

Statement of Environmental Effects

Proposed Section 96(1A) Modification to
existing 'Bunnings' Warehouse Expansion

Lot 1 and Common Property SP 72448
No.301 - 335 Mulgoa Road,
Jamisontown NSW

Report: S96 (1A) Modification to existing 'Bunnings' Warehouse Expansion
Lot 1 and Common Property SP72448
No.301 – 335 Mulgoa Road, Jamisontown, NSW

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1 Introduction

This Statement of Environmental Effects Report (the “**Report**”) has been prepared by PGH Environmental Planning, on behalf of Bunnings Group Limited (the “**client**”). The Report describes the existing site and locality, outlines the proposed development and assesses the suitability of the proposal having regard to the relevant environmental legislation.

The subject site (the “**site**”) is known as Lot 1 and Common Property SP72448, Nos.301 – 335 Mulgoa Road, Jamisontown. A Bunnings Warehouse is located in the north-western corner of the site and a range of large format retail stores are located to the south and south-east of the site adjoining Mulgoa Road.

Council recently on 30 July 2015, granted consent to undertake a boundary adjustment and alterations and additions to the existing Bunnings Warehouse (DA15/0377). Construction has commenced and the business is trading but in a reduced capacity, consequently the client is seeking to allow for a staged re-opening of the renovated sections of the warehouse in order to minimise the overall period of disruption to trading during construction works. A number of the conditions of consent require certain works to be completed prior to the issue of ‘an occupation certificate’ and in discussions with the Principal Certifying Authority, it has advised that the wording of these conditions do not allow for the issue of an ‘interim occupation certificate’ over parts of the site which effectively prevents a staged re-opening.

As a result of this situation we propose that it is necessary to amend conditions 40, 41, 42, 43 and 52 of the development consent (the “**proposal**”).

There are no changes to the approved floor area, parking requirements, staff numbers or trading hours of the development.

The site is zoned B5 Business Development under Penrith Local Environmental Plan (LEP) 2010. The proposal has been assessed having regard to the relevant matters for consideration under Section 79C of the *Environmental Planning and Assessment Act, 1979* and *Environmental Planning and Assessment Regulation 2000* and associated legislation.

The current development consent was approved as “*integrated development*” pursuant to Section 91 of the *Environmental Planning and Assessment Act 1979*, as it involves works within 40 metres of an existing creek (unnamed tributary of School House Creek).

An application for a Controlled Activity Approval (CAA) is under consideration by the New South Wales Office of Water (NOW) and as the proposed modifications do not change any physical aspects it is our opinion that further referral to NOW is not required.

The documentation relied upon in assessing the proposal is referred to in **Section 8**. The assessment demonstrates that the proposal satisfies the relevant legislation and controls and should be approved.

2 Site and Locality

An inspection of the site and surrounding area has been undertaken, resulting in the following observations.

2.1 Site Location

The site is located on the northern side of the M4 Western Motorway and to the west of Mulgoa Road, Penrith (refer **Figure 1**).

2.2 Site Description

The site is known as Lot 1 and Common Property SP72448, Nos.301 – 335 Mulgoa Road, Jamisontown. It is an irregular shaped allotment and Lot 1 is defined by the existing Bunnings building. The total area of the Strata Plan, including common property is 7.298hectares (refer **Figure 2**).

2.3 Existing Development

The Bunnings Warehouse building is located within a large scale bulky goods retail complex comprising the ‘Penrith Homemaker Centre’ and ‘Harvey Norman Centre’. The site is accessed from both Mulgoa Road (via Wolseley Street) and Blaikie Road (via Pattys Place). The building is positioned in the western corner of the complex adjoining the M4 Motorway and a creek line (an unnamed tributary of School House Creek) is located approximately 20metres from the northern boundary of Lot 1 and 24.5metres from the proposed delivery laneway.

