



Mark Naylor - 9710 0107
File Ref: DN13/0061

02 December 2013



Fiona Gibson
NSW Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attention:

Dear Ms Gibson,

Development Referral No. DN13/0061

Subject: Section 75W request to modify the terms of the Concept Approval at the Kirrawee Brick Pit Site (MP10_0076 MOD 2)

Property: 566-594 Princes Highway, Kirrawee

I refer to the above section 75W request to modify the Concept Approval at the Kirrawee Brick Pit site, 566-594 Princes Highway, Kirrawee (MP10_0076 MOD 2), which the Department has referred to Council for comment.

The section 75W request comprises the following proposed modifications to the terms of the Concept Approval:

1. Modification of the Concept Approval to facilitate the determination of a development application for works to be carried out prior to residential building separations and modifications being submitted to, and approved by, the Department (modification of Conditions B1 and B2 of Schedule 2);
2. Modification of the project description to include reference to 'gross leaseable area' (modification of Part A of Schedule 1 and Condition A1 of Schedule 2);
3. Amendment of the Biodiversity Management Plan to permit construction of a temporary water body in conjunction with dewatering, rather than prior to dewatering (modification of Condition A2 of Schedule 2 and Issues 2 and 8 of Schedule 4);
4. A new Dewatering Plan (modification of Issue 9 of Schedule 4); and
5. An amended approach to geotechnical issues including a geotechnical monitoring plan (modification of Issue 11 of Schedule 4).

Council has reviewed the proposed modifications and makes the following comments:

1. *Modification of the Concept Approval to facilitate the determination of a development application for works to be carried out prior to residential building*

separations and modifications being submitted to, and approved by, the Department (modification of Conditions B1 and B2 of Schedule 2)

Currently, the effect of Conditions B1 and B2 of Schedule 2 is to require the residential portion of the development to be modified (building separation and other matters) and then “submitted to, and approved by, the Department prior to the determination of any future application on the site.” It is understood that the proponent intends to appropriately amend the residential design in response to Conditions B1 and B2, but sees the requirement for this to be finalised ahead of “any future application on the site” as potentially causing unnecessary delay to the project.

Further, the proponent has indicated an intention to undertake “early works” (including de-watering, remediation and bulk excavation) on the site as soon as possible. Conditions B1 and B2 in their current form would prevent this. The proponent therefore proposes that Conditions B1 and B2 be modified as follows (words in bold added):

B1 BUILDING ENVELOPE AND SEPARATION MODIFICATIONS

*The plans, as described in A2, shall be modified so that the building separation between residential portions of the buildings complies with the minimum requirements of the Residential Flat Design Code. Amended plans demonstrating compliance with this modification shall be submitted to, and approved by, the Department prior to the determination of any future application on the site **for the residential apartments.***

B2 DEVELOPMENT DESIGN

Future applications shall be designed to include that:

- (a) roof terraces are setback a minimum of 1.5 metres from the buildings edge.*
- (b) plant rooms, lift overruns and mechanical ventilation rooms provided on the roof of a building are appropriately screened and not exceed the heights approved by the Concept Plan.*
- (c) the reference to building depth of 24 metres is deleted.*

*The amended Development Designs shall be submitted to and approved by the Department prior to determination of any future application on the site **for the residential apartments.***

In Council’s opinion the above modification goes much further than facilitating “early works”. It allows applications for any works other than applications for the residential apartments to be determined before the Department has approved the amended residential design. Indeed, it is possible under the proposed modification that applications for the retail and commercial portions of the development are determined prior to the Department’s approval of the amended residential portion.

In council's view this situation is unacceptable - it does not provide for the proper assessment of the amended residential portion and it does not facilitate the orderly development of the site.

The assessment and approval of the amended residential portion needs to be undertaken in the context of the mixed use development as a whole. The major parts of the mixed use development - its internal roads and pedestrian areas, its residential, retail, commercial, car parking and servicing components - interrelate and together affect one another, including the separation of the residential buildings. Assessment of these interrelationships and their effect on the residential part should be carried out before any application for the non-residential elements is determined. This will ensure that residential design quality is not compromised and that the integrity of the development is maintained. This is consistent with the Department's approval of the first modification to the concept plan which sought to maintain design excellence.

Further, the proponent has indicated that it is in the process of formulating significant changes to the size, structure and built form of the development. The uncertainty created by this circumstance increases the need for the required amendment of the residential design to be approved *before* any future development applications are determined.

Council therefore objects to the proponent's modification of Conditions B1 and B2 as noted above and is broadly supportive of a proposal that is consistent with the Concept Approval.

Council would not object, however, to an amendment which allowed the proposed early works to proceed. Council recognises the proponent's need for the timely delivery of 'early works' and the prohibitive effect which the current wording of Conditions B1 and B2 has on this. Accordingly, Council supports the modification of Conditions B1 and B2 subject to the following wording (in bold) which allows any 'early works' applications to proceed without delay:

B1 BUILDING ENVELOPE AND SEPARATION MODIFICATIONS

*The plans, as described in A2, shall be modified so that the building separation between residential portions of the buildings complies with the minimum requirements of the Residential Flat Design Code. Amended plans demonstrating compliance with this modification shall be submitted to, and approved by, the Department prior to the determination of any future application on the site, **except applications for de-watering works, remediation works and earthworks.***

B2 DEVELOPMENT DESIGN

Future applications shall be designed to include that:

(a) roof terraces are setback a minimum of 1.5 metres from the buildings edge.

(b) plant rooms, lift overruns and mechanical ventilation rooms provided on the roof of a building are appropriately screened and not exceed the heights approved by the Concept Plan.

(c) the reference to building depth of 24 metres is deleