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The General Manager
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Attention: Development Assessment Team

**SECTION 4.55(1A) MODIFICATION APPLICATION TO MODIFY DA18/0190
 ALTERATIONS TO ST CLAIR SHOPPING CENTRE CAR PARK
 155 BENNETT ROAD (4 ENDEAVOUR AVENUE), ST CLAIR (LOTS 1 & 2 DP 1018519)**

Dear Sir/Madam

This Section 4.55(1A) Modification Application is submitted to Penrith City Council on behalf of Ringmer Pacific Management Pty Ltd in support of amendments to Development Consent **DA18/0190** for alterations to the St Clair Shopping Centre car park at 155 Bennett Road (4 Endeavour Avenue), St Clair (Lots 1 & 2 DP 1018519).

In accordance with Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) the proposed changes shall result in minor environmental impact for the reasons outlined throughout this letter.

Approval to **DA18/0190** was granted by Penrith City Council on 27 April 2018 (operative from 11 May 2018) for *Alterations to St Clair Shopping Centre car park*.

This application represents the first modification to **DA18/0190** and is required to enable the timely completion of the works through the staging of construction.

No changes to the car park layout, access/circulation arrangements or any physical structures are required to achieve this outcome, but rather the modifications are limited to the wording of Conditions of Consent, particularly as they relate to the sequencing of various components of the development, Construction Certificates and Compliance Certificates.

The amendments sought have been assessed against the relevant legislation and policies and Section 4.55(1A) of the EP&A Act.

This Section 4.55(1A) Modification Application is structured as follows:

- Part A Preliminary
- Part B Proposed Development
- Part C Legislative and Policy Framework
- Part D Key Matters for Consideration
- Part E Conclusion

Attached to this submission are the following specialist reports and plans:

- **Appendix 1 – Consent DA18/0190**
- **Appendix 2 – Staging Plan**

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DA18/0190 – Alterations to St Clair Shopping Centre Car Park
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PART A PRELIMINARY

1.1 INTRODUCTION

This application seeks consent for modifications to approved **DA18/0190** pursuant to Section 4.55(1A) of the EP&A Act.

Specifically, the proposed modification seeks consent for the rewording of certain Conditions of Consent to allow for construction to be staged.

The proposed modification does not present any significant environmental impacts and the development will remain substantially the same as that approved under the original application. There will be no change to the car park layout, access/circulation arrangements, any physical structures or the use of the site. The proposal will prominently reflect the original consent.

Development Consent under Section 4.55(1A) of the EP&A Act states:

(1A) Modifications involving minimal environmental impact

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, and*
- (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) under this section, and*
- (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 modification of a development consent, and*
- (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.*

The proposed modification provides for minor changes to the Conditions of Consent that result in no adverse environmental impact to the immediate surroundings or broader locality.

The proposed modification seeks to enable the timely completion of works through the staging of construction, ultimately to support the efficient operations of the existing shopping centre's access, circulation and parking arrangements.

The proposed development is considered to be substantially the same as required by Section 4.55(1A).

Accordingly, it is considered that Section 4.55(1A) is the most appropriate mechanism for the proposed modifications to the consent.

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1.2 SITE DESCRIPTION

The subject site is identified as 155 Bennett Road (or 4 Endeavour Avenue), St Clair, being legally described as Lot 1 DP 1018519 and Lot 2 DP 1018519 (**Figure 1**). The site comprises St Clair shopping centre and McDonald's operations.

Whilst the site address corresponds with the whole of the site, the proposed modifications specifically relate to the at-grade car park.



Figure 1. Cadastre Map (SIX Maps 2018)

1.3 DEVELOPMENT HISTORY

Approval to **DA18/0190** was granted by Penrith City Council on 27 April 2018 (operative from 11 May 2018) for *Alterations to St Clair Shopping Centre car park*.

Review of **DA18/0190** indicates that there is nothing which prevents the proposed modification from proceeding.

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PART B PROPOSED DEVELOPMENT

2.1 PROPOSED MODIFICATIONS & JUSTIFICATION

The proposed modification seeks the rewording of certain Conditions of Consent to allow for construction to be staged.

The objective of staging construction is to enable the upgrade to the McDonald's drive-through to occur as a priority. The works sought to be prioritised include:

- Duplication of McDonald's drive-through lane to reduce traffic overflow;
- Reconfiguration of car parking adjacent to the southern wall of the Woolworths supermarket to replace angled parking with 90 degree parking; and
- Reform kerbing in this area.

The proposed staging is visually depicted in the Staging Plan at **Appendix 2**.

