



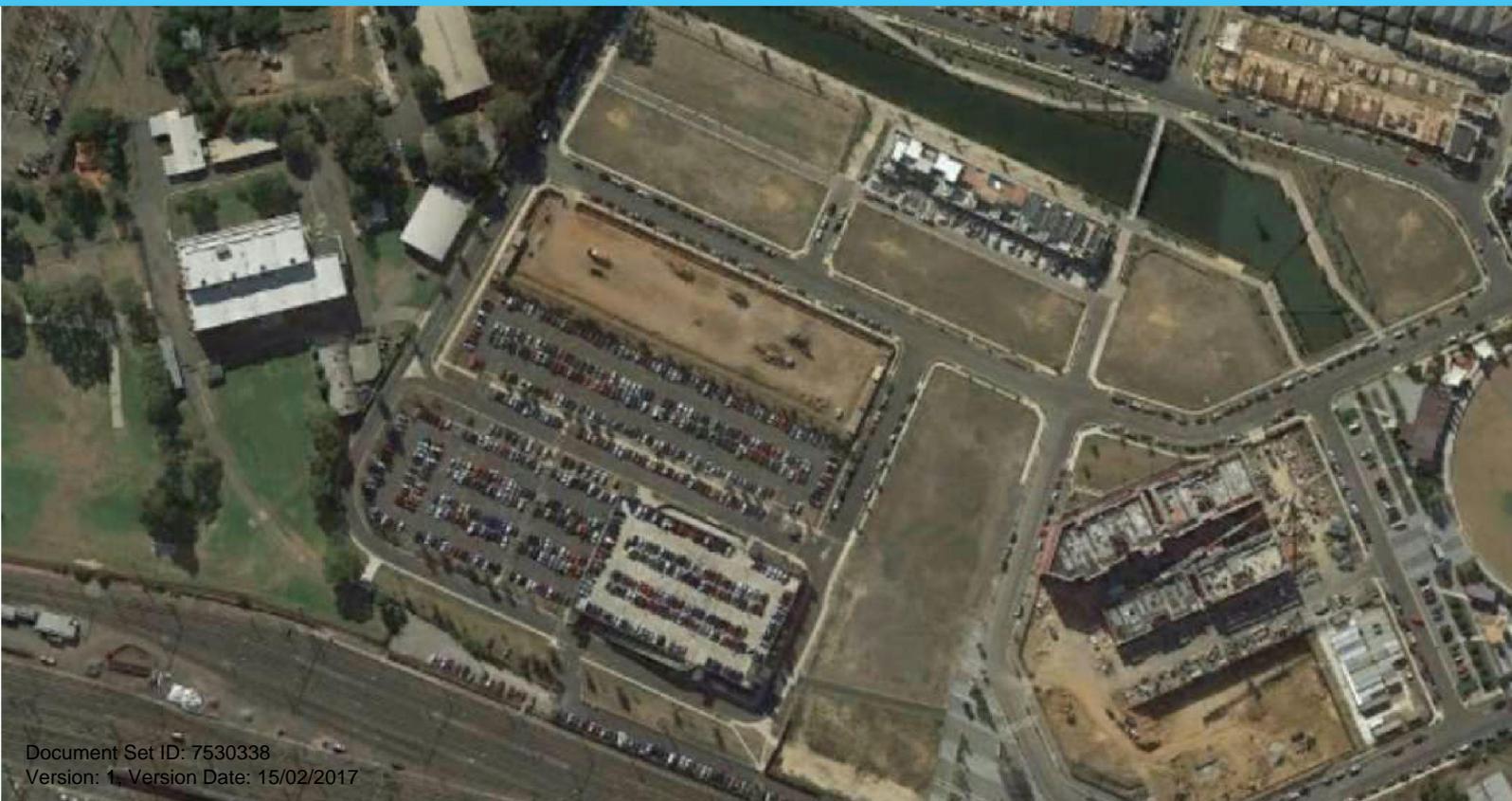
Statement of Environmental Effects

Proposed Modification under Section 96 of the Environmental Planning and
Assessment Act 1979

Lot 3105 DP 1184499, 1-39 Lord Sheffield Circuit, Penrith

February 2017

Evolve Housing



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1 Introduction

Stimson and Baker Planning has been engaged by Evolve Housing to prepare a Statement of Environmental Effects in relation to a proposed modification to existing approval DA15/0026, at the property known as Lot 3105 DP1184499, 1-39 Lord Sheffield Circuit, Penrith.

