

19 October 2018
Our Ref: 20554A.3s4-55(KM)



planning consultants

The General Manager
Penrith City Council
PO Box 60
Penrith NSW 2751

Dear Sir

**RE: SECTION 4.55(1A) APPLICATION TO MODIFY
DEVELOPMENT CONSENT DA 16/1351 FOR A BULKY GOODS PREMISES
243-261 FORRESTER ROAD, NORTH ST MARYS**

1.0 Introduction

DFP has been commissioned by Home Consortium to prepare an application under Section 4.55(1A) of the *Environmental Planning and Assessment 1979* (EP&A Act) to modify development consent DA 16/1351 for a Bulky Goods Premises (now known as a Specialised Retail Premises) development at 243-261 Forrester Road, North St Marys (the Site).

The s4.55(1A) application seeks to modify the development consent to extend the lapsing period of the development consent by 1 year in accordance with s4.54(1) of the EP&A Act (see **Section 4.0**).

This letter has been prepared in support of the section 4.55(1A) application and includes the information necessary for Penrith City Council (Council) to assess and determine the application including:

- A background outlining the approved development;
- A brief Site Context;
- Details and reasons for the proposed modification;
- An environmental assessment; and
- Our conclusion and recommendations.

We have concluded that the proposed modification will result in a development that is substantially the same as the approved development and will have minimal environmental impact and accordingly, the proposal is considered to satisfy the requirements to enable these modifications to be approved by Council pursuant to s4.55 of the EP&A Act.

2.0 Background

On 22 February 2017, Council granted development consent to Development Application (DA) 16/1351 for:

“Change of Use of an Existing Building (Masters) for a Bulky Goods Premises including Enclosure of the Existing Garden Centre and Associated Advertising Signage.”

This Notice of Determination (see **Attachment 1**) indicates that the development consent expires on 22 February 2019 unless work associated with the approved development has physical commenced prior to that date. At the date of this submission, physical commencement has not occurred.

3.0 Site Context

The Site is located in the suburb of North St Marys and is approximately 2 kilometres north of the St Marys Railway Station, in the local government area (LGA) of Penrith City Council (see **Figure 1**).



Figure 1: Site Location

The Site is legally described as Lot 12 DP 1192443 and is also known as 243-261 Forrester Road, North St Marys. The Site is approximately 230m long (north-south) and 157m deep (east-west) and has an area of approximately 3.185 hectares.

Occupying the Site is a large warehouse-style building surrounded by surface car parking and driveways. This development was approved on 5 July 2012 (DA reference 11/0470) for construction and use as a Masters Home Improvement Centre. This development commenced operations in 2014 but ceased in 2016/2017.

To the north of the Site is Forrester Road and there is a large expanse of undeveloped land earmarked for Regional Open Space.

To the east and south is the St Marys Rugby League Club and Holiday Inn Hotel, St Marys Leagues Stadium, surface car parking and playing fields.

To the west, on the opposite side of Forrester Road, is the St Marys Industrial Area.

4.0 Proposed Modification

The modification application seeks to extend the lapsing period of the development consent by 1 year in accordance with s4.54 of the EP&A Act such that the modified development consent would lapse on 22 February 2020.

This extension of time is required to enable the Developer to compete contractual arrangements for the works and to provide some flexibility should physical commencement of the approved development not occur prior to 22 February 2019.

5.0 Statutory Provisions

Section 4.55 of the EP&A Act contains the provisions that must be considered by Council in determining an application to modify a Notice of Determination. In this regard, the relevant provision is section 4.55(1A) of the EP&A Act.

This application is lodged under section 4.55(1A) as the amendment proposed is considered to be minor in nature, will have minimal environmental impact and will remain substantially the same development as originally approved.

In addition to the EP&A Act, Clause 115 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation are detailed below.

5.1 Section 4.55(1A) of the Act

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that a number of matters be addressed, as discussed below:

“A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) It is satisfied that the proposed modification is of minimal environmental impact”

The proposed modification involves no physical amendments to the approved development and accordingly, the proposal will have minimal environmental impact.

“(b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”

The proposed modification does not alter the approved land use or the physical form of the approved development and accordingly, the development will remain substantially the same as that originally approved.

“(c) It has notified the application in accordance with:
(i) The regulations, if the regulations so require, or
(ii) A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modifications of a development consent,”

In our opinion, the proposed modification does not require notification as there are no physical amendments to the approved development. However, this is a matter for Council to consider.

“(d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be”

Should Council notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

Subsections (1) and (2) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in Section 6.0 of this submission.

5.2 Clause 115 of the EP&A Regulation 2000

Subclause 115(1) of the Regulation details the information to be submitted with an application to modify a Development Consent under s4.55(1A). These details are outlined in **Table 1**.

