

30. ECO-INFO - SECTION 96 MODIFICATIONS TO CONSENTS ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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WHICH DEVELOPMENT CONSENTS DOES SECTION 96 APPLY TO?

- All applications to modify a development consent must be considered using Section 96.
- The changes apply to all development consents, whether they were granted before or after June 1 2000.

HOW DOES COUNCIL DETERMINE MODIFICATION APPLICATIONS?

There are a number of matters Council must consider when determining these applications.

IS THE DEVELOPMENT SUBSTANTIALLY THE SAME DEVELOPMENT?

- Council must first determine whether the modified development is “substantially the same” as the development that was originally approved (before any modifications had been made to it).
- Council must decide in the circumstances if a development will be substantially the same development.
- Council must compare the likely impacts of the proposed modified development, including the environmental, social and economic impacts, with the impacts of the original development.

- When Council looks at the impacts of the proposed modified development, the modified development includes all modifications made to the development since the original consent was granted.
- When Council looks at the impacts of the original development, the Council must consider the impacts of the original development as if they were occurring at the time the modification application is determined, **not** at the time the original application as determined. This comparison takes into account any changes to the environment or legislation that has occurred since the original development consent was granted.
- Where the applicant seeks to modify an aspect of the development that has been modified before, Council must make the comparison between the proposed modified development and the original development carefully.
- If Council decides the development will be substantially the same, Council must then consider:
 - * The matters listed in section 79C of the EP&A Act that are relevant to the modified development, and
 - * Any public submissions that have been made.

WHAT ARE EXAMPLES OF THE DIFFERENT TYPES OF SECTION 96 MODIFICATIONS?

Section 96(1) - Minor Modifications

- * Approved development where dimensions of plans may be incorrect.
- * Description of development may be incorrect, such as, "Hairdressing Salon" should have read "Hairdressing and Beauty Salon".

Section 96(1A) - No Environmental Impact

- * Alterations to room layout for dwelling, dual occupancy, commercial buildings.
- * Changes to car parking layout for dual occupancy, residential flat building, and commercial building.
- * Minor change to external facade, roofline, window positions, building finishes (including colours).

Section 96(2) - All other applications

- * Internal and external alterations which may impact on privacy or solar access to adjoining properties, such as relocation of a courtyard in a dual occupancy.
- * Amendments to land use, which require further assessment.
- * Substantial alterations to larger development, which does not change the development, such as increased floor space to a warehouse.
- * Alteration to the number of lots in a subdivision.

NOTIFICATION OF MODIFICATIONS

- Public notification under Section 96(1) is not required.
- Public notification under Section 96(1A) will generally not be required unless Council is of the opinion it may impact on an adjoining property and submissions were received to the original application.
- Public notification under Section 96(2) is required under Council's Notification Development Control Plan (No.70), including written notice to any person who made a submission to the original application.

FEES

- The fee for applications under Section 96(1) is \$55.
- The fee for applications under Section 96(1A) is:
 - 50% of the fee for the original development application; or
 - \$500 (whichever is the lesser);
- The standard fee will apply to the Section 96(2) applications in accordance with the fee schedule of Council's Management Plan.

APPLICATION

Application should be made on Council's *Combined Development Application Form* and lodged at Council's offices along with:

- Clear plans clearly showing all the modifications proposed; and
- A description of the environmental effects and proposed measures to mitigate any such effects (Section 96(2) applications only).

For information on assistance regarding applications to modify consents and fees, please contact Councils Customer Service Section on 4350 5555.