

2182 Castlereagh Road, Penrith

## Section 4.55 Planning Statement

# Section 4.55 Planning Statement

## 2182 CASTLEREAGH ROAD, PENRITH

### Minor amendments to approved Alterations and Additions to Existing Bunnings Warehouse

**October 2021**

Prepared under instructions from  
[Bunnings Group Ltd](#)

by

[Aaron Sutherland](#)  
B Town Planning UNSW

aaron@sutherlandplanning.com.au  
Tel: 0410 452 371  
PO BOX 814 BOWRAL NSW 2576

NOTE: This document is Copyright. Apart from any fair dealings for the purposes of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced in whole or in part, without the written permission of Sutherland & Associates Planning, PO Box 814, BOWRAL NSW 2576

1.0	INTRODUCTION	4
2.0	SITE DESCRIPTION AND LOCATION	5
2.1	Locality Description	5
2.2	Site Description	5
3.0	BACKGROUND	7
3.1	Development Application DA21/0005	7
4.0	PROPOSED MODIFICATIONS	8
4.1	Description	8
4.2	Numerical Overview	9
4.3	Amended Conditions	9
4.3.1	Condition No. 1	9
4.3.2	Condition No. 2	9
4.3.3	Condition No. 7	9
4.3.4	Condition No. 13	10
4.3.5	Condition No. 44	10
4.3.6	Condition No. 56	10
5.0	STATUTORY PLANNING FRAMEWORK	12
5.1	Environmental Planning & Assessment Act 1979	12
5.1.1	Section 4.55	12
5.2	Environmental Planning Instruments	13
5.2.1	State Environmental Planning Policy (Infrastructure) 2007	13
5.2.2	Penrith Local Environmental Plan 2010	14
5.3	Penrith Development Control Plan 2014	14
6.0	CONCLUSION	17

## 1.0 INTRODUCTION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* to modify the consent for Development Application DA21/0005 for alterations and additions to the existing Bunnings Warehouse at 2182 Castlereagh Road, Penrith.

The application seeks approval for the following minor changes to the approved works:

- Enclosure of Building Materials & Landscape Supplies Yard (BMLSY) with walls instead of fencing.
- Relocation of roller doors to BMLSY to the north face to improve carpark circulation
- Minor changes to carpark circulation pattern including additional trailer carparking, and associated reduction in car parking spaces
- Removal of the approved extension to the Goods Inwards area at the south west corner of the building.
- Various changes to egress/roller shutter doors.
- Associated changes to landscape arising from changed building and car parking layout and conditions of approval.
- Minor changes to configuration of internal racking.

The proposed modifications are detailed on amended architectural plans prepared by John R. Brogan & Associates Pty. Limited, Architects Planners and Commercial Interior Designers. The application is also accompanied by the following:

- Assessment of Parking and Traffic Implications: Transport & Traffic Planning Associates
- Amended Civil Package: C&M
- Amended Landscape Plans: John Lock & Associates

This Statement has been prepared pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*. The Statement provides an assessment of the amended proposal having regard to the relevant legislative context, social economic and environmental impacts, potential amenity impacts of the development on the surrounding locality and the measures proposed within the application to mitigate such impacts.

The Statement details the amended proposal's compliance against applicable environmental planning instruments and development control plans including:

- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2014

Having regard to the applicable legislative framework, the proposed amendments to the approved development are minor, and such that the development retains the same fundamental characteristics and is therefore substantially the same development. The amended development remains consistent with the aims and objectives of the relevant environmental planning instruments and development control plan whilst improving compatibility with the emerging character of the locality.

The proposed modifications involve a reduction to the scope of approved works, are of minor environmental impact, and do not result in any adverse impact and accordingly approval is warranted.

## 2.0 SITE DESCRIPTION AND LOCATION

### 2.1 Locality Description

The site is located within the northern end of the suburb of Penrith which is within the Penrith Local Government Area. The site is within an established industrial precinct which is located to the north-west of the central business district and train station of Penrith.

