for large sites from which the material is sourced plus duplicates for VENM) • Map of sample locations of the site from which the material is sourced (Field Sketch or Indicated on Engineering Plan) • Full description of material(s) to be delivered – either described in the report of Bore logs attached • Laboratory Reports and Certificates for the material to be delivered attached and completed as part of the certification report (including Lab Quality Control) • The materials to be supplied are not Potential Acid Sulphate soils	During VENM and ENM importation
6.5	Field Screening, Sampling and Analysis of materials • Description of any Field Screening undertaken (if any) of the Site from which the material is sourced	During VENM and ENM importation

Environmental Management or Mitigation Measure		Phase
	• Samples provided of the material to be delivered must be discrete (not composite) by the environmental consultant • Samples of the material to be delivered must be appropriately preserved and forwarded to a laboratory approved by PLDC	
6.6	The Analysis Undertaken on VENM AND ENM to be delivered to the Site must include: • Priority Metals (arsenic, cadmium, chromium, copper, lead, mercury, nickel, zinc) • Organochlorine Pesticides (OCPs) • Petroleum Hydrocarbons (TPH) • Benzene, Toluene, Ethylbenzene, Xylene (BTEX Compounds) • Polycyclic Aromatic Hydrocarbons (PAHs) • Polychlorinated Biphenyls (PCB's)	During VENM and ENM importation
6.7	PLDC will undertake: • Material tracking by recording: the source(s) of material generation, including site address(s), the total amount of material generated per site and transport and receipt dockets that ensure total amount of material generated at the source site is consistent with the total amount received at PLDC • Validation inspections and sampling at the site to 'check' that imported materials meet either VENM or ENM. The sampling frequency can be flexible given this environmental control is simply a validation process	During VENM and ENM importation
6.8	In addition to previous consent conditions, erosion and sediment control including stabilisation measures as described in the industry standard Landcom Manual Managing Urban Stormwater: Soils and Construction (Volume 1 Edition 4) will be implemented.	Pre-VENM and ENM Importation
6.9	PLDC will minimise human and environmental exposure to soil during work in accordance with the PLDC Occupational Health Safety and Environmental Management System.	During VENM and ENM importation
7	**Flora and Fauna**	
7.1	PLDC will ensure that existing management and rehabilitation measures as per the original development application and consents are implemented, including implementation of the Castlereagh Biodiversity and Natural Heritage Conservation Master Plan, which provides detailed policy and strategic direction to support the sustainability targets for the site.	During VENM and ENM importation
8	**Indigenous Heritage**	
8.1	PLDC will ensure that if any new or unknown Indigenous sites or relics are uncovered during the proposed Project, work affecting those sites or relics will cease immediately and the material will be assessed by Aboriginal stakeholders and OEH, in accordance with current consent conditions.	During VENM and ENM importation
9	**Non-Indigenous Heritage**	
9.1	The conservation management plan (CMP) for the site identifies appropriate conservation management measures to ensure that items of historical value are maintained. PLDC will ensure that sufficient buffers are established between any heritage item and the surrounding activities. Management will be undertaken in accordance with the CMP for the site.	During VENM and ENM importation
10	**Landscape and Visual**	
10.1	PLDC will undertake other measures for mitigating visual impacts described in the extant conditions where appropriate.	During VENM and ENM importation

9. Consideration of alternatives

Under the State Environmental Planning Policy (Precincts - Western Parkland City) 2021, a discussion is required to determine any feasible alternatives to increasing the amount of imported material as well as the consequences of not carrying out the revised landform for Lot 4.

9.1 Alternatives

9.1.1 'Do something' scenario

Penrith Lakes has serviced Sydney for the past 30+ years and is looking to continue its operations as a material import facility to support ongoing major infrastructure demand including its use by many of the City's key current and pending infrastructure projects such as Sydney Metro West and Western Sydney Airport Metro. Approval of this modification would ultimately enable delivery of the Penrith Lakes Scheme.

9.1.2 'Do Nothing' Scenario

The 'do nothing' scenario is not an option for the site as this would be inconsistent with the above SEPP and wider provisions of the flood management plan and masterplan and precinct plans. Under this scenario the site would also stop being able to accept the spoil generated from many of Sydney's key infrastructure projects, requiring the NSW Government to find an alternative solution. A small advantage of this scenario would be avoidance of any additional environmental impacts. However, with a Statement of Commitments and current mitigation measures in place, as well any additional required mitigation measures, any impacts can be sufficiently and adequately managed to avoid further or significant impacts from importation of VENM and ENM. Further, the associated impact of the NSW Government finding an alternative for manage generated spoil would have its own environmental impact.

10. Justification for modified project

The proposed modification to raise the Lot 4 landform to the 1-in-500-year ARI level is necessary to provide the required flood immunity set under the WPC SEPP and wider policy to support the site's long-term future and deliver the Penrith Lakes Scheme. Allowing for an additional 9.7 million tonnes of fill to be imported to site would also continue to support the State's ongoing infrastructure projects, such as Sydney Metro, with the site providing an effective mechanism to deal with tunnel spoil generated during excavation works.

As abovementioned, any environmental impacts could be adequately managed such that the modification would have no material impact on the surrounding landscape, including flood risk, visual impacts, noise and vibration, traffic and access, biodiversity, and community. This extends to proposed modification not introducing or alternating the nature, scale, magnitude, or intensity of any residual impacts.

Accordingly, this proposal aligns with the goals and aims of the WPC SEPP, by promoting responsible resource management and environmental protection and its approval is recommended.

The proposed modification is also consistent with the definitions of section 4.55(2) of the EP&A Act in being substantially the same as the extant consents. Finally, this report has demonstrated that the proposed modification to be consistent with the relevant EPIs, the EP&A Regulation, and other statutory requirements. The assessment has demonstrated the suitability of the site to support the development proposed under the modification within any material or significant impact on the receiving environment. This accounts for the PLDC continuing to operate the site in accordance with the standing conditions of consent, the consolidated statement of commitment, the wider mitigation measures, and the provisions of the various management plans, planning instruments and development controls over the site. This includes the pollution management measures described in the standing environmental protection licence, which has been in place since 2001 (EPL: 2956). Finally, the site, and activities proposed under the modification remain to be in the public interest on account of supporting the Government's public infrastructure program, while helping deliver the Penrith Lakes Scheme, which under the standing Deed is to be developed in the long-term in the public interest.