

728-750 Princes Highway, Tempe

Section 4.55 Planning Statement
(Amended – Feb 2022)

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728-750 PRINCES HIGHWAY, TEMPE

Changes to the internal arrangement and façade
of the approved Bunnings warehouse

February 2022

Prepared under instructions from
[Bunnings Properties Pty Ltd](#)

by

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1.0 INTRODUCTION

This amended submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (MOD/2021/0376) to modify the consent for Development Application 201700185 to partially demolish the rear of the existing building, construction of a new building form and adaptively reuse the site for use as a 2 level hardware and building supplies store with undercroft car parking, erection of signage, boundary adjustments to provide a slip lane from the Princes Highway into Smith Street and the widening of Smith Street on the north-eastern side at 728-750 Princes Highway, Tempe.

As originally lodged on 10 September 2021, the application seeks approval for a number of changes to the internal arrangement of the warehouse, refinements to the car parking layout, changes to the roof design, as well as changes to the façades. Consequential changes to several conditions of consent are also required to reflect the proposed amendments and to remove requirements that are no longer necessary.

In November 2021, the subject modification application was amended under clause 121B of the Environmental Planning and Assessment Regulation 2000 (November Amendment) as a result of recent actions and resolutions by Council and its Local Traffic Committee in respect of the LATM Study which is currently preventing Bunnings from obtaining a construction certificate to commence construction of its proposed development. The changes sought to delete Condition No. 68A and make changes to Condition No. 112.

Since submission of the November 2021 amendment, further interaction with Sydney Eastern City Planning Panel at a meeting held on 9 December 2021 and productive consultations with Council officers has prompted a refinement to the requested amendments and the application is now proposed to be amended under Clause 121B of the Environmental Planning & Assessment Regulation as follows (in addition to originally requested amendments):

- Delete Condition No. 68A and instead incorporate the Tempe South LATM Study – Final Report' prepared by Bitzios Consulting dated 6 July 2021 as an approved document in Condition No. 1;
- Amend Condition No. 27 to require the applicant to meet the cost of implementing any future resident parking scheme in Smith Street, Tempe, as required by the approved LATM and any LATM review required by Condition 112b) subject to Traffic Committee approval;
- Amend Condition No. 54 to clarify that the bus shelter is to be located to maintain a 2.5 metre clear footpath along the Princes Highway with provision of a suitable easement; and
- Amend Condition No. 112(a) to require the identified traffic management works to be implemented to the satisfaction of Director Infrastructure Services Inner West Local Traffic Committee prior to the issue of an Occupation Certificate.

The modifications proposed to the built form continue to be as detailed on the amended architectural plans prepared by John R Brogan & Associates Pty Ltd which accompanied the original modification application prior to its subsequent amendment.

This Statement has been prepared pursuant to Section 4.55(2) 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.

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

- Marrickville Local Environmental Plan 2011

- Marrickville Development Control Plan 2011

Having regard to the applicable legislative framework, the proposed amendments to the approved development are 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 are of limited 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 primary site is known as 728-750 Princes Highway, Tempe and is bounded by the Princes Highway to the north-west and Smith Street to the south-west. Tempe resides within the Inner West Local Government Area.

The section of the Princes Highway within which the site is situated is a classified road under the *Roads Act 1993* (NSW). The roads authority for the Princes Highway is Transport for NSW. The site is less than 700 metres north-west of the Sydney Airport, as well as approximately 525 metres north-west of the Alexandra Canal and 680 metres north-east of the Cooks River.

Tempe is characterised by an eclectic mix of residential, business, recreational and industrial uses.

The location of the site is illustrated in Figure 1 below.

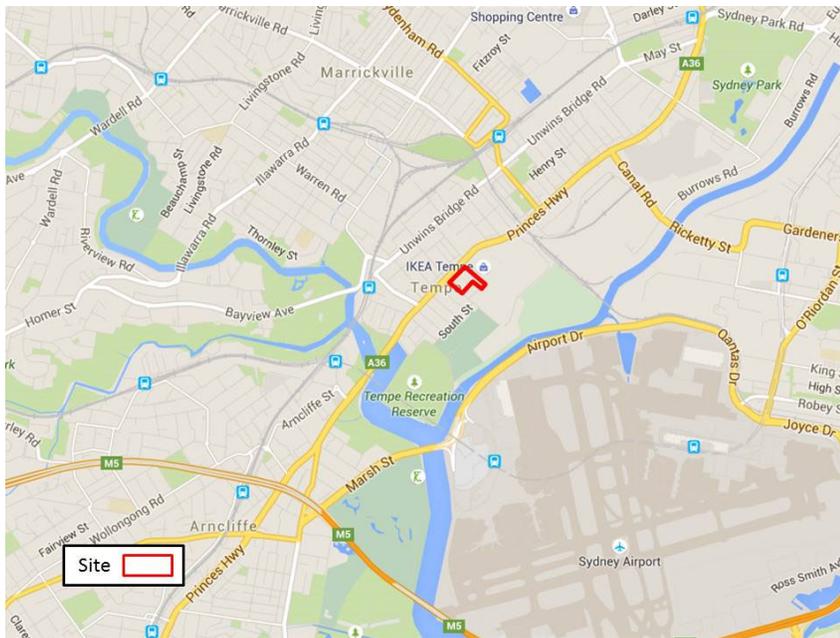


Figure 1:

Site Location:
(Source:
Google Maps)

2.2 Site Description

The primary site is known as 728-750 Princes Highway, Tempe and is legally described as lot 2, DP803493. The site is bounded by the Princes Highway to the north-west and Smith Street to the south-west. The primary area of the site is generally rectangular in shape with a small handle to the south-eastern corner and has an area of approximately 20,358 square metres. An aerial picture of the site is shown at Figure 2.

Tempe is characterised by residential, business, recreational and industrial uses. The site is adjoined to the north-east by the Ikea (Tempe) bulky goods retail store.