Specifically, this is sought to be achieved through allowing multiple Construction Certificates (CCs) to be issued for the various components of the works. The required wording of the relevant conditions is provided in **Section 2.2** below.

2.2 PROPOSED CONDITIONS OF CONSENT

To facilitate the development outlined above, this Section 4.55(1A) Modification Application seeks to modify the Development Description and Conditions 1, 2, 4, 5, 6, 8, 9, 10, 18, 19, 20, 21, 22, 23, 24, 25, 28, 31, 37 and 39 of **DA18/0190**. To reflect the proposed modification to the relevant condition, text proposed to be deleted is indicated by 'strikethrough' text and text proposed to be added is indicated by **bold** text as follows:

*Description of Development: Alterations to St Clair Shopping Centre Car Park **with works to be staged. Stage 1 includes upgrades to McDonald's drive-through and Stage 2 relates to the shopping centre car park.***

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

Plan	Prepared By	Version	Drawing/Job No.	Dated
Site Plan	Leffler Simes Architects	B	DA02/2383	8/02/2018
Site Addendum Plan	-	-	-	-
Staging Areas Plan	Leffler Simes Architects	A	DA03/2383	9/07/2018
General Arrangement Plan – Sheet 1	Wood & Grieve Engineers	A	CI-060-01 / 36073	19/12/2017
General Arrangement Plan – Sheet 2	Wood & Grieve Engineers	A	CI-060-02 / 36073	19/12/2017
Civil Details	Wood & Grieve Engineers	A	CI-066-01 / 36073	19/12/2017
Sediment & Erosion Control Plan	Wood & Grieve Engineers	A	CI-070-01 / 36073	19/12/2017

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Sediment & Erosion Control Details	Wood & Grieve Engineers	A	CI-076-01 / 36073	19/12/2017
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2. Lot 1 DP 1018519 and Lot DP 1018519 are to be consolidated as one lot. A copy of the registered plan of consolidation from NSW Land Registry Services is to be submitted to the Principal Certifying Authority (PCA) and Penrith City Council, if Council is not the PCA, prior to the issue of a ~~Compliance Certificate~~ **the final Occupation Certificate** for the development.

4. A Construction Certificate **relating to the component of works** shall be obtained prior to commencement of any **those** works.

5. The pathway from Bennett Road to the shopping centre entrance shall be 1800mm in width up until the McDonalds drive-through lanes. Beyond this point where the pathway cannot reach the requirement of the 1800mm width, a passing bay shall be provided that meets the requirements of AS 1428.1 in design and placement. Amended plans in this regard are to be submitted to an approved by Council prior to the issue of a Construction Certificate **relating to this component of works**.

6. Prior to the issue of a Construction Certificate **relating to the component of works**, an arborist's report prepared by an accredited and experienced arborist shall be submitted to the Principal Certifying Authority regarding required tree protection measures for existing trees where planter bays are being reduced in size.

8. Prior to the issue of a Construction Certificate **relating to the component of works**, a Construction Management Plan (**relating to that component of works**) prepared by a suitably qualified traffic engineer shall be submitted to the Principal Certifying Authority. The plan shall detail arrangements for the pedestrian movements and interim parking and access arrangements during the construction period **for that component of works**.

9. Prior to the issue of a Construction Certificate and Occupation Certificate **relating to the component of works**, the recommendations provided in the Access Report, prepared by ABE Consulting, dated 05 December 2017 shall be met **for that component of works**.

10. Erosion and sediment control measures shall be installed prior to the commencement of works on site including approved clearing of site vegetation. The erosion and sediment controls measures are to be maintained in accordance with the approved erosion and sediment control plans for the development, **as they relate to the component of works being carried out**.

18. An Infrastructure Restoration Bond **for each stage of works** is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond **for each stage of works** is to be lodged with Penrith City Council prior to commencement of any works on site or prior to the issue of any Construction Certificate **associated with that stage of works**, whichever occurs first. The bond and applicable fees are in accordance with Councils adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

19. Prior to the issue of a Construction Certificate **relating to the component of works**, a Section 138 Roads Act application **relating to the component of works**, including payment of application and inspection fees, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b) Concrete footpaths and/or cycleways
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)

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- d) Road occupancy or road closures
- e) The placement of hoardings, structures, containers, waste skips, signs, etc in the road reserve
- f) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- a) Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- b) All works associated with the Roads Act approval must be completed prior to the issue of a Compliance Certificate **relating to that particular component of the development.**

20. The stormwater drainage system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Wood & Grieve Engineers, Drawing Number CI-060-01 & 02, revision A, dated 19/12/2017.

