

Statement of Environmental Effects for S.4.55(1A)

4 ENDEAVOUR AVENUE ST CLAIR

22 NOVEMBER 2021



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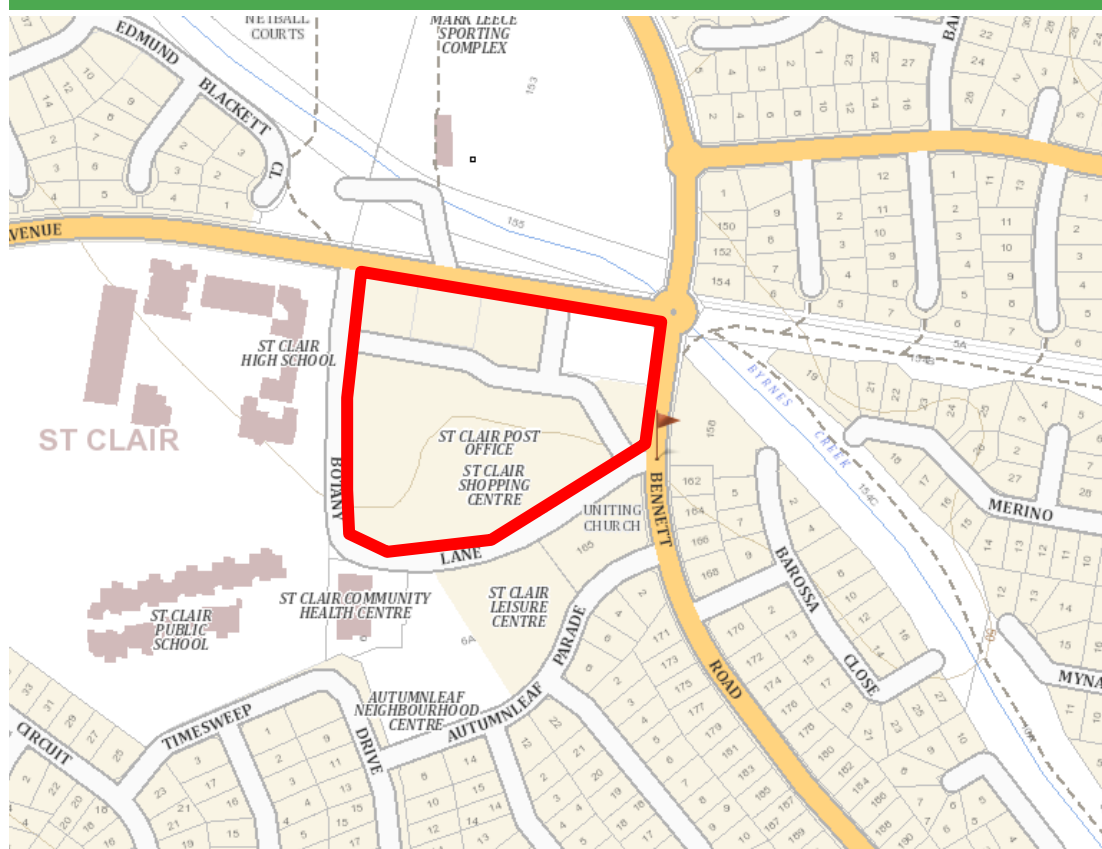
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THE SITE

The subject site sits within its own development lot being Lots 1 and 2 in DP 1018519 at 4 Endeavour Avenue St Clair. The site is an irregular shaped allotment which is approximately 3.05Ha. The site is located on the southern side of Endeavour Avenue St Clair and has street frontage to Botany lane, Bennett Road and Endeavour Avenue. The site adjoins St Clair High School and Public School and is surrounding by low density residential development.

An aerial map of the subject site and its immediate context is provided below.

Figure 1: Aerial Map Extract of Subject Site (Six Maps)

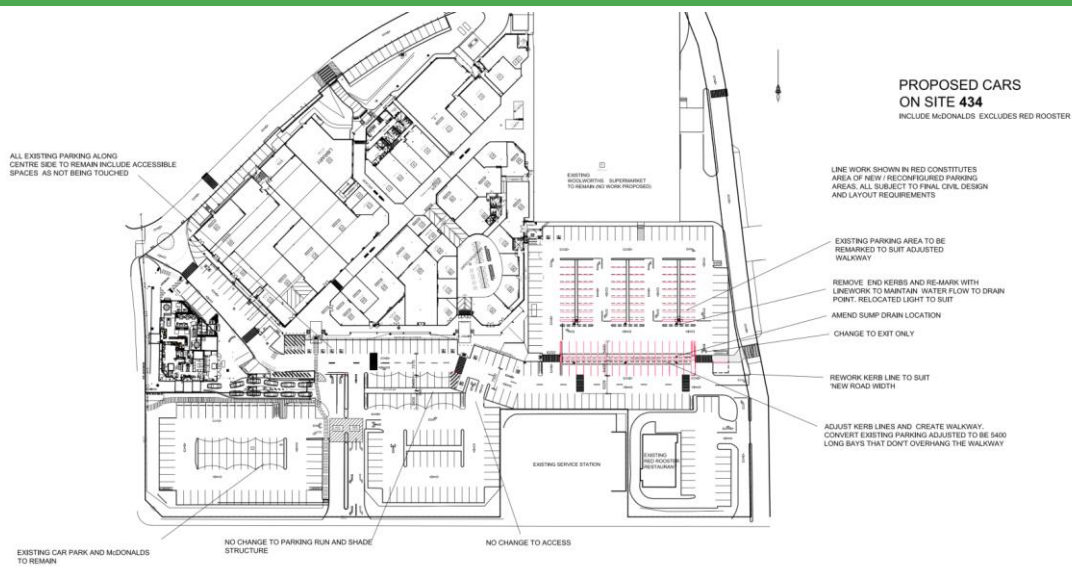


 Subject Site

- Minor reduction of 6 car parking spaces to accommodate a new pedestrian walkway in the Woolworths car park.
- Provide a revised the pedestrian crossing located to the west of the Site on Botany Lane (providing pedestrian connectivity to the St Clair High School).

There is currently no formal pedestrian connection linking the St Clair Shopping Centre to the St Clair High School and this new pedestrian pathway will greatly increase the safety for the visitors to the site.

Figure 3: Extract showing the proposed modifications to the car parking



There are no changes proposed to the buildings or the proposed floor area within the development. The only changes are as shown in the redlines above to improve functionality and safety within the car park.

ASSESSMENT OF PLANNING ISSUES & CONTROLS

S.4.55(1A) ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Pursuant to Section 4.55 (1A) of the Act (Previously known as Section 961A), Council may consider an application to amend a development consent provided that it is substantially the same development and of minimal environmental impact.

The proposed change to introduce minor changes to the car park and the pedestrian walkway is of minimal consequence and the development remains both substantially the same development and of minimal environmental impact.

An extract of Section 4.55 (1A) is provided 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), 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.*

The application is substantially the same as the approved development, with the and the minor refinement of the scheme to reflect the detailed design work undertaken.

The application can be identified as 'substantially the same development' when having regard to case law set down by the Land and Environmental Court, with the development concept remaining physically the same in terms of building form and overall footprint approved via DA18/0190.

Land and Environmental Court Judgement

The question as to whether a modified proposal is 'substantially the same' as that originally approved has been an ongoing issue dealt with in the Land and Environment

Court. It is also important to note that the Court has consistently described the Section 4.55-modification provision of the Act as “beneficial and facultative”. It is designed to assist the modification process rather than to act as an impediment to it; “It is to be construed and applied in a way that is favorable to those who seek to benefit from the provision” (see *North Sydney Council v Michael Standley & Associates Pty Limited [1998]*).

As demonstrated below the change to an approval can be substantial without the amended proposal failing the ‘substantially the same’ test. By way of example, and relevant to the current proposal, the following cases were considered in the Court and found to be substantially the same development, with this extract contained in a Gadens Publication dated 17 June 2012:

(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.

Bassett and Jones Architects Pty Limited v Waverley Council (No 2) [2005]: *The modification application sought an additional storey to the approved front building of a mixed commercial and residential development, which would alter the building from three- storeys to four-storeys; and the provision of a zero side setback for a part of the external side walls at all three levels. This resulted in an increase in floor space of 112 square metres, **being a 20 per cent increase in floor space, and a 28 per cent increase in height (both of which exceeded the applicable council controls).***

The Court found that the test was satisfied albeit only on “a very fine balance”. The Court noted however that the modified design might give rise to privacy impacts that may warrant refusal of the application when the merits of the change are assessed. The application was later refused on its merits, but not before passing the “substantially the same” threshold test.

Davi Developments Pty Ltd v Leichardt Council [2007]: *A modification application sought to change consent for a seven storey residential flat building with two levels of basement parking. There was to be a reduction of one floor, but an increase in the main parapet height by 900mm, and the substantial reconfiguration of the unit mix such that the numbers reduced from 42 to 30, with a rearrangement of the car park plan such that it was “entirely different”. The Court nevertheless considered that the fundamental characteristics and essence of the building would remain essentially the same.*

Bathla Investments Pty Limited v Blacktown City Council [2008]: *The original approval was for eight townhouses presenting as four, single-storey buildings. Some of the townhouses were attached. The modification application sought to change some*

of the townhouses to two storeys, and also sought to separate the dwellings and made changes to the garage designs and parking layout. The Court noted that there were “numerous differences” between the schemes, however, the townhouse development presented as materially and essentially the same development.

Marana Developments Pty Limited v Botany City Council [2011]: The original approval was for the construction of five residential flat buildings (with basement car parking) comprising a total of 76 units. The modification application sought ‘significant changes to the external appearance and layout of the buildings’ **including an increase in unit numbers from 76 up to 102, and an additional level of basement car parking.**

This also involved a changed unit mix. Despite significant internal changes, the minimal change to the external floor plates and layout was of great significance and the test was satisfied.

Boyd v Bega Valley Council [2007]: It was proposed to add a second storey to a single storey dual occupancy development. Although the application was unsuccessful on merit grounds reasons (visual impact from the waterway caused by poor architectural design), the Court was satisfied that the increase from a single storey to a two storey dwelling satisfied “substantially the same” test.

As can be seen above, particularly in **Marana Developments Pty Limited v Botany City Council [2011]**, the provision of additional units, does not take away from the fact that it is substantially the same development and can pass the required test under Section 4.55 of the act.

The development proposal can be appropriately defined as substantially the same development as the original consent. It is noted that the proposed amendment will have limited amenity impacts with potential impacts having been addressed via previous DAs.

It is anticipated that the development application will be notified to adjoining property owners and a discussion against the relevant planning controls is provided further in this statement.

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

Due to the minor nature of the proposal, there are no changes that impact on compliance with SEPP 55. No further assessment is required.

STATE ENVIRONMENTAL PLANNING POLICY – (VEGETATION IN NON-RURAL AREAS) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the appropriate preservation of trees and vegetation.

The current 4.55(1A) modification application has been prepared to support a minor change to the approved car parking layout and to introduce a new pedestrian pathway. There are no changes proposed to the approved and existing landscaping of this site.

SYDNEY REGIONAL ENVIRONMENTAL PLAN (SREP) NO. 20 HAWKESBURY NEPEAN RIVER

This policy has been addressed via previous DA, noting no change to the approved drainage concept that demonstrates that stormwater is conveyed to the existing street network as per DA18/0190.

PENRITH LOCAL ENVIRONMENTAL 2010

The subject site is zoned B2 Local Centre and subject to a maximum building height of 15m under the provisions of the Penrith Local Environmental Plan 2010.

Noting this application is to modify the proposed car parking as such the proposal remains substantially the same as has been approved on the site. There is no change of use proposed that impacts on compliance with the relevant provisions of the Penrith Local Environmental Plan.

The development proposal continues to be consistent with the prescribed zone objectives which are stipulated as:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide retail facilities for the local community commensurate with the centre's role in the local and regional retail hierarchy.*
- *To ensure that future housing does not detract from the economic and employment functions of a centre.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The table below provides detail on the development standards relevant to the current proposal.

Penrith Local Environmental Plan 2010			
Clause	Control	Comment	Complies
Zoning	B2 – Local Centre	There is no change proposed to the land use activities. The changes proposed relate to the approved car parking. The proposal remains aligned with the objectives of the zone.	Yes
Part 2 Permitted or Prohibited Development			
2.3	Zone Objectives and Land Use Table	The proposal is only minor and will ensure a land use that is in-tune with the objectives of the B2 Local Centre zone.	Yes
2.7	Demolition	No additional demolition works is proposed as part of this 4.55(1A) modification.	N/A

Part 4 Principal Development Standards			
4.3	Height of Buildings- 15	There is a maximum 15m height limit, and the proposal does not intent on delivering any development that is beyond this height limit.	Yes
4.4	Floor Space Ratio – 0.5:1	No FSR control applies to the subject site. Not relevant.	N/A
Part 5 Miscellaneous Provisions			
5.10	Heritage Conservation	The site is not heritage listed and there are no heritage items within the vicinity of the site.	N/A
Part 7 Additional Local Provisions			
7.1	Earthworks	There are no additional earthworks proposed which are beyond what has already been approved on this site.	Yes
7.2	Flood Planning	The site is not subject to flooding and the current stormwater system will allow for the suitable drainage of the site.	Yes
7.3	Development on Natural Resource Sensitive Land	The site is not identified on the Natural Resources Sensitive Map. Not applicable.	N/A
7.4	Sustainable Development	<p>The proposal satisfied the LEP in that:</p> <p><i>(a) conserving energy and reducing carbon dioxide emissions,</i></p> <p><i>(b) embodied energy in material and building processes,</i></p> <p>Has been addressed via previous Das.</p> <p><i>(c) building design and orientation</i></p> <p><i>(d) passive solar design and day lighting,</i></p> <p><i>(e) natural ventilation</i></p> <p>As above, this has been addressed under previous Das.</p> <p><i>(f) energy efficiency and conservation,</i></p> <p><i>(g) water conservation and water reuse,</i></p> <p>Has been addressed via previous DAs, noting no change to the stormwater management arrangements approved via DA18/0190.</p> <p><i>(h) waste minimisation and recycling</i></p>	N/A

		<p>Has been addressed via previous DAs, noting no change to the waste room and management arrangements approved via DA18/0190.</p> <p>(i) <i>reduction of vehicle dependence,</i></p> <p>Has been addressed via previous DAs, noting that the development site is within walking distance to local infrastructure.</p> <p>(j) <i>potential for adaptive reuse.</i></p> <p>Has been addressed via previous DAs.</p>	
7.5	Protection of Scenic Character and Landscape Values	The site is not identified on the Land with Scenic and Landscape Values Map.	N/A
7.6	Salinity	Has been addressed via previous DAs.	N/A
7.7	Servicing	Has been addressed via previous DAs.	N/A

PENRITH DEVELOPMENT CONTROL PLAN 2014

All relevant Council controls have been identified and considered in the following compliance table.

Penrith Development Control Plan 2014 Compliance Table			
Clause	Controls	Comments	Complies
C1 Site Planning and Design Principles			
1.1	Site Planning	<u>1.1.1 Site Analysis</u> A Site Analysis has been prepared as part of the previous DA, noting that the current application is seeking to undertake minor modification to the design scheme of the car parking area.	N/A
		<u>1.1.2 Key Areas with Scenic and Landscape Values</u> This is not relevant to the subject site or the proposed development.	N/A
1.2	Design Principles	<u>1.2.2 Built Form – Energy Efficiency and Conservation</u> Has been addressed via previous DAs.	N/A
		<u>1.2.3 Building Form – Height, Bulk and Scale</u> No change to the built form outcome on the site is proposed.	Yes
		<u>1.2.4 Responding to the Site's Topography and Landform</u> Has been addressed via previous DAs.	N/A
		<u>1.2.5 Safety and Security (Principles of Crime Prevention through Environmental Design)</u> No change, the approved development will continue to address its frontages.	Yes
		<u>1.2.6 Maximising Access and Adaptability</u> The development will continue to provide appropriate equitable access to the site in accordance with the relevant controls and Australian Standards.	N/A

Clause	Controls	Comments	Complies
C2 Vegetation Management			
2.1	Preservation of Trees and Vegetation	There are no changes proposed that will impact on the preservation of trees and vegetation on this site.	Yes
2.2	Biodiversity Corridors and Areas of Remnant Indigenous Vegetation in Non-Urban Areas	The proposal relates to the approved car park area. There are no changes that impact on biodiversity or vegetation.	Yes
2.3	Bushfire Management	Subject site is not identified as being within a Bushfire Prone Land. Not applicable.	Yes
C3 Water Management			
3.1	Water Conservation	Has been addressed via previous Das.	N/A
3.2	Catchment Management and Water Quality	No change to the approved stormwater arrangements approved via previous DA.	N/A
3.3	Watercourses, Wetlands and Riparian Corridors	Subject site is not located within proximity to a watercourse, wetland or riparian corridor.	N/A
3.4	Groundwater	No change to the approved stormwater arrangements approved via previous DA.	N/A
3.5	Flood Planning	The subject site is not identified as being flood prone. Not applicable.	N/A
3.6	Stormwater Management and Drainage	No change to the approved stormwater arrangements approved via previous DA.	N/A
3.9	Water Sensitive Urban Design	Has been addressed via previous DA's noting no change to the approved stormwater arrangements approved via previous DA.	N/A
C4 Land Management			
4.1	Site Stability and Earthworks	There are no additional earthworks proposed which are beyond what has already been approved on this site.	N/A
4.3	Erosion and Sedimentation	Has been addressed via previous DAs.	N/A
4.4	Contaminated Lands	Due to the minor nature of the proposal, there are no changes that impact on potential contamination matters. No further assessment is required.	N/A

Clause	Controls	Comments	Complies
4.5	Salinity	This is not relevant to the subject application.	N/A
C5 Waste Management			
		There are no changes to the waste storage areas or arrangements proposed as part of this application.	Yes
C6 Landscape Design			
		There are no changes to the approved and existing landscape arrangements on this site.	N/A
C7 Cultural and Heritage			
7.1	Heritage	Has been addressed via previous DAs.	N/A
7.2	Aboriginal Cultural and Heritage	Has been addressed via previous DAs.	N/A
7.3	Significant Trees and Gardens	Has been addressed via previous DAs., however it is noted that the subject site does not contain any trees or gardens that is considered to be of cultural, historical, scientific or aesthetic significance.	N/A
C10 Transport, Access and Parking			
10.2	Traffic Management and Safety	No change to the vehicle access arrangements to and from the site.	N/A
10.3	Key Transport Corridors	The subject site does not bound a key arterial road network. Not applicable.	N/A
10.5	Parking, Access and Driveways	<p>The proposed modifications result in the loss of 6 car parking spaces which is about a 1% decrease in parking. However, the revised proposal achieves a higher level of User Class 3 Parking Spaces which reflects the parking utilization within the site as such the overall outcome is that a more accessible and adequate car parking will ensure the safety and functionality are both higher. Thus the minor loss of 6 parking spaces can be supported. Further details are provided in the supporting traffic statement by Ason.</p> <p>The proposal will have minimal impacts on the local road system and the proposed changes aim to ensure vehicles can navigate safely through the site. The changes seek to reduce pinch points and to ensure adequate car parking is provided for the shopping centre customers.</p>	Yes

Clause	Controls	Comments	Complies
C11 Subdivision			
		No subdivision is proposed as part of this development and as such the controls contained under C11 Subdivision does not apply to the current development.	N/A
Potential Environmental Impacts			
Visual Impacts			
The visual impacts from the proposed works are minimal. Although the site is separated by road from nearby residents so there are negligible visual effects. Noting there are no changes to the approved building height of existing setbacks of the existing building. The building envelope is being retained.			
Servicing			
The existing site has access to power, reticulated sewer, and reticulated water, as such there are adequate services available to the site.			
Transport, Access, and Parking			
There are no changes to the existing transport, access, and with minor changes to the parking arrangements as outlined in this application. The site is within proximity of public transport. There are numerous car parking areas provided which include accessible parking spaces.			
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Noise			
The site is separated from nearby residents by roads as such there is no additional acoustic assessment needed as part of this proposal. There are no changes that impacts on the acoustic environment.			

CONCLUSION

It is concluded that following a review of the relevant planning controls, the proposed modification application is an appropriate outcome on site and remains consistent with the design intent of the original proposal.

Having regard to the benefits of the proposal and considering the absence of adverse environmental, social, or economic impacts, the application is submitted to Council for assessment and granting of development consent. Think Planners Pty Ltd recommends the approval of the modification including the amendment of relevant conditions identified previously in this statement.