The site currently contains a part one (1) part two (2) storey industrial building with ancillary office spaces and is listed as the Westpac Stores, jointly with the former Penfolds Building (now IKEA) as heritage item I299 in the Marrickville Local Environmental Plan 2011. The site has also been identified under Marrickville Local Environmental Plan 2011 as an archaeological site.

The Princes Highway facade is broken by deep set, sunscreened windows with strong vertical lines. To the rear of the Princes Highway façade is an open plan rendered brick warehouse, divided into bays with external piers and steel trusses supporting the saw toothed roof structure above.

The Smith Street elevation of the building includes the same brick façade as the Princes Highway for the first 30 metres with windows at ground and first floors, with the remaining 55 metres portion consisting of pre-cast concrete panels.

Vehicle access is currently provided to site via both the Princes Highway at the north-eastern corner of the site and Smith Street at the south-western corner of the site.



Figure 2:

Site (Source: Six Maps, Department of Lands)

2.3 Surrounding Development

The site is adjoined to the north-east by the Ikea (Tempe) bulky goods retail store. Further to the north of the Ikea (Tempe) store is the Salvos bulky goods retail store.

The north-western side of the Princes Highway, opposite the subject site is largely characterised by small and medium scale businesses including vehicle repair stations with a low density residential neighbourhood immediately to the north-west of those businesses.

The area immediately adjacent to the site on the south-western side of Smith Street is characterised by low density residential dwellings. Immediately adjoining the site to the south-east also on Smith Street is a Light Industrial use, occupied by Hard Rock Enterprises.

3.0 BACKGROUND

3.1 Development Application 201700185

On 27 June 2019, the Sydney East Planning Panel determined to grant development consent to Development Application 201700185 to partially demolish the rear of the existing building, construction of a new building form and adaptively reuse the site for use as a 2 level hardware and building supplies store with undercroft car parking, erection of signage, boundary adjustments to provide a slip lane from the Princes Highway into Smith Street and the widening of Smith Street on the north-eastern side at 728-750 Princes Highway, Tempe.

The approval involved retention and adaptive reuse of significant internal spaces and fabric within the office building at the front of the site including the office building entry and two level vestibule and gallery space, ground floor and first floor former office amenities areas, and the northern stairwell. However, the approval also involved the insertion of new vertical access components within this part of the building including stairs, lifts and travellers.

3.2 MOD/2020/0096

On 18 September 2020, consent was granted to MOD/2020/0096 which provided the following primary modifications to the approved development:

- Relocating the lift lobby further to the south to be housed in the projecting module of the western facade to the south;
- Reconfiguring the arrangement of the stairwell to better fit into the existing space and allow for a greater circulation area;
- The movement of the proposed primary store door opening- the opening would be located just north of the current approved location and would encourage better circulation of the space;
- The extension of the approved travelator further to the south;
- Reconfiguration of the doorways of the lift lobby circulation space in the second stairwell- this includes extending short wall nubs from the northern wall to move the doorways away from the wall; and
- The relocation of the void space on the warehouse level 2 to the southwestern corner, consolidating the warehouse space and enhancing the circulation of the area.

4.0 PROPOSED AMENDMENT TO MOD/2021/0376

4.1 Current Status of MOD/2021/0376

On 19 September 2021, MOD/2021/0376 was accepted by Council, to make a number of changes to the internal arrangement of the warehouse, refinements to the car parking layout, changes to the roof design, as well as changes to the façades.

The application as lodged also sought to make consequential changes to several conditions of consent to reflect the proposed amendments and to remove requirements that are no longer necessary.

MOD/2021/0376 is currently under assessment by Inner West Council and at the time of writing of this amended planning statement, has not yet been determined by the Planning Panel as consent authority.

4.2 Amendment to MOD/2021/0376 (November 2021 amendment)

In November 2021, the subject modification application was amended under clause 121B of the Environmental Planning and Assessment Regulation 2000 (November Amendment) as a result of recent actions and resolutions by Council and its Local Traffic Committee in respect of the LATM Study which is currently preventing Bunnings from obtaining a construction certificate to commence construction of its proposed development.

The changes sought to require specific traffic management works to be undertaken prior to the issue of an Occupation Certificate, as recommended by the Local Area Traffic Management Study (LATM Study) undertaken by Bitzios Consulting on behalf of Council on 6 July 2021 in satisfaction of Condition 68A of the Development Consent.

Below is a chronology of events in relation to the LATM preparation and consideration. The Appendices referenced below were submitted to Council as supporting documents to the statement, and accompany this Amended Planning Statement again for completeness.

Date	Event
21 April 2017	<p>Bunnings lodged development application DA2017/00185 with Council.</p> <p>The DA was accompanied by a Statement of Environmental Effects dated April 2017. A copy of the Statement of Environmental Effects for the DA is at Appendix 1 Page 17 of the Statement of Environmental Effects stated that the proposal included:</p> <p><i>Construction of a dedicated right hand turn lane to provide storage for northbound customer vehicles wishing to turn into the Bunnings complex.</i></p> <p><i>Installation of signalised traffic control to facilitate a safe turn as above</i></p>
29 August 2017	<p>On 29 August 2017, RMS wrote to Council to say that RMS did not support the proposed traffic signals on the basis that the signals do not meet RMS' Warrants for the Provision of Traffic Signals. RMS also said that the installation of signals would have a detrimental impact on the network operations of southbound traffic on the Princes Highway. RMS' letter notes that it has previously agreed (in letters dated 13 October 2016, 28 February 2017 and 30 May 2017) to priority-controlled (unsignalised) right turns into the site. A copy of this letter is at page 39 of the Amended Traffic Assessment at Appendix 2.</p> <p>Since the date of that letter, RMS (and then TfNSW) has consistently maintained its opposition to traffic control signals at the proposed Princes Highway entry to</p>

