



Our Ref: 20.033

Your Ref: 16/1083

23 December 2020

General Manager
Penrith City Council
PO Box 60
Penrith NSW 2750

Dear Sir

Re: DA 16/1083 – Application to Modify consent under Section 4.55 (1A) of Environmental Planning and Assessment Act 1979

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.

1. Overview

An operational consent was granted for DA16/1083 by Penrith Council on 24 September 2018. Modifications to the consent have been subsequently granted on 13 February 2019, and 30 October 2020.

The proponent now seeks a further amendment to the hours of operation that are contained within condition number 8 of the consent. The condition currently reads as follows:

8 For the purpose of preserving the amenity of neighbouring properties, hours of operation (Monday to Sunday) for the following uses are to be restricted to between:

- Serviced Apartments Reception: 24 hours
- Gymnasium: 7am to 10pm
- Swimming Pool, Outdoor Bar and Kitchen: 8am to 10pm
- Conference Room: 8am to 10pm

This application seeks to extend the closing times of the swimming pool, outdoor bar/kitchen and Conference Room to 12 midnight. To support this application, a further revision of the Rodney Stevens and Associates acoustic report that has supported the project from the outset.

2. 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.

(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.

Each of the matters listed above are dealt with in turn:

- a) The proposed plan amendments will not result in any negative environmental impact. No acoustic impacts are expected as identified in the accompanying Acoustic Impact Assessment.
- b) The development would be substantially the same. Its use and building form are consistent with the original application. The development will continue to be consistent with what was described and approved in the original application.
- c) In our opinion the proposed amendment is so minor that we believe notification is not required in this instance.

Based on the discussion above the development proposal is appropriately defined as being of minimal environmental impact and is substantially the same development which enables Penrith Council to determine the application in its current form.

3. 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:

- a) The amendment does not affect the proposal's compliance with Council's LEP.
- b) There are no Draft EPI's relating to the land that are relevant to this proposal.
- c) There are no planning agreements that apply to the land that directly impact this modification.
- d) There will be no change in any potential impacts arising as a result of the proposed amendment. The accompanying Acoustic Impact Assessment confirms the extended hours will not negatively impact on nearby sensitive receivers.
- e) The site will continue to be suitable for the approved use after the amendments are made.
- f) The public interest will not be diminished as a result of this application.

4. Summary

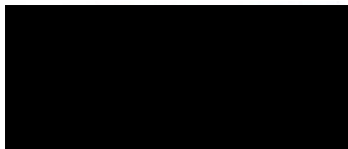
The amendments are considered minor in nature with no impact arising in relation to how the site will function or potentially impact on the locality. The extension of hours will enable the development to function more effectively and provide a better offering for those staying at the facility.

Council can therefore support the application in its current form.

Please contact me on [REDACTED] if you would like any further information.

Sincerely

Stimson Urban & Regional Planning



Warwick Stimson RPIA
Director

