



DW/EA
14653
14 February 2017

Carolyn McNally
Secretary
NSW Department of Planning and Environment
320 Pitt Street
Sydney NSW 2000

Dear Carolyn

**SSD 7588 - SECTION 96(1A) APPLICATION
10 HERBERT STREET, ST LEONARDS**

On behalf of Ramsay Health Care (RHC) we hereby submit an application pursuant to section 96(1A) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) to modify Development Consent SSD 7588 relating to 10 Herbert Street, St Leonards.

The modification relates to the modification of Condition C21 and deletion of Condition E10 both of which relate to Green Star Certification.

This application identifies the consent and describes the proposed modifications and is accompanied by:

- Notice of Determination SSD 7588 (**Attachment A**);
- Sustainability Strategy prepared by Coulstock Consulting dated 15 February 2017 (**Attachment B**)
- Letter from Ramsay Health Care dated 15 February 2017 (**Attachment C**);
- Email from DPE dated 7 February 2017 (**Attachment D**).

1.0 BACKGROUND

1.1 CONSENT PROPOSED TO BE MODIFIED

Development consent for SSD 7588 was granted by the NSW Department of Planning and Environment on 15 November 2016 for the construction of an eight-storey mental health services facility.

Ramsay Health Care are relocating an existing mental health care facility in Greenwich to a purpose built modern facility at 2 Frederick Street, St Leonards (formerly 10 Herbert Street St Leonards). The development is currently under construction. The site is approximately 200 metres north of North Shore Private Hospital and 625 metres north of St Leonards Railway Station.

This Section 96(1A) application represents the only modification sought to date for the approved SSD application and relates only to the modification of one condition and the deletion of another condition relating to Green Star Certification. As such, no amendments to the plans are sought as part of this application.

2.0 PROPOSED MODIFICATIONS TO CONSENT

The application relates to the modification of Condition C21 and the deletion of Condition E10. These are conditions read as follows:

Green Star Certification – Construction

C21. The Applicant is to demonstrate environmentally sustainable development practices during construction and ensure the proposal meets sustainability benchmarks by obtaining a Green Star Certification (Design & As Built) from the Green Building Council of Australia.

Green Star Certification – Operational

E10. The Applicant is to demonstrate environmentally sustainable development practices during operation of the facility and ensure the proposal meets sustainability benchmarks by obtaining a Green Star certification (Performance) from the Green Building Council of Australia.

Approval is therefore sought to modify the consent of SSD 7588 as follows: Note words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in ***bold italics***.

Green Star Certification – Construction

*C21. The Applicant is to demonstrate environmentally sustainable development practices during construction and ensure the proposal meets sustainability benchmarks provided ***in the Sustainability Strategy prepared by Coulstock Consulting dated 14 February 2017 through an independent customised certification process.*** ~~by obtaining a Green Star Certification (Design & As Built) from the Green Building Council of Australia.~~*

Reason for Amendment: The Sustainability Strategy prepared by Coulstock Consulting dated 14 February 2017 (**Attachment A**) provides the following rationale for the modification of this condition:

“There are very few health care buildings that have followed a formal Green Star certification pathway for their buildings and entered into an agreement with the Green Building Council of Australia (GBCA). Particularly, the certification process can add increased costs to projects that typically are severely budget restrained (money that could be spend on initiatives that improve the wellbeing of the patients within, or in the case of mental health harm minimisation design). Moreover, the buildings that are registered or have achieved a Green Star rating would have followed this pathway from feasibility stage of the design to ensure the initiatives can be designed into the facility from the start.

Due to functionality, mental health facilities have many restrictions that prevent a number of sustainability initiatives being achieved, especially to the strict requirements of credits within the Green Star certification process.....

With this in mind RHC are intent on demonstrating high levels of sustainability through a custom process for this Project. A process that will incorporate sustainability initiatives and ensure governance is upheld but at a reduced cost of certification to ensure the money is allocated to initiatives rather than the process.

It is the intent for this project to adapt the Green Star framework and to demonstrate compliance (functionality constraints considered) via and independent sustainability professional review process. Verification of the targeted initiatives will be achieved through a two-step process via an independent suitable qualified professional.

The process will incorporate a review of design and sign off that the initiatives are included; followed by a subsequent review of the final documentation at Practical Completion (PC), to ensure the initiatives have been embedded in the project.”

This condition is sought to be amended to enable The Northside Clinic to provide a more appropriate ESD framework, namely adapting the Green Star framework and demonstrate compliance (functionality constraints considered) via an independent sustainability professional review process.

