

**STATEMENT OF ENVIRONMENTAL
EFFECTS
FOR
SECTION 96(1A) MODIFICATION
APPLICATION TO DA 16/2017
AT
13 TEMPLAR ROAD ERSKINE PARK
FOR
STAGED CONSTRUCTION OF DATA
CENTRE INCLUDING ASSOCIATED
OFFICE SPACE AND CARPARKING**

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1.0 INTRODUCTION:

This Statement of Environmental Effects (SEE) has been prepared in support of a Section 96(1a) Modification Application for proposed modifications to an approved staged construction of a data centre including associated office space and carparking approved by Penrith City Council on 23rd May 2017 under DA 16/2017, the subject of this Section 96(1A) modification application.

In the preparation of this SEE, consideration has been given to a range of documents, plans and reports including, but not limited to, the following:

- (a) Plans of the modified development prepared by Greenbox Architects.
- (b) Environmental Planning and Assessment Act 1979 ("EPAA 1979");
- (c) State Environmental Planning Policy No. 55 – Remediation of Land ("SEPP 55");
- (d) State Environmental Planning Policy (Western Sydney Employment Area) 2009;
- (e) Planning Principles of the NSW Land and Environment Court;
- (f) DA 16/2017 and associated documentation

I have inspected the subject site and the parent consent and documentation and I have assessed the modified plans prepared by Green Box Architecture and I consider that the proposal is reasonable and is worthy of approval by Penrith City Council under the provisions of section 96 of the Environmental Planning and Assessment Act.

The proposed modifications are within the existing approved building envelope however, for abundant caution, I have elected to assess the current application under Section 96(1A) of the Environmental Planning and Assessment Act, 1979.

2.0 PROPOSED SECTION 96(1A) MODIFICATIONS

The section 96 (1A) modification application seeks to modify the current list of plans under Condition 1 of Development Consent 16/2017 as follows –

- DA000 Cover Sheet Issue 10
- DA001 Site Plan Issue 10
- DA005 Shadow Diagrams Issue 10
- DA010 Staging Plan Issue 8
- DA100 Ground Floor Plan Issue 10
- DA110 Level One Floor Plan Issue 10
- DA120 Roof Plan Issue 10
- DA150 GA Elevations Issue 11
- DA200 GA Sections Issue 10
- DA300 3D Views Issue 10

The proposed modifications are as follows and are indicated in the submitted plans prepared by Green Box Architecture.

As advised in the preceding paragraphs, the current section 96 (1A) modification application seeks to modify the current list of approved plans under DA 16/2017 by the provision of an amended list of drawings incorporating the following the modifications.

Level 1 office level was increased by 1200mm to match data halls access floor level, office roof level is to be increased accordingly.

Main entry façade shape was simplified, a canopy with DLR logo will be added.

SPOP to be moved from L1 to Ground Floor, space on L1 becomes a store.

Stage 2 roof screening: middle part on the west side is proposed to be changed to a balustrade.

South façade for electrical rooms: temporary roller shutter doors added. Please note that these roller shutter doors are temporary and will be demolished after equipment installation. The openings will be blocked and rendered to match the pre-cast finish of the remainder of the subject building.

4.0 REASONS FOR PROPOSED MODIFICATIONS

There are a number of reasons for the proposed modifications including, but not limited to, the following;

- The modifications are necessary to facilitate the construction of the approved structure
- The changes to the floor levels are necessary to facilitate access through the offices.
- The proposed modifications are very minor compared to the original approved development.

3.0 PLANNING CONTEXT

3.1 Section 96(1A) of the Environmental Planning and Assessment Act

Section 96(1A) enables modifications to an approved development. The relevant Section 96(1A) requires the Consent Authority to be satisfied as to the following matters: -

(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.

Section 96(3) is also relevant and is in the following terms;

3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 79C(1) as are of relevance to the development the subject of the application.

The Applicant is also bound by the requirements of Section 115 of the Environmental Planning and Assessment Regulation as follows:-

(1) An application for modification of a Development Consent under Section 96(1), (1A) or (2) or 96AA (1) of the Act must contain the following information:-

- (a) the name and address of the Applicant,*
- (b) a description of the development to be carried out under the consent (as previously modified),*
- (c) the address and formal particulars of title, the land on which the development is to be carried out,*
- (d) a description of the proposed modification to the Development Consent,*
- (e) a statement that indicates either:*
 - (i) that the modification is merely intended to correct the minor error, misdescription or miscalculation, or*
 - (ii) that the modification is intended to have some other effect as specified in the statement,*
- (f) a description of the expected impacts of the modification,*
- (g) an undertaking to the effect that the development (as to be modified) will remain substantially the same as a development that was originally approved,*
- (h) if the Applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the*

making of the application (except where the application for the consent, the subject of the modification was made, or could have been made, without the consent of the owner),

(i) a statement as to whether the application is being made to the Court (under Section 96 (or to the Consent Authority under Section 96 (AA), and, if the Consent Authority so requires must be in the form approved by that Authority.

(2) The Application must be accompanied by the fee prescribed by Clause 258.

Further comment on the abovementioned provisions are provided in the remainder of this SEE.

3.2 Section 96(1A)(b)

Section 96(1A)(b) requires the Consent Authority to be 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).*”

The Court has considered Section 96(1A) in a number of decisions.

In *Moto Projects (No. 2) Pty Limited v North Sydney Council* (1999) 106 LGERA 298, his Honour, Bignold J described the consideration of the proposed modifications as follows:

55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

56 *The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).*

It is clear from the *Moto* judgment that there are 2 “limbs” to be satisfied. There is to be both a qualitative and a quantitative assessment as to whether the proposed modified development would be one that is substantially the same development as that originally approved.

I consider that the proposed modified development is substantially the same development as the approved original development and satisfies both the qualitative and quantitative limbs under *Moto* for the following reasons;

Qualitative Limb under Moto

The proposed modified development is the same nature in qualitative terms as the original approved development. Accordingly, the qualitative nature of the approved development will not, in any way, be altered.

Quantitative Limb under Moto

In quantitative terms, I wish to note the following:-

- The original approved development will be generally maintained apart from the proposed minor modifications.
- The proposed modifications are within the existing approved building envelope.

Overall, I consider that the proposed modifications satisfy both the qualitative and quantitative limbs under *Moto*.

3.3 Sections 96(1A)(c) & (d)

Sections 96(1A)(c) and (d) relate to notification of the current Section 96(1A) Modification Application. It is assumed that Penrith City Council will carry out public exhibition of the current application, if required, under its Notification Development Control Plan or under the Regulation.

Based on my assessment, I consider that the current application satisfies Section 96(1A).

4.0 SECTION 79C ASSESSMENT

4.1 State Environmental Planning Policy No 55 – Remediation of land

This Section 96(1A) submission has no impact on this assessment criteria and / or the approved design.

4.2 Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)

This Section 96(1A) submission accords with the aims of the deemed SEPP.

4.3 State Environmental Planning Policy (Western Sydney Employment Area) 2009

The proposal remains permissible under the provisions of the SEPP 2009.

5.0 CONCLUSION:

The proposal is consistent with the approved development of the subject site and the proposed modifications will not change the approved use, will not generate additional impacts in terms of pollutants and will not generate additional traffic volumes and as such, is worthy of consent.

LANCE DOYLE

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Dated: 14th September 2017