



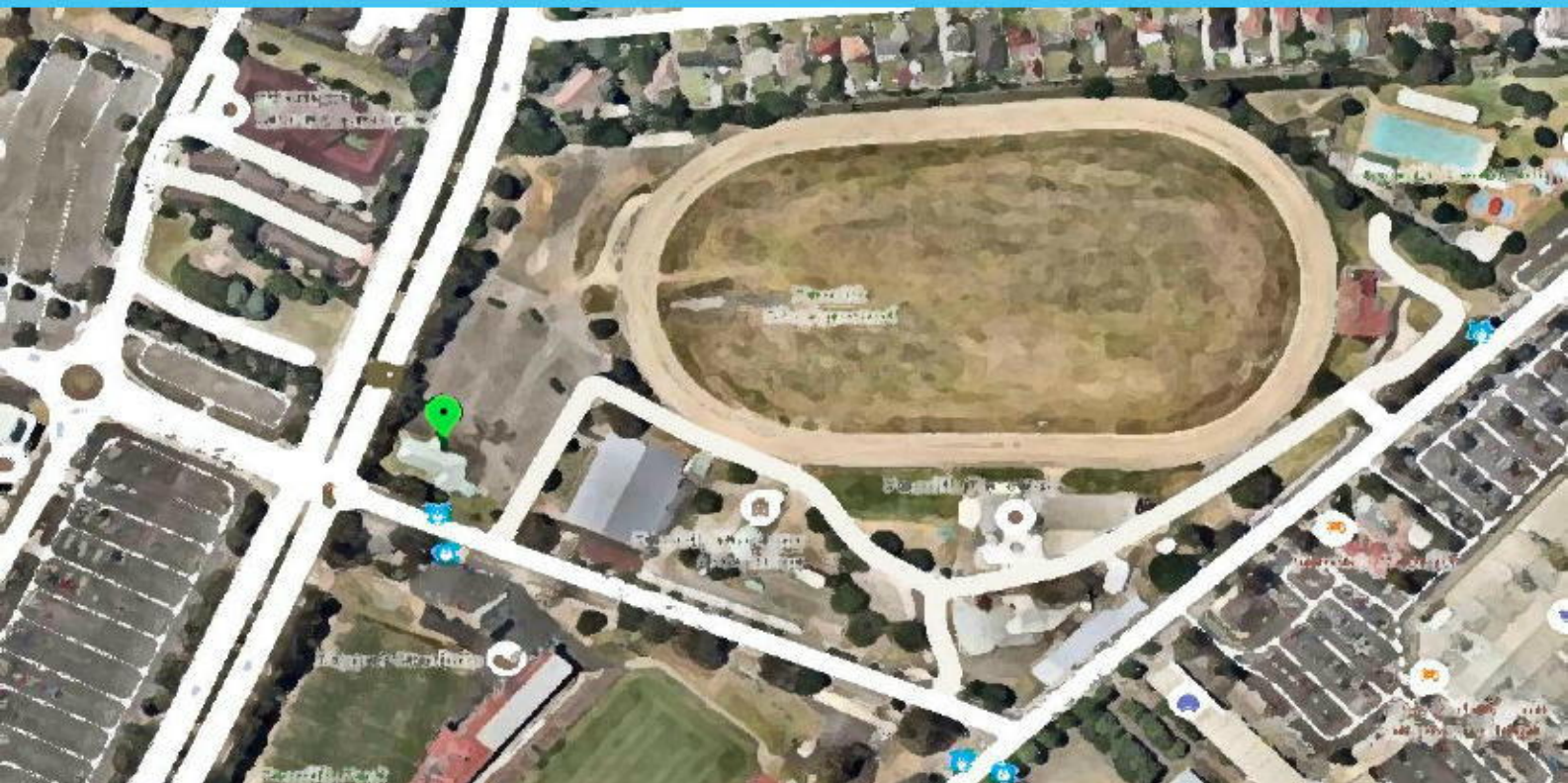
# Statement of Environmental Effects

Section 96(1A) Modification – DA16/0219

127-141 Station Street, Penrith

May 2016

HB Group



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# 1 Introduction

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## 1.1 Overview

Stimson & Baker Planning has been engaged by HB Group to prepare a Statement of Environmental Effects in relation to a proposed modification to existing approval DA16/0219 at 127-141 Station Street, Penrith.

The proposed development was approved by Council and consent issued on 16 April 2016 and was described as follows:

### *Fit Out and Use as Hog's Breath Cafe*

With the client now progressing to construction documentation stage and finalisation and approvals from Hog's Breath Head Office, a minor modification is proposed. The proposal is to reduce the floor area and remove an area that was dedicated to a bar area and dining area.