~~Green Star Certification—Operational~~

~~E10. The Applicant is to demonstrate environmentally sustainable development practices during operation of the facility and ensure the proposal meets sustainability benchmarks by obtaining a Green Star certification (Performance) from the Green Building Council of Australia.~~

Reason for Amendment: The Sustainability Strategy prepared by Coulstock Consulting dated 14 February 2017 (**Attachment A**) provides the following rationale for the deletion of this condition:

“Whilst this tool is a positive direction for environmental benchmarking of buildings to understand their performance, we believe that this not in keeping with NSW Health Infrastructure’s own project requirements and is therefore unreasonable to impose on RHC for this project.

The NSW Health Engineering Services Guideline (ESG) 2016 was released on 26 August 2016. This guideline superseded TS11.

The ESG states that for healthcare buildings “All new facilities will target a Green Star Health Care 4 star equivalency rating, this has been and will continue to be considered as aspirational within the context of project location, scope and budgetary allowances, no documentation or certification is required”.

There is no mention of Green Star Performance tool as a requirement in the ESG.

Furthermore, the following is relevant in relation to the Green star performance tool:

- *This tool is still in a relatively early phase of its life. Whilst it is a formal tool in the market place the current version of this tool is v1.1. For example, Green Star Office Design tool arguably, only became sufficiently robust enough to remove the majority of issues in the v3 release.*
- *The total number of project registrations on the Green Building Council of Australia’s (GBCA’s) website for any form of Green star performance rating tools is 13. Four of these were under the pilot tool, seven of these under version 1 and only two under version 1.1.*
- *It appears that none of these registered projects were healthcare buildings, and most them are commercial office buildings.”*

In light of this advice, it is considered that compliance with Condition E10 is overly restrictive and burdensome for the health sector to operate under. The deletion of this condition would be consistent with many other SSD and S75W approvals in recent years as discussed in Section 4.0 of this report.

3.0 SUBSTANTIALLY THE SAME DEVELOPMENT

The power to amend a development consent is found in Section 96 of the Environmental Planning and Assessment Act 1979 (EP&A Act). Section 96 is an independent facilitative power that is separate to the granting of a development consent. The statutory requirements to be satisfied for the grant of consent to modify a development consent are set out in Section 96. These depend on whether or not the modification is made under subsection (1), (1A) or (2).

This modification application to development consent SSD 7588 is made under Section 96(1A) of the EP&A Act, as the modification is considered of minimal environmental impact.

Pursuant to Section 96(1A) of the EP&A Act, the Minister or his delegate may modify development consent if:

- (a) *it is satisfied that the proposed modification is of **minimal environmental impact (our emphasis)**, and*

- (b) *it is satisfied that the development to which the consent as modified relates is **substantially the same development (our emphasis)** as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (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*
- (d) *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.*

Pursuant to Section 96(1A)(a) the proposed modifications are considered of minimal environmental impact as they do not relate to the approved plans but rather to the amendment and deletion of Green Star Certification conditions of consent that are considered unsuitable to be applied to the approved development (ie a health care facility). The proposed modifications therefore would not give rise to a change in environmental impacts from the development approved in SSD 7588. In any event, an alternate ESD framework based on a 4 Star Green Star rating has been developed by Coulstock Consulting to meet and exceed health industry standards for ESD in design.

Pursuant to Section 96(1A)(b) the proposed modifications are considered substantially the same development as that originally approved in that:

- There is no external or internal architectural change to the approved 8 storey mental health facility, which is currently under construction and will provide once completed:
- There is no change proposed to the architectural qualities and materials of the facility; and
- There is no change proposed to the services provided to meet the needs of patients, staff and visitors.

All key elements of the approved development remain, resulting in a development that is substantially the same. The modifications sought are simply to modify and delete two conditions of consent (C21 and E10 respectively) that relate to Green Star Certification that are considered inappropriate to be applied to a health care facility. Particularly so when applied as a condition of consent given the fundamental design and operational changes that would be required to meet Green Star Certification, many of which are in not suited to a mental health facility.

We note that in an email dated 7 February 2017 DPE confirmed that it would consider the application to modify and delete the Green Star conditions of SSD 7588 under Section 96(1A) (Attachment D).

4.0 OTHER HEALTH CARE FACILITY/HOSPITAL CONSENTS

Within the health services sector Green Star Certification is not an industry standard given the unique design and operational requirements of these facilities. This has been demonstrated from recent SSD applications and s75W Modification applications where DPE has either approved SSD and s75W applications in the public and private health sector without requiring Green Star Certification (SSD 7714 & SSD 6980), or requiring Green Star Certification only to have these conditions modified to “target” a Green Star rating (MP10_0091 MOD 1 & MP10_0050 MOD 2).

