

Fact Sheet: Modification of Development Consent

Applications made under Section 87 or 96 of the *Environmental Planning and Assessment Act 1979*

Are you seeking to modify your Development Application (DA) or Complying Development Certificate (CDC) consent?

This Fact Sheet is provided for the purposes of general advice only. More specific and detailed information may be required depending on the nature of the application.

Amending an existing development consent can be undertaken through Section 87 (for a CDC) or Section 96 (for a DA) of the Environmental Planning and Assessment Act 1979. Such applications may be appropriate if you disagree with particular conditions of consent or decide to amend certain aspects of the proposal. You must complete an application form (**Modification of Consent/Certificate**), attach plans and/or a written justification for the proposed modification and pay the prescribed fee. There are different types of modifications and hence a varying level of detail that may need to be provided with any application.

Section 87 of the Environmental Planning and Assessment Act 1979 deals with modifications of Complying Development Certificates (CDC). A modification of a CDC will be assessed in the same manner as a new CDC, i.e. 10 day maximum determination time.

Section 96 of the Environmental Planning and Assessment Act 1979 deals with modifications of Development Application Consents.

There are limitations on the changes which can be made by modifying development application consents, modifications must result in the development being substantially the same as the originally approved development. The onus is on the

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applicant to demonstrate that the modification is substantially the same as that originally approved.

If Council does not agree that the proposed modifications would result in substantially the same development as was originally approved, a new development application will need to be submitted for assessment. If unsure, ask Council's Customer Services or Development Services for further details.

There are 5 different types of Modification of consent applications under the Act, which are described below:

Section 87 – Modification of Complying Development

(1) A person who has made an application to carry out complying development and a person having the benefit of a complying development certificate may apply to modify the development the subject of the application or certificate.

(2) This division applies to an application to modify development in the same way as it applies to the original application.

Modifications can only be approved where the proposal remains complying development. If a proposed modification will result in development that is not complying, a Development Application will be required.

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Section 96(1) – Modifications involving minor errors, misdescription, or miscalculation

There would be no change to the form of the development approved, and notification would not be required.

Examples:

- Incorrect plan numbers
- Incorrect description
- Incorrect calculation
- Change to the wording of a condition(s)

Section 96(1A) – Modifications involving minimal environmental impact

There will be minimal impact on noise, privacy, height, overshadowing, etc., and notification is generally not required. Depending on the nature of the modifications proposed Council may choose to notify the amended applications to properties likely to be affected.

Examples:

- Internal design changes
- Amended landscape plans
- Minor changes to the external façade, roofline, window positions, building finishes, etc
- Drainage design amendments
- Changes in unit mix
- Change to hours of operation

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Section 96(2) – Other modifications

These are all other modifications having more than a minimal environmental impact. These will be notified in a manner consistent with the original DA.

Examples:

- Amendments to land use, which require further assessment
- Substantial alterations to larger development, which does not change the overall development
- Alteration to the number of lots in a subdivision
- Alterations where external impact is expected/possible
- Changes in:
 - windows
 - floor levels
 - heights
 - carparking generation
 - roof forms

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Section 96AA - Modification by consent authorities of consents granted by the Court

These are all modifications to consents issued by the Court.

An application that was approved by the Court can be modified under the provisions of the Section 96AA of the Act. Fees for Section 96AA applications will be charged based on the nature of the modification as identified in Sections 96(1), 96(1A) and 96(2) as listed above.

Fees

The type of modification application will dictate the fee that is required to be paid. The fees for modification of a Development Consent or a Complying Development Certificate are set out in Council's list of fees and charges which can be viewed on Council's webpage.

The fees for modification of a Development Consent are also laid down in the *Environmental Planning and Assessment Regulation 2000* (see Clause 258). The Regulation can be viewed at:

<http://www.legislation.nsw.gov.au/viewtop/inforce/subordleg+557+2000+cd+0+N/?dq=Regulations%20under%20Environmental%20Planning%20and%20Assessment%20Act%201979%20No%20203>