



**SECTION 96(1A) MODIFICATION APPLICATION
ASSESSMENT REPORT**

**AMENDMENT TO CONDITION RELATING TO
ENERGY STAR RATING**

157-163 CLEVELAND STREET, REDFERN

SSD-4949-2011 MOD 5



Modification of consent under section 96(1A) of the
Environmental Planning and Assessment Act 1979

September 2013

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Cover photo: photomontage of northwest elevation (Source: Applicant's EIS)

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1. INTRODUCTION

The purpose of this report is to assess a request to modify Development Consent (SSD-4949-2011) for the redevelopment of 157-163 Cleveland Street, Redfern for student accommodation under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (the Act). The application seeks to amend condition E4 relating to Energy Star Ratings.

1.1 Site and locality

The site known as 157-163 Cleveland Street, Redfern, fronts Cleveland Street and is bounded by Abercrombie Street to the west, Hart Street to the east and Hudson Street to the south (**Figure 1**). The site is located south-west of the Sydney Central Business District, within short walking distance of both Redfern and Central Railway Stations. The site is also within close proximity to several tertiary educational establishments including Sydney University, UTS and Notre Dame University.

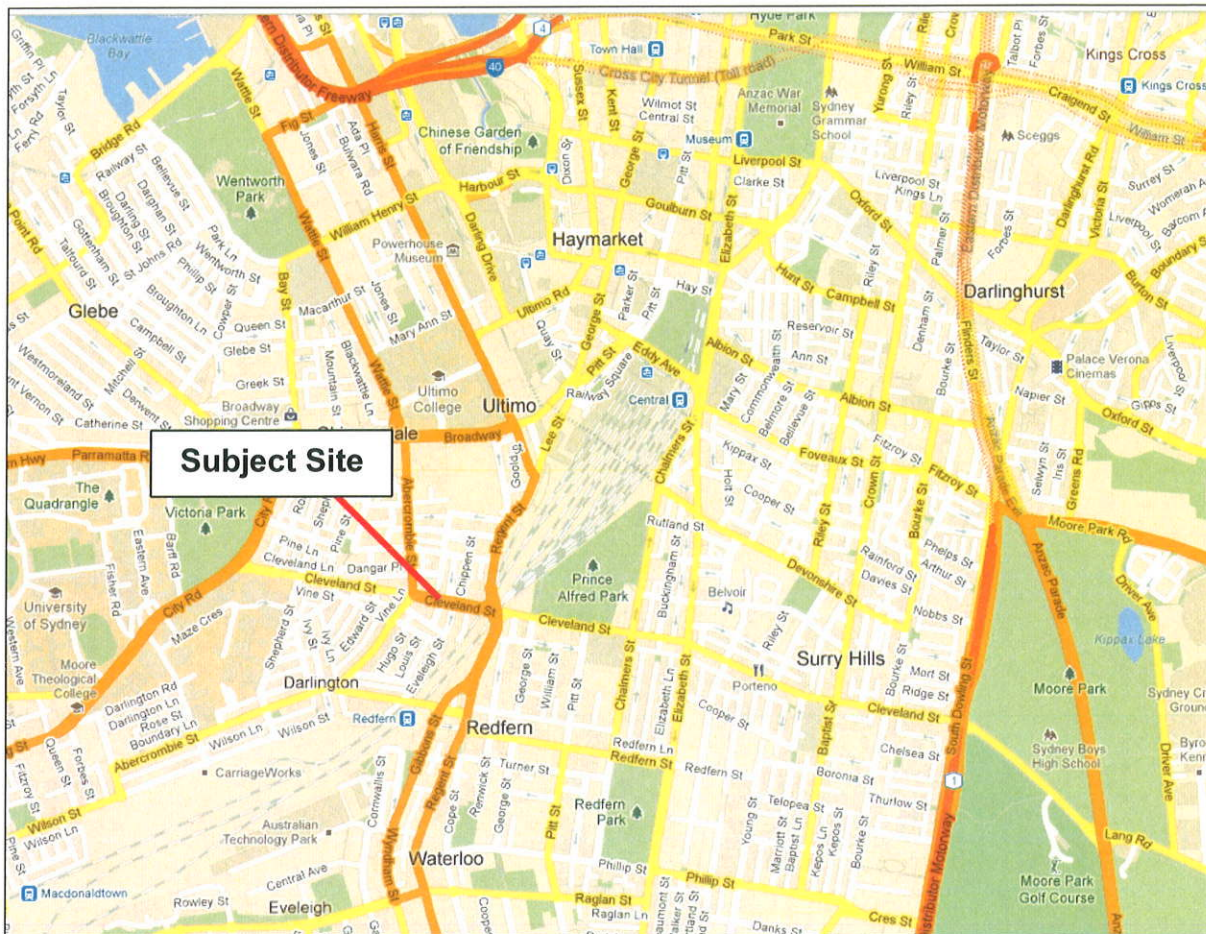


Figure 1: Project Location (Source: Google Maps)