It is also noted, that given the unique operational requirements for health care facilities, as opposed to other commercial buildings, meeting an ESD rating framework for the operation of the facility is considered onerous and has not to our knowledge previously been imposed as a condition of consent. **Table 1** identifies such developments:

Table 1 – recently approved applications for health care facilities/hospitals

SSDA/Part 3A No.	Description	Date of Determination	ESD Requirement
7714	Blacktown Hospital Stage 2	16 December 2016	<p>Condition B7 – <i>“The applicant must incorporate all feasible ecological sustainable development initiatives in the final design including, but not restricted to, measures identified in documents listed in Condition A2.”</i></p> <p>Condition above just related to ESD design. No other ESD conditions were imposed.</p>
MP10_0091 MOD 1	Sydney South West Private Hospital Modification of consent (Section 75W)	26 May 2016	<p>Condition F7 – <i>“The project shall target a 4 star Green Star design rating and shall implement all operational and design measures outlined the EA.”</i></p> <p>DPE accepted in its assessment of the s75W that meeting 4 star Green Star rating were onerous and the ESD initiatives to “target” a 4 star Green Star” rating proposed by the proponent for design and operation were accepted.</p>
6980	Brookvale Community Health Care Centre	28 April 2016	<p>No specific ESD/Green Star conditions imposed. The EIS prepared by SMEC was approved and DPEs assessment report stated in relation to ESD:</p> <p><i>“The development incorporates the following sustainability initiatives:</i></p> <ul style="list-style-type: none"> <i>• facade shading to minimise solar heat gain, and reduce energy requirements for air conditioning;</i> <i>• reduced reliance on artificial lighting by maximising natural light in habitable spaces;</i> <i>• air conditioning and lighting to be controlled and shut down after hours by an automatic Building Management System; and</i> <i>• energy efficient sensor light fittings. The Department is satisfied that the proposed sustainability initiatives would encourage ESD, in accordance with the objects of the EP&A Act.”</i>
MP10_0050 MOD 2	Westmead Millennium Institute and Westmead Research Hub Modification to Consent (Section 75W)	14 December 2013	<p>Condition D7 – <i>“The project shall target a 4 star Green Star design rating and the proponent shall further investigate the ESD measures and initiatives outlined with the EA and relevant modification applications.”</i></p> <p>DPE accepted in its assessment of the s75W that meeting 4 star Green Star rating were onerous and the ESD initiatives to “target” a 4 star Green Star” rating proposed by the proponent for design. No ESD condition was imposed relating to operation.</p>

4.1 NO REQUIREMENT FOR GREEN STAR CERTIFICATION

There is no requirement for a Green Star Certification to be achieved in any statutory instrument, planning policy, development control plan, guidelines or SEARs relevant to the site and approved development. Indeed, the Environmental Assessment Report prepared by DPE and dated November 2016 concludes the following under Section 2.6 Ecologically Sustainable Development:

“The proposal is considered to be consistent with ESD principles as described in Section 5.6.1 of the EIS, which has been prepared in accordance with the requirements of Schedule 2 of the EP&A Regulation.”

The Secretary’s Environmental Assessment Requirements dated 5 May 2016 provides the following in respect to ESD:

6. Ecologically Sustainable Development (ESD)

- Detail how ESD principles (as defined in clause 7(4) of Schedule 2 of the Environmental Planning and Assessment Regulation 2000) will be incorporated in the design and ongoing operation phases of the development.
- Demonstrate that the development has been assessed against a suitably accredited rating scheme to meet industry best practice.
- Include a description of the measures that would be implemented to minimise consumption of resources, water (including water sensitive urban design) and energy.

The Environmental Assessment Report prepared by DPE and dated November 2016 concludes the following under Section 2.9 Secretary’s Environmental Assessment Requirements:

“The EIS is compliant with the Secretary’s Environmental Assessment Requirements (SEARs) and is sufficient to enable an adequate consideration and assessment of the proposal for determination purposes.”

Notwithstanding this, this Section 96(1A) application intends to provide DPE with a sustainability strategy for the approved development that adapts the Green Star framework and demonstrates compliance (functionality constraints considered) via an independent sustainability professional review process. The Sustainability Strategy prepared by Coulstock Consulting dated 14 February 2017 (**Attachment A**) states the following:

“Verification of the targeted initiatives will be achieved through a two-step process via an independent suitable qualified professional. The process will incorporate a review of design and sign off that the initiatives are included; followed by a subsequent review of the final documentation at Practical Completion (PC), to ensure the initiatives have been embedded in the project.”

