

S4.55 (1A) MODIFICATION

MODIFICATION TO DA/0299/2022 2252 CASTLEREAGH HIGHWAY, GALAMBINE NSW 2850 (LOT 3 DP1227437)



CLIENT: TOPFRUIT INTERNATIONAL PTY LTD

DATE: 6 FEBRUARY 2023

PREPARED BY:



ABN 23 104 067 405

7 Canberra Street Charlestown NSW 2290 | PO Box 850 Charlestown NSW 2290

87 Herbert Street Gulgong NSW 2852 | PO Box 232 Gulgong NSW 2852

02 4942 5441 | 02 6374 2911

admin@dewittconsulting.com.au

www.dewittconsulting.com.au



CONTENTS

1.	INTRODUCTION AND EXISTING CONSENT	1
2.	PROPOSED MODIFICATION	1
2.1	APPROVED DOCUMENTATION.....	1
3.	JUSTIFICATION FOR PROPOSED MODIFICATION.....	2
4.	RELEVANT PROVISIONS OF SECTION 4.55	2
4.1	SECTION 4.55 (1A) – MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT.....	2
4.2	SECTION 4.15(1)(A) – STATUTORY PLANNING CONSIDERATIONS	3
4.3	SECTION 4.15(1)(B) – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS	3
4.3.1	IMPACTS ON THE NATURAL ENVIRONMENT	3
4.3.2	IMPACTS ON THE BUILT ENVIRONMENT	3
4.3.3	SOCIAL AND ECONOMIC IMPACTS.....	4
4.4	SECTION 4.15(1)(C) – THE SUITABILITY OF THE SITE.....	4
4.5	SECTION 4.15(1)(D) – SUBMISSIONS	4
4.6	SECTION 4.15(1)(E) – PUBLIC INTEREST.....	4
5.	CONCLUSION.....	4

ATTACHMENTS

Appendix 1: Site Plan and Elevations prepared by de Witt Consulting

This document is issued to Topfruit International Pty Ltd for the purpose of supporting a modification application made under Section 4.55(2) for development consent DA/0299/2022. It should not be used for any other purpose. The report must not be reproduced in whole or in part except with the prior consent of de Witt Consulting and subject to inclusion of an acknowledgement of the source. No information as to the contents or subject matter of this document or any part thereof may be communicated in any manner to any third party without the prior consent of de Witt Consulting.

Whilst reasonable attempts have been made to ensure that the contents of this report are accurate and complete at the time of writing, de Witt Consulting disclaims any responsibility for loss or damage that may be occasioned directly or indirectly through the use of, or reliance on, the contents of this report.

Prepared by:	Reviewed by:	Released by:
Name: Joshua Gallagher Position: Town Planner	Name: Matthew de Witt Position: Senior Town Planner	Name: Joshua Gallagher Position: Town Planner Signed: Issued for Client Review Date: 8 February 2023

Copyright: The concepts and information contained in this document are the property of de Witt Consulting. Use or copying of this document in whole or part without the written permission of de Witt Consulting constitutes an infringement of copyright.

1. INTRODUCTION AND EXISTING CONSENT

This application is made under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), to modify development consent granted by Mid-Western Regional Council, being DA/0299/2022, granted on 27 May 2022. The existing consent is for an Agricultural Produce Industry at 2252 Castlereagh Highway, Galambine NSW 2850 (Lot 3 DP1227437) (the site).

de Witt Consulting has been engaged by Topfruit International Pty Ltd (the Client) to prepare the supporting information for this Section 4.55(1A) application. The proposed modification seeks to alter development consent DA/0299/2022 by extending the approved shed with a 9-metre awning extension to the north. This area will be utilised for the storage of machinery and compressor / lockable area on the southern side of the shed, refer to **Appendix 1**. There are no other changes sought through this modification application.

As detailed in this application, the proposed modification is of minimal environmental impact and will result in substantially the same development as approved by the consent. The proposed modifications will not preclude the development from complying with the conditions of consent, except where specific conditions are requested to be amended under this application.