The site has an area of 3,360m² and occupies the whole street block. It has a 77 metre frontage to Cleveland Street and a fall of approximately 2.4 metres from west to east. The whole of the site is currently occupied by existing buildings, consisting of a warehouse building on the eastern part of the site. Built in 1938, the warehouse (originally two factories) appears as a part 1/part 2 storey building to Cleveland Street and comprises one space. A modern three storey retail and residential building fronts the intersection of Cleveland and Abercrombie Streets, consisting of ground floor retail and eight residential units that are currently occupied on a rolling short term lease. The existing site layout is illustrated in **Figure 2**.



Figure 2: Existing Site Layout (source: Applicant's EIS)

1.2 Background

On 16 May 2012, the Director General of the Department of Planning and Infrastructure, as delegate for the Minister for Planning and Infrastructure approved SSD-4949-2011 for the redevelopment of the site for student accommodation including:

- construction of part 2/ part 5 storey building and partial retention of existing facades to Cleveland and Hart Streets;
- total GFA of 10,080 m²;
- 404 bedrooms with capacity for up to 461 students;
- provision of communal facilities including reception/lobby, administration room, meeting room, internet/study area, TV/games room, laundry room and communal kitchen;
- landscaped central courtyard; and
- site identification signs to Cleveland Street and Hudson Street.

1.3 Previous Modifications

On 9 August 2012, the A/Director, Metropolitan and Regional Projects South approved a Modification Application (**MOD 1**) to amend Condition A4 to defer the requirement to pay the Section 94F Affordable Housing contributions until prior to the Occupation Certificate being obtained.

On 19 October 2012, the Director, Metropolitan and Regional Projects South approved a Modification Application (**MOD 2**) to amend Conditions E4 and D9 relating to green star rating and hours of work; amendments to Conditions B3 related to additional details for external signage to Cleveland and Hudson Streets, materials and finishes and a new condition A7 relating to external signage.

On 31 January 2013, the Director, Metropolitan and Regional Projects South approved a Modification Application (**MOD 3**) to amend condition D2 (b) relating to Aboriginal and European Archaeology, and for demolition and reinstatement of the Hart Street elevation.

On 14 August 2013, the Director of Industry, Social Projects and Key Sites approved a Modification Application (**MOD 4**) to reduce the number of student beds, modify the internal layout of the middle wing, fenestration changes in the central wing and increase the size of the awning at Cleveland and Abercrombie Street.

2. PROPOSED MODIFICATION

On 22 August 2013, Urbanest Pty Ltd lodged a modification application under Section 96 (1A) of the Act to modify SSD-4949-2011. The applicant seeks to modify the Green Star rating condition to enable consideration under a Custom Tool which has been developed in consultation with the Green Building Council of Australia. The development of the custom tool was as a consequence of the inability to use the existing Green Star Multi Unit Residential Tool, which is for conventional residential development, not student accommodation.

Further details of the proposed modifications are provided in **Appendix A**.

3. STATUTORY CONTEXT

3.1 Modification of approval

Section 96(1A) of the Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications which seek modifications to approvals:

That the proposed modification is of minimal environmental impact.

The department is satisfied that the proposed modification will have minimal environmental impact (see assessment in **Section 5** of this report).

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).

The proposed amendment to the condition ensures that the proposal (as modified) is substantially the same development as approved.

It has notified the application in accordance with the regulations.

Refer to Section 4 of this report.

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.

No public submissions were received in relation to the modification request and Council has confirmed it has no comment.

3.2 Environmental Planning Instruments

State Environmental Planning Policy (State & Regional Development) 2011

The original project approval was State Significant Development under Clause 2 of Schedule 2 of State Environmental Planning Policy (State and Regional Development) 2011 as the site falls within the area defined as the Redfern-Waterloo site and has a capital investment value in excess of \$10 million.

State Environmental Planning Policy (Major Development) 2005

The site is zoned Business Zone - Mixed Use by the State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP). The approved student accommodation use is permissible within the zone.

3.3 Delegation

The original application was determined under the delegation of the Minister of Planning and Infrastructure; therefore, the Minister remains the consent authority for any subsequent applications to modify the consent. Under the instrument of delegation dated 14 September 2011, the Minister delegated his functions under Section 96 (1A) of the Act to the Directors in the Major Projects Assessment Division where:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections.

It is noted that:

- City of Sydney Council has confirmed it has no comments to make on the proposal;
- no reportable political donation has been declared in relation to the original application or any subsequent modification request; and
- no public submissions were received.

In accordance with the Minister's delegation, the Director, Industry, Social Projects and Key Sites may determine this project under delegated authority.

