

# STATEMENT OF ENVIRONMENTAL EFFECTS

PROPOSED MODIFICATION  
SECTION 4.55 (1A) – DA 17/1247

230-242 ALDINGTON ROAD,  
KEMPS CREEK



## STATEMENT OF ENVIRONMENTAL EFFECTS

### Prepared by

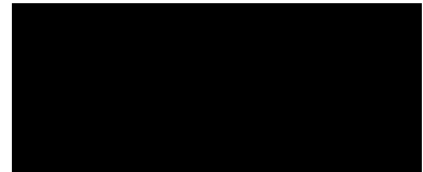
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### Client and Land Details

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**Client:** BAPS Swaminarayan Santha  
Rosehill, NSW  
**Subject Site:** Lot 18 DP 253503, 230-242 Aldington Road, Kemps Creek  
**Proposal:** Proposed Modification Section 4.55 (1A) to DA17/1247



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Warwick Stimson RPIA  
Director



This report dated December 2020 is provided to 'the client' exclusively. No liability is extended for any other use or to any other party. Whilst the report is derived in part from our knowledge and expertise, it is based on the conditions prevailing at the time of the report and upon the information provided by the client.

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Version	Date	Comment
1.0	3/12/20	Initial Draft for client review
2.0	8/12/20	Final for DA lodgement

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# 1 INTRODUCTION

## 1.1 PROJECT OVERVIEW

Stimson Urban & Regional Planning has been engaged by BAPS Swaminarayan Santha to prepare a Statement of Environmental Effects in relation to a proposed modification of Development Application DA17/1247.

As the detailed design has progressed for the purposes of a construction certificate, a number of minor amendments have been identified.

This report describes the proposed modifications in detail and undertakes an assessment of the proposal against the relevant aims, objectives and development provisions of Council's LEP and DCP, and Section 4.15 of the Act.

## 1.2 HISTORY OF THE APPLICATION

The following applications have been considered by Penrith Council to date.

Development Application Number	Relevant Dates	Comments
DA17/1247	Approved by JRPP 23 September 2019	A deferred commencement consent was issued identifying a number of matters to be detailed prior to the issue of an operational consent.
DA17/1247	3 March 2020	Deferred Commencement conditions approved. Operational consent issued.
DA17/1247 Mod 1	Approved 10 November 2020	Seeks minor design amendments to a number of aspects of the development.
DA17/1247 Mod 2 (this application)	Lodged December 2020	Seeks minor elevation changes, changes to retaining walls and addition of walkways.

## 1.3 SUPPORTING DOCUMENTATION

The proposed is accompanied by the following documentation:

Documentation	Prepared by
Architectural Drawings	Jakaan Architects
Bushfire Compliance	Harris Environmental Consulting

## 2 THE SITE AND SURROUNDS

The subject site and its surrounds have the following characteristics.

Site Address	230-242 Aldington Road, Kemps Creek
Lot/DP	Lot 18 DP 253503
Site Area	101,328sqm (approx.)
Local Government Area	Penrith City Council
Zoning	RU2 Rural Landscape
Current Land Use	Vacant
Proposed Land Use	Place of Worship
Surrounding Land Uses	Vacant farmland
Topography	The site rises from Aldington Road to the rear of the site by approximately 25-30m
Terrestrial Biodiversity	Not mapped in LEP
Heritage	Not mapped in LEP
Flooding/Overland Flow	Not mapped in LEP
Bushfire	Mapped



