

Our Ref: 13.42

Your Ref: DA 16/1083

4 December 2018

General Manager
Penrith City Council
P O Box 60
Penrith NSW 2751

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

Dear Sir

Re: DA 16/1083, 21-25 Woodriff Street, Penrith
Application under Section 4.55 (1A) 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.

DA16/1083 was approved by the Sydney West Planning Panel on October 2018. Condition 11 of the consent reads:

11. Strata subdivision of the building or part of the building to be used as serviced apartment is not permitted

As is the case with most serviced apartment buildings, funding of the project requires strata subdivision of the building. If required, this allows units to be individually purchased by investors and allows the developer of a serviced apartment building to mitigate risk across a project.

This application seeks the removal of Condition 11 to allow for the strata subdivision of the approved building.

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 impacts are expected.
- 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.
- d) The application relates to subdivision. No changes to the approved building are proposed.

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 City Council to determine the application in its current form.

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 generally affect the proposal's compliance with Council's LEP. (Clause 8.6 is discussed below)
- 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 amendment.
- 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.

The primary matter for consideration for this application is compliance with Clause 8.6 of Penrith LEP2010, which reads:

8.6 Serviced apartments

Development consent must not be granted for development for the purpose of the strata subdivision of a building or part of a building that is or has been used for serviced apartments, unless the consent authority is satisfied that the design quality principles set out in Schedule 1 to [State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development](#) and the design principles of the Apartment Design Guide (within the meaning of that Policy) are achieved for the development as if it were a residential apartment development within the meaning of that Policy.

Specifically, the clause requires compliance with the design quality principles (within Schedule 1 of the SEPP, and the Apartment Design Guide). In this regard, an assessment against these documents is attached to this submission. Compliance has generally been achieved. Where minor variations are proposed, these mainly arise because of the DCP requirements relating to buildings in the Penrith CBD. Since this clause can satisfactorily responded to, there should be no reason to not support the 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. The proposal relates to the submission of the building and no changes to the physical structure are proposed.

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