4. CONSULTATION

The application was notified in accordance with the *Environmental Planning & Assessment Regulation 2000*. The modification request was made available on the Department's website and referred to the City of Sydney Council for comment. Due to the nature of the proposed modification, the modification request was not exhibited by any other means.

City of Sydney Council

Council has confirmed that it has no comments to make in regards to the proposal.

Public Submissions

No public submissions were received in relation to the modification request.

5. CONSIDERATION OF PROPOSED MODIFICATIONS

The applicant seeks to modify the Green Star rating condition to enable consideration under a custom tool which has been developed in consultation with the Green Building Council of Australia (GBCA). Condition E4 is to be modified as follows:

E4 Energy Star Ratings

A Green Star Custom tool is to be developed for Urbanest student accommodation developments with the Green Building Council of Australia.

Documentation **A report** is to be provided to the Certifying Authority (with a copy supplied to the Department) ~~by a suitably qualified consultant, indicating that the development achieves a minimum performance standard equivalent to a "Design" 4 Star Green Star rating.~~
indicating:

- (a) that the development has targeted a 4 star Green Star Custom Tool design rating; and
- (b) that the constructed development has addressed the targeted Green Star Credits.

This report is to be prepared by a Green Star Accredited Professional and will comprise a summary of targeted Green Star points; associated environmental initiatives; and their implementation.

~~Documentation that a 4 Star Green Star equivalent rating has been achieved is to be provided to the Certifying Authority prior to the issue of an Occupation Certificate.~~

~~An application for a minimum 4 Star Green Star "As Built" shall be made to the Green Building Council of Australia (GBCA). The submission shall target a 10% point buffer over the required 45 point threshold necessary to achieve a 4 Star rating. Certification of the minimum 4 Star Green Star "As Built" accreditation from the GBCA shall be provided to the Department within 2 years of the issue of the final Occupation Certificate.~~

~~In the event that the development does not achieve the necessary 45 points required by the GBCA to gain "As Built" 4 Star Green Star certification, the applicant shall provide the Green Star Round 2 assessment results issued by the GBCA to the Department, which provides an explanation of why the targeted points were not accepted by the GBCA.~~

The amendment to the condition follows consideration by the applicant as to how to achieve the originally approved requirements for a 4 star Green Star Design and As Built certifications. Initial consultation following approval of the SSD application with the GBCA resolved that the approved use of the building for student accommodation could not be considered under the Green Star Multi Unit Residential Tool (MURT) v1 2009.

Following this advice, the applicant began the process of developing a custom tool to achieve the required Green Star ratings for student accommodation premises. During this process, the applicant sought a modification to the existing requirements. On 19 October 2012, the department approved a modification to Condition E4 to enable:

- documentation to be submitted to demonstrate that a rating equivalent to a 4 star Green Star Design Rating had been achieved;
- assessment of a Green Star As Built submission targeting 45 points plus a 10% buffer; and
- the applicant to submit details of the application and the GBCA's findings of the failed application to the department for consideration.

The approval of this previous modification enabled the applicant to continue to develop the custom tool with the GBCA. GBCA has confirmed that a custom tool is nearing completion. The applicant has advised that it is unclear whether the building will achieve the required 4 star rating due to parameters set within the custom tool. As a consequence, the applicant proposes to modify the requirements of condition E4 to enable the applicant to demonstrate how the proposal has targeted a 4 star Green Star rating and how the constructed development has addressed the required Green Star credits.

The department notes that this is not as stringent as requiring the proposal to achieve a 4 star Green Star rating, however following the development of custom tool, achievement of a 4 star Green Star rating may not be reached.

Notwithstanding the above, the department is satisfied that the applicant is committed to achieving sustainability measures within the approved development and has endeavoured to demonstrate this through the development of the custom tool. The process undertaken to reach the implementation of the custom tool is as a consequence of the inability to use previously available rating tools.

It is considered that the proposed modification be supported as it will enable certification of the building under a custom tool which has been developed in coordination with the GBCA.

6. CONCLUSION

The department considers that the proposed modification is consistent with the originally approved project application (SSD-4949-2011). The development of a custom tool for student accommodation use of the building, demonstrates that the applicant is committed to achieving required sustainability performance for the building.

The modification application has been assessed in accordance with the matters for consideration under section 96 (1A) and 79C of the Act, and all relevant environmental planning instruments, and is considered to comply with all relevant items, subject to conditions.

It is recommended that the modification application be approved as proposed.

7. RECOMMENDATION

It is recommended that the Director, Industry, Social Projects and Key Sites:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the modification under delegated authority, subject to conditions; and
- (c) **sign** the attached Instrument of Modification for SSD-4949-2011 MOD 5.

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Approved by:



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APPENDIX A MODIFICATION REQUEST

See the department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6105

APPENDIX B SUBMISSIONS

See the department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6105

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT