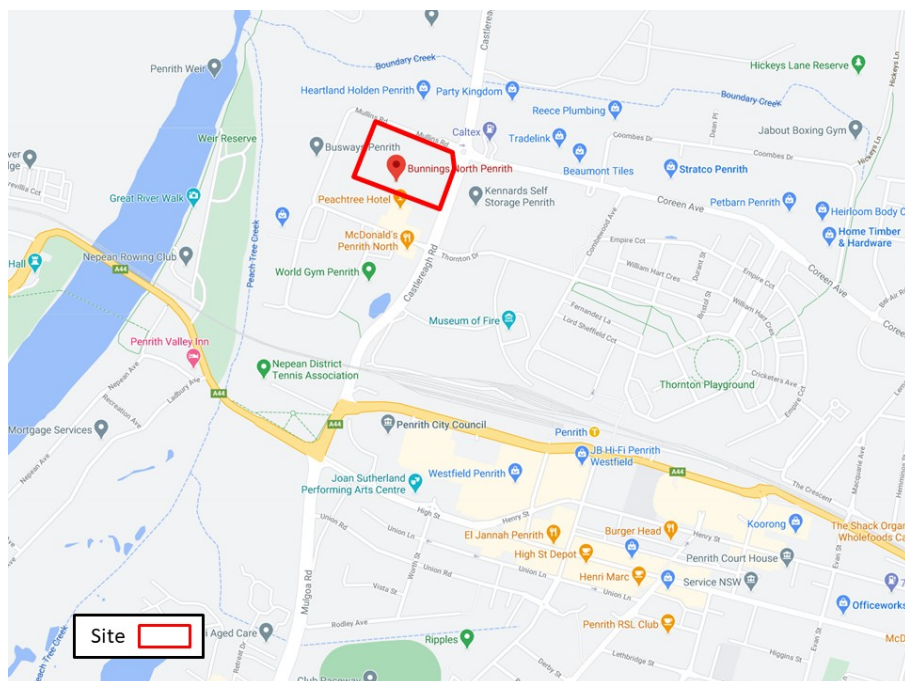


Figure 1:

Site Location:  
(Source:  
Google Maps)

### 2.2 Site Description

The site is legally described as Lot 1 in DP 1067795 and is known as 2182 Castlereagh Road, Penrith. The site is located on the south-western corner of the intersection of Castlereagh Road and Mullins Road, although it is noted that the corner of the site to the intersection wraps around a smaller allotment immediately at the intersection which is occupied by a Sydney Water sewer pumping station.

The site is predominantly rectangular in shape with a frontage of approximately 203 metres to Mullins Road to the north, 157 metre to Castlereagh Road to the east, a western side boundary of 188 metres, and a stepped southern boundary with a length of approximately 226 metres. The site has an area of approximately 40,545.8 square metres.

The site is currently occupied by an existing Bunnings warehouse located along the southern end of the site which opened in 2006, which is currently configured with the outdoor nursery at the eastern end, a central warehouse, and a timber trade sales area at the western end. To the north of the existing building is a large hardstand car park on the remainder of the site which is accessed via a primary central driveway along the northern boundary of the site from Mullins Road, whilst a secondary driveway from Mullins Road is located at the western end of the northern frontage. A loop road around the warehouse provides access for deliveries and waste removal which occurs at the rear or southern side of the building

The hardstand car parking area is setback from the front boundaries of the property to provide a landscaped presentation to each road with mature trees. There is also a grassed area residual area at the north-western end of the site which is surrounded by the car park.



