

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA16/1351.01
<b>Proposed development:</b>	Extension of a Lapsing Period - Change of Use of an Existing Building (Masters) for a Bulky Goods Premises Including Enclosure of the Existing Garden Centre and Associated Advertising Signage
<b>Property address:</b>	243 - 261 Forrester Road, NORTH ST MARYS NSW 2760
<b>Property description:</b>	Lot 12 DP 1192443
<b>Date received:</b>	24 October 2018
<b>Assessing officer</b>	Mahbub Alam
<b>Zoning:</b>	IN2 Light Industrial - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendations:</b>	Approve

### Executive Summary

---

Council is in receipt of a request to extend the timeframe for expiration of an approved development application for a Change of Use of an Existing Building (Masters) for a Bulky Goods Premises Including Enclosure of the Existing Garden Centre and Associated Advertising Signage at 243 - 261 Forrester Road, North St Marys. Under Penrith Local Environmental Plan 2010, The proposal subject of this application can be categorised as a “bulky goods premises” which is a permissible form of development on the site with Council’s consent under Clause 2.5 (Additional Permitted Uses for Particular Land) and Schedule 1 (Additional Permitted Uses) of LEP2010. No change is proposed to the approved development or the permissibility of the development by this application.

This application is solely a request for an extension of time before the approved consent lapses. The current consent was issued on 22 February 2017 and expires on 22 February 2019, being only valid for two years. Section 4.54 allows an extension by 1 year only.

An assessment under Sections 4.53 and 4.54 and of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval.

### Site & Surrounds

---

The subject site contains an existing home improvement centre on the north-western part of the site adjacent to the roundabout at the intersection of Forrester /Links Roads and Ropes Crossing Boulevard. Forrester Road, which provides an arterial route into St Marys town centre from the north.

The surrounding land uses include a mix of open space, industrial, rural and recreational (registered club and facilities).

The existing development on the subject site consists of a Masters Home Improvement store, with 13,071m<sup>2</sup> of approved GFA, and 357 car parking spaces, under DA11/0470.

The site previously formed part of the St Marys Rugby League Club landholding however was excided off.

## Proposal

---

This application is a request for an extension of time before the approved consent lapses.

The approved development comprises for a Change of Use of an Existing Building (Masters) for a Bulky Goods Premises Including Enclosure of the Existing Garden Centre and Associated Advertising Signage

The current consent was issued on 22 February 2017 and expires on 22 February 2019, being only valid for two years. Section 4.54 of the EP&A Act 1979 allows an extension by 1 year.

## Plans that apply

---

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

---

### • Section 4.15 - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 4.15 (previously 79C) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

### • Section 4.54 - Extension of lapsing consent by 1 year

#### **4.53 Lapsing of consent**

*(cf previous s 95)*

- (1) A development consent lapses 5 years after the date from which it operates.*
- (2) However, a consent authority may reduce that period of 5 years in granting development consent. This subsection does not apply to development consent granted to a concept development application under Division 4.4 for development that requires a subsequent development application and consent.*
- (3) Such a reduction may not be made so as to cause:
  - (a) a development consent to erect or demolish a building or to subdivide land to lapse within 2 years after the date from which the consent operates, or*
  - (b) a development consent of a kind prescribed by the regulations to lapse within the period prescribed by the regulations in relation to the consent.**
- (3A) A reduction that has been made under subsection (2) is to be disregarded if:
  - (a) the development consent operated before, and lapses after, the commencement of this subsection (or the development consent lapsed during the period commencing on 22 April 2010 and ending on the commencement of this subsection), or*
  - (b) the development consent operated before, and lapses after, a date after 1 July 2011 prescribed by the regulations.**

*A reduction may not be made under subsection (2) during the period commencing on the commencement of this subsection and ending on 1 July 2011 or during any subsequent period prescribed by the regulations.*

#### *(4) Development consent for:*

- (a) the erection of a building, or*
- (b) the subdivision of land, or*
- (c) the carrying out of a work,*

*does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.*

*(5) Development consent for development other than that referred to in subsection (4) does not lapse if the use of any land, building or work the subject of that consent is actually commenced before the date on which the consent would otherwise lapse.*

*(6) Despite any other provision of this section, a development consent that is subject to a deferred commencement condition under section 4.16 (3) lapses if the applicant fails to satisfy the consent authority as to the matter specified in the condition within 5 years from the grant of*

*the consent or, if a shorter period is specified by the consent authority, within the period so specified.*

*(7) The regulations may set out circumstances in which work is or is not taken to be physically commenced for the purposes of this section.*

This application for a request for extension to the consent is made under the previous Section 95A of the Environmental Planning & Assessment Act, 1979.

This Section is replaced by Sections 4.53 and 4.54 is also relevant and both area stated below. With respect to the Sections, the current consent was issued on 22 February 2017 and expires on 22 February 2019, being only valid for two years. Section 4.54 allows an extension by 1 year. The consent will be extended to lapse on 22 February 2020.

The Regulations do require the applicant to provide a reason. No further extension beyond this extra one year is possible and a new development application would be required if work is not commenced and the consent enacted.

A letter has been submitted with this application stating that 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,

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

### **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

The extension of the expiration of the consent does not alter compliance with SREP No. 20.

#### **Local Environmental Plan 2010 (Amendment 4)**

<b>Provision</b>	<b>Compliance</b>
Clause 2.3 Permissibility	

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

### **Development Control Plan 2014**

<b>Provision</b>	<b>Compliance</b>
C1 Site Planning and Design Principles	Complies - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	N/A

## Section 79C(1)(a)(iv) The provisions of the regulations

he extension of the expiration of the consent has occurred in accordance with Clause 114 of the Environmental Planning & Assessment Regulations 2000, which is stated below. 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. The Regulations do not require further consideration of the reasons.

### **114 What is the form for an application for extension of a development consent?**

*(cf clause 71 of EP&A Regulation 1994)*

*An application under section 4.54 of the Act for the extension of time to commence development:*

- (a) must be in writing, and*
- (b) must identify the development consent to which it relates, and*
- (c) must indicate why the consent authority should extend the time.*

## Section 79C(1)(b)The likely impacts of the development

The likely impacts of the approved development will not be altered by the request for a one year extension to the consent. There are no physical changes proposed to the approved development.

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

In view of the above assessment against the necessary clauses of the Act & Regulations and that there is not change to the development from approved, Council can be satisfied that the site remains suitable.

## Section 79C(1)(d) Any Submissions

### **Referrals**

The application was referred to the following stakeholders and their comments have formed part of the assessment:

<b>Referral Body</b>	<b>Comments Received</b>
Building Surveyor	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions

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

The proposed development remains acceptable in terms of public interest.

## Conclusion

---

In assessing this application against the relevant environmental planning policies, being Penrith Local Environmental Plan 2010 and Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies. The extension of the consent by 1 year is permitted under the Environmental Planning & Assessment Act, 1979 and associated Regulations. Therefore, the application is worthy of support, subject to recommended conditions.

## Recommendation

---

That DA16/1351 for Extension of Consent Expiration relating to the approved for a Change of Use of an Existing Building (Masters) for a Bulky Goods Premises Including Enclosure of the Existing Garden Centre and Associated Advertising Signage at 243 - 261 Forrester Road, North St Marys, be approved subject to the attached conditions.



# CONDITIONS

## General

### 1 A001

The development must be implemented substantially in accordance with the plans below stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Plan	Prepared by	Dated
Site Plan Rev P01	The Buchan Group	21/11/16
Proposed Plan Rev P01	The Buchan Group	21/11/16
Roof Plan Rev P01	The Buchan Group	21/11/16
Elevations Rev P01	The Buchan Group	28/11/16 (amended by email 20/1/17)
Sections Rev P01	The Buchan Group	21/11/16
Pylon Signage Rev P01	The Buchan Group	21/11/16

### 2 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

**The development shall not be used or occupied until an Occupation Certificate has been issued.**

### 3 A026 - Advertising sign (not for residential)

All signage areas shall not exceed those approved under DA13/0434 and in accordance with the signage zones shown stamped approved plans under this consent. Such signage content shall:

- Not include any additional external lighting beyond that already approved for the site.
- Not have any flashing lights or movable pieces.
- Not consist of neon or fluorescent colours.

