



# Statement of Environmental Effects

Proposed Modification – Section 96(1A)(DA17/0099) – Building Envelope Amendment  
O'Connell Street, Caddens

August 2017

Legacy Property



Stimson & Baker Planning  
ACN: 167 096 371  
ABN: 34 824 672 534

Suite 5,  
488 High Street  
Penrith NSW 2750

P 02 4731 2730  
F 02 4731 2370

[www.stimsonandbaker.com.au](http://www.stimsonandbaker.com.au)

This submission has been prepared by



---

**Warwick Stimson** MPAIA CPP  
Director



This report dated August 2017 is provided to 'the client' exclusively. No liability is extended for any other use or to any other party. Whilst the report is derived in part from our knowledge and expertise, it is based on the conditions prevailing at the time of the report and upon the information provided by the client.

© Stimson & Baker Planning, 2017

# Table of Contents

<b>1</b>	<b>INTRODUCTION</b>	<b>1</b>
<b>2</b>	<b>THE SITE AND SURROUNDS</b>	<b>2</b>
2.1	The Site	2
<b>3</b>	<b>DEVELOPMENT PROPOSAL</b>	<b>4</b>
3.1	Details of the Proposal	4
3.2	Proposed Amendments to the Consent	4
<b>4</b>	<b>STATUTORY CONTEXT</b>	<b>5</b>
4.1	Planning Controls	5
<b>5</b>	<b>SECTION 79C ASSESSMENT</b>	<b>7</b>
5.1	Section 79C(1)(a)(i) – Any Environmental Planning Instruments	7
5.2	Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instrument	7
5.3	Section 79C(1)(a)(iii) – Any Development Control Plan	7
5.4	Section 79C(1)(a)(iii)a) – Any Planning Agreement or Draft Planning Agreement entered into under Section 93f	7
5.5	Section 79C(1)(a)(iv) – The Regulations	7
5.6	Section 79C(1)(b) – The Likely Impacts of the Development	8
5.7	Section 79C(1)(c) – The Suitability of the Site	8
5.8	Section 79C(1)(d) – Any Submission Made	8
5.9	Section 79C(1)(e) – The Public Interest	8
<b>6</b>	<b>CONCLUSION AND RECOMMENDATION</b>	<b>9</b>

**APPENDIX A** Amended Building Envelope Plan/Design Guide

# 1 Introduction

---

Stimson & Baker Planning has been engaged by Legacy Property (Legacy) to prepare a Statement of Environmental Effects in relation to a proposed modification to existing approval DA17/0099 at O'Connell Street, Caddens. The existing approval is dated 23 May 2017 and covers multiple lots.

Legacy Property seek approval for a modification to the approved Building Envelope Plan. This plan, as approved, had identified specific lots (referred to as 'patio lots') as having zero lot setbacks. Level changes between lots now necessitates building setbacks being established for those buildings.

An amended building envelope plan is submitted for approval.

The land that is the subject of this application contains a watercourse and bushfire prone land. The application **will not** require referral however given it is for a minor building envelope amendment.

The amendment will not significantly alter the proposal as originally considered and approved. Approval is recommended for this application.



## 2 The Site and Surrounds

---

### 2.1 The Site

In its entirety, the subject site is over 30 hectares in area, with frontages to both O'Connell Street and Caddens Road.



Figure 1 Subject site

As this locality is a residential release area, the surrounds have historically been characterised as rural, however there is increased development activity occurring consistent with what has been previously approved.

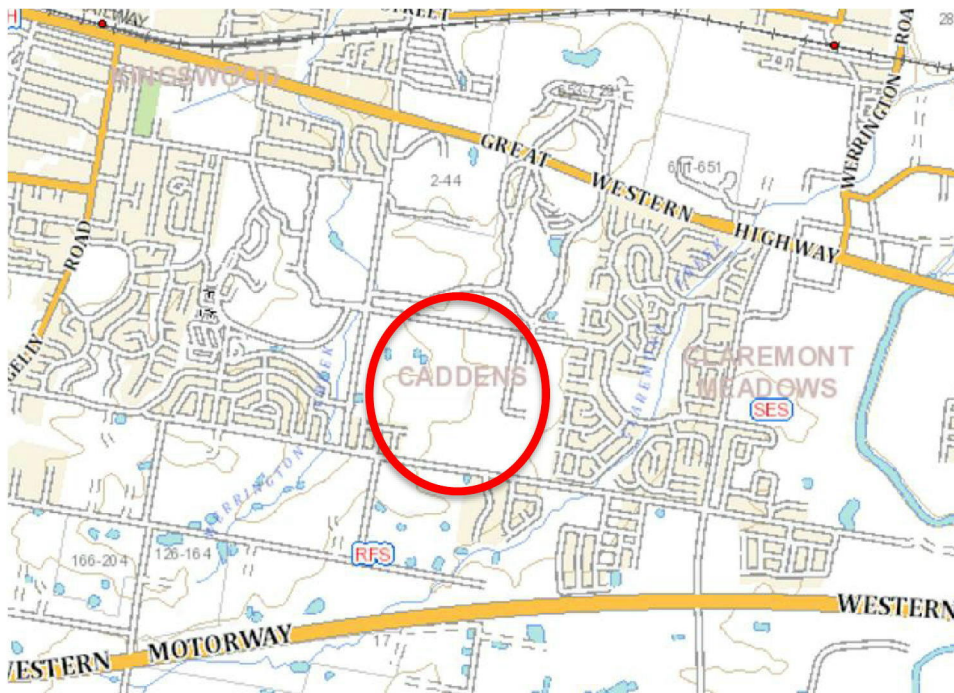


Figure 2 Surrounding cadastre

The site is well connected to the Great Western Highway to the north, Bringelly and The Northern Roads to the west, and in turn the M4 Motorway to the south.

Surrounding land uses include recently developed residential dwellings to the west as part of the development of Caddens, rural residential development to the south, and the State Records Centre immediately to the east. The area to the north of the site across O'Connell Street is identified as a neighbourhood centre to serve the community of Caddens and its surrounds.

**Topography**

The subject site is quite undulating with prominent peaks, particularly in the location of the proposed Hilltop Park. The civil drawings and survey plans detail the various levels around the site.

**Vehicular Access**

Vehicular access is currently available from Caddens Road and O'Connell Street.

**Utilities and Services**

There are existing reticulated sewer, water and electricity services to or near the site.

**Vegetation**

Some vegetation is found on the site however it is not considered to be significant and is proposed to be removed. Vegetation removal has already been approved under previous DA's on the site.

## 3 Development Proposal

---

### 3.1 Details of the Proposal

Legacy Property wish to seek the following amendments to the existing approval.

- Amend the building envelope plan to include building setbacks to the nominated 'patio lots'. Changes in ground levels near the boundary have required this change.

No other changes are proposed.

### 3.2 Proposed Amendments to the Consent

As cited above, various amendments will be made to the relevant conditions of the consent to account for the amended documents and plan references.



## 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 nature of the overall subdivision approval.

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. The proposal continues to be consistent with the DCP.

### 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 subdivision as approved. The proposed amendments are considered to be minor.

## 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

In the event Council notifies the application we welcome the opportunity to respond to any submissions that are received.

## 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 minor amendment.

## 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.

The application requires consideration of the appended request to vary the minimum lot size development standard. It is submitted there are sufficient environmental planning grounds to justify the variation sought.

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.