Figure 2:

Aerial view of  
the site  
(Source: Six  
Maps,  
Department of  
Lands)



## 3.0 BACKGROUND

### 3.1 Development Application DA21/0005

On 16 August 2021, consent was granted to Development Application DA21/0005 for alterations and additions to the existing Bunnings warehouse as follows:

- The addition of a wing from the existing western end of the building, north towards Mullins Road to provide for a larger Timber Trade Sales area and a Building Materials and Landscape supplies yard;
- Extension of the Timber Trade Sales area to the south with a new associated canopy over the unloading area;
- Addition of entry awning to the existing nursery entry and associated changes to gates, as well as replacement of existing shade sails;
- Associated reconfiguration to car parking as a consequence of the extension to the building including new line marking and directional signage, resulting in a total increase in car parking from 375 to 389 spaces;
- The addition of 5 new “business identification” signs to the building extension.

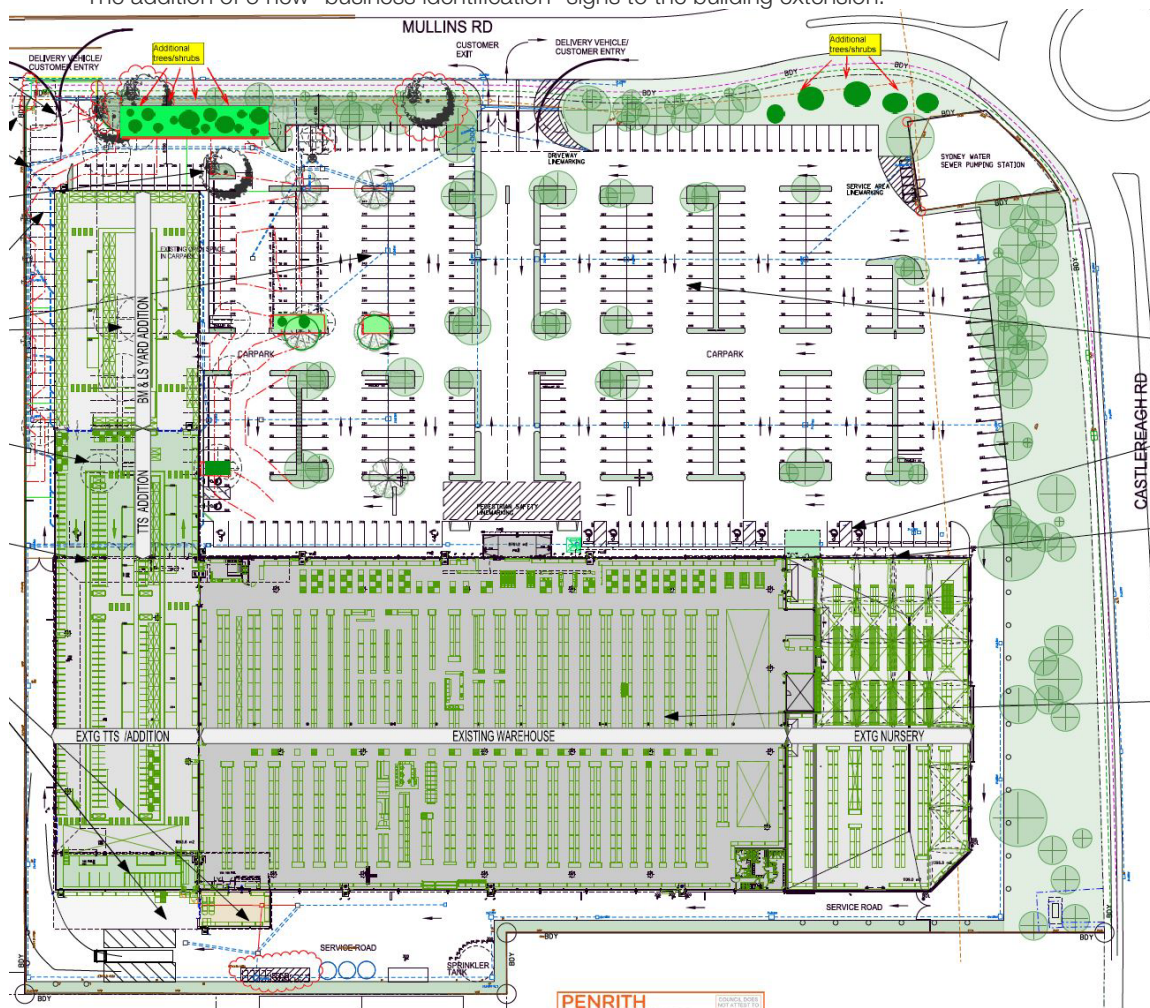


Figure 3:

Approved ground floor plan

## 4.0 PROPOSED MODIFICATIONS

### 4.1 Description

The subject application seeks consent for the following primary modifications to the approved development:

- Enclosure of Building Materials & Landscape Supplies Yard (BMLSY) with walls instead of fencing.
- Relocation of roller doors to BMLSY to the north face to improve carpark circulation
- Minor changes to carpark circulation pattern including additional trailer carparking, and associated reduction in car parking spaces
- Removal of the approved extension to the Goods Inwards area at the south west corner of the building.
- Various changes to egress/roller shutter doors.
- Associated changes to landscape arising from changed building and car parking layout and conditions of approval.
- Minor changes to configuration of internal racking

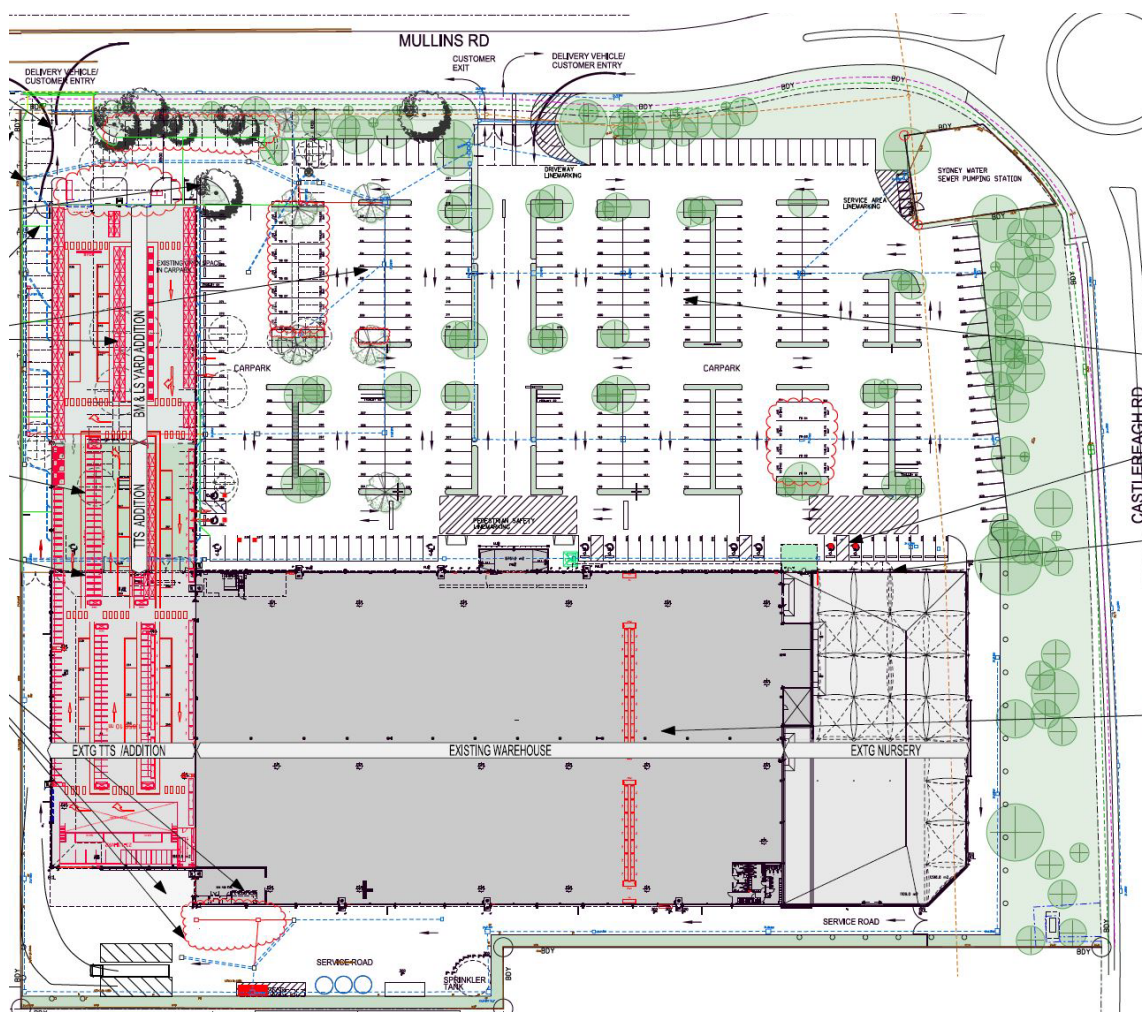


Figure 3:

Amended alterations and additions to the existing Bunnings warehouse



## 4.2 Numerical Overview

Element	Approved	Proposed Amendments
Site Area	40,545.8 square metres	40,545.8 square metres
Gross Floor Area	13,255.1 square metres	13,141.1 square metres
Floor Space Ratio	0.33:1	0.324:1
Height	9.5 metres parapet height	9.5 metres parapet height
Parking	389	359
Setbacks (approx.)	<ul style="list-style-type: none"> <li>Mullins Road: 19.6m for building, 2.1m for car parking</li> <li>South (for western portion) – 14m</li> </ul>	<ul style="list-style-type: none"> <li>Mullins Road: 19.6m for building, 6.15m for car parking</li> <li>South (for western portion) – 14m</li> </ul>

## 4.3 Amended Conditions

### 4.3.1 Condition No. 1

Condition No. 1 includes the approved architectural, landscape and civil plans and will need to be updated to reflect the amended plans which form part of this S4.55 application.

### 4.3.2 Condition No. 2

Condition No. 2 currently states that the development shall not be used or occupied until an Occupation Certificate has been issued. However, the existing Bunnings will be operational whilst the works are being undertaken and so this condition is proposed to be amended as below to reflect this circumstance:

*The ~~development~~ alterations and additions to the existing building authorised by this Consent shall not be used or occupied until an Occupation Certificate has been issued.*

### 4.3.3 Condition No. 7

Condition No. 7 requires removal of some car parking to increase landscaping depth from 2 metres to 6 metres and retention of existing spotted gum trees where possible. The amended design incorporates this requirement.

However, Condition No. 7 also requires an additional 7-8 trees to be planted along the frontage of the site. Upon review of the spatial requirements for the trees, John Lock & Associates landscape architect has determined that 3 – 4 trees is more appropriate to avoid overcrowding and canopy conflict. Accordingly, it is proposed to amend Condition No. 7 as follows:

*The proposed 2m wide landscaping area location along the north-western frontage of Mullins Road shall be widened to 6m consistent with the existing landscaping width provided along Mullins Road frontage as shown in red on the landscape plan and site plan. Where practical, the proposed spotted gums to be removed shall be retained.*

*Prior to the issue of the Occupation Certificate, an additional ~~7—8~~ 3 – 4 trees shall be planted along the frontage of the site that are of the same or similar species to the existing trees along the site frontage as shown in red on the landscape plan.*

#### 4.3.4 Condition No. 13

It is proposed to amend Condition No. 13 so that it is specific to the approved works under this consent, as follows:

*All land that has been disturbed by earthworks, **as authorised by this development consent**, is to be spray grassed or similarly treated to establish a grass cover.*

#### 4.3.5 Condition No. 44

Condition No. 44 requires “complying” all weather bicycle parking and end of journey facilities. However, this condition is considered onerous and is proposed to be deleted for the following reasons:

- The objective under Section 10.7 the Penrith DCP is to encourage bicycle use by providing sufficient number of secure and accessible bicycle parking spaces with new developments. The proposal is not for a “new development” as there is an existing and operational Bunnings store on the site already and the subject proposal is only for an extension to the existing store to provide improved product selection for customers. Given the existing use does not have bicycle parking or end of journey facilities, it is unreasonable for this consent to attempt to retrospectively have these facilities installed for the existing use.
- Section 10.7 of the Penrith DCP requires bicycle parking for “commercial developments”. The Bunnings store is not defined as a “commercial premises” under the PLEP and instead is defined as “hardware and building supplies” and so the bicycle parking requirements do not apply to this form of development.
- Notwithstanding the above, due to the location of the site and the nature of the use as being hardware related products and bulky goods, cycling is not a common method of transportation used for visits to Bunnings stores by employees or customers and so the provision of bicycle parking, and in particular end-of-trip facilities, is not warranted.

#### 4.3.6 Condition No. 56

Condition No. 56 also currently relates to the entire building, rather than the works specifically authorised by the consent, and so this condition is proposed to be amended as below to relate specifically to the approved works:

*An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation **and use of the part of the existing building the subject of this Consent** ~~the building/tenancy and commencement of the approved use~~. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.*

*Before the Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building are to be submitted to Penrith City Council and the New South Wales Fire Brigades.*

*A copy of the Occupation Certificate and all necessary documentation supporting the issue of that Certificate including the above mentioned documents shall be submitted to Penrith City Council, if Council is not the Principal Certifying Authority*

## 5.0 STATUTORY PLANNING FRAMEWORK

### 5.1 Environmental Planning & Assessment Act 1979

#### 5.1.1 Section 4.55

Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 empowers Council to modify a development consent, as follows:

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, as the case may be..

In accordance with section 4.55(1A)(a) the proposed modifications are considered to result in only a minor environmental impact for the following reasons:

- The proposed amendments are relatively minor and do not result in any significant change to the intensity of the use.
- The changes do not result in any meaningful change in relation to the functionality of the approved development which are of any planning consequence.
- The nature of the amendments does not generate any issues which require any further detailed analysis and can only be described as of minor environmental impact.

For these reasons the amendment is considered to be of minimal environmental impact and can therefore be considered under section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

In the consideration of the issue of whether or not the amended proposal is 'substantially the same development', the Land & Environment Court case of *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 establishes a number of tests which are of assistance. In the circumstance of the subject development consent, the amendments do not alter the description of the approved development or significantly change or remove the quantum and general arrangement of the



approved use, and do not affect the correct characterisation of the amended proposal as being *substantially* the same as that which has already been approved, for the following reasons:

- The proposed amendments do not radically transform the original proposal (Test 1)
- The proposed amended development is essentially and materially the same development as the development for which consent was originally granted (Test 2)
- The way in which the development is to be carried out is essentially and materially the same (Test 3)
- There is no aspect of the approved development which was important, material or essential to the development when it was approved which is proposed to be removed or substantially altered. (Test 4)

In conclusion, having regard to the guidance provided by the relevant case law, the proposed Section 4.55(1A) modification application to the approved consent satisfies the “substantially the same development test” pursuant to Section 4.55(1A).

## 5.2 Environmental Planning Instruments

In accordance with Section 4.55(3) of the Environmental Planning and Assessment Act 1979 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 4.15(1) as are of relevance to the development the subject of the application.

The provisions of relevant environmental planning instruments and development control plans are relevant matters for consideration under Section 4.15(1) and are addressed below.