The proposed development was approved by the Joint Regional Planning Panel on 17 December 2015. The Notice of Determination describes the DA as follows:

Mixed Use Development – One (1) Ground Floor Commercial/Retail Tenancy, 268 Residential Apartments and associated Car Parking. Landscaping and Drainage Works.

Evolve Housing seek approval for a minor modification that includes the installation of an awning, an additional door in the tenancy, relocation of a lobby door and the relocation of accessible amenities. Submitted with this application is a plan showing the proposed amendments, and supporting statement from an Access Consultant.

The amendment will not alter the proposal as originally considered by the JRPP. Further, since this application is for a Section 96(1A) modification, Council will be able to determine this matter without the need to refer it to the JRPP.

2 The Site and Surrounds

2.1 Local Context

The subject site, directly adjacent to the North Penrith commuter car park is accessible by walking/cycling to public transport, both rail and bus, the Penrith City Centre, recreation and employment areas.

The subject site is central to regional nodes within the LGA such as Penrith Lakes, Penrith Panthers Sporting, Leisure and Recreation Precinct, the Nepean River and Penrith Health and Education Precinct.

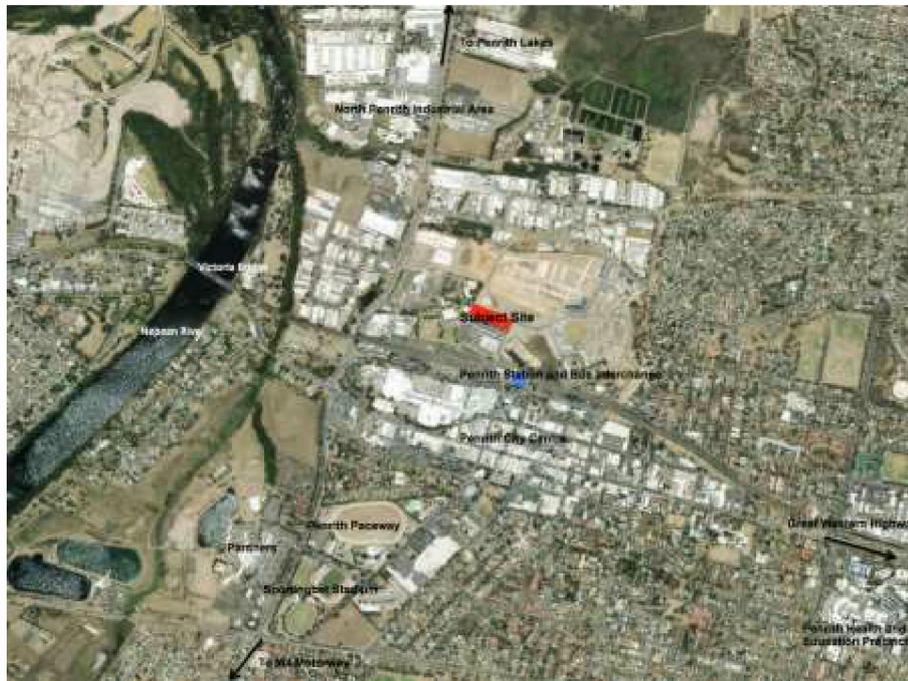


Figure 1: Local Context

2.2 The Subject Site

The site is currently being developed in accordance with approved DA15/0026. The site has three road frontages and a commuter carpark to the south. The site is located on the southern side of Lord Sheffield Circuit, eastern side of Coombewood Avenue and western side of Dunshea Street with frontages of 154.485m, 36.045m and 34.9m, respectively. The site also backs onto the North Penrith Commuter Car Park, which is located to the south of the subject site.

The site is known as 1-39 Lord Sheffield Circuit and is legally described as Lot 3105, DP1184499. The property, whilst fronting in a northerly direction, is narrow and effectively orientated in an east-west direction. The site has an area of 6370m².



Figure 2 Subject site

Topography

The site is relatively level with a very minor fall from the south east corner of the property to the north-west corner of less than 0.5m.

Vehicular Access

When the road works are finalised there will be direct vehicular access to the site from Lord Sheffield Circuit, Coombewood Avenue and Dunshea Avenue.

Pedestrian Access and Public Transport

There is a pedestrian pathway proposed across the frontage of the site on Lord Sheffield Circuit.

Penrith Railway Station is some 250m walking distance from the site, with the Penrith bus interchange 350m walking distance from the site.

The site has frontage to the future Strategic Bus Corridor proposed throughout the estate.

Utilities and Services

Reticulated sewer, water and electricity services will be provided to the site.

Vegetation

There is no vegetation currently on the site.

