

22 May 2019
Ref No: 2672-1059

The Secretary
Department of Planning and Environment
PO Box 39
SYDNEY NSW 2001

Attention: Secretary of Department of Planning and Environment

Dear Sir/Madam

**Section 4.55(1A) - Modification Application to Development Consent SSD 9103
– Construction of the New Macksville Hospital**

This is a Modification Report supports the application submitted by Health Infrastructure NSW (HI) pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent SSD 9103 which approved the construction of the new Macksville Hospital.

1. Introduction

This Section 4.55(1A) application seeks to modify Development Consent SSD 9103 to reflect proposed lowering of hospital building heights (as reduced levels (RL) in metres AHD). It includes an assessment of the proposed reduced building height RL in terms of the matters for consideration as listed under section 4.55(1A) and section 4.15 of the EP&A Act. This application is accompanied by:

- A copy of the Notice of Determination for SSD 9103 (**Attachment A**); and
- Revised Architectural Plan set (**Attachment B**).

2. Background

State Significant Development Consent (SSD 9103) (**Attachment A**) was granted on 29 March 2019 by the NSW Department of Planning and Environment. The approved development comprises the construction of the New Macksville Hospital including:

- A new three-storey building, including a semi-basement level, comprising an emergency department, various inpatient units, a perioperative unit, community health services, associated administration spaces and back of house services.
- A large new at-grade carpark.
- A loading dock associated with the basement level.
- Landscaping, civil infrastructure and plant.

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The development approved under SSD 9103 involves relatively minor earthworks with the majority of earthworks (and other early works) approved by Nambucca Shire Council under Development Application 2018/076, issued under Section 4.18(1)(a) of the EP&A 1979.

The earthworks, including benching of the site in readiness for the establishment of the new Macksville Hospital were completed in early 2019 and the site was handed over to NSW Health. It was subsequently identified that the building pad had been constructed approximately 250 mm below the design level indicated in the plans (as RLs relative to AHD) that were submitted with the EIS and subsequently approved by SSD 9103.

This Section 4.55(1A) application therefore seeks to modify SSD 9103 by modifying the approved plans so that they reflect the lower levels (RLs) for the building pad and therefore lower RLs for the hospital building heights (i.e. 250 mm below those indicated in the plans submitted with the EIS and subsequently approved under SSD 9103). It is noted that the maximum height of the building relative to the ground level will not change as a result of the proposed changes to the plans. It is also noted that the lower RLs across the building pad do not result in any issues in terms of constructability of the approved development.

The Section 4.55(1A) modification application also provides an assessment of the environmental impact resulting from the proposed modification against relevant provisions in Section 4.55(1A) and the relevant matters for consideration under Section 4.15 of the EP&A Act.

3. Proposed Modification

Revised plans reflecting the proposed changes in building heights (RLs) are provided in **Attachment B**. As identified in the revised plans, the building is to be constructed as per the original design approved under SSD 9103 (i.e. across one and two storeys, with a basement level) however it is proposed to reduce the overall height of the hospital building by 250 mm to account for the lower RL of the building pad (i.e. 250 mm below what was indicated in the plans assessed via the EIS and subsequently approved under SSD 9103). Therefore, the proposed modification reduces the roof of the building from 27,850 mm (RL) (approved under SSD 9103) to approximately 27,600 mm (RL). It is noted that the maximum height (roof peak) of the building relative to the ground level will not change and will remain at approximately 9.94 m above ground level.

3.1 Modification to Condition A2

To facilitate the proposed design modifications outlined above, it is proposed to amend Condition A2 of SSD 9103 to read as follows (red text to replace strike-through text):

Terms of Consent

- A2. The development may only be carried out:
- (a) in compliance with the conditions of this consent;
 - (b) in accordance with all written directions of the Planning Secretary;
 - (c) generally in accordance with the EIS, Response to Submissions and Supplementary Response to Submissions;
 - (d) in accordance with the approved plans in the table below:

Architectural Plans prepared by STH

Dwg No.	Rev	Name of Plan	Date
MH-AR-SSD-002 MH-AR-DWG-10-001	A- 2	Site Plan	27/09/2018 03/05/2019
MH-AR-SSD-005 MH-AR-DWG-20-001	A- 2	Overall Floor Plan - Lower Ground Plan	27/09/2018 03/05/2019
MH-AR-SSD-006 MH-AR-DWG-20-002	A- 2	Overall Floor Plan - Ground Level Plan	27/09/2018 03/05/2019
MH-AR-SSD-007 MH-AR-DWG-20-003	A- 2	Overall Floor Plan - Level 01 Plan	27/09/2018 03/05/2019
MH-AR-SSD-008 MH-AR-DWG-20-004	A- 2	Overall Roof Plan	27/09/2018 03/05/2019
MH-AR-DWG-22-000	2	Floor Plan – Lower Ground Back of House	03/05/2019
MH-AR-DWG-22-001	2	Floor Plan – Ground Level Community Health	03/05/2019
MH-AR-DWG-22-002	2	Floor Plan – Ground Level Maternity / Emergency	03/05/2019
MH-AR-DWG-22-003	2	Floor Plan – Ground Level Inpatient Units	03/05/2019
MH-AR-DWG-22-004	2	Floor Plan – Level 01 Central Administration	03/05/2019
MH-AR-DWG-22-005	2	Floor Plan – Level 01 Perioperative	03/05/2019
MH-AR-DWG-22-005	2	Floor Plan – Car Park	03/05/2019
MH-AR-SSD-009	A- B	Sections Sheet 1	27/09/2018 09/05/2019
MH-AR-SSD-010	A- B	Sections Sheet 2	27/09/2018 09/05/2019
MH-AR-SSD-011 MH-AR-DWG-50-001	A- 3	Elevations Sheet 1	27/09/2018 03/05/2019
MH-AR-SSD-012 MH-AR-DWG-50-002	A- 3	Elevations Sheet 2	27/09/2018 03/05/2019
MH-AR-SSD-015	A- B	Section Details Sheet 1	27/09/2018 09/05/2019
MH-AR-SSD-016	A- B	Section Details Sheet 2	27/09/2018 09/05/2019
MH-AR-SSD-017	A- B	Section Details Sheet 3	27/09/2018 09/05/2019
MH-AR-DWG-10-002	E	Location Plan	15/02/2019

No other conditions are required to be amended to facilitate the proposed modification.



4. Environmental Assessment

4.1 Consistency with Planning Framework

The proposed modifications are consistent with the applicable planning framework and do not alter the previous assessment of the development against the following:

- Environmental Planning and Assessment Act 1979 (EP&A Act)
- Environmental Planning and Assessment Regulation 2000 (EP&A Regulations)
- Protection of the Environment Operations Act 1997 (POEO Act)
- State Environmental Planning Policy No. 33 – Hazardous and Offensive Development 2011
- State Environmental Planning Policy No. 44 – Koala Habitat
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 64 – Advertising and Signage
- State Environmental Planning Policy (Coastal Management) 2007 (Coastal Management SEPP)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
- State Environmental Planning Policy (State & Regional Development) 2011
- Heritage Act 1977
- National Parks and Wildlife Act 1974 (NP Act)
- Fisheries Management Act 1994
- Biodiversity Conservation Act (1994)
- (Cth) Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)
- Nambucca Local Environmental Plan 2010 (LEP).

4.2 Impact on the Environment

The EIS submitted with the original application assessed the potential impacts of the overall development with regard to the following key planning issues:

- Compliance with relevant strategic and statutory (and non-statutory) plans and policies
- Permissibility
- Vegetation and Biodiversity
- Urban Design and Built Form
- Environmental Amenity
- Visual Impact and Amenity
- Crime Prevention through Environmental Design Principles
- Traffic, Access and Parking
- Ecologically Sustainable Development (ESD)
- Aboriginal Heritage
- Non-Aboriginal Heritage
- Noise and Vibration
- Soils
- Services and Utilities
- Bush Fire Assessment
- Flooding
- Drainage, Stormwater and Water Sources
- Waste
- Mosquito Impact Assessment
- Building Code of Australia
- Structural Design

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- Access for People with Disabilities
 - Construction Management Plan
 - Socio-economic
 - Cumulative Impacts.

The environmental assessment of the proposed modified development remains generally unchanged with respect to the above matters. However, the following matters warrant further assessment.

4.2.1 Urban Design and Built Form

The EIS and Response to Submissions (RtS) report indicated that the massing, design and articulation of the hospital building was sufficiently prominent to identify the building as a hospital and respond to clinical needs and functionality, whilst also respecting and being sympathetic to the low-density scale (being a maximum of two storeys in height above existing ground level) of surrounding development and the broader rural setting. The proposed modification will result in a minor reduction of overall height of buildings and is considered unlikely to result in a significant change to the assessment of the urban design and built form provided in the EIS.

4.2.2 Environmental Amenity

The EIS and RtS concluded that the development is unlikely to impact on environmental amenity of the site as the site is large and reasonably distant from other existing land uses, with an adequate separation from residences to help avoid and minimise amenity impacts. The proposed modification will result in a minor reduction of overall height of buildings and is considered unlikely to result in a significant change to the environmental amenity assessment provided in the EIS.

4.2.3 Visual Impact and Amenity

The EIS and RtS noted that development will result in a substantial visual change to the site and be visible in the surrounding landscape and intersect selective viewpoints, including those from dwellings but that the development would not create a significant deleterious visual impact on the amenity of the locality or affected receivers and is acceptable. The proposed modification will result in a minor reduction of overall height of buildings and is considered unlikely to result in a significant change to the visual impact and amenity assessment provided in the EIS.

4.2.4 Flooding

The flood levels near the site are:

- 100-year = 3.08 m AHD
- Probable Maximum Flood (PMF) = 8.65 m AHD.

The proposed development site has been strategically located to be above the PMF given the critical nature of a hospital facility. Taking into account the reduced ground level at the site, the subject development footprint still occurs on land above the PMF, hence all floor levels (including the basement level at RL 14.50 m) would also still be above the PMF level. The proposed modification does not change the hospital building and associated facilities susceptibility to flooding.

