

**SECTION 4.55  
MODIFICATION  
APPLICATION  
TO PENRITH CITY  
COUNCIL TO  
MODIFY DA 17/0096.01  
FOR 42-46 CHARLES ST  
ST MARYS**

**Prepared by Lance Doyle, Town Planner**

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# Section 4.55 Modification request to Penrith City Council to modify development consent number 17/0096.01 being for a waste facility at 42 to 46 Charles Street St Marys

## Introduction

This Statement of Environmental Effects (SEE) has been prepared in support of a Section 4.55 Modification for the proposed modification of Condition 1 of the development consent number 17/0096.01 being for Additions to Waste Management Facility to Create Enclosed Storage Area to an approved waste management facility at 42 to 46 Charles Street St Marys.

The development consent, the subject of this modification application included condition No.1 as follows –

1 The development must be implemented substantially in accordance with the following plans

Drawing Title	Drawing No.	Prepared By	Dated
Title Page & Views	A000	Toxfree	21/04/2017
Site Plan	A100 (Rev – A)	Toxfree	21/04/2017
Ground Floor Plan – Integrated Storage Extension	A101 (Rev – A)	Toxfree	21/04/2017
Elevation & Sections	A102	Toxfree	21/04/2017

and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

The approved works, the subject of the parent application have been carried out on the subject site however, due to the open nature of part of the approved building incorporating waste storage area, it has become necessary to seek consent to enclose the subject area to protect the waste material and employees of the facility from adverse weather conditions and control airborne particulate matter migrating from the storage area. The proposed works do not generate any additional employees being required to support the operation, nor does the proposal modify the approved throughput of waste, in fact, the author is advised, the throughput may even be reduced.

This modification application is supported by a BCA Compliance Report by CK Architects to assist in the assessment of the proposed modification.



**Subject site highlighted**

I have inspected the subject site and assessed the plans and supporting documents for the proposed modified development. I consider that the proposed development is very reasonable and is worthy of approval of Penrith City Council (Council).

It is my professional view that the proposed modifications should be assessed as “modifications involving minimal environmental impact” pursuant to Division 4.55 of the Environmental Planning and Assessment Act, 1979, due to the fact that there are no unreasonable adverse amenity impacts on adjoining properties or the public domain and

the subject modification is substantially the same development being *Additions to Waste Management Facility to Create Enclosed Storage Area*.

## Background

The parent Development Application was approved on 13<sup>th</sup> June 2017. The relevant condition is Condition 1 – as follows-

1 The development must be implemented substantially in accordance with the following plans

Drawing Title	Drawing No.	Prepared By	Dated
Title Page & Views	A000	Toxfree	21/04/2017
Site Plan	A100 (Rev – A)	Toxfree	21/04/2017
Ground Floor Plan – Integrated Storage Extension	A101 (Rev – A)	Toxfree	21/04/2017
Elevation & Sections	A102	Toxfree	21/04/2017

and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

## The Requested Modification

The current Section 4.55 Modification seeks the following amendments to substitute the following Plans to be incorporated within Condition 1 of consent 17/0096.01.

**A100 3d View, Drawing List & Building Area Calculations Revision A dated 22/01/2020**

**A101 Siteplan & Demolition Plan Revision A dated 22/01/2020**

**A102 Ground Floor Plan- Bay 4 Close In Revision A dated 22/01/2020**

**A103 Elevation & Sections Revision A dated 22/01/2020**

**A104 Sections Revision A dated 22/01/2020**

This modification application is submitted to Council under the provisions of Division 4.55 – modification of consents– generally, ***Part 1(A) modifications involving minimal environmental impact.***

## **Division 4.55 of the Environmental Planning and Assessment Act 1979 No. 203.**

The relevant provisions of Division 4.55 (1A) are as follows –

*A consent authority must, 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 and,*

### **Response**

The proposal is considered to be of minimal environmental impact due to the minor nature of the proposed modification to the approved proposal, due to the fact that the proposed works will not generate any additional employees being required to support the operation, nor shall the proposal modify the approved throughput of waste, in fact, the author is advised, the throughput may even be reduced.

*b) It is satisfied that the development to which the consent has 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), and*

### **Response**

The development as proposed to be modified will be the same development for which development consent was granted that is, the approved development will remain *Additions to Waste Management Facility to Create Enclosed Storage Area*

*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 in the Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

## **Response**

The requested modification will be notified to likely affected parties by Penrith City Council.

*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*

## **Response**

Submissions made in response to the notification of the requested modification will be considered by the consent authority as part of the assessment process.

## **Reasons for the Proposed Modification**

The proposed modifications are to provide for a more weatherproof facility to safeguard the external environment against the off-site migration of airborne and waterborne materials.

## **Division 4.15 Evaluation**

### Environmental Planning Instruments

The proposal as approved and as modified is a permissible development under the provisions of the Penrith Local Environmental Plan 2010.

### Development Control Plans

The proposal is bound by the provisions of Penrith City Development Control Plan. The proposed modification to the Development Consent does not offend any of the relevant provisions under the Penrith City Development Control Plan.

The subject application is accompanied by a Building Code of Australia assessment to ensure that the proposal is consistent with the provisions of the BCA during and post construction.

### Division 4.15 Merit Assessment.

Assessment of the Division 4.55 Application requires consideration under the provisions of Division 4.15 of the Environmental Planning and Assessment Act in terms of the merits of the proposal.

Broadly speaking, Division 4.15 considerations can be categorized as — likely impacts on the natural environment, built environment, social and economic environment, and site suitability.

*Impact on the Natural Environment.*

The proposed modification will not impact upon flora and fauna, soil or water quality, air quality or the conservation of natural resources.

*Impact on the Built Environment.*

- **Scenic qualities** – The proposed modification is consistent with the current and future character of the locality as expressed within the provisions of the Penrith Local Environmental Plan 2010 and any provisions of Development Control Plans made thereunder.
- **Compatibility with adjacent land uses** –The proposed modification will not materially alter the compatibility with the adjacent land uses.
- **Bulk and scale** – The minor increase in roof area is not considered to result in a development of an unreasonable bulk and scale.
- **Overshadowing** – The proposed modification will not impact upon the solar access to nearby sites.
- **Views and vistas** – There will be no impacts upon views and vistas across or around the subject site.
- **Site design** – The proposed alterations and additions are considered reasonable for the subject site.
- **Public domain** – The proposed modifications are not considered to unreasonably impact upon the public domain.
- **Amenity Impacts** – I consider that there will be no unreasonable amenity impacts from the proposed modification.

*Impact on the Social and Economic Environment.*

The proposed modified development does not result in any adverse, social or economic impacts.

### Suitability of the Site.

The subject site, by virtue of its current approved facility, topography and locality is suitable for the proposed modification to the approved built form.

### **Conclusion**

The subject modifications are a consequence of the refinement of the approved design in order to address concerns over the level of openness of the current storage areas which, from experience by the operator, are subject to disturbance by wind and rain and the proposal which facilitates the enclosure of the storage facility will prevent the ingress of weather and subsequent egress of particulate matter to enhance the environmental performance of the approved waste facility.

I am of the view that the proposal as modified, is reasonable and, due to the fact that the proposed works will not generate any additional employees being required to support the operation, nor shall the proposal modify the approved throughput of waste, in fact, the author is advised, the throughput may even be reduced thereby resulting in no additional material impact upon the locality.

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**12<sup>th</sup> February 2020**