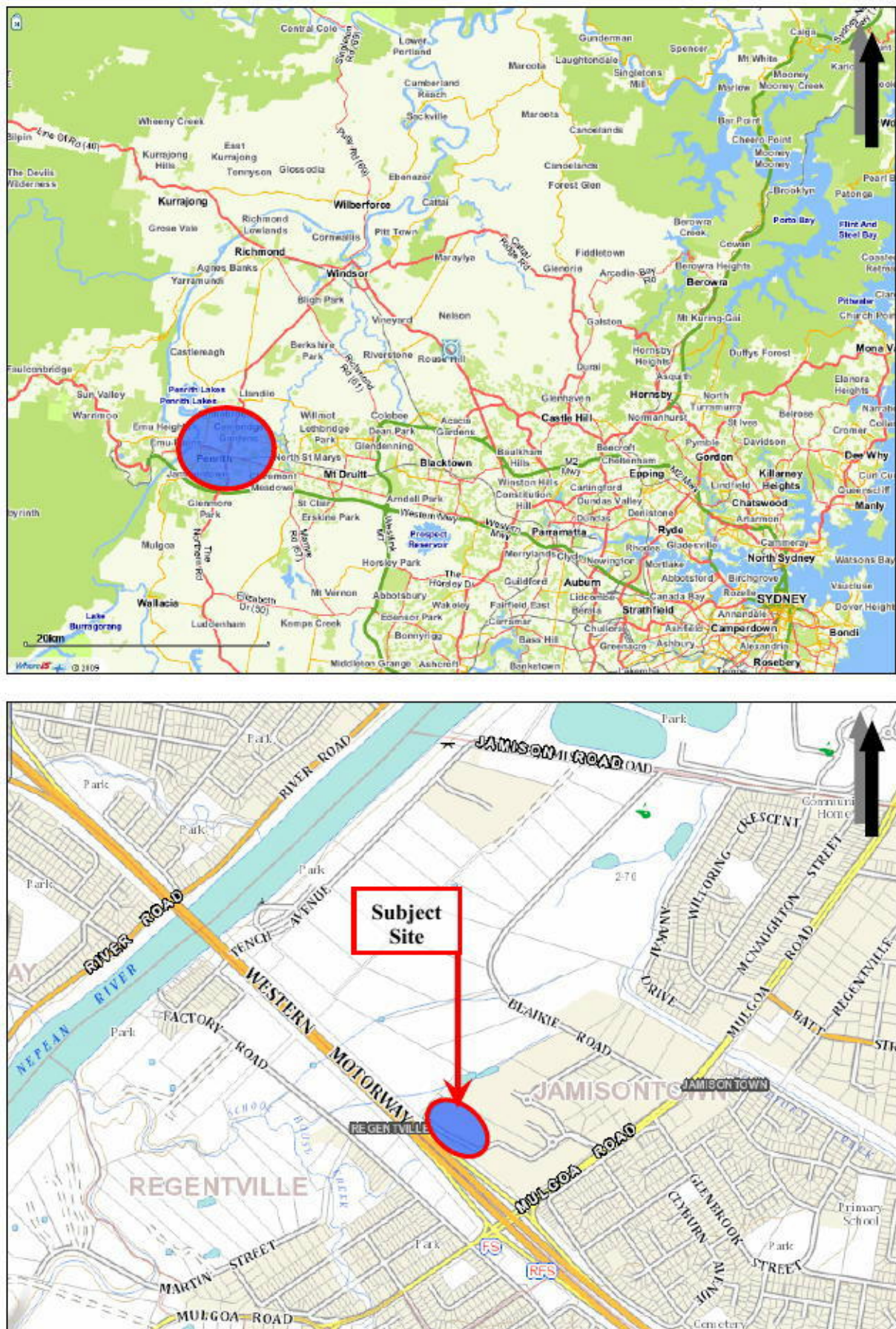


Figure 1 – Locality Map

Section 96(1A) Modification of existing 'Bunnings' Warehouse Expansion

Not to Scale

Source: Google maps

Lot 1 and Common Property SP72448

Nos.301 – 335 Mulgoa Road, Jamisontown





Figure 2 – Site Plan

Not to Scale

Source <https://maps.six.nsw.gov.au/>

Section 96(1A) Modification of existing 'Bunnings' Warehouse Expansion

Lot 1 and Common Property SP72448

Nos.301 – 335 Mulgoa Road, Jamisontown

2.4 **Character of Locality**

The site is located at the western extremity of a wider business/light industrial area which contains a mix of large format retail uses, petrol stations, hotel and car sales uses fronting Mulgoa Road. Mulgoa Road provides a main traffic link between the M4 Motorway to the south and Penrith CBD to the north. The site is approximately 850m from the Nepean River (to the west) and the land immediately to the north and west is zoned rural and is flood affected (refer **Figure 3**).

3 **History**

Council recently on 30 July 2015, granted consent (DA15/0377) to undertake a boundary adjustment and alterations and additions to the existing Bunnings Warehouse.

Further on 25 August 2015 Council confirmed (by email) its approval of minor amendments to the stamped development plans without the need for a Section 96 Modification. This matter arose due to a survey error in respect of the western boundary.

4 **The Proposal**

The client is seeking to modify conditions 40, 41, 42, 43 and 52 of the development consent to allow for the issue of an 'interim occupation certificate' over parts of the site and permit a staged re-opening of the renovated sections of the warehouse in order to minimise the overall period of disruption to trading during construction works (the "**proposal**"). Importantly the proposed amendments do not create any inconsistency with the remaining conditions of consent as issued.

4.1 **Proposed Conditions to be Modified**

The nominated condition Nos.40, 41, 42, 43 and 52 relate to:

- Engineering (works-as-executed drawings);
- Stormwater Management and Flood Control Works and associated restriction as to user and positive covenants;
- Directional signage and line marking; and
- Landscaping.



Figure 3 – Site and Locality

Not to Scale

Source <https://maps.six.nsw.gov.au/>

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It is proposed that they be modified to permit the issue of an Interim Occupation Certificate prior to these works/matters being finalised. This can be achieved by inserting a reference to Final Occupation Certificate as follows (Amendments in **bold text** and ~~strikeout~~):