Figure 1 Subject Site - Aerial

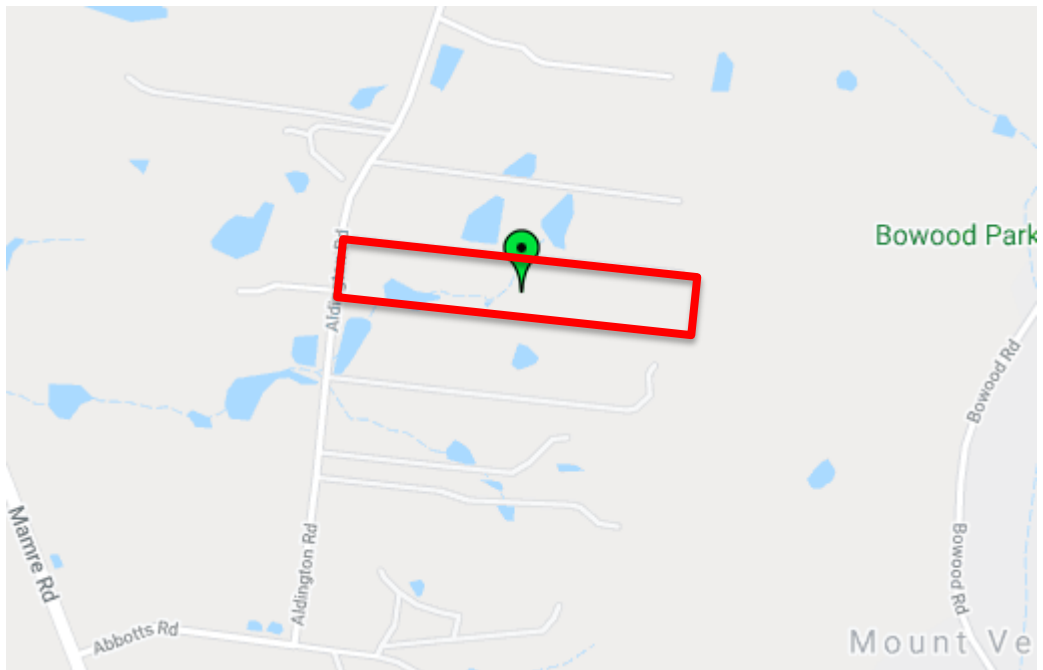


Figure 2 Subject Site - Cadastre

### 3 MODIFICATION DESCRIPTION AND PLANNING CONTROLS

#### 3.1 AMENDMENTS SOUGHT

The following amendments are sought to be made to the approved development.

1. Addition of covered walkways between the central facility buildings,
2. Minor elevation amendments of the central facility buildings.
3. Modifications to the retaining walls located between the dining hall building and the Mandir.

Some umbrella structures have also been removed.

In terms of the existing Notice of Determination, we are of the view that only plan references need to be updated and amended.

#### 3.2 PLANNING CONTROLS

Section 4.55 of the Act provides details relating to the modification of consents as follows:

##### 4.55 Modification of consents—generally

- (l) Modifications involving minor error, misdescription or miscalculation 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 a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.
- (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), 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.

Subsections (1), (2) and (5) do not apply to such a modification.

- (2) Other modifications – 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

- (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 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

In relation to the above we submit the following:

- The modification sought is not an error or misdescription. Nor is it considered to result in any significant changes to the resultant development. Accordingly, we submit the application should be considered as a s4.55(1A).
- Further supporting the application being a s4.55(1A) is the fact that no significant environmental impacts will arise as a result. Indeed, we submit the changes proposed would be imperceptible when considering the overall development and the scale of the site and buildings proposed.
- Since there are no significant changes proposed to the approved use, function and utility of the buildings approved, Council can be 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.
- Council can therefore grant consent to the proposed modification.



## 4 KEY PLANNING ISSUES

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The following impacts have been considered in the preparation of this development proposal.

### 4.1 VISUAL IMPACT

The visual impacts of this modification will be imperceptible when viewed from the public and private domain. Whilst there are adjustments proposed to the elements identified in this application, these are relatively minor in the overall context of the development of the site.

### 4.2 BUSHFIRE IMPACT

For completeness, we have obtained an opinion from the Bushfire Impact Consultant in relation to the proposed amendments. In the accompanying advice, they conclude:

The walkway remains separated from the buildings by 6 m and therefore does not change the bushfire protection measures in place.

...

In conclusion, in my professional opinion, the minor modifications proposed do not change the original DA bushfire related conditions of consent.