Date	Event
	the site.
13 October 2017	On 13 October 2017, Bunnings amended the DA to remove the signalisation of the right turn lane from the Princes Highway into the Site.
27 June 2019	On 27 June 2019, the Sydney Eastern City Planning Panel granted the Consent subject, relevantly, to conditions 68A and 112. A copy of the Panel's determination and statement of reasons is at Appendix 4 . A copy of the consent as granted is at Appendix 5 .
20 November 2019	<p>On 20 November 2019, Council and Bunnings entered into a Memorandum of Understanding for the preparation of the LATM Study required by condition 68A of the Consent. A copy of the MOU is at Appendix 6. Under the MOU Council had the ultimate control over:</p> <ul style="list-style-type: none"> (a) the contents of the Study Brief to be issued to the traffic consultant; (b) the selection of the traffic consultant; and (c) the engagement and instruction of the traffic consultant.
23 December 2019	On 23 December 2019, Council provided Bunnings with a draft study brief to be used to tender for the traffic consultant to undertake the LATM Study. Bunnings promptly (on 15 January 2021) approved the brief without comment (Appendix 7).
24 February 2020	On 24 February 2020, following a tender process conducted by Council, Council told Bunnings that Bitzios Consulting was Council's preferred tenderer. On that same day, Bunnings told Council that it had no objection to Bitzios Consulting being nominated as Council's preferred consultant for the LATM Study (Appendix 7).
3 August 2020	<p>On 3 August 2020, a draft LATM Study was presented to a meeting of Council's Traffic Committee. An extract of the business paper for this meeting, which includes a copy of a draft LATM Study dated 24 July 2020 is at Appendix 8.</p> <p>The committee endorsed the draft Tempe South Local Area Traffic Management (LATM) Study and proposed treatments for community consultation'. An extract from the minutes of this meeting is at Appendix 9.</p>
25 August 2020	<p>On 25 August 2020, a general meeting of Council adopted the Traffic Committee's decision to endorse the draft LATM Study for exhibition subject to the following amendment:</p> <p style="text-align: center;"><i>A further LATM Study be undertaken of the impact of traffic on students at Tempe Public and Tempe High School, and associated streets including Edwin Street and Tramway Street Tempe and the treatments be reviewed in the light of the additional study.</i></p> <p>An extract of the minutes from this meeting is at Appendix 10.</p>
18 September 2020	On 18 September 2020, Council modified the Consent. The additional studies required by Council at its 25 August 2020 meeting (none of which related to the installation of traffic signals on the Princes Highway) were completed by Bitzios on 28 September 2021 and the amended LATM Study was placed on public exhibition between 3 November 2020 and 12 January 2021.

Date	Event
8 December 2020	<p>On 8 December 2020, Council passed a motion moved by Clr Macri that Council:</p> <ol style="list-style-type: none"> 1. <i>Extend the Local Area Traffic Management (LATM) for Tempe to include a supplementary report on an investigation into the feasibility of the signalling the exit only from Bunnings through the existing driveway on the Princes Highway;</i> 2. <i>Seek a meeting with the planning minister Stokes and roads minister Constance on this issue to demonstrate the importance of this motion; and</i> 3. <i>Inform the state member Mr Ron Hoenig of this motion and seek his support.</i> <p>Extracts from the agenda and minutes of this meeting are at Appendices 11 and 12 respectively.</p> <p>The Officer's Comments included on the agenda for the 8 December 2020 Council meeting said that:</p> <p style="padding-left: 40px;"><i>The Bunnings Tempe development application was approved on the basis of access to and from Smith Street. The proposed modification, to exit the site via the Princes Highway, would require a s4.55 modification to the current approved Development consent.</i></p> <p>This statement is incorrect. The Consent was approved on the basis of access to and from the site using both Smith Street and the Princes Highway. The approved plans show this. There was therefore no proposed modification to exit the site via the Princes Highway. Council's decision on 8 December 2020 to investigate signals on the Princes Highway was therefore based on incorrect information.</p>
19 April 2021	<p>On 19 April 2021, the updated LATM Report was an Appendix at a meeting of Council's Local Traffic Committee. An extract from the agenda for this meeting, which annexes the a version of the LATM Study dated 6 April 2021, is at Appendix 13. The Council Officer's report recommended that:</p> <ol style="list-style-type: none"> 1. <i>The final Tempe South Local Area Traffic Management (LATM) Study and proposed treatments be noted;</i> 2. <i>The recommended treatments as outlined in Attachment 2 be adopted excluding proposals at Union Street and Brooklyn Street;</i> 3. <i>Further consultation be undertaken for a partial road closure at Brooklyn Street at Princess Highway, a 'Shared Zone' in Union Street, 'No Entry from Smith Street', 'Left and Right Only' restriction at the entrance of Union Street at Princess Highway and Smith Street traffic signals;</i> 4. <i>After a 12 month period following the issue of an Occupation Certificate for the Bunnings Development at 728-750 Princess Highway, a LATM review be undertaken by Council and reported back to the Traffic Committee; and</i> 5. <i>It be noted that Council is separately investigating the provision of traffic signals at the Bunnings exit driveway at Princess Highway.</i> <p>The Committee recommended 'that the final LATM Study and proposed treatments be deferred until a determination regarding the signalised exit from Bunnings is received from the Minister for Transport'.</p>