A separate development application for the erection of a sign or advertising structure, other than that previously approved by this application, DA13/0434 or an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan 2014

### 4 A029 - HOURS OF OPERATION AND DELIVERY TIMES

The operating hours are from 6.00am to 10.00pm Monday to Friday, and 6.00am to 8.00pm Saturdays and Sundays. Delivery and service vehicles generated by the development are limited to these operational hours.

### 5 A032 - Goods in buildings

All materials and goods associated with the use shall be contained within the building at all times.

### 6 A038 - LIGHTING LOCATIONS

A lighting system shall be maintained for the development to provide uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding landuses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).

### 7 A046 - Obtain Construction Certificate before commencement of works

A **Construction Certificate** shall be obtained prior to commencement of any building works.

### 8 A Special (BLANK)

Separate approvals are required for any uses other than the approved bulky goods and café as shown on the stamped plans.

The Bulky Goods uses must comply with the definition with Penrith LEP 2010.

The use of the ancillary café is approved, with further consent required for the fit out.

### 9 A Special (BLANK)

The hours of operation of the café are restricted to that of the centre. All café patrons must access the café via the main doors to the centre only.

### 10 A Special (BLANK)

The relevant conditions of consent of DA11/0470 relating to landscaping, car parking and vehicular access are to be adhered to at all times.

## Environmental Matters

#### 11 D009 - Covering of waste storage area

All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

#### 12 D014 - Plant and equipment noise

The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

#### 13 D023 - Bunding

All works and storage areas where spillages are likely to occur shall be bunded. The size of the area to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater.

#### 14 D026 - Liquid wastes

Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

If mains sewer is not available or if Sydney Water will not allow disposal to the sewer then a licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.

#### 15 D Special BLANK

Offensive odours are not to be emitted from the site. Vapours, fumes, gases, or any other substance that are considered to be harmful to human health or the environment or impact unreasonably on a person outside of the premises are not to be emitted from the site.

### BCA Issues

#### 16 E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)

The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

- (a) deal with each essential fire safety measure in the building premises, and
- (b) be given:

- within 12 months after the last such statement was given, or
- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.
- 

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

#### 17 E01A - BCA compliance for Class 2-9

All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

- (a) complying with the deemed to satisfy provisions, or
- (b) formulating an alternative solution which:
  - complies with the performance requirements, or
  - is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

### Construction

## 18 H001 - Stamped plans and erection of site notice

Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details are to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

## 19 H002 - All forms of construction

Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.



## 20 H006 - Submission of and implement waste management plan

A completed waste management plan shall be submitted to Penrith City Council for consideration and approval. Council must approve the plan before works can commence on site.

The waste management plan shall be prepared in accordance with the Penrith Development Control Plan, and shall address all waste materials likely to result from the proposed development (including all demolition and construction works, and the operations of the development), with details of the estimated waste volumes, onsite storage and management, proposed re-use of materials, designated waste contractors, recycling outlet and / or landfill site.

The approved waste management plan must be implemented on-site and adhered to throughout all stages of the development, with supporting documentation / receipts retained in order to verify the recycling and disposal of materials in accordance with the approved plan.

## 21 H041 - Hours of work (other devt)

Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

## Engineering

### 22 K Special (BLANK)

All car spaces are to be sealed/line marked and dedicated for the parking of vehicles only and not be used for storage of materials/products/waste materials etc

## Certification

### 23 Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)

Prior to the commencement of any earthworks or construction works on site, the proponent is to:

- employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
- submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

#### Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

# **Appendix - Development Control Plan Compliance**

## **Development Control Plan 2014**

### **Part C - City-wide Controls**

The extension of the expiration of the consent does not alter compliance with DCP 2014.