It is noted that the conditions relating to Green Star Certification were responding to Part C.3 Sustainable Development of Willoughby DCP that provides the following:

C.3 Sustainable Development

- Minimise consumption of resources
- Facilitate energy efficient development and water conservation design

No requirement for Green Star Certification is provided in Part C.3 of Willoughby DCP, and even if it were, under Section 11 of SEPP (State and Regional Development) 2011 DCPs do not apply to SSD. This is acknowledged in the Environmental Assessment Report prepared by DPE and dated November 2016.

5.0 ENVIRONMENTAL ASSESSMENT

Section 96(3) of the EP&A Act requires the consent authority to take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

The following assessment takes into consideration the provisions of Section 79(C) (1) of the EP&A Act.

5.1 Compliance with relevant Planning Instruments, DCPs and Policies

The Environmental Impact Statement (EIS) submitted with the original SSD addressed the approved development's compliance against relevant environmental planning instruments, DCPs and policies. There is no requirement for a Green Star Certification to be achieved in any statutory instrument, planning policy, development control plan, guidelines or SEARs relevant to the site and approved development.

There is no requirement for a Green Star Certification to be achieved in any statutory instrument, planning policy, development control plan, guidelines or SEARs relevant to the site and approved development.

Notwithstanding this, this Section 96(1A) application intends to provide DPE with a sustainability strategy for the approved development that adapts the Green Star framework and demonstrates compliance (functionality constraints considered) via an independent sustainability professional review process.

5.2 Natural and Built Environment Impacts

There are expected to be no natural or built environmental impacts as a consequence of the proposed modifications sought to SSD 7588. The proposed modifications simply seek to modify and delete two conditions of consent (C21 and E10 respectively) that relate to Green Star Certification that are considered inappropriate to be applied to a health care facility. Particularly so when applied as a condition of consent given the fundamental design and operational changes that would be required to meet Green Star Certification, many of which are not suited to a mental health facility.

The alternate ESD framework based on a 4 Star Green Star rating has been developed by Coulstock Consulting to meet and exceed health industry standards for ESD in design.

5.3 Social and Economic Impacts

The benefits of Green Star certification are evident in commercial developments, but are not seen in the health sector. The cost of Green Star certification is offset in the commercial sector through increased marketability of development or rents. This is not equivalent for the health sector. The health sector operates specifically to the needs of patients, staff and visitors and therefore cannot meet the performance measures that Green Star imposes.

Additionally, the certification process is not feasible or reasonable for the health sector, as the funding is better geared towards more specific healthy building initiatives that are achievable for the industry. RHC acknowledges the importance of protecting the environment and as such Northside Clinic has incorporated sustainable initiatives throughout the construction and design, where 'Best Practice' outcomes will balance environmental gains and economic performance, as discussed in **Attachment B**.

Accordingly, the modifications sought to the SSD 7588 are not considered to give rise to any adverse social or economic impacts.

5.4 Public Interest

The proposal to modify and delete Condition C21 and Condition E10 respectively relating to Green Star Certification is considered to be entirely within the public interest as imposing Green Star Certification as a condition of consent has enormous ramifications for the design and function of health care facilities, particularly so mental health facilities that have unique requirements. As such, health care facilities typically

develop a custom ESD framework that is appropriate for the design of the building. In this instance, Coulstock Consulting has developed an ESD framework for the design of the building based upon a target of 40 initiatives of a 4 Star Green Star rating that are appropriate to a mental health care facility.

Requiring Green Star Certification at this stage, as required by the current SSD consent, will only serve to delay the construction by necessitating substantial design changes and impose onerous costs upon this important facility that will serve the pressing need in northern Sydney for acute mental health services. Accordingly, the modifications sought are considered within the public interest.

6.0 CONCLUSION

This Section 96(1A) seeks to modify Condition C21 and deletion of Condition E10 which relate to Green Star Certification. The proposed modifications will not alter the built form or design of the approved development, but will allow sustainable development and operation that is suited to the health sector.

In accordance with section 96(1A) of the EP&A Act, Council may modify the consent as:

- the proposed modification is of minimal environmental impact; and
- is substantially the same development as development for which the consent was granted.

We trust that this information is sufficient to enable a prompt assessment of the proposed modification request. Should you have any queries about this matter, please do not hesitate to contact me on (02) 9409 4904 or dwest@jbaurban.com.au.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Daniel West', with a stylized flourish extending to the right.

Daniel West
Principal Planner