40. Prior to the issue of ~~an~~ **a Final** Occupation Certificate, works-as-executed drawings, final operation and maintenance management plans and any other compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage for Building Developments.

An original set of works-as-executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority.

- 41 Prior to the issue of ~~an~~ **a Final** Occupation Certificate the Principal Certifying Authority shall ensure that the:
- a) Stormwater management systems (including on-site detention and water sensitive urban design)
 - b) Overland flowpath works
 - c) Flood control works
 - Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
 - Have met the design intent with regard to any construction variations to the approved design.
 - Any remedial works required to been undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the works-as-executed drawings.

- 42 Prior to the issue of ~~an~~ **a Final** Occupation Certificate a restriction as to user and positive covenant relating to the:
- a) Stormwater management systems (including on-site detention and water sensitive urban design)
 - b) Overland flowpath works
 - c) Flood control works

Shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater Drainage for Building Development.

- 43** Prior to the issue of ~~an~~ **a Final** Occupation Certificate, directional signage and linemarking shall be installed indicating directional movements and the location of customer parking to the satisfaction of the Principal Certifying Authority.
- 52** The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a suitably qualified landscape professional.

i. Implementation Report

Upon completion of the landscape works associated with the development and prior to the issue of ~~an~~ **a Final** Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development.

The report is to be prepared by a suitably qualified landscape professional.

~~An~~ **A Final** Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

ii. Maintenance Report

On the first anniversary of the date of ~~the~~ **a Final** Occupation Certificate issued for the development, a Landscape Maintenance Report is to be submitted to Penrith City Council certifying that the landscape works are still in accordance with the development consent and the plant material is alive and thriving.

This report is to be prepared by a suitably qualified landscape profession

5 Planning Controls

This Section addresses the planning controls considered relevant in an assessment of the proposal. The following planning legislation and controls apply to the proposed development.