Date	Event
	An extract from the minutes of this meeting is at Appendix 14 .
5 May 2021	On 5 May 2021, Council wrote to TfNSW asking whether TfNSW maintains the same position as stated in its letter dated 30 May 2017, following which TfNSW confirmed that it maintains the same position (see Appendix 2). A copy of this email and its response dated 7 May 2020 is at Appendix 15 .
6 May 2021	On 6 May 2021, Bitzios Consulting issued a Feasibility Study to Council on the viability of placing the traffic signals. This study was managed and paid for by Council with no input from Bunnings. Critically, the results of this study were presented as a separate report and not part of the LATM Study. A copy of this study is at Appendix 16 .
27 June 2021	On 27 June 2021, a meeting was held between Council, Bunnings and TfNSW where TfNSW again advised that it would not support traffic signals. A copy of the minutes of this meeting is at Appendix 17 .
15 July 2021	On 15 July 2021, Council wrote to Bunnings to say that TfNSW had called for a meeting between Council staff, councillors, the Minister's Office and TfNSW and that the Local Traffic Committee's consideration of the LATM Study would be deferred until after that meeting (Appendix 18).
13 August 2021	On 13 August 2021, TfNSW again wrote to Council to say that it would not support traffic signals. Bunnings has not seen a copy of this correspondence.
16 August 2021	<p>On 16 August 2021, Council's Traffic Committee again considered the LATM Study. An extract of the agenda for this meeting, which annexes a version of the LATM Study dated 6 July 2021 is at Appendix 19. The Council Officer's report recommended that:</p> <ol style="list-style-type: none"> 1. <i>The final Tempe South Local Area Traffic Management (LATM) Study and proposed treatments be noted;</i> 2. <i>The recommended treatments as outlined in Attachment 2 be adopted;</i> 3. <i>At grade contrasting pavement entrance treatment, installation of mounted kerbs, marked parking bays on both sides of the road be installed in Union Street between Princes Highway and Edwin Street. Further, a 40km/h speed limit zone be established in Union Street subject to approval from Transport for NSW;</i> 4. <i>Detailed design of the recommended treatments be reported back to the Traffic Committee; and</i> 5. <i>After a 12-month period following the issue of an Occupation Certificate for the Bunnings Development at 728-750 Princess Highway, a LATM review be undertaken by Council and reported back to the Traffic Committee.</i> <p>At this meeting, the Traffic Committee recommended the LATM Study be deferred again and that:</p> <p><i>Council refer this matter to the State Government for intervention on the grounds of safety and unnecessary impact on local residents, business and Tempe Primary School.</i></p>

Date	Event
	<p>An extract from the minutes of this meeting is at Appendix 20.</p> <p>The TfNSW representative on Council's Traffic Committee abstained from voting on this recommendation.</p>
23 September 2021	<p>On 23 September 2021, representatives of the Planning Delivery Unit within the Department of Planning, Industry and Environment met with representatives of Council. A copy of the minutes of this meeting is at Appendix 21. These minutes record that:</p> <p style="padding-left: 40px;"><i>Clr Macri outlined that no solution or information from TfNSW other than a signalised intersection would satisfy him / Chair of the Traffic Committee.</i></p>
11 October 2021	<p>On 11 October 2021, solicitors acting on behalf of Bunnings, Allens Linklaters, wrote to Council (Appendix 22) to request that Council confirm whether the LATM Study has been submitted to the satisfaction of the Inner West Council Local Traffic Committee (Traffic Committee) and approved by the Traffic Committee as required by Condition 68A of the Consent.</p>
12 October 2021	<p>On 12 October 2021 Council resolved as follows:</p> <p style="padding-left: 40px;"><i>THAT Council:</i></p> <ol style="list-style-type: none"> 1. Commence a campaign to lobby Bunnings about improving traffic arrangement at Tempe; 2. Campaign includes ads in local newspapers, social media and installation of banners at high-visibility locations near Bunnings Tempe and consider ads in the SMH also the Telegraph; 3. Writes to NSW Minister for Roads seeking approval of traffic signals installation on Princes Highway to provide controlled access to Bunnings; 4. Writes to all residents of Sydenham, Tempe and St Peters advising of Council's advocacy and calling on residents to lobby the NSW Government for a better outcome; 5. Staff do not exercise their delegations to approve the LATM during the Caretaker period until the new council has been consulted; and 6. Submit submission opposing the section 4.55 until the traffic issues have been resolved. <p>Extracts from the business paper and minutes of this meeting are at Appendices 23 and 24 respectively.</p> <p>On 21 October 2021, Council wrote to Allens (Appendix 25). This letter quoted the above terms of the resolution passed by Council on 12 October 2021.</p>

Bunnings have clearly satisfied their obligations in relation to the requirements of Condition No. 68A (subject to the requirement to obtain the Council Traffic Committee's approval), however, the Council's Traffic Committee have continually deferred approval of the LATM, contrary to the officer recommendation, on the basis that it does not include signalisation of the intersection of Smith Street and the Princes Highway.

Under the Roads Act 1993 (NSW), signalisation of an intersection cannot be carried out without consent from TfNSW.

TfNSW has unequivocally confirmed on numerous occasions that it does not support the installation of traffic signals on the Princes Highway. Accordingly, the actions of the Inner West Council Traffic Committee are preventing Bunnings from being able to proceed with the development consent.

This is an unreasonable situation and therefore in the circumstances where an LATM Study has been prepared on behalf of Council, the November 2021 amendment proposed to impose a requirement on Bunnings to undertake the recommended works through amendment of Condition No. 112 of the Consent, as follows:

LATM study delivery

a) *The ~~LATM works~~ adopted road work treatments described in Section 13.5, Table 13.11 of the 'Tempe South LATM Study – Final Report' prepared by Bitzios Consulting dated 6 July 2021 ~~Condition 68A of this Determination being~~ must be implemented to the satisfaction of Inner West Local Traffic Committee prior to the issue of an Occupation Certificate and are to be carried out by the applicant at the applicant's expense.*

b) *After a period of 12 months from the issue of an Occupation Certificate, the applicant is to fund a review of the LATM measures implemented as part of Part a) of this condition. Any implemented LATM devices that are deemed not to be required are to be removed by the applicant at the applicant's expense and to the satisfaction of Inner West Local Traffic Committee. In addition any new LATM measures deemed necessary shall also be constructed by the applicant and at the applicant's expense.*

c) *All works required to be carried out on public land as part of Parts a) and b) of this condition are to be carried out by the applicant at the applicant's expense with an appropriate Deed and bond being entered into with Council prior to the issue of an Occupation Certificate.*

Reason: To confirm the terms of approval.