3 Development Proposal

3.1 Details of the Proposal

Evolve wish to seek the following amendments to the existing approved plans:

1. The installation of an awning above the approved tenancy. The Awning is to have a depth of 2.5m and an overall length of 18m. The installation of the awning will allow minimal tinting on the tenancy “shop front”, thus minimising potential visual impact when viewed from the public domain. Minor elevational amendments above the awning will also need to be made. The accompanying plans detail the proposed awning.
2. An additional door is proposed to provide access from the tenancy through to the car park. This will enable an acceptable path of travel to those areas, including the accessible amenities.
3. An additional door is proposed to provide access from the foyer/lobby area through to the car park
4. The accessible amenities are proposed to be located in the car park behind the tenancy. A supporting statement is provided from an access consultant.
5. A minor reconfiguration of parking spaces is proposed behind the tenancy. There are no changes to the originally approved parking numbers.
6. A sink is proposed to be installed in the cleaner’s room.

The above amendments are quite minor and will not be perceptible in the context of the overall development.

3.2 Proposed Amendments to the Consent

Architectural and engineering plans are submitted with this application. From our assessment, it appears that the only Condition 1 requires amending, with the plan references to be updated as per the submitted plans. The accompanying Access Report should also be referenced.

It is noted that the requirement for a separate DA in relation to the use of the tenancy remains. That application is currently being prepared.

4 Statutory Context

4.1 Planning Controls

4.1.1 Environmental Planning and Assessment Act 1979

Section 96 of the Environmental Planning and Assessment Act 1979 allows for proponents to seek modifications to already approved development applications.

Section 96 states:

96 Modification of consents—generally

(1) *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), section 96AB and Division 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 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 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 79C (1) as are of relevance to the development the subject of the application.*
- (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 respect to the relevant sections of the Act above, the following is submitted for consideration:

- This proposed modification is considered minor with no environmental impact arising. As the request is not generated from an error or misdescription, it is submitted that section 96(1A) is the most appropriate clause to apply.
- The approved development will remain *substantially the same development* as a result of this application. No significant changes are proposed.
- The amendment is considered minor in the context of the scale and bulk of the overall building.

We submit that notification of this application is not required because of its minor nature.

In terms of subsection (3), an assessment against Section 79C has been undertaken in Section 5 of this report, however it is noted that the proposed amendments should not significantly change the assessment undertaken as part of the original application.

5 Section 79C Assessment

An assessment of the proposal has been undertaken in accordance with the statutory requirements of the EPA Act. The following assessment against Section 79C of the EPA Act has been undertaken.

5.1 Section 79C(1)(a)(i) – Any Environmental Planning Instruments

The relevant environmental planning instruments have been considered against this proposal. There are no changes arising as a result from the assessment of the development that was originally undertaken.

The proposal continues to be permissible with consent and is considered satisfactory when assessed against the relevant requirements. No changes are proposed to overall building height, or any other major development standard.

5.2 Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instrument

This consideration is not relevant to the proposed modification.

5.3 Section 79C(1)(a)(iii) – Any Development Control Plan

Compliance against the relevant DCP's has been considered as part of the original development application. The proposed amendments are minor and will not significantly alter the development as approved. It is noted that the awning is some 2.5m deep, as opposed to the cited 3.0m cited in the relevant section of the DCP. We submit that those controls primarily relate to development that is occurring closer to the village centre as opposed to the subject location on the fringe. The difference is minor and will not be noticeable once constructed. The awning proposed also does not require a significant amount of engineering design and as such, its costs are minimised. A variation is sought on this basis.

5.4 Section 79C(1)(a)(iiia) – Any Planning Agreement or Draft Planning Agreement entered into under Section 93f

The application does not impact on such agreements.

5.5 Section 79C(1)(a)(iv) – The Regulations

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

5.6 Section 79C(1)(b) – The Likely Impacts of the Development

Council as part of the original development application considered all impacts of the development. This modification application does not materially alter that assessment. There are no significant changes to the exterior of the building.

5.7 Section 79C(1)(c) – The Suitability of the Site

The site continues to be suitable for the development proposal.

5.8 Section 79C(1)(d) – Any Submission Made

We submit that no notification is required due to the minor nature of this application.

5.9 Section 79C(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 and Recommendation

The proposed development modification has been assessed against the requirements of the Act and is considered to represent a form of development that is acceptable.

The proposed modification would not result in any unacceptable impact on the locality, nor significantly alter the development as approved.

An assessment against section 79C of the EPA Act has not resulted in any significant issues arising.

Accordingly it is recommended that the proposed modification be approved.