1. Water Management Act 2000.
2. Sydney Regional Environmental Plan (SREP) No.20 - Hawkesbury Nepean River (No.2-1997).
3. Penrith Local Environmental Plan 2010.
4. Penrith Development Control Plan 2010;
5. Draft Penrith Development Control Plan 2014.
6. The Disability (Access to Premises – Buildings) Standards 2010.

5.1 Water Management Act 2000

The site is located to the south of a watercourse (unnamed tributary of School House Creek) which traverses the land parcel immediately to the north of the site (Lot 11 DP1046110). There are presently works and structures on site within 40metres of the watercourse and the proposal seeks to reconfigure these developed areas as illustrated in the development plans.

The current development consent was approved as “integrated development” pursuant to Section 91 of the Environmental Planning and Assessment Act 1979, as it involves works within 40 metres of an existing creek (unnamed tributary of School House Creek).

An application for a Controlled Activity Approval (CAA) is under consideration by the New South Wales Office of Water (NOW) and as the proposed modifications do not change any physical aspects it is our opinion that further referral to NOW is not required.

5.2 Sydney Regional Environmental Plan (SREP) No.20 - Hawkesbury Nepean River

Sydney Regional Environmental Plan No.20 aims to protect the environment of the Hawkesbury-Nepean River by ensuring that the impacts of future land uses are considered in a regional context. The proposal does not change any of the approved works. It is considered to be an administrative amendment which will not result in any impacts upon the surrounding tributary creeks of the Hawkesbury River and local riparian system.

A Sediment and Erosion Control Plan provides control measures during construction. It is considered that the application is consistent with the aims and intent of the Policy.

5.3 Penrith Local Environmental Plan 2010

The land is presently zoned¹ B5 Business Development under Penrith LEP 2010. It is our view that the following definition² is considered relevant:

***hardware and building supplies** means a building or place the principal purpose of which is the sale or hire of goods or materials, such as household fixtures, timber, tools, paint, wallpaper, plumbing supplies and the like, that are used in the construction and maintenance of buildings and adjacent outdoor areas.*

Note. Hardware and building supplies are a type of **retail premises**—see the definition of that term in this Dictionary.

The land use table to Part 2 of LEP 2010 for the B5 Business Development zone provides that *hardware and building supplies* are permitted with consent.

5.3.1 Zone Objectives

Subclause 2.3(2) of LEP 2010 provides that ‘*the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone*’.

The objectives of B5 Business Development zone are:

- To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.
- To maintain the economic strength of centres in Penrith by limiting the retailing of food, groceries and clothing.

The proposal is considered to be consistent with the objectives of the zone as it:

- ✓ Continues to encourages employment opportunities; and
- ✓ provides a business which provides for warehouse and bulky goods premises in a location which supports the viability of Penrith.

In our opinion the proposal is consistent with these objectives and therefore satisfies this provision. Given that the scope of the amendments do not affect the built form of the approved development we consider that they do not have any direct impact upon Parts 4 – 7 of LEP 2010.

¹ Planning Certificate No.15/01202, dated 05/03/2015.

² Dictionary LEP 2010.

5.4 **Penrith Development Control Plan 2014**

We have reviewed the DCP and given that the scope of the amendments do not affect the built form of the approved development we consider that they do not have any direct impact upon the applicable Part B - DCP Principles; Part C - City-Wide Controls; and Part D – Land Use Based Controls in Penrith the DCP.

6 **Statutory Assessment**

This section provides an assessment of the proposal against the relevant matters for consideration pursuant to Section 96(1A) and 79C(1) of the *Environmental Planning and Assessment Act 1979*.

6.1 **Section 96(1A) – Modifications Involving Minimal Environmental Impact**

In consideration of a modification of Development Consent, the Consent Authority must have regard as to whether:

▪ ***Section 96(1A)(a) - It is satisfied that the proposed modification is of minimal environmental impact.***

The proposal involves minor modifications to the operational and staging program of the redevelopment. There are no changes to the external appearance or internal layout of the building; no effect on vegetation and no change to the approved use of the building or intensity of use of the various areas. The essential character of the approved plans has been retained and consequently it is considered that the modifications are of minimal environmental impact.