The November 2021 amendment also proposed that as a consequence of the above that Condition 68A be deleted.

4.3 Amendment to MOD/2021/0376 (February 2022 amendment)

Since submission of the November 2021 amendment, further interaction with Sydney Eastern City Planning Panel at a meeting held on 9 December 2021 and productive consultations with Council officers has prompted a refinement to the requested amendments and the application is now proposed to be amended under Clause 121B of the Environmental Planning & Assessment Regulation as follows (in addition to originally requested amendments):

- Delete Condition No. 68A and instead incorporate the Tempe South LATM Study – Final Report' prepared by Bitzios Consulting dated 6 July 2021 as an approved document in Condition No. 1;
- Amend Condition No. 27 to require the applicant to meet the cost of implementing any future resident parking scheme in Smith Street, Tempe, as required by the approved LATM and any LATM review required by Condition 112b) subject to Traffic Committee approval;
- Amend Condition No. 54 to clarify that the bus shelter is to be located to maintain a 2.5 metre clear footpath along the Princes Highway with provision of a suitable easement; and
- Amend Condition No. 112(a) to require the identified traffic management works to be implemented to the satisfaction of Director Infrastructure Services Inner West Local Traffic Committee prior to the issue of an Occupation Certificate.

5.0 REVISED APPLICATION

5.1 General Description

The application seeks approval for the following amendments to the approved development (as described in MOD/2021/0376 as originally lodged):

- Re-allocation of the internal space on warehouse level 1 to accommodate the relocation of the Building Materials and Landscape Yard from the detached building at the south-eastern corner of the site, into the main warehouse. The detached building will now be used for storage. The warehouse level 1 will now accommodate warehouse retailing, the Timber Trade Sales area, and the Building Materials and Landscape Yard.
- The detached building at the southern eastern corner of the site is proposed to be modified by replacing the mesh wall along the north-eastern side of the building, to a solid concrete wall, due to the need to achieve Building Code of Australia fire rating compliance. As the proposal encloses this building, it adds 2,085 square metres to the Gross Floor Area of the approved development.
- The undercroft car parking layout has been reconfigured to achieve the following, which has resulted in a reduction of 27 car parking spaces:
 - achieve better internal circulation and access from the undercroft level to the Timber Trade Sales area on the level above
 - mark the car share, disabled parking spaces and bicycle parking spaces
 - demonstrate compliance with Australian Standard AS 2890.1-2004, Australian Standard AS 2890.2- 2002, and Australian Standard AS 2890.6-2009
 - introduce security fencing to enable the car park to be closed.
- Amendment to the roof plan to provide more accurate services information, including the replacement of the generic 'AC plant platform' notation with specific reference to fusion air conditioning units, and the introduction of PV cells which will cover an approximate total roof area of 3,000 square metres generating a minimum of 400KW.
- Façade changes as follows:
 - The painting of the RC panel wall on the western elevation (fronting the Princes Highway above the retained brick portion of the building) and the RC panel wall on the southern elevation that sits vertically above the retained brick portion of the building is amended to a vivid white, which reflects the white colour of the Ashfield Bunnings warehouse.
 - Replacement of several notations to "Painted RC panel" with "Painted Panel Wall" to facilitate the use of a light weight panel instead of RC in some locations.
 - Rationalisation of the approved signs with the removal of the text "our policy: lowest prices are just the beginning", and reversal of the colour scheme for the Smith Street sign above the retained building.
- Inclusion of ceiling fans within the warehouse.

5.2 Numerical Overview

Below is a numerical summary of the components of the approved development which have changed as a result of the proposed amendments:

Element	Approved	Proposed
Site Area	20,400 square metres	20,400 square metres
Gross Floor Area	17,865 square metres	19,908 square metres

Element	Approved	Proposed
Floor Space Ratio	0.875:1	0.975:1:1
Car Parking	424	397

5.3 Proposed Amendments to Conditions

The application proposes the following consequential amendments to the conditions of consent:

5.3.1 Condition No. 1

It is proposed to amend Condition No. 1 to reflect:

- the updated architectural plans and elevations which form part of this application; and
- the Tempe South LATM Study – Final Report prepared by Bitzios Consulting dated 6 July 2021.

5.3.2 Condition No. 5

It is proposed to amend Condition No. 5 to reflect the minor reduction in car parking as a result of refinement of the car parking layout, as follows:

A total of ~~424~~ 397 car parking spaces being provided, paved and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 – Parking. The parking spaces must include the following allocations:

- a) 4 double-length car and trailer spaces;*
- b) 10 accessible car parking space; and*
- c) 4 car share spaces.*

Reason: To ensure practical off-street car parking is available for the use of the premises.

The reduction in car parking provision is a consequence of other improvements that have been achieved from a refinement to the design of the car park. In particular, the undercroft car parking layout has been reconfigured to achieve:

- better internal circulation and access from the undercroft level to the Timber Trade Sales area on the level above, which is critically important to avoid vehicles needing to depart the site and re-enter the site via Smith Street or from the Highway;
- the provision of 4 car share spaces;
- the provision of 13 public car spaces; and
- the introduction of security fencing to enable the car park to be closed.

5.3.3 Condition No. 27

Condition No. 27 states the following:

The applicant must meet the cost of implementing any future resident parking scheme in Smith Street, Tempe subject to Traffic Committee approval.

Reason: To confirm the terms of approval.

Condition No. 27 is proposed to be relocated in the consent under the heading “Before Occupation Certificate” and amended as follows to ensure that it relates to the approved Tempe South LATM Study – Final Report prepared by Bitzios Consulting dated 6 July 2021, as follows:

The applicant must meet the cost of implementing any future resident parking scheme in Smith Street, Tempe required by the Tempe South LATM Study – Final Report prepared by Bitzios Consulting dated 6 July 2021 and any LATM review required by Condition 112(b). ~~subject to Traffic Committee approval.~~

Reason: To confirm the terms of approval.