The amendment will not alter the proposal as originally considered by Council as it only relates to minor design changes. Given the development is 'substantially the same' as what was originally approved, Council is able to support the development application and its approval is recommended. This report describes the proposed development and subject site in detail and undertakes an assessment of the proposal against the EPA Act.

## 2 The Site and Surrounds

### 2.1 Local Context

The subject site is located in the suburb of Penrith which is a Regional City under the State Government's *A Plan for Growing Sydney*. The subject site is located centrally to the Penrith City Centre, Pepper Stadium, Panthers Penrith and the Nepean River. It is also located with frontage to Mulgoa Road providing direct access to the M4 Motorway. The proposal contributes to the activation of this area.

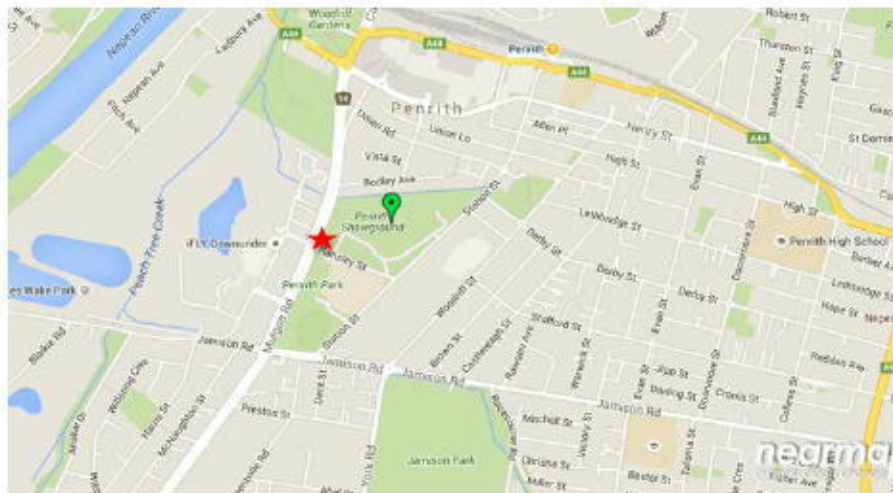


Figure 1: Local Context (Source: <http://maps.au.nearmap.com/>)

## 2.2 The Subject Site and Surrounds

The subject site is bound by three roads being Mulgoa Road located to the west, Ransley Street to the south and Station Street to the east. Legally described as Lot 12 DP 1176987, the site is an irregular shape and has an area of approximately 13ha. The development site which is occupied by the function centre is shown shaded red in Figure 2 and applies to approximately 1ha of the 13ha site.

The site is known as the Penrith Paceway. Other uses on the site include the Penrith Museum of Printing and the club house. The approved restaurant is within the previous function centre.

Surrounding the site is a large parking area to the north of the function centre that is used for the Paceway, but predominantly for the function centre. Pepper Stadium is located to the south on Ransley St, Panthers Penrith to the west on Mulgoa Road and Nepean Village and the Panasonic Site ready for redevelopment on to the east on Station St.

There is an existing access driveway from Ransley Street to the function centre.



Figure 2 Subject property (Source: <http://maps.au.nearmap.com/> )