Section 96(1A)(b) - It is satisfied that 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).

In Moto Projects [No.2] Pty Limited v North Sydney Council (1999) NSWLEC 280, Bignold J stated that for a Section 96 to be successful the modified development must be “essentially or materially the same as the (currently) approved development”³.

³ Paragraph 55.

In this regard he commented that the comparative task involves “an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)”⁴.

The following quantitative and qualitative matters have been considered in determining whether the development will be substantially the same as that approved.

Quantitative

The amendments involve changes to the wording of the nominated conditions to facilitate the staged construction with no changes to the physical or operational aspects of the development.

Qualitative

It is our view that the inclusion of a provision to permit the staged occupation of the development does not substantially change the essential use and function of the development or the circumstances under which the consent was granted in the first place. Consequently the proposal is essentially and materially the same development as that approved.

Section 96(1A)(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 under section 72 that requires the notification or advertising of applications for modification of a development consent.***

Council is required to comply with any relevant notification or advertising provisions.

Section 96(1A)(d) - It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Any submissions received will be duly considered by Council prior to determination of the proposal.

Section 96(3) - In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

This is addressed in the following Section, **Section 6.2**.

⁴ Paragraph 56.

6.2 The Provisions of any Environmental Planning Instrument

Section 79C(1)(a)(i) – The provisions of any environmental planning instrument

The proposal is permissible with the consent of Council. It is consistent with the relevant provisions of the EP&A Act and EP&A Regulation, SREP No. 20, and Penrith LEP 2010 as outlined in **Section 5** of this Report. It is considered that the application is satisfactory in this regard.

6.3 The Provisions of any Draft Environmental Planning Instrument

Section 79C(1)(a)(ii) – The provisions of any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved)

There is no draft Plan applicable.

6.4 The Provisions of any Development Control Plan

Section 79C(1)(a)(iii) – The provisions of any development control plan

In our opinion, the report demonstrates that the proposal complies with relevant provisions of DCP 2014 as outlined in **Section 5**. No variations are proposed to Council's DCP and therefore the application is satisfactory.

6.5 Planning Agreement or Draft Planning Agreement

Section 79C(1)(a)(iia) – any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F

There is no planning agreement applicable.

6.6 Matters Prescribed by the Regulations

Section 79C(1)(a)(iv) – The provision of any matters prescribed by the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

Pursuant to clause 92 of the *Environmental Planning and Assessment Regulation 2000* all demolition work will be carried out in accordance with the provisions of AS2601-2001 - The Demolition of Structures.

The NSW Coastal Policy 1997 does not apply to the land (Clause 92 EP&A Regulation). The proposal involves the enlargement of an existing building and will be constructed to comply with regulated fire safety measures (Clauses 93, 94 & 94A EP&A Regulation). Having regard to these matters it is considered that the application is satisfactory.

6.7 Any Coastal Zone Management Plan

Section 79C(1)(a)(v) – The provision of any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There are no coastal management plans that apply to the land.

6.8 The Likely Impacts of the Development

Section 79C(1)(b) – The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

6.8.1 Natural Environmental Impact

The site is presently used as a hardware and building supplies and the site has been developed including parking and landscaped areas. The proposal is a land use application that has considered impacts on existing vegetation. It is our view that there will be no adverse natural environmental impacts in respect of:

- ✓ Water – little likelihood of pollution through run-off, turbidity or contamination. The proposal involves stormwater measures and a number of specialist reports have been compiled which consider potential impacts of the proposal minimal.
- ✓ Soils – little effect on soil quality, including for example, erosion, instability, salinity, acidity, or contamination.
- ✓ Air Quality – little likelihood of pollution through the emission of dust, odours, and other airborne pollutants.
- ✓ Flora and Fauna – no effect upon the maintenance of biodiversity or impact upon critical habitats, threatened species, populations, ecological communities or their habitats.