4.3 Section 4.55 - Modification of Consents - Generally

The proposal seeks to modify SSD 9103 pursuant to Section 4.55(1A) of the EP&A Act. The proposed modification is minor in nature and seeks to lower the building heights of the approved development by 250 mm.

This modification does not alter the design intent of the approved development and is considered to be of minimal environmental impact. As such, the proposal is to be considered to fall within the provisions of Section 4.55(1A) of the EP&A Act, with an assessment against the provisions of Section 4.55(1A) provided below.

Subsection 1A(a)

“(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,”

Comment: Refer to the environmental assessment in **Section 4.2**. The environmental impacts of the proposed modification are minimal. The proposed modification will not result in any significant change to the perceived bulk and scale of the development, the appearance of the building, visual or environmental amenity, the susceptibility of the buildings to flooding nor any other environmental impacts.

Subsection 1A(b)

(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,

Subsection 1A(c)

(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,”*

Comment: The proposed amendments are considered to be minor in nature and will not result in any significant amenity impact to surrounding properties. It is considered that the Minister of Planning will not need to notify this application.

The proposed reduction of building heights, whether considered individually or as a whole, will not substantially alter the essence of the approved development. The proposed development is substantially the same as the approved in that:

- It retains the same use as the approved development, providing for a health services facility on a site zoned Special Uses 2 – Health Services Facility (SP2)

- The proposed modifications are within the approved building envelope, and result in only a minor reduction in the height and therefore will not adversely alter the bulk, mass or scale of the development
- The public benefits delivered by the development in the form of facilities and amenity will continue to be provided
- The environmental impacts are the same as the approved development.

The proposed modifications will result in a development which is substantially the same as the approved development.

Subsection 1A(d)

(d) It has considered any submission made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment: It is anticipated that no submissions will be received as the application will not require notification.

Subsection 3

“(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 4.15(1) as are of relevance to the development of the subject application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.”

Comment: According to Section 4.55(3), the consent authority must take into consideration the relevant matters under Section 4.15(1) of the EP&A Act. The matters for consideration under Section 4.15(1) of the EP&A Act are addressed in **Table 4-1** below.

Table 4-1 Assessment matters under Section 4.15(1) of the EP&A Act

Section 4.15 ‘Matters for Consideration’	Compliance	Comment
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	Yes	As detailed in Section 4.1 of this letter, the proposed modifications are consistent with the applicable planning framework and do not alter the previous assessment of the development against the applicable environmental planning instruments.
Section 4.15(1)(a)(ii) – Provisions of 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	NA	There are no proposed instruments applicable to the site.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	NA	Clause 11 of State Environmental Planning Policy (State and Regional Development) 2011 states that development control plans do not apply to State Significant Development.

Section 4.15 'Matters for Consideration'	Compliance	Comment
Section 4.15(1)(a)(iia) – Provisions of any planning agreement that has been entered into under section 7.4 , or any draft planning agreement that a developer has offered to enter into under section 7.4, and		There are no planning agreements applicable to the proposed development.
Section 4.15(1)(a)(iv) – Provisions of the regulations		The proposed modification is consistent with the EP&A Regulations.
Section 4.15(1)(b) – The likely impacts of the proposed development , including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,		The proposed development is not expected to have any significant environmental impacts beyond what has been anticipated under SSD 9103. The proposed modifications will not result in any additional impact relating to the perceived bulk and scale of the development, the appearance of the building, visual or environmental amenity, the susceptibility of the buildings to flooding nor any other environmental impacts.
Section 4.15(1)(c) – Suitability of the site for the development		The EIS concluded that the site is suitable for the purpose of a hospital. The proposed modification does not affect the suitability of the site for the development.
Section 4.15(1)(d) – Any submissions made in accordance with this Act or the regulations,		The proposed modification of the development has no significant influence on any submissions made during exhibition of SSD 9103.
Section 4.15(1)(e) – The public interest		The proposed changes in RL for the hospital building heights will not change the assessment within the EIS which indicated that the SSD is in the public interest. The proposal will not result in any detrimental environmental impact, is consistent with the original intent of the approved SSD 9103 and maintains consistency with the applicable plans and policies.

5. Conclusion

This application has been prepared by GeoLINK on behalf of HI to modify SSD 9103 pursuant to Section 4.55(1A) of the EP&A Act. The purpose of this modification is to lower the approved RL heights of the hospital building so as to reflect a lower finished ground level of the building pad

The proposed modification does not alter the environmental impacts assessed and approved as part of the existing development consent. The application does not include modification to any other aspect of development (SSD 9103) and therefore is the same development as the development for which the consent was originally granted.



In accordance with Section 4.55(1A) of the EP&A Act, the Minister or delegate may modify the consent as:

- The consent, as proposed to be modified, is the same development as that originally approved; and
- The proposed modification will not result in environmental impact.

Yours sincerely

GeoLINK



Simon Waterworth

Director / Town Planner

Attach: A copy of the Notice of Determination for SSD 9103 (**Attachment A**)
Revised Architectural Plan set (**Attachment B**)