

Our Ref: 17.032

Your Ref: DA17/0980

Penrith  
Suite 5 488 High Street  
P 4731 2730  
F 4731 2370

Tamworth  
108 Brisbane Street  
P 6766 5505

All mail to  
PO Box 1912 Penrith NSW 2751

21 June 2018

General Manager  
Penrith City Council  
601 High St  
Penrith NSW 2750

Dear Sir

**Re: DA17/0980- 88a Nepean Gorge Drive, Mulgoa**  
**Application under Section 4.55 (1) of Environmental Planning and Assessment Act 1979**  
**Statement of Environmental Effects**

I refer to the above application and advise we have been requested to assist with a Section 4.55 modification of the approved development. This submission is to be considered as a Statement of Environmental Effects for the application.

This application seeks amendment to Conditions 48,49 and 50 in respect to Section 94 fees levied, and Condition 35 in respect to the requirement for an Infrastructure Restoration Bond to be paid.

#### **Conditions 48,49 and 50**

The consent as issued, calculates the Section 94 levies based on 6.2 persons per dwelling, and erroneously does not account for the existing dwelling entitlement. The levy should be 50% of what has been cited. The Notice of Determination needs to be amended to enable the issuing of a Construction Certificate.

#### **Condition 35**

The configuration of the block, its access handle, and the condition of existing Council infrastructure (i.e. roads, no kerbing) mean the requirement to pay a Bond is unnecessary and unreasonable. There is no Council infrastructure within close proximity to the site at all. We submit the condition was inserted erroneously and should be removed.

#### **Section 4.55 - Modification of Consents Generally**

Section 4.55 of the Act provides that a consent authority may, in certain circumstances, grant consent to an application that seeks to modify a development consent. In this circumstance, the minor nature of the amendment and the minimal impacts that arise as a result, warrant the application being requested under 4.55(1A) as follows.

#### **(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) and Part 8 do not apply to such a modification.*

It is clear that the conditions have been included in error, and that they are unreasonable and unnecessary. The conditions can be removed in accordance with Section 4.55(1) of the Act.

#### **Section 4.15 - Evaluation – Statement of Environmental Effects**

Section 4.15 of the Environmental Planning and Assessment Act 1979 contains matters that need to be considered for any development application. Section 4.15 reads:

##### **Matters for consideration—general**

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:*

- (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 Director-General 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 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*
  - (v) *any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,*
- (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,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

The development will continue to satisfy the consideration against Section 4.15 even after the amendment as:

- The amendment does not affect the proposal's compliance with Council's LEP.
- There are no Draft EPI's relating to the land.
- There are no planning agreements that apply to the land that directly impact this modification.
- There will be no change in any potential impacts arising as a result of the proposed development.
- The site will continue to be suitable for the approved use after the amendments are made.
- The public interest will not be diminished as a result of this application.

**Summary**

The amendments are considered minor in nature with no impact arising in relation to how the site will function or potentially impact on the locality. They have been applied erroneously and can therefore be deleted.

Council can therefore support the application in its current form.

Please contact me on 02 4731 2730 if you would like any further information.

Sincerely

**Stimson & Baker Planning**



**Warwick Stimson MPIA**  
Director