

23 August 2012

**DETERMINATION OF CONCEPT PLAN APPLICATION MP10\_0076  
FOR A MIXED USE DEVELOPMENT  
AT 566-594 PRINCES HIGHWAY, KIRRAWEE ('KIRRAWEE BRICK PITS')**

**1. DELEGATION TO THE COMMISSION**

The above concept plan application lodged by Henroth Investments Pty Ltd (Henroth) has been referred to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation dated 14 September 2011, as more than 25 submissions were received and Sutherland Shire Council objected to the proposal.

The matter was received by the Commission on 3 July 2012.

The Commission constituted to determine the concept plan application consists of Donna Campbell (chair), Garry Payne AM and Abigail Goldberg.

**2. CONCEPT PLAN APPLICATION**

The concept plan application is for a mixed use development incorporating commercial, retail and residential uses, a public park and underground car parking, within a complex of two residential towers of 14 and 11 storeys and seven smaller buildings ranging in height from 3 to 7 storeys.

Following exhibition of the Environmental Assessment (EA) the proponent provided a response to the issues raised in submissions, and modified the scheme to that set out in the Preferred Project Report (PPR) incorporating the following elements:

- Commercial floor space of 860m<sup>2</sup>;
- Retail floor space of 14,370m<sup>2</sup>;
- Residential floor space of 45,505m<sup>2</sup>;
- Floor space ratio of 1.43:1;
- 1,150 car spaces (residential and non-residential); and
- Public park of 9,000m<sup>2</sup>.

**3. DEPARTMENT'S ASSESSMENT REPORT**

The Department exhibited the EA between 15 December 2010 and 11 February 2011. The Department received 197 submissions on the proposals, being six from public authorities and 191 from the general public. Of the 191 public submissions, 108 (57%) objected to the proposal while the remainder (43%) offered support or comment.

The Director-General's Environmental Assessment Report (the DG's report) considered the PPR scheme and the project's background, statutory context and submissions. The DG's report also provided an assessment of the project in relation to the following key issues:

- Strategic justification for additional retail floor space in Kirrawee;
- Economic impacts;
- Traffic, access and parking;
- Parkland, habitat conservation and lake water quality;

- Built form (height, density and design);
- Residential amenity;
- Other issues (open space, flora and fauna, s94 contributions and the Voluntary Planning Agreement (VPA)).

Following its assessment, the Department has recommended approval of the concept plan subject to a reduction in the total number of car spaces from 1,150 down to 1,033 of which 486 car spaces (including 54 visitor spaces) would be available for the residential component. The Department has also recommended other design modifications, terms of approval, and future environmental assessment requirements.

#### **4. SITE VISIT AND CONSULTATION**

Each Commission member carried out an unaccompanied site visit prior to the public meeting.

##### **4.1 Sutherland Shire Council**

The Commission met with Sutherland Shire Council (the Council) officers on 31 July 2012. At this meeting the Council confirmed its objection to the proposal on the following grounds:

- inconsistency with the site's planning controls;
- being contrary to centres strategic planning in the context of the Metro Plan and Sutherland Shire policies;
- opportunity cost of the proposed development on a large, unique site;
- the design is car-oriented and internalises the retail element resulting in a lack of connection to, and impact on the existing Kirrawee centre and shopping strip;
- defined trade area inaccurate and underestimates economic impacts on other centres including Sutherland;
- insufficient consultation, assessment and mitigation for impact of traffic increase on local roads, intersection changes, and loss of on-street parking (e.g. lack of analysis of AM peak impacts on the Northern Precinct, potential rat-running south of the Princes Highway, loss of on-street parking);
- the Sydney Turpentine Ironbark Forest (STIF) offsets can not be accommodated on a single site, but any offsets should also be within 10km of the site and of the same STIF as the site, with the Council recommending amendment to Schedule 3, Condition 10, if the concept plan is approved;
- stormwater and flooding impacts; and
- poor accessibility and way-finding.

The Council also advised on the status of the Voluntary Planning Agreement (VPA) for the public park.

##### **4.2 Proponent – Henroth Investments Pty Ltd**

The Commission met with the proponent on 31 July 2012, and the following was discussed:

- history of the site and of the proposal;
- design quality, development density and heights;
- potential retail uses;
- traffic impact analyses carried out and findings;
- reasoning and preference for increase in on-site residential parking;
- loss of on-street parking and its on-site accommodation;
- stormwater and flooding;
- application of strategic planning guidance for centres and Kirrawee/the site; and

- interrelationship between VPA and s94 contributions and status of the VPA with Sutherland Shire Council.

The Commission also met with the proponent on 7 August 2012 to discuss:

- how best to secure quality design;
- number and allocation of car spaces; and
- how best to secure the park for public use and provide for appropriate design and maintenance.

In response, the proponent submitted a letter dated 9 August with suggested conditions to address these issues.

### **4.3 Public Meeting**

At the public meeting held on 2 August 2012 at the Miranda RSL, 13 people spoke to the Commission on matters both for and against, with the key points summarised below.

#### ***Against:***

- the density, scale and height of development is out of keeping with the surroundings;
- prior site history including dismissed appeal with greater amount of retail floorspace;
- opportunity cost of what 'could' have been accommodated on the site including other land uses, or a truly landmark development (e.g. taller towers);
- need for quality design for the built form and landscaping;
- no support for any retail;
- excessive amount and nature of retail conflicting with Kirrawee and other centres (e.g. Jannali and Sutherland) impacting on economic viability of other centres and their ability to attract retailers;
- impact on economic viability of existing businesses, and economic impact assessment inaccurate (e.g. with regard to defined trade area, and impact of broader economic conditions);
- pre-emptive process results in uncertainty for residents, businesses and investors;
- role of supermarkets in anchoring town centres and other retailers, and if other supermarkets close due to competition from the site it would have a knock-on effect in other centres;
- inconsistent with and pre-emptive of strategic planning policies including centres policies and density/height controls;
- concern regarding the quality of design of the park; public access to the park; and on-going maintenance;
- traffic generation and intersection changes which would further increase traffic and safety concerns on already congested local and regional roads;
- inadequate consultation, including on impacts arising from proposed intersection changes;
- loss of already limited on-street parking, and the impact of this loss on locals, commuters, industrial and retail businesses;
- need to contain traffic on Princes Highway with good entry/egress and short queuing times, and also minimise potential for rat-running; and
- prefer retention of the previously proposed (now deleted) commuter parking element.

#### ***For:***

- provides much-needed housing stock and housing choice;
- in an accessible location close to public transport, shops and facilities;
- provides a public park for use by the local community in an area with limited public open space;

- provides local retail facilities convenient and accessible for the local community. In this regard, it is requested that the bus stops cater for community accessible buses and for the site to be accessible and cater for those with mobility limitations;
- the development will support the existing Kirrawee shops;
- increase in local employment opportunities;
- the redevelopment would result in new footpaths and improved pedestrian safety (e.g. new crossing in Flora Street);
- the existing brick pit is an eyesore and 'something' needs to happen;
- impact on surrounds is limited; and
- Kirrawee is being left behind and needs to put on the map.

## **5. COMMISSION'S COMMENTS**

The Commission has carefully considered the assessment in the DG's report, and written submissions and oral submissions made at the public meeting.

The key issues that emerged are whether Kirrawee is an appropriate location for the proposed retail use, the height and design of the development, securing the park for public use, and parking and traffic. These matters are therefore discussed in further detail below.

### **5.1. Retail Use**

Kirrawee Centre is identified as a 'Village Centre' in the Draft South Sub-Regional Strategy, and the existing Kirrawee shopping strip in itself would be consistent with this characterisation.

However, beyond the existing shopping strip is a broad range of industrial, commercial and residential (including low-rise residential flat buildings) land uses. The site is adjacent to the Princes Highway, which is a major road that has been identified as a renewal/economic corridor in the Draft South Sub-Regional Strategy. The Department's Draft Centres Policy also acknowledges the potential for lower-order centres to expand and take on a greater importance.

The site is highly accessible to Kirrawee Railway Station, and its size and location provides a unique opportunity for higher density redevelopment in this area. In the Commission's view, the proposed land uses and mix would be reasonable and mutually supportive, with limited potential impact, and provision of benefits for the surrounding business and residential community.

In reaching this view, the Commission has considered the 2009 Land & Environment Court decision concerning an earlier proposal for a mixed use redevelopment on the application site.

In that case, the proponent appealed against the Council's deemed refusal of the application. Whilst the Court found that there is clearly a need for further supermarkets in the region, it upheld the refusal noting that the key question is "whether Kirrawee is the appropriate location for such a large supermarket". The Court found that there had been insufficient economic impact assessment of the proposal to answer this question.

In response for the current application, the proponent commissioned Hill PDA to provide advice on opportunities for growth in Sutherland Shire centres and Kirrawee. The Department then commissioned Leyshon Consulting to conduct an independent review of Hill PDA's advice, and also to review submissions prepared on behalf of other retail landholders.

The consultants' shared conclusion was that there is an identified high demand for retail services in the local government area, and also that there is limited suitable land for major retail development (without allotment amalgamation). At the public meeting, the Commission heard general support from residents in the local community for a supermarket and other retail on the site, especially for those with mobility restrictions.

With regard to the economic impact of the proposal on Kirrawee itself and other town centres, Leyshon Consulting concluded that retail impacts are likely to be greater than identified by Hill PDA but are not of such a level as to warrant refusal of the proposal. The Commission accepts this finding.

Planning law does not permit the refusal of a proposal simply on the grounds that it constitutes competition to existing commercial interests, and the Commission's view is there would not be an overall adverse impact on the extent and adequacy of facilities and services available to the local community. In contrast, the proposal would provide a different offering to Kirrawee shops, and improve the range and size of retail services available to local residents and reduce their need to travel to access these services. The additional residential population from the proposal would also likely further increase patronage of the existing Kirrawee shops and the railway station.

## **5.2. Height and Design**

In written and oral submissions many in the local community expressed support for redevelopment of the site, but consider the proposal too high and too dense.

Through the Department's assessment process the height has been reduced, and the buildings narrowed. The end design centralises the higher buildings, and uses the level changes, stepped building heights, and angled and narrowed building footprints to reduce the visual impact of the buildings.

The Commission considers the height and layout of the development reasonable for a large infill site situated in a town centre near to a railway station and on the Princes Highway. The size of the site also means the height and layout would not unreasonably affect neighbours by way of loss of solar access or overlooking. Maximising building height also allows for greater setbacks, separation and ground level open space.

The proposed building height means the development will be visible, particularly from Princes Highway, and the future design quality is very important. A single quality architect would have the skills to provide a high quality design outcome across the site and numerous buildings, and the Commission has determined:

- to delete draft Schedule 2, Condition A13 which required three different architects to provide the final detailed design; and
- to insert Schedule 3, Condition 18 – Design Quality. This requires the demonstration of design excellence through substantive stages to the relevant approval body of future Part 4 applications.

## **5.3. Public Park**

There is widespread community support for the proposed 9,000m<sup>2</sup> park in the south-west corner of the site, and the Commission considers it will provide a significant community benefit.

The proponent's intention is to design and build the park to a reasonable standard agreed with the Council, and then upon completion transfer ownership of the park to the Council.

The Council has agreed that the provision of the public park would be in lieu of any Section 94 contributions.

The proponent and Council both advised the Commission they have been in discussions and a draft Voluntary Planning Agreement has been prepared in relation to the park.

The Council and Commission's primary concern is to ensure that the public park is provided for community use and designed and maintained to a good standard. To this end, the Commission has amended Schedule 2, Condition A11 to focus on provision of the park, and secure its design, public accessibility and the conservation of the Sydney Turpentine Ironbark Forest.

Schedule 3, Condition 5 requires s94 contributions to be confirmed at each detailed stage of the development, and it has been amended to clarify that the costs to the proponent in providing the public park are to be offset against the contributions that would otherwise be payable. The Commission was advised by both the proponent and the Council that the value of the provision of the park for the public will far exceed the section 94 contributions that would otherwise be payable.

In support of the Council's request, Schedule 3, Condition 10 has also been amended to secure the type and location preferably within 10km of the site of the new Sydney Turpentine Ironbark Forest plantings.

#### **5.4. Traffic and Parking**

##### ***Traffic***

Traffic impacts arising from the development exacerbating existing traffic issues was a key concern for the Council and the business and residential community.

The Commission accepts the DG's report findings that the traffic impact will not be unreasonable.

The proponent submitted a Traffic and Transport Assessment by Halcrow and a number of modifications to the modelling and traffic arrangements were also made during the assessment process. The DG's report assesses traffic impacts noting that the Roads and Maritime Services (RMS) and Transport for NSW generally support the proposal subject to recommended conditions. These have been included in the draft approval.

