

8 November 2017

The General Manager
Penrith City Council
PO Box 60,
Penrith
NSW 2751

Dear Sir/Madam,

SECTION 96 (1A) MODIFICATION TO DEVELOPMENT CONSENT DA 16/1240

7 & 8 Kommer Place, St Marys NSW 2760

Approved Development: Erection of New Awnings for Storage purposes (30 May 2017)

1. Introduction

In support of this Section 96 (1A) application please find enclosed:

1. Completed S96 Application Form;
2. Cheque for Section 96(1A) assessment fee;
3. A copy of this letter-form Statement of Environmental Effects and Modified Plans.

This application letter for a Section 96(1A) has been prepared by Mod Urban Pty Ltd on behalf of Cardboard King Pty Ltd, the owners and applicant for the site. It supports a S96(1A) application to Penrith City Council to the approved DA 16/1240, specifically relating to erection of new awnings for storage purposes.

The proposed modification does not present any significant environmental impacts and will remain substantially the same as that approved under the original application, and is related to the restrictions of storing product on the existing easement as identified in stamped plan DA 06A (Fedele Design Pty Ltd). There will be no change to the use of the site or no significant change to the external scale and bulk of the awning form on the subject site as a result of this proposal. The proposal will therefore largely reflect the original consent.

Development Consent under Section 96(1A) of the *Environmental Planning and Assessment Act, 1979* states:

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.

The proposed modifications provide for a minor change to the approved development consent and do not have any significant environmental impact. A minor change to allow product to be stored over the existing easement will occur, through the proposed modification of Condition 1 in relation to the annotation of stamped plan DA 06A of the development consent DA 16/1240, however despite this, the proposal is considered to be substantially the same development as that approved and only results in a minor change to the operation of the facility and does not impact upon its scale or form.

Accordingly, it is considered that Section 96(1A) is the most appropriate mechanism for the proposed modifications to the consent.

2. Background

Development consent was granted 30 May 2017 for erection of new awnings for storage purposes. (DA16/1240).

Council imposed through Condition 1 of the consent that no material is to be stored over the Sydney Water easement in the northern corner of the site.

3. Proposed Modifications

This Section 96(1A) Application seeks to make the following modifications to the approved development:

- To modify condition 1 substitute stamped plan DA 06A (Appendix A) with DA 06A (Appendix B) by removing the restriction of placing no material over the easement as imposed by Council.

4. Legislative Framework

Environmental Planning & Assessment Act 1979

Section 96(1A) of the *Environmental Planning & Assessment Act 1979* makes provision to modify a Development Application that has been made pursuant to Part 4 of the *Environmental Planning & Assessment Act 1979*.

The proposal as submitted to Penrith City Council is considered to satisfy the provisions of Section 96(1A) of the Act in that the changes proposed will result in minimal environmental impact and will result in the development being substantially the same as that for which consent was originally granted.

The key provisions of Section 96(1A) of the Act have been considered below:

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*

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Accordingly, it is considered that Section 96(1A) is the most appropriate mechanism for the proposed modifications to the consent

Penrith Local Environmental Plan 2010 (PLEP 2010)

The proposal does not alter the use of the site as factory/warehouse use.

The proposed modification does not result in any alteration to the approved awning structures.

The proposal remains permissible under development consent for use as a 'factory/warehouse' use, and complies with the relevant provisions of the PLEP 2010.

Penrith Development Control Plan 2010 (PDCP 2010)

The proposed modifications to the development through amendment to Condition 1 in relation to stamped plan DA 06A to allow materials to be stored over the existing Sydney Water easement have been compared to the relevant requirements of PDCP 2010, and compliance with all relevant controls remains as per the existing approval DA 16/1240.

We therefore, on behalf of the applicant/owner of the subject site, request that the Council reconsider its position in relation to the restriction of placing materials over the Sydney Water easement. In this context the Council's position in relation to Condition 1 (and the restriction of materials being stored over the easement would serve no material planning purpose.

The following section of this letter outlines the potential impacts of allowing the storage of material over the easement.

5. Key Matters for Consideration

The key matters for consideration as they relate to the modified proposal are addressed below, in relation to the applicant seeking to remove the restriction of placing no material over the easement as imposed by Council.

- The applicant Cardboard King Pty Ltd, who have operated on the site for 13 years, and have always stored material over the Sydney Water easement, as the water pipes the easement seeks to protect is located underground.
- The applicant would adhere to any additional conditions of consent that Council may impose which essentially allows them to store product (namely baled paper or cardboard) over the easement, restricts any permanent fixing of structures to the ground over the easement, and ensures any material stored is removed immediately at the request of Sydney Water should they seek access to the underground pipes.
- Council should also be aware that existing buildings in the area are located over the easement, and the applicant only seeks to store baled paper or cardboard, which is regularly transported off the site for sale (primarily to overseas customers) for recycling.
- The new awning structure is attached to the boundary wall, and will not inhibit access to the easement and Sydney Water pipes underground.
- It is noted from Council's development assessment report for DA 16/1240 that Council's development engineers raised no objection in regards to the proposed building works in close proximity to the stormwater drainage easements. It is also noted that Sydney Water raised no objection, and did not seek to prevent the storage of material over the easement.
- Finally, the applicant would be willing to update the approved Operational Management Plan to include a section that identifies the procedures related to clearing stored material from the easement should Sydney Water ever have the need to access the easement.

We therefore, on behalf of the applicant/owner of the subject site, request that the Council reconsider its position in relation to the restriction of placing materials over the Sydney Water easement for the reasons outlined above.

Likely Impacts of Development

The likely impacts of development in accordance with the requirements of Section 79C have been considered above. No environmental, social and economic impacts are likely as a result of the modification, and it is not expected any impacts will occur to the built environment.

Suitability of Site for Development

The site is considered suitable for the development, as established in the approval of DA 16/1240.

5. Conclusion

The subject S96 (1A) modification application seeks consent for modifications to the approved stamped plans to remove the restriction of placing material over the easement and will not result in any unacceptable environmental impacts on the subject site or surrounding environment.

As detailed throughout this statement, the proposed modifications to development condition 1 will result in a development outcome that is substantially the same as that for which consent was originally granted under DA 16/1240.

The proposal has been assessed against the matters for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979* including relevant provisions of *Penrith Local Environmental Plan 2010*.

Accordingly, it is requested that Penrith City Council support the application.

Should you require further information, please contact the undersigned.

Yours Sincerely,



Matthew O'Donnell

Director

Mod Urban Pty Ltd

Appendix A – Stamped Plan

Appendix B – Modified Plan