2. PROPOSED MODIFICATION

This application seeks to change the approved plans for the shed at 2252 Castlereagh Highway, Galambine NSW 2850. The modified plans will create an awning to be extended on the northern side of the shed to allow for storage of machinery and an additional enclosed covered area for compressor and additional storage.

A Plan of Proposed Modification has been prepared in attached in **Appendix 1**.

2.1 APPROVED DOCUMENTATION

Potential changes to conditions of consent are outlined in Table 1 to reflect the proposed modification.

Table 1 – Proposed changes to conditions

Condition	Suggested Change			
1. Approved Documentation	Modification (delete)			
	Name of Plan	Reference	Prepared by	Date
	Site Location Plan	Sheet 1 of 3 Issue D	de Witt Consulting	17/05/2022
	Staged Site Plan	Sheet 2 of 3 Issue D	de Witt Consulting	17/05/2022
	Elevations	Sheet 1 of 3 Issue D	de Witt Consulting	17/05/2022
	Modification (proposed)			
	Name of Plan	Reference	Prepared by	Date
	Site Location Plan	Sheet 1 of 3 Issue E	de Witt Consulting	02/02/2023
	Staged Site Plan	Sheet 1 of 3 Issue E	de Witt Consulting	02/02/2023
	Elevations	Sheet 1 of 3 Issue E	de Witt Consulting	02/02/2023

3. JUSTIFICATION FOR PROPOSED MODIFICATION

The proposed modification is to replace the approved shed plans with a revised shed plan enabling an awning 9 metres wide and 32 meters long on the northern side of the approved structure and a covered and enclosed area 9 metres wide for the purpose of a compressor room on the southern side of the shed.

The extensions to the approved shed will allow for additional storage of machinery and equipment and empty bins during harvesting season. The extension on the southern side will provide additional cooling facility with compressor and condenser for the storage of produce during peak harvesting periods.

The plans have been modified to reflect the changes required and is included in **Appendix 1**.

4. RELEVANT PROVISIONS OF SECTION 4.55

4.1 SECTION 4.55 (1A) – MODIFICATIONS INVOLVING MINIMAL ENVIRONMENTAL IMPACT

Section 4.55(1A) of the EP&A Act states the consent authority may modify a consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

The modification proposed will result in a development in the same location as the previously approved. The modification seeks to amend the approved plans for the shed to allow for an extension of an awning on the northern side and an enclosed covered area on the southern side to allow for additional cooling storage of the produce and associated equipment. The proposed modification will not significantly alter any environmental impact from that already considered as part of the development assessment and consenting approval.

(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

In relation to 4.55(1A), Council can be satisfied that the requested modification will still be substantially the same development that was approved under the existing consent. As indicated, the development outcome on the site will remain the same, the proposed modification is providing additional covered space for storage of equipment and produce. The development is entirely the same as that already approved.

(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 relation to 4.55(1A) (c and d), any relevant representations will need to be considered by the Council in determination of the modification. However, it is not anticipated the proposed modification will need additional notification or referral.

(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.

The modified development will remain substantially the same as the development that is currently approved. The following subsections provide an assessment of the proposed modification against Section 4.15(1) of the Act, as are of relevance to the development.

4.2 SECTION 4.15(1)(A) – STATUTORY PLANNING CONSIDERATIONS

Section 4.15 (1)(a) of the Act requires the consent authority to take into consideration:

“(a) the provisions of:

- (i) any environmental planning instrument, and*
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) any development control plan, and*
 - (iiia) any planning agreement that has been entered into under Section 7.4, or any draft planning agreement that a developer has offered to enter into under Section 7.4, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) (Repealed)*
- that apply to the land to which the development application relates,*

The proposed modification seeks to amend the approved plans by modifying the shed plans creating an extended awning on the northern side and a covered enclosed space on the southern side of the approved shed. This modification report details the consistency between approval and modification of the subject DA and the justification for such a proposal. As such, it is reasonable to conclude that the provisions under Section 4.15(1)(a) of the Act relevant to the development have been appropriately represented under both the documentation provided for the original DA and this modification. Importantly, the proposed modification will not preclude the development from complying with the conditions of consent, unless where amended in this report (referring to Section 2).