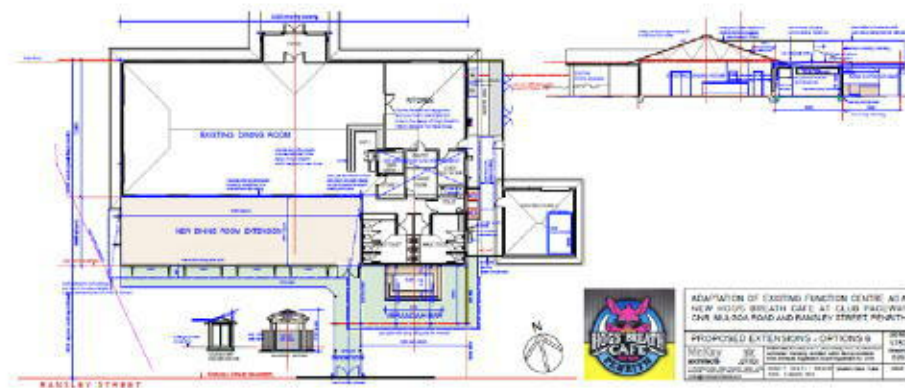
## 3 Development Proposal

### 3.1 Details of the Proposal

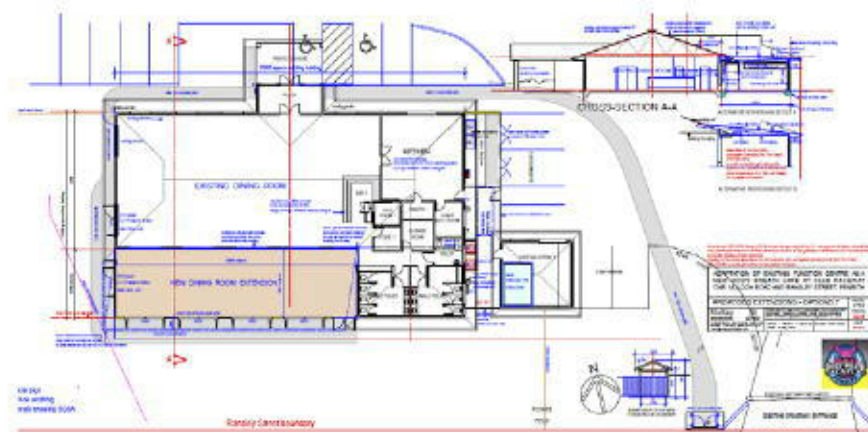
The proposed amendments are to reduce the floor area of the bar/dining area due to the clients Head Office requirements and relocate the entrance from the street closer to the entrance driveway.

The proposed amendments will result in the verandah bar being deleted being a reduction of approximately 50sqm. The street entrance will be closer to the driveway and a pathway will be provided from this point to the key entrance from the car park area. Although not structural the cool room will be relocated within the storage area and be used as a freezer room.

Approved Plans as follows:



Proposed Amendments as follows:



## 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:

<i>96 Modification of consents—generally</i>	
(1)	<i>Modifications involving minor error, misdescription or miscalculation</i> 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)	<i>Modifications involving minimal environmental impact</i> 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)	<i>it is satisfied that the proposed modification is of minimal environmental impact, and</i>
(b)	<i>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</i>
(c)	<i>it has notified the application in accordance with:</i>
(i)	<i>the regulations, if the regulations so require, or</i>
(ii)	<i>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</i>
(d)	<i>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.</i>
<i>Subsections (1), (2) and (5) do not apply to such a modification.</i>	



- (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. The proposal is reducing the floor area and now generally retaining the same front building façade. 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. The changes are considered minor as it is reducing the approved floor area and this does not alter the function or operation of the building as approved. Proposed changes are minor in the context of the overall development of the site and considered to have no environmental impacts.
- We submit that due to the nature of the proposed amendments and no previous notification of the original application that no further notification is considered necessary in the circumstances of this case.

In terms of subsection (3), an assessment against Section 79C has been undertaken in Section 5 of this report.

## 5 Section 79C Assessment

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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 in the original application to Council. There are no changes arising as a result from the assessment of the development that was originally undertaken and provided in the original development application SEE. Further assessment of the impacts are outlined below in Section 5.6.

The proposal is permissible with consent and is considered satisfactory when assessed against the relevant requirements.

There should be no changes to the original consideration of the development by Council against the LEP.

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

There are no known draft Environmental Planning Instruments applicable to the subject site.

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

Compliance against the relevant DCP's has been considered in the original application. There should be no changes to Council's conclusions formed in that assessment.

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

There are no known planning agreements that apply to the site or development.

## 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

The proposal is not altering the building footprint or the height of building, however the following is been provided in relation to the design and presentation:

### 5.6.1 Built Form

The proposal is reducing the building footprint to what was approved by Council. It is considered that the proposed amendments will have negligible visual impacts given the floor area is reduced and the façade at this point of the existing building will remain the same.

### 5.6.2 Traffic and Parking

The proposed reduction in floor space does not alter the parking. The floor area that is being deleted was a verandah bar and not a dining area. There is more than adequate parking as outlined in the original application.

In summary, Council as part of the original development application considered all impacts of the development. This modification application does not alter that assessment as the proposed modifications are minor and will not significantly alter the original proposal.

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

The proposal continues to be consistent with the planning controls that apply to the site. No unacceptable impacts arise as a result of these modifications.

For the reasons outlined in this report the site is considered suitable for this proposed amendments.

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

It is submitted that no notification is required.

## 5.9 Section 79C(1)(e) – The Public Interest

The public interest would not be jeopardised as a result of this proposed amendment.

## 6 Conclusion and Recommendation

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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 to reduce the floor area 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 of DA16/0129 be approved.