Prior to the issue of any a Construction Certificate **relating to the component of works**, the Certifying Authority shall ensure that the stormwater management system **relating to that component of works** has been designed in accordance with Penrith City Council's stormwater Drainage for Building Developments Policy.

21. Prior to the issue of a Construction Certificate **relating to the component of works**, the Certifying Authority shall ensure that vehicular access, circulation, maneuvering and pedestrian and parking areas associated with the **particular component of the** subject development are in accordance with AS 2890.1, AS 2890.6 and Penrith City Council's Development Control Plan.

22. Prior to commencement of any works associated with the **particular component of the** development, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate **for that component of works** and to ensure compliance with the Protection of the Environment Operations Act 1997 and Managing Urban Stormwater series from the Office of Environment and Heritage.

The erosion and sediment control measures **for that component of works** shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilized.

23. Prior to the issue of a Compliance Certificate **relating to the component of works**, directional signage and line marking shall be installed indicating required directional movements, driveway entry/exit points and the location of staff and customer parking to the satisfaction of the Principal Certifying Authority.

24. In order to facilitate safe pedestrian movements from the pedestrian crossing at Bennett Road (at the eastern end of the site) to the shopping centre entrance, pedestrian fencing shall be provided to limit access across the McDonald's drive-through lanes by pedestrians, and to direct pedestrians along the provided footway and crossing points. Amended plans in this regard shall be submitted to and approved by Council prior to the issue of a Construction Certificate **relating to the component of works.**

25. In order to facilitate safe pedestrian movements from the existing crossing at the western end of Botany Lane to the shopping centre entrance, the dimensions of the proposed east west pedestrian footpath shall be 1.8m (wide), providing adequate width for passing wheelchairs (and including the provision of appropriate kerb ramps to transition between footpath and road surface pavement) in accordance with AS 1428.1 and AS 2890.6. Amended plans in this regard shall be submitted to and approved by Council prior to the issue of a Construction Certificate **relating to the component of works.**

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28. Existing accessible car parking spaces shall be upgraded to comply with current Australian Standards, prior to the issue of a Compliance Certificate **relating to the component of works**.

31. Upon completion of the landscape works associated with **a particular component of the development** and prior to the issue of a Compliance Certificate **for relating to that particular component of the development**, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for **that particular component of the development**. The report is to be prepared by a suitably qualified and experienced landscape professional.

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 Compliance Certificate for **that particular component of the development**.

37. Prior to the issue of a Construction Certificate **relating to the component of works**, a landscape plan prepared by a suitably qualified and experienced landscape professional shall be submitted to an approved by Council detailing all proposed landscaping works.

39. On completion of works **relating to a particular component of the development**, a Compliance Certificate is to be obtained from the Principal Certifying Authority certifying that all conditions of the development consent **relating to that particular component of the development** have been satisfied. The Certificate shall not be issued if any conditions of this consent **relating to that particular component of the development**, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Compliance Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the certifier who issued the Compliance Certificate.

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PART C LEGISLATIVE AND POLICY FRAMEWORK

3.1 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

Section 4.55(1A) of the EP&A Act makes provision to modify a DA that has been made pursuant to Part 4 of the EP&A Act.

The proposal as submitted to DPE is considered to satisfy the provisions of Section 4.55(1A) of the Act in that the changes proposed will result in minimal environmental impact and will result in the development being substantially the same as that for which consent was originally granted. The key provisions of Section 4.55(1A) of the EP&A Act have been considered 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, and*
- (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).*
- (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 modification of a development consent, and*
- (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.*

The proposed rewording of certain Conditions of Consent reflect only minor changes to the original approval. All development particulars would remain consistent with the previous approval, whilst the staging of construction would be enabled. This would allow for the upgrade to the McDonald's drive-through to occur as a priority.

The car park layout, access/circulation arrangements, all physical structures and the use of the site would remain consistent with that approved under **DA18/0190**. The proposal is considered to be substantially the same development and satisfies the provisions of Section 4.55(1A) of the EP&A Act.

3.2 PENRITH LOCAL ENVIRONMENTAL PLAN 2010

The site is subject to *Penrith Local Environmental Plan 2010* (PLEP2010) and is zoned B2 Local Centre.

The proposed modification will preserve the approved use of the site for Commercial Premises, which are permissible with consent in the B2 zone.

No changes to lot size, building height, floor space ratio (FSR) or any other matters addressed under PLEP2010 would result from the proposed modification.

The proposal is therefore consistent with all relevant objectives and provisions of PLEP2010.