The application is therefore considered acceptable in terms of potential bushfire impacts.

## 5 SECTION 4.15 ASSESSMENT

An assessment of the proposal has been undertaken in accordance with the statutory requirements of the EPA Act. The following assessment against Section 4.15 of the EPA Act has been undertaken.

### 5.1 SECTION 4.15(1)(A)(I) – ANY ENVIRONMENTAL PLANNING INSTRUMENTS

The following relevant environmental planning instruments have been considered earlier in this report.

#### 5.1.1 *Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River*

The proposed modification does not alter the original assessment of the application against the SREP. The health of the Hawkesbury Nepean River system will be protected and maintained during the construction and operation of the facility.

#### 5.1.2 *State Environmental Planning Policy No 55 – Remediation of Land*

The proposed modification does not alter the original assessment of the application against SEPP 55. No further consideration is required.

#### 5.1.3 *State Environmental Planning Policy (Infrastructure) 2007*

The proposed modification does not trigger any requirement for consideration of SEPP (Infrastructure). No further consideration is required.

#### 5.1.4 *Penrith Local Environmental Plan 2010*

The proposed modification continues to be permissible with consent under the LEP. The modifications would also see the development remain consistent with the objectives of the LEP and the zone itself. The proposed amendments are not in conflict with any development standards or clauses of the LEP and are therefore considered satisfactory when assessed against its provisions.

### 5.2 SECTION 4.15(1)(A)(II) – ANY PROPOSED INSTRUMENT

There are no known draft Environmental Planning Instruments applicable to the subject site or the proposed development.

### **5.3 SECTION 4.15(1)(A)(III) – ANY DEVELOPMENT CONTROL PLAN**

The following Development Control Plan has been considered in relation to this proposed modification.

#### **5.3.1 *Penrith Development Control Plan 2014***

The proposed amendments do not alter the original assessment of the application against the DCP. The proposed development continues to satisfy the objectives of those controls.

### **5.4 SECTION 4.15(1)(A)(IIIA) – ANY PLANNING AGREEMENT OR DRAFT PLANNING AGREEMENT ENTERED INTO UNDER SECTION 7.4**

There are no known planning agreements that apply to the site or development.

### **5.5 SECTION 4.15(1)(A)(IV) – THE REGULATIONS**

There are no sections of the regulations that are relevant to the proposal at this stage.

### **5.6 SECTION 4.15(1)(A)(V) – ANY COASTAL ZONE MANAGEMENT PLAN**

Not relevant to the proposed development.

### **5.7 SECTION 4.15(1)(B) – THE LIKELY IMPACTS OF THE DEVELOPMENT**

No significant impacts of any kind have been identified in the assessment. No changes will arise to the function and utility of the site. No environmental impacts will occur as the amendments sought are minor design changes.

### **5.8 SECTION 4.15(1)(C) – THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT**

The proposal continues to be suitable for the site. The proposed modifications do not change the assessment undertaken at the time of the original Development Application.

### **5.9 SECTION 4.15(1)(D) – ANY SUBMISSION MADE**

Council may undertake a notification process in accordance with its controls and policies. We welcome the opportunity to provide additional information in response to any submissions that may be received.

## **5.10 SECTION 4.15(1)(E) – THE PUBLIC INTEREST**

Given the type of development, its general compliance with the planning controls, how the objectives are satisfied and the suitability of the site it is considered that the public interest would not be jeopardised as a result of this development.

## 6 CONCLUSION & RECOMMENDATION

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The proposed development has been assessed against the requirements of the Penrith Council LEP and DCP and is considered to represent a form of development that is acceptable.

The proposed modifications are minor in the context of the scale of the approved development. There will be no perceptible changes to the development.

The proposed works result in the development remaining 'substantially the same' as what was originally approved, therefore satisfying the test of modification.

An assessment against Section 4.15 of the EPA Act has not resulted in any significant issues arising.

Accordingly, it is recommended that the proposed development be approved.