5.3.4 Condition No. 48

Condition No. 48 requires a change in the colour of the painted wall on the western elevation and the southern elevation that sits vertically above the retained brick portion of the existing building to be changed to an “off-white” colour.

The basis for this is to reflect the same approach as that which exists at the Ashfield Bunnings store. However, the white colour at the Ashfield store is “vivid” white and not “off-white”. The amended elevations which accompany this application have addressed the intent of this requirement and have changed the colour of the relevant sections of wall from green to vivid white. Accordingly, Condition No. 48(a) is now redundant so it is proposed to be deleted:

Before the lodgement of any Construction Certificate, amended plans and details must be submitted to and approved by Council’s Heritage Advisor indicating the following:

~~a) The painting of the RC panel wall on the western elevation (fronting the Princes Highway above the retained brick portion of the building) and the RC panel wall on the southern elevation that sits vertically above the retained brick portion of the building being amended to an off white colour, and the colour scheme of the flush wall signage being amended accordingly. A specific colour swatch must be provided to Council’s satisfaction;~~

b) All cabling and conduit supplying power to the sign installed on the heritage listed warehouse façade being completely concealed and must not involve intervention in or damage to the façade; and

c) Methodology for the installation of the signage on the heritage listed warehouse façade can be carried out in a reversible manner without damage to the façade.

Reason: To ensure the integrity of the heritage item.

5.3.5 Condition No. 49

Condition No. 49 requires the payment of the Section 7.11 contribution prior to release of the Construction Certificate.

However, on 25 June 2020, the Minister for Planning and Public Space issued the *Environmental Planning and Assessment (Local Infrastructure Contributions – Timing of Payments) Direction 2020* which provides that a consent authority must not impose a condition on the grant of development

consent to which this Direction applies for the payment of a monetary contribution under section 7.11 of the Act, or a levy under section 7.12 of the Act, (a local infrastructure contribution) that requires the payment to be made at any time that is earlier than before the issue of an occupation certificate in respect of any building to which the development consent relates.

In accordance with the Ministerial Direction, Condition No. 49 is proposed to be amended as follows to defer the timing for payment of the S7.11 contribution to prior to Occupation Certificate:

A contribution of \$682,553.18 has been assessed as the contribution for the development under Section 7.11 of the Environmental Planning and Assessment Act 1979 and Marrickville Section 94/94A Contributions Plan 2014 (a copy of which may be inspected at the offices of the Council).

The Section 7.11 contribution referred to above is indexed quarterly in accordance with Marrickville Section 94/94A Contributions Plan 2014.

The Section 7.11 contribution (as adjusted) must be paid to the Council in cash or by unendorsed bank cheque (from an Australian Bank only) or EFTPOS (Debit only) or credit card before the issue of a **Construction Occupation** Certificate. Under Marrickville Section 94/94A Contributions Plan 2014 payment of Section 7.11 contributions CANNOT be made by Personal Cheque or Company Cheque.*

**NB A 1% credit card transaction fee applies to all credit card transactions.*

NOTE: Under Marrickville Section 94/94A Contributions Plan 2014, the proposed cost of carrying out development is adjusted quarterly at time of payment of the levy in line with the Consumer Price Index: All Groups Index Number for Sydney provided by the Australian Bureau of Statistics.

Reason: To ensure that the approved development makes a contribution towards the provision, extension or augmentation of public amenities and public services in the area.

5.3.6 Condition No. 54

Condition No. 54 relates to the need to relocate the existing bus shelter adjacent to the site. The condition is inconsistent in that it requires the bus shelter to be adjacent to the site, but also suggests that it might also be within the property boundary with the provision of a suitable easement. In order to address the inconsistency of the condition, it is proposed to amend Condition No. 54 as follows:

*The person acting on this consent shall seek approval from the State Transit Authority (STA) for the proposed relocation of the bus stop and shelter. The applicant must liaise with Council's bus shelter service provider to organise the relocation at no cost to Council. The shelter shall be located ~~adjacent to the site and within the property boundaries (with provision of a suitable easement)~~ so as to maintain a 2.5m clear footpath along the Princes Highway **with provision of a suitable easement (on the property) to achieve the required clearance**. A plan of the proposed bus shelter relocation with signposting alterations shall be submitted to the RMS and Council for approval before the issue of a Construction Certificate.*

Reason: To confirm the terms of approval.

5.3.7 Condition No 68A and 112

As discussed under Section 4 of this Statement, Bunnings have clearly satisfied their obligations in relation to the requirements of Condition No. 68A (subject to the requirement to obtain the Council Traffic Committee's approval), however, the Council's Traffic Committee have continually deferred approval of the LATM, contrary to the officer recommendation, on the basis that it does not include signalisation of the intersection of Smith Street and the Princes Highway.

Under the Roads Act 1993 (NSW), signalisation of an intersection cannot be carried out without consent from TfNSW.

TfNSW has unequivocally confirmed on numerous occasions that it does not support the installation of traffic signals on the Princes Highway. Accordingly, the actions of the Traffic Committee are preventing Bunnings from being able to proceed with the development consent.

This is an unreasonable situation and therefore in the circumstances where an LATM Study has been prepared on behalf of Council, it is proposed to impose a requirement on Bunnings to undertake the recommended works through amendment of Condition No. 112 of the Consent, as follows:

LATM study delivery

- a) *The LATM works described in **Condition No. 1** ~~Condition 68A~~ of this Determination being implemented to the satisfaction of ~~Inner West Local Traffic Committee~~ **the Director Infrastructure Services** prior to the issue of an Occupation Certificate and are to be carried out by the applicant at the applicant's expense.*
- b) *After a period of 12 months from the issue of an Occupation Certificate, the applicant is to fund a review (**undertaken by Council**) of the LATM measures implemented as part of Part a) of this condition. Any implemented LATM devices that are deemed not to be required are to be removed by the applicant at the applicant's expense and to the satisfaction of Inner West Local Traffic Committee. In addition any new LATM measures deemed necessary shall also be constructed by the applicant and at the applicant's expense.*
- c) *All works required to be carried out on public land as part of Parts a) and b) of this condition are to be carried out by the applicant at the applicant's expense with an appropriate Deed and bond being entered into with Council prior to the issue of an Occupation Certificate.*

Reason: To confirm the terms of approval.

It is also proposed that as a consequence of the above that Condition 68A be deleted.

6.0 STATUTORY PLANNING FRAMEWORK

6.1 Environmental Planning & Assessment Act 1979

6.1.1 Section 4.55

Section 4.55(2) 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 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

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) 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 any period prescribed by the regulations or provided by the development control plan, as the case may be.

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 change or remove the 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 result in any significant external change to the approved development.
- The proposed amendments do not result in any change whatsoever to the intensity of the use.
- The proposal amendments only involve refinements to the internal configuration of the warehouse and car park layout without any significance to important aspects of the approved development to achieve an improved overall functionality.

- The changes are not significant and do not result in any change in relation to the original heritage fabric which is being retained.
- The nature of the amendments does not generate any issues which require any further detailed analysis.

In conclusion the proposed amendments satisfy the tests established by *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 and the amended proposal is substantially the same development, as follows:

- 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)

6.2 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.

6.2.1 State Environmental Planning Policy No. 64 - Advertising and Signage

State Environmental Planning Policy No. 64 – Advertising and Signage (SEPP 64) aims to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.

Pursuant to clause 8 of SEPP 64, a consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied that the signage is consistent with the objectives of the SEPP and that the signage satisfies the assessment criteria specified in Schedule 1 of the SEPP.

The proposed amendment includes a rationalisation to the previously approved signs to remove the text “our policy: lowest prices are just the beginning”, and reversal of the colour scheme for the Smith Street sign above the retained building. The amendments result in a reduction to the impact of the signage and therefore the signage remains consistent with the assessment criteria specified in Schedule 1 of the SEPP.

6.2.2 Marrickville Local Environmental Plan 2011

The proposed amendments are addressed below against the provisions of the MLEP 2011 which are relevant to the nature of the proposed amendment:

Floor Space Ratio

Clause 4.4 of the MLEP provides that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map at Figure 3. The site is within area 'M' on the Floor Space Ratio Map and accordingly an FSR of 0.95:1 applies to the site (as shown below in Figure 3).

Figure 3:

Extract from the MLEP 2011
FSR map



The approved development has an FSR of 0.875:1 which complies with the maximum permissible FSR.

However, the proposed amendment includes the replacement of the mesh wall along the north-eastern side of the detached building at the southern eastern corner of the site with a solid concrete wall, due to the need to achieve Building Code of Australia fire rating compliance. As this amendment encloses this building, it adds 2,085 square metres to the Gross Floor Area of the approved development resulting in an FSR of 0.975:1 which represents a minor variation of 2.63% to the 0.95:1 FSR control.

However, in this instance the proposed FSR variation is not the result of any intensification to the use on the site and is merely the consequence of a change to the material used for the side wall of this previously approved building. Furthermore, it is noted that this proposal actually reduces the intensification of the use on the site because this building is no longer to be used for a retail purpose being the Building Materials and Landscape Yard (which is to be relocated into the main warehouse building) and instead this building is only to be used for storage purposes. The conversion of this building from an approved retail space to a storage purpose does not add team members, nor enable additional customers, and therefore does not change the intensity of use on the site.

Accordingly, the proposed variation is considered to be capable of support as strict compliance would be unreasonable and unnecessary in the circumstance of the case, and there is an environmental

planning ground to support the variation, being the achievement of the necessary fire rating for this building.

Heritage Conservation

The site is identified as a heritage item in Schedule 5 of the MLEP 2011 (item number I299 being the Westpac Stores, jointly with the former Penfolds Building (now IKEA). The site has also been identified under MLEP as an archaeological site. Figure 7 shows an extract from MLEP 2011 identifying the site as a heritage item.

In accordance with clause 5.10(2) of the MLEP development consent is required for alteration to a heritage item.

The proposed amendments do not involve any change in respect of the approved works within the retained office building entry and two level vestibule and gallery space. As a result, the proposed amendments do not result in any change in relation to the heritage impact of the approved works.

6.3 Marrickville Development Control Plan 2011

The Marrickville Development Control Plan 2011 was adopted by Marrickville Council on 12 July 2011 and came into effect on 15 December 2011. MDCP 2011 is a comprehensive DCP that contains detailed provisions relating to all development types.

The proposed amendments are addressed below against the provisions of the MDCP 2011 which are relevant to the nature of the proposed amendment:

6.3.1 Urban Design

Part 2.1 of the MDCP 2011 contains a range of principles to guide the urban design of developments including matters relating to connectivity, accessibility, land use mix, density, urban form, legibility, activation, streetscape character, consistency and diversity, continuity and change and sensory pleasure.

Principle	Comment
2.1.1.4 Appropriate density	<p>Whilst the proposed amendment technically results in an increase to the Gross Floor Area of the development, this is only as a result of the change of the north-eastern wall of the south-eastern building from mesh to solid concrete, and does not actually result in any change to the previously approved density of the development.</p> <p>The density of the development as amended remains consistent both with the existing form and with the neighbouring developments to the north (IKEA and the Salvation Army store).</p>

6.3.1 Parking

In accordance with Part 2.10 of MDCP 2011, the subject property is located in Parking Area 3. The onsite car parking requirements in table 1 to Section 2.10.5 of the MDCP does not include a specific provision for 'hardware and building supplies'. The DCP states that calculation of parking provision for

uses not specified in table 1 is to be undertaken on merit, guided by the RMS Guide to Traffic Generating Developments rates reduced by 60, 40 and 20% for Parking Areas 1, 2 & 3 respectively;

A Traffic and Parking Report prepared by TTPA accompanied the original application which concluded that provision within a range of 360-412 spaces will be appropriate to cater for expected demand, including seasonal demand, to avoid any overflow on-street parking. Whilst the proposal results in a reduction of 27 car parking space to 397 spaces, this remains within the range previously identified as being required for the development and therefore the amended car parking provision remains sufficient for the approved development.

It is noted that the subject proposal results in a technical increase in the Gross Floor Area of the development as a result of the change in material for the side wall of the detached building at the southern eastern corner of the site from a mesh screen to a solid concrete wall. However, despite the increase in Gross Floor Area, when considered holistically with the other changes proposed in this modification application, and in particular the conversion of this building from a retail space to a storage space, this proposal actually results in a decrease in the intensification of use of the site when compared with the approved development. Therefore, the previous car parking assessment remains valid. Notwithstanding, even when applying the peak parking demand of 1 space per 55 to 48m² to the new Gross Floor Area of 19,908 square metres, this benchmark suggests parking numbers of between 361 and 414, and so the amended parking provision of 397 spaces still remains sufficient when considered on this basis.

6.3.2 Signs and Advertising Structures

Part 2.12 of MDCP 2011 provides development controls for signs and advertising structures and specifically to buildings in commercial and industrial zones and also for those on heritage items.

The proposed amendment includes a rationalisation to the previously approved signs to remove the text "our policy: lowest prices are just the beginning", and reversal of the colour scheme for the Smith Street sign above the retained building. The amendments result in a reduction to the impact of the signage and therefore the signage remains consistent with Part 2.12 of MDCP 2011.

6.3.3 Energy Efficiency

Part 2.16.3 of MDCP 2011 specifies a range of requirements for new business premises, retail premises, office premises and industrial buildings (involving a gross floor area of greater than 1,000 square metres). The original application was accompanied by an Energy Efficiency Performance Report prepared by KJPMG SGA which demonstrates that the development complies with the provisions of Part 2.16.3 of MDCP 2011.

Notwithstanding this, the proposed amendment includes the introduction of PV cells which will cover an approximate total roof area of 3,000 square metres generating a minimum of 400KW. This represents an improved energy efficiency outcome for the approved development.

6.3.4 Industrial Development

Part 6 of MDCP 2011 contains specific controls in relation to industrial development pertaining to such considerations as FSR, site frontage, height, built form and character, site layout and amenities, building height, building design and appearance, setbacks, site facilities, noise and vibration,

environmental protection, and hours of operation. The relevant controls are discussed in the table below:

Control	Comment
C4 Floor Space Ratio	<p>Whilst the proposed amendment technically results in an increase to the Gross Floor Area of the development, this is only as a result of the change of the north-eastern wall of the south-eastern building from mesh to solid concrete, and does not actually result in any change to the previously approved density of the development.</p> <p>The density of the development as amended remains consistent both with the existing form and with the neighbouring developments to the north (IKEA and the Salvation Army store).</p>
C18 Rooftop and Exposed Structures	<p>The proposal includes an amendment to the roof plan to provide more accurate services information, including the replacement of the generic 'AC plant platform' notation with specific reference to fusion air conditioning units. The setback of the approved warehouse and its associated roof form from Smith Street will ensure that these services on the rooftop do not pose any amenity issues for nearby residents.</p>

6.3.1 Heritage

The proposed amendments do not involve any change in respect of the approved works within the retained office building entry and two level vestibule and gallery space.

7.0 CONCLUSION

This submission has been prepared as supporting documentation for an application made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* to modify the consent for Development Application 201700185 to partially demolish the rear of the existing building, construction of a new building form and adaptively reuse the site for use as a 2 level hardware and building supplies store with undercroft car parking, erection of signage, boundary adjustments to provide a slip lane from the Princes Highway into Smith Street and the widening of Smith Street on the north-eastern side at 728-750 Princes Highway, Tempe.

As originally lodged on 10 September 2021, the application seeks approval for a number of changes to the internal arrangement of the warehouse, refinements to the car parking layout, changes to the roof design, as well as changes to the façades. Consequential changes to several conditions of consent are also required to reflect the proposed amendments and to remove requirements that are no longer necessary.

In November 2021, the subject modification application was amended under clause 121B of the Environmental Planning and Assessment Regulation 2000 (November Amendment) as a result of recent actions and resolutions by Council and its Local Traffic Committee in respect of the LATM Study which is currently preventing Bunnings from obtaining a construction certificate to commence construction of its proposed development. The changes sought to delete Condition No. 68A and make changes to Condition No. 112.

Since submission of the November 2021 amendment, further interaction with Sydney Eastern City Planning Panel at a meeting held on 9 December 2021 and productive consultations with Council officers has prompted a refinement to the requested amendments and the application is now proposed to be amended under Clause 121B of the Environmental Planning & Assessment Regulation as follows (in addition to originally requested amendments):

- Delete Condition No. 68A and instead incorporate the Tempe South LATM Study – Final Report' prepared by Bitzios Consulting dated 6 July 2021 as an approved document in Condition No. 1;
- Amend Condition No. 27 to require the applicant to meet the cost of implementing any future resident parking scheme in Smith Street, Tempe, as required by the approved LATM and any LATM review required by Condition 112b) subject to Traffic Committee approval;
- Amend Condition No. 54 to clarify that the bus shelter is to be located to maintain a 2.5 metre clear footpath along the Princes Highway with provision of a suitable easement; and
- Amend Condition No. 112(a) to require the identified traffic management works to be implemented to the satisfaction of Director Infrastructure Services Inner West Local Traffic Committee prior to the issue of an Occupation Certificate.

As detailed in this submission the proposed modifications may be made by the consent authority in accordance with Section 4.55(2) 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 heritage impacts. Accordingly, the proposed amendments are considered acceptable and warrant approval.