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3.3 PENRITH DEVELOPMENT CONTROL PLAN 2014

The proposed modification complies with the relevant provisions of *Penrith Development Control Plan 2014* (PDCP2014).

Given there will be no change to the car park layout, access/circulation arrangements, any physical structures or the use of the site, no further consideration of PDCP2014 is required.

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PART D KEY MATTERS FOR CONSIDERATION

The key matters for consideration are addressed in the ensuing subsections.

4.1 LAND USE

The proposed modification will preserve the use of the site for Commercial Premises, consistent with **DA18/0190**.

4.2 TRAFFIC AND TRANSPORT

The car park layout, access/circulation arrangements and all physical structures would remain consistent with that approved under **DA18/0190**. The assessment, conclusions and recommendations of the Traffic Design Statement prepared by Ason Group in support of the original DA would therefore remain relevant.

The need to prioritise the upgrade to the McDonald's drive-through has been informed by the existing inefficiencies associated with this component of the site. As described in the Traffic Design Statement submitted with the original DA:

The McDonalds drive-through facility is heavily utilised and is understood to experience congestion during peak periods, impacting traffic flow on site. It was observed on site that the queue from the McDonalds drive-through extends into the shopping centre circulation roadway. Vehicles attempting to access the internal east-west roadway (between Bennett Road and Botany Lane) were blocked and subsequently delayed in accessing the eastern or western carparks.

In response, the Traffic Design Statement resolves that additional capacity within the drive-through is necessary to assist with improved traffic flow and reduced congestion within the carpark.

The Traffic Design Statement concludes that the design of the car park (as approved under **DA18/0190**) a reduction in queuing impacts associated with the drive-through, a reduction in conflict points, improved circulation and improved pedestrian connectivity.

These benefits would be secured through the prioritisation of the McDonald's drive-through upgrade, as sought to be enabled through this modification application.

4.3 SOIL AND WATER

Stormwater management and erosion & sediment control would remain consistent with the original DA, subject to being staged in conjunction with the stage of the development affecting that portion of the site.

4.4 LANDSCAPING

The retention and removal of existing vegetation, as well as replanting and new landscaping, would remain consistent with the original DA. All landscape works would be carried out in conjunction with the stage of the development affecting that portion of the site.

4.5 ACCESS

The development would continue to be carried out in accordance with the Accessibility Review Report prepared by ABE Consulting as part of the original DA.

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4.6 CONSTRUCTION

The development (as modified) would be carried out in accordance with the Conditions of Consent to ensure the appropriate management of all on and off site impacts and the safety of all site users. As per Condition 8, a Construction Management Plan would be prepared and implemented in association with the particular component of the development being undertaken. The proposed development staging would make adequate provision for interim pedestrian, access, circulation and parking arrangements, ensuring the viability of continued shopping centre operations throughout the development.

4.7 OTHER MATTERS FOR CONSIDERATION

All other matters for consideration have been previously assessed as part of **DA18/0190** and remain unaffected by the proposed modification.

4.8 LIKELY IMPACTS OF DEVELOPMENT

The likely impacts of development in accordance with Section 4.15 of the EP&A Act have been considered above.

4.9 SUITABILITY OF SITE FOR DEVELOPMENT

The site is considered suitable for development as established by the previous approval of **DA18/0190**.

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PART E CONCLUSION

The subject application seeks consent for modification to the Conditions of Consent applying to the approved alterations to the St Clair shopping centre car park at 155 Bennett Road (4 Endeavour Avenue), St Clair, and will not result in any unacceptable environmental impacts.

As detailed throughout this statement, the proposed rewording of certain Conditions of Consent is required to enable the timely completion of works through the staging of construction, ultimately to support the efficient operations of the existing shopping centre's access, circulation and parking arrangements. The objective of staging construction is to enable the upgrade to the McDonald's drive-through to occur as a priority.

There will be no change to the car park layout, access/circulation arrangements, any physical structures or the use of the site as a result of the modifications. The development would remain consistent with that shown in the Stamped Plans approved by Council under **DA18/0190**.

The development as modified would remain substantially the same development as that for which consent was originally granted under **DA18/0190**.

Accordingly, it is requested that Penrith City Council support the application.

Yours faithfully,



Chris Wilson
Director
Willowtree Planning Pty Ltd

SECTION 4.55 (1A) MODIFICATION APPLICATION

347 Kent Street, Sydney

D/2017/294 – Alterations and Additions to Podium Levels of Existing Commercial Building

Appendix 1 – Consent DA18/0190

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Appendix 2 – Staging Plan