##### ***Parking***

In relation to parking, the proponent's PPR sought 1,150 car parking spaces in a basement arrangement providing for 603 residential and residential visitor spaces, 40 street replacement spaces and 507 spaces for commercial/retail use. For the residential component, the PPR parking rate corresponds to 1.4 car spaces per residential flat inclusive of residential visitor spaces.

The Department has recommended a reduction in the number of residential car spaces down to a ratio of 1 car space per residential flat. As set out in the draft recommended conditions this would result in a maximum of 1,033 carspaces of which 486 would be residential car spaces (inclusive of 54 visitor spaces).

Although it is acknowledged the site is near to Kirrawee Railway Station, the broader area is suburban and it is likely residents will have a relatively high level of car ownership and use, particularly for non-commuter trips. If insufficient on-site residential parking is provided, the Commission is concerned there will be unnecessary and unreasonable pressure on on-

street parking. The Commission also accepts the proponent's view, that the availability of parking in the development will be less of a factor in moderating traffic generation than destination parking availability and proximity of good public transport and local facilities.

As a result, the Commission has amended the draft recommended conditions to reflect the proponent's PPR rates. This would allow for a maximum of 1,150 car parking spaces in a basement arrangement of which 603 would be residential and residential visitor spaces. This applies an overall ratio of approximately 1.4 carspaces per flat, and includes visitor parking at a ratio of 1 residential visitor car space per 8 flats.

### ***Community Bus Parking***

At the public meeting, some community members expressed the need to ensure the proposed retail can be accessed by community buses and by people with mobility restrictions.

In response, the Commission has required the community bus & taxi drop-off on Flora Street to be relocated adjacent to the central and main pedestrian entry off Flora Street, by adding Schedule 3, Modification 14(h). This relocation is intended to secure the shortest, and most accessible route from Flora Street to the proposed retail, whereas the current location is adjacent to the park and numerous steps.

## **6 COMMISSION'S DETERMINATION**

The Commission has considered the DG's Report and associated documents including submissions received, and heard representations from the parties outlined in the above report.

The Commission generally agrees with the Department's conclusions as set out on page 38 of the DG's report. In the Commission's view, the proposed concept plan will provide an appropriate redevelopment of a large, infill site that is within a town centre and with good accessibility to and via Kirrawee Railway Station.

The report of an independent consultant engaged by the Department confirms that there is an identified high demand for retail services in the local government area, and limited suitable land for major retail development (without allotment amalgamation). The report concludes that the retail impacts are not of such a level as to warrant refusal of the proposal.

The proposal will provide additional housing stock, increase the offer and range of retail services available to residents and workers, and provide a public park. Due to the large site size direct amenity impacts on neighbours would be limited, and the broader impacts such as traffic generation would not be unreasonable subject to the improvements sought by the RMS and the Department's recommended conditions.

The Commission has approved the concept plan application in accordance with the Department's recommendation, subject to minor modifications. These modifications are intended to:

- increase the number of residential car spaces to reflect the PPR rate of 1.4 carspaces per flat, including residential visitor spaces (amendments to draft Schedule 2, Condition B4 and draft Schedule 3, Condition 14(a));
- secure demonstration of design excellence with future applications (deletion of draft Schedule 2, Condition A13; and insertion of new Schedule 3, Condition 18);
- clarify the need to secure the public park, which may be by way of a Voluntary Planning Agreement (amendment of draft Schedule 2, Conditions A8 and A11);

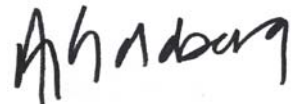
- clarify that, in the absence of a Voluntary Planning Agreement with Council, the cost of providing the public park will be offset against the s94 contributions otherwise payable (amendment of draft Schedule 3, Condition 5).
- secure new Sydney Turpentine Ironbark Forest plantings preferably within 10km of the site and of the same type of STIF as on-site (amendment of draft Schedule 3, Condition 10); and
- relocate the 'community bus and taxi drop off' on Flora Street to the main retail entry point to improve accessibility and convenience for people with mobility restrictions (insertion of Schedule 3, Condition 14(h)).



Donna Campbell (chair)  
**PAC Member**



Garry Payne AM  
**PAC Member**



Abigail Goldberg  
**PAC Member**