As development consent was granted to DA0299/2022, it must be assumed that the development was considered satisfactory with respect to the above provisions, and as the proposed modifications will result in substantially the same development capable of achieving compliance with these provisions, and of no more / changed environmental impact, then it is reasonable that the proposed modification is also considered satisfactory. The proposed modification is minor and will not result in additional impact or non-compliances with planning instruments or statutory requirements.

4.3 SECTION 4.15(1)(B) – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACTS

Section 4.15(1)(b) of the Act requires the consent authority to consider:

“(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.”

These are each addressed below.

4.3.1 IMPACTS ON THE NATURAL ENVIRONMENT

The proposed modification will not create any additional or changed impact on the natural environment. The proposed modification seeks to amend the approved plans through the addition of an awning extended a further 9m on the northern side and an additional enclosed covered area on the southern side for additional cooling and storage of produce to the existing approved structure. The proposed modification will not alter any impacts on the natural environment from that already considered under the assessment of DA0299/2022.

4.3.2 IMPACTS ON THE BUILT ENVIRONMENT

The proposed modification will not create any additional or changed impacts on the existing built environment. The existing built environment will slightly alter as a result of the proposed additional

infrastructure, however is minor in nature and will not substantially change from that already considered appropriate by Council.

4.3.3 SOCIAL AND ECONOMIC IMPACTS

The proposed modification will not adversely alter the existing social and economic outcomes of the approved development. The proposed modification will however, provided an improved economic impact in that it will create additional storage space for machinery, equipment and storage of produce. The proposed modification would otherwise not adversely impact on the surrounding land for building and rural uses.

4.4 SECTION 4.15(1)(C) – THE SUITABILITY OF THE SITE

Section 4.15(1)(c) requires the consent authority to consider:

“(c) the suitability of the site for the development.”

The site has already been approved for development and the proposed modification does not seek to substantially change the development. The modification seeks to amend the approved plans through the addition of an awning extended a further 9m on the northern side and an additional enclosed covered area on the southern side for additional cooling and storage of produce. The proposed does not change the suitability of the site that has already been considered during the approval of DA0299/2022.

4.5 SECTION 4.15(1)(D) – SUBMISSIONS

Section 4.15(1)(d) requires the consent authority to consider:

“(d) any submissions made in accordance with this Act or the regulations”.

It is understood that any relevant representations will need to be considered by Council in determination of the Section 4.55(1A) modification and responses prepared by the applicant where appropriate.

4.6 SECTION 4.15(1)(E) – PUBLIC INTEREST

Section 4.15(1)(e) requires the consent authority to consider:

“(e) the public interest”.

The public interest is best served by orderly and economic use of land for purposes permissible under the relevant planning regime and predominantly in accordance with the prevailing planning controls. The approved development is a permissible form of development and is therefore considered to be in the public interest. Furthermore, the proposed modification enables the previously approved structure to be complemented by this additional awning and plant room, it will ensure the business can function efficiently and sustainably which is in the public interest.

5. CONCLUSION

The Section 4.55(1A) application seeks approval to modify development consent DA0299/2022. The application seeks to amend the approved plans with the extension of a 9m wide awning on the northern side of the shed and an enclosed and covered area on the southern side for additional cooling and storage of produce. This change will allow for the storage of machinery, equipment and additional storage space for produce. The proposed modification will remain substantially the same as that approved under DA0299/2022 with no changes to the building and natural environment.

In relation to Section 4.55(1A)(b), the development will remain substantially the same as that approved under DA0299/2022, and the modifications for which consent is now sought do not alter the original findings made in relation to the DA regarding the reasonableness and appropriateness of the proposal when considered against the provisions of Section 4.15(1) of the Act.

Therefore, the proposal is worthy of favourable consideration and determination, subject to the application of the revised conditions of consent contained in Section 2 of this report.

APPENDICES

DRAFT

APPENDIX 1

Site Plan and Elevations prepared by de Witt Consulting

DRAFT