### 5.2.1 State Environmental Planning Policy (Infrastructure) 2007

Clause 104 of SEPP (Infrastructure) requires that before granting consent to a development for a commercial premises (the proposal is for ‘hardware and building supplies’ which is a type of ‘retail premises’ which falls under the definition of ‘commercial premises’ in the Standard Instrument) which is 10,000 square metres or above or development that provides car parking for 50 or more motor vehicles, Councils must refer the application to Transport for NSW for comment and must consider the accessibility of the site, including:

- the efficiency of movement of people to and from the site and the extent of multi-purpose trips, and
- the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and
- any potential traffic safety, road congestion or parking implications of the development.

The approved development had a retail floor area which exceeded 10,000 square metres and so the application was referred to Transport for NSW. The proposed amendments do not increase the size of the approved development and result in a minor reduction in car parking and therefore no further referral to TfNSW is considered necessary as a consequence of the proposed amendments.

### 5.2.2 Penrith Local Environmental Plan 2010

The minor nature of the proposed amendments is such that they do not raise any further issues for consideration against the relevant provisions of the Penrith Local Environmental Plan 2010 beyond those considered in the assessment of the original application.

### 5.3 Penrith Development Control Plan 2014

The Penrith Development Control Plan 2014 (PDCP) was adopted by Penrith Council on 23 March 2015 and came into effect on 17 April 2015. The proposal's compliance with the primary controls of PDCP is outlined in the table below.

Part	Control	Proposed
C2 Vegetation Management		
2.1 Preservation of Trees and Vegetation	Table C2.1 of the DCP requires that for tree removal within Business areas a tree survey and assessment report is required.	The application is accompanied by an amended landscaping package prepared by John Lock & Associates which demonstrates an improved landscape design consistent with Condition No. 7 of the consent.
C3 Water Management		
3.6 Stormwater Management and Drainage 3.8 Rainwater / Storage Tanks	<p>Applicable controls related to stormwater management and drainage are provided below:</p> <ul style="list-style-type: none"> <li>• Pipe outlets shall be treated with measures to dissipate stormwater velocity, except where waters enter a formed channel;</li> <li>• Permeable ground surfaces are to be maintained as far as possible;</li> <li>• The development should take into account the existing drainage patterns;</li> <li>• On-site stormwater detention systems must release water after any rainfall event to maximise future capacity</li> </ul>	A amended stormwater concept plan has been prepared and accompanies this application.
C6 Landscape Design		
6.1.1 Development Process	<p>The DCP defines in table C6.2 development with a value over \$2M as Category 3.</p> <p>Submission requirements for Category 3 type development include:</p> <ul style="list-style-type: none"> <li>• Site Analysis;</li> </ul>	The application is accompanied by an amended landscaping package prepared by John Lock & Associates which demonstrates an improved landscape design consistent with Condition No. 7 of the consent.

Part	Control	Proposed
	<ul style="list-style-type: none"> <li>Tree Survey and Arboricultural Reports;</li> <li>Tree Management Plan;</li> <li>Landscape Detail Plan and Additional Details.</li> </ul>	
C7 Culture and Heritage		
C7 Culture and Heritage	This section of the DCP applies to listed heritage items, heritage conservation areas, identified archaeological sites, Aboriginal places of heritage significance and sites on which Aboriginal objects are located.	<p>The subject site is not identified as a heritage item, heritage conservation area or as an identified archaeological site. The site is unlikely to contain objects, items or places significant to Aboriginal people.</p> <p>The subject site is not located within close proximity to any of the above and does not contain a significant building or structure more than 50 years old.</p> <p>The site is not identified within Schedule 5 of the PLEP 2010 and as such this section of the DCP does not apply.</p>
C10 Transport, Access and Parking		
10.1 Transport and Land Use	<p>This clause of the DCP relates to traffic, access and car parking. The following controls apply:</p> <ul style="list-style-type: none"> <li>A Transport Management and Accessibility Plan (TMAP) is to be prepared for all significant developments as identified within the DCP.</li> <li>New development that have potential significant public transport patronage are to be located close to transport nodes or networks.</li> <li>A range of uses are to be integrated in mixed-use areas to provide a range of services to minimise the need for additional travel.</li> <li>Public transport use is to be enhanced by providing good pedestrian connections from places of residence or employment to transport networks</li> </ul>	<p>An amended Traffic Report including has been prepared by TTPA in support of the application.</p> <p>The DCP suggests a parking rate of 1 space per 50sqm of gross floor area for bulky goods premises. However, this is a generic requirement and Bunnings warehouse is aware of the actual parking required for their stores based on extensive survey data from existing stores. The DCP would require 265 spaces, however, the proposal provides 359 spaces to ensure that parking demand is properly satisfied.</p>
10.5	This Clause of the DCP relates to car parking requirements for development.	A total of 359 car parking spaces are now proposed for the extended store within

