Fact Sheet: Modifications to Development Consent
Applications made under Section 87 or 96
Environmental Planning and Assessment Act 1979

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

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 (Application to Modify a Consent), attach plans and/or a written justification for the proposed modification and pay the prescribed fee.

Section 87 of the Environmental Planning & 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 approval.

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

There are limitations on the changes which can be made by modifying consents:

- **Modifications to a Complying Development Certificate (CDC)** - 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.

- **Modifications to a Development Application (DA)** – The modified development must remain substantially the same as the approved development. If the development is not substantially the same, a new DA will
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be required. If unsure, ask Council’s Customer Services or Development Services for details.

There are different types of modifications and hence a varying level of detail that may need to be provided with any application.

There are 5 different types of modification of consent applications (s87, s96(1), s96(1A), s96(2) and s96(AA)) 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.

Fees:
Amendment to Application for a CC or CDC - 30% original fee with minimum of $40

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 where Council has made an error:

- A change to a condition of consent;
- Incorrect plan numbers;
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- Incorrect description.

Fees:
Section 96(1) - to correct council error in consent wording = no cost

Examples where applicant has made an error:
- A change to condition for example a dollar amount or number of employees and the like
- Would have no change in the form of development approved
- Would not require notification

Fees:
Section 96(1) = $55

Section 96(1A) – Modifications involving minimal environmental impact - Minor amendments.
There is no impact on privacy, height, overshadowing, etc., and notification is generally not required. These will require notification if the original application was notified.

Examples:
- Internal design changes
- Amended landscape plans
- Minor changes to the external façade, roofline, window positions, building finishes, etc.
- Drainage design amendments
- Changes to approved Schedule of Finishes
- Changes in unit mix
- No impact on privacy, height, overshadowing and the like
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**Fees:**

Section 96(1A) = 50% of original fee (or $500 whichever is the lesser)

**Section 96(2) – Other modifications**

*These are all other modifications where environmental impact is possible. These may require notification if the original application was notified.*

**Examples:**

- Amendments to land use, which require further assessment.
- Substantial alterations to larger development, which does not change the 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

- Change to condition relating to operating hours

**Fees:**

- Section 96(2) – where fee for original application less than $100 = 50% of the original fee
- Section 96(2) – where development does not involve erection of building, carrying out work or subdivision of lands & fee for original application less than $100 = 50% of the original fee

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**Development Services**

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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.
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- Section 96(2) – where development is for the erection of a dwelling with estimated construction of $100,000 or less = $150
- Section 96(2) – for any other development application = 50% of original fee

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 type of modification sought (see fees for Sections 96(1), 96(1A) and 96(2) listed above).