6.8.2 Built Environmental Impact

As discussed the proposal amendments do not change the physical aspects of the approval. The preceding assessment concludes that there are no long term amenity impacts. The impact of the proposal has been assessed against the relevant objectives of Penrith LEP 2010 and it demonstrates that the proposal is satisfactory.

In our opinion it is unlikely to have an adverse impact upon the existing and future character of the locality in respect of:

- ✓ Context and Setting – the proposed development has regard to existing topography and existing development.
- ✓ Overshadowing – no overshadowing due to height, or bulk and scale.
- ✓ Visual – external appearance that is consistent with the business and retail nature of the area.
- ✓ Noise and Vibration – the proposal will not generate offensive noise or vibration.
- ✓ Heritage – the site is not within the vicinity of any heritage item.
- ✓ Waste - little likelihood of pollution through waste generation, storage and disposal of wastes and litter.
- ✓ Energy Efficiency – the building will continue to provide where appropriate, energy saving measures.

6.8.3 Social and Economic Impact

The proposed amendments will assist in minimising the overall period of disruption to trading during construction work and therefore can provide positive economic benefits to the local community through continued provision of employment.

In our opinion the approval of this application will contribute to the economic development of the locality and have a positive social impact (through improved services) and should therefore be supported.

6.9 The Suitability of the Site

Section 79C(1)(c) – The suitability of the site for the development

The site is located within an area that is zoned for a range of uses within the Penrith local government area and is suitably located to accommodate the proposed use. In our opinion, the site is suitable for the development.

6.10 Submissions Received

Section 79C(1)(d) – Any submissions made in accordance with this Act or the regulations

The proposal will be subject to notification by Council in accordance with Councils adopted policy. Any submissions received will be duly considered by Council prior to determination of the proposal.

6.11 The Public Interest

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

The land is zoned for a mix of purposes within a business area that contains a range of uses related to business and retail activity. It is in close proximity to the Penrith CBD and is located on a main transport corridor.

The proposed amendments will assist in providing a smooth transition during the construction period and therefore are considered to be in the public interest.

7 Conclusion

The client seeks approval to undertake alterations and additions and expand the existing Bunnings Warehouse on Lot 1 and Common Property SP72448, Nos.301 – 335 Mulgoa Road, Jamisontown. The works reflect a contemporary overhaul of the current design and layout of the building.

The client is seeking to allow for a staged re-opening of the renovated sections of the Bunnings Warehouse on Lot 1 and Common Property SP72448, Nos.301 – 335 Mulgoa Road, Jamisontown. Consent condition Nos.40, 41, 42, 43 and 52 require certain works to be completed prior to the issue of 'an occupation certificate' and in discussions with the Principal Certifying Authority, it has advised that the wording of these conditions do not allow for the issue of an 'interim occupation certificate' over parts of the site which effectively prevents a staged re-opening.

The amendments are therefore necessary in order to minimise the overall period of disruption to trading during construction works.

The proposal has been assessed having regard to the matters for consideration under Section 79C and Section 96(1A) of the Environmental Planning and Assessment Act, 1979 and relevant documentation.

Having regard to the above, it is considered that the proposed changes do not substantially change the essential use and functions of the development and consequently the proposal is essentially and materially the same development as that approved. Our assessment of the proposal demonstrates that the modifications have merit; will have a minimal environmental impact and should be approved by Council.

~~~~~

## 8 References

### PLANNING AND STATUTORY DOCUMENTS

- Environmental Planning and Assessment Act, 1979.
- Environmental Planning and Assessment Regulation 2000.
- Water Management Act 2000.
- Sydney Regional Environmental Plan (SREP) No.20 - Hawkesbury Nepean River.
- Penrith Environmental Plan (LEP) 2010.
- Penrith Development Control Plan (DCP) 2010.

### REPORTS AND DOCUMENTS

- Planning Certificate No. 15/01202 dated 05/03/15.
- Notice of Determination 15/0377 dated 30 July 2015, issued by Penrith City Council.