Part	Control	Proposed
Parking, Access and Driveways		<p>the at-grade parking area in front of the warehouse.</p> <p>Parking provided by the development is compliant with Council's requirements for car parking, access and driveways.</p>
10.5.2 Access and Driveways	<p>This section of the DCP relates to Access to sites. Applicable controls are provided below:</p> <ul style="list-style-type: none"> <li>The road access to the site should provide for safe entry to and exit from the site. All vehicles must enter/exit the site in a forward direction.</li> <li>The entry and exit from the site should provide for appropriate traffic sight distance in both directions, in accordance with AS2890.1 and 2 - 2004 for car parking.</li> <li>Access to basement parking shall have an entry threshold a minimum of 300mm above the top of the kerb.</li> </ul>	<p>The proposed amendments results in some minor changes to the existing driveway at the western end of the site, however, the revised design achieves a compliant design and layout with regard to access. A response to the controls is provided below:</p> <ul style="list-style-type: none"> <li>All vehicles are able to enter and leave the site safely in a forwards direction.</li> <li>Adequate sight distances are provided to the development in accordance with the relevant Australian Standards.</li> </ul>
D4 Industrial Development		
4.3 Building Setbacks and Landscape	<ul style="list-style-type: none"> <li>4m setback required from Mullins Road</li> <li>Setback areas are to be landscaped, but may incorporate an off-street parking area if it can be demonstrated that the location of the car parking area: <ul style="list-style-type: none"> <li>Is within a setback which is at least 13m wide and set behind a landscaped area which is at least 4m wide;</li> <li>Promotes the function and operation of the development;</li> <li>Enhances the overall design of the development by implementing design elements,</li> </ul> </li> </ul>	<p>The amended proposal provides an increase to the landscaped setback from Mullins Road which is now a continuous minimum 6.15 metres in depth, with car parking located behind and compliant with the 4 metre requirement.</p>



## 6.0 CONCLUSION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* to modify the consent for Development Application DA21/0005 for alterations and additions to the existing Bunnings Warehouse at 2182 Castlereagh Road, Penrith.

The application seeks approval for the following minor changes to the approved works:

- Enclosure of Building Materials & Landscape Supplies Yard (BMLSY) with walls instead of fencing.
- Relocation of roller doors to BMLSY to the north face to improve carpark circulation
- Minor changes to carpark circulation pattern including additional trailer carparking, and associated reduction in car parking spaces
- Removal of the approved extension to the Goods Inwards area at the south west corner of the building.
- Various changes to egress/roller shutter doors.
- Associated changes to landscape arising from changed building and car parking layout and conditions of approval.
- Minor changes to configuration of internal racking.

The proposal amendments are particularly minor and of minimal environmental impact in that the amended proposal retains the fundamental components of the approved layout and spatial characteristics of the development.

As detailed in this submission the proposed modifications may be made by the consent authority in accordance with Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* as the proposed amendments do not radically transform the proposal or alter the overarching fundamental characteristics of the original approval, and so the amended proposal is appropriately categorised as being “substantially the same” as the approved development.

The proposed amendments remain consistent with the aims and objectives of the relevant environmental planning instruments and development control plan and will not result in any adverse impacts. Accordingly, the proposed amendments are considered acceptable and warrant approval.