Table 1: Information Required by Clause 115 of the Regulation	
Requirement	Details
Name and address of applicant	Home Investment Consortium Company Pty Ltd PO Box 19, Double Bay NSW 2028
Description of approved development	Change of Use of an Existing Building (Masters) for a Bulky Goods Premises including Enclosure of the Existing Garden Centre and Associated Advertising Signage.
Site address	243-261 Forrester Road, North St Marys Lot 12 DP 1192443
Description of the proposed modifications	To modify Development Consent DA 16/1351 to extend the lapsing period by 1 year.
Statement describing intent of modification	Modification under Section 4.55(1A) of the EP&A Act to extend the lapsing period by 1 year to provide additional time for physical commencement to occur.
Description of expected impacts	The proposed modifications will result in no change to the physical form of the approved building and accordingly, the proposal will have no adverse environmental impacts.
Undertaking that the development will remain substantially the same as that originally approved	The proposed modifications will result in no change to the approved land use or the physical form of the approved building and accordingly, the development will remain substantially the same as that originally approved.
Biodiversity Credits	n/a
Owners consent	Owner's consent is provided on the form/letter accompanying this submission to Council.
Application to Court or Consent Authority	The modification application is being lodged with Council.

In accordance with subclause 115(9), the application is accompanied by the relevant fee prescribed under Part 15 of the Regulation.

Subclauses (2), (3), (3A), (3B), (4), (5), (6), (7), (8) and (10) of cl115 do not apply to the proposed modification.

6.0 Environmental Planning Assessment

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) as are of relevance to the proposed modification must be taken into consideration in determining the application for modification. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. Accordingly, the following subsections provide an assessment of any such relevant matters.

6.1 Section 4.15(1)(a) – Planning Controls

6.1.1 EP&A Act

Section 4.54 of the EP&A Act provides as follows:

- “(1) If, in granting a development consent, the consent authority reduces the period after which the consent lapses to less than 5 years, the applicant or any other person entitled to act on the consent may apply to the consent authority, before the period expires, for an extension of 1 year.*
- (2) The consent authority may grant the extension if satisfied that the applicant has shown good cause.*
- (3) (Repealed)*
- (4) An extension of 1 year granted under this section commences to run from the later of the following:*
- (a) the date on which the consent would have lapsed but for the extension,*
 - (b) the date on which the consent authority granted the extension or, if the Court has allowed the extension in determining an appeal, the date on which the Court determined the appeal.”*

The proposed modification seeks to extend the lapsing period of the development consent by 1 year in accordance with s4.54(1) of the EP&A Act with the extension to run from the date on which the consent would have lapsed - i.e. it is proposed that the modified development consent would lapse on 22 February 2020.

The Developer has yet to finalise contractual arrangements for the Site as they have a large portfolio of similar sites and have been progressively undertaking works on those sites over the past 12-18 months. This extension of time is required as to compete contractual arrangements for the works and to provide some flexibility should physical commencement of the approved development not occur prior to 22 February 2019.

6.1.2 Penrith Local Environmental Plan 2010

The Site is zoned IN2 Light Industrial under the LEP. The approved use as a bulky goods premises is now defined as a ‘specialised retail premises’ and this land use is permissible with development consent on the Site pursuant to Schedule 1 of the LEP. In addition, signage is permissible with development consent in this zone.

The proposed modification does not alter the approved land uses or the physical form of the approved development and accordingly, no further assessment in respect of LEP 2012 is considered warranted in this instance.

6.1.3 Penrith Development Control Plan 2014

The Penrith DCP 2014 applies to the Site although as indicated above, the proposed modification does not alter the approved land uses or the physical form of the approved development and accordingly, does not warrant a detailed assessment against the provisions of the DCP in this instance.

6.2 Section 4.15(1)(b) – Natural and Built Environmental Impacts

The proposed modification will not result in any change to the physical form of the approved development and will not therefore, result in any different or additional impacts to the approved development.

6.3 Section 4.15(1)(b) – Social and Economic Impacts

The proposed modification will provide additional time for physical commencement of the approved development which will ultimately have positive social and economic impacts by providing local employment opportunities and services to nearby residents and businesses.



6.4 Section 4.15(1)(c) – Suitability of the Site for Development

The proposed modification has no bearing on the suitability of the Site for the development which has already been deemed by Council to be suitable for the approved development.

6.5 Section 4.15(1)(e) – Public Interest

The proposed modification is in the public interest as it will provide additional time for the developer to commence physical works on the Site without having to lodge a new development application.

7.0 Conclusion and Recommendations

This submission accompanies an application under section 4.55(1A) of the EP&A Act to modify development consent DA 16/1351 for a bulky good premises and associated signage at 243-261 Forrester Road, North St Marys.

The proposed modification seeks to extend the lapsing period of the development consent by 1 year in accordance with s4.54(1) of the EP&A Act such that the modified consent would lapse on 22 February 2020. This modification will not substantially alter the approved development, will have no adverse environmental impact and accordingly, is considered to satisfy the requirements pursuant to section 4.55(1A) of the EP&A Act.

Accordingly, we are of the view that the proposed modification is acceptable in this particular instance and can be approved under section 4.55(1A).

We would be pleased to discuss this application further with Council Officers should that be required and if you have any queries, please do not hesitate to contact Kendal Mackay from our office.

Yours faithfully
DFP PLANNING PTY LTD

A handwritten signature in black ink, appearing to read 'K. Mackay', written over a horizontal line.

KENDAL MACKAY
PARTNER

kmackay@dfpplanning.com.au

Reviewed: _____

A handwritten signature in black ink, appearing to read 'R. Hayer', written over a horizontal line.

Attachment: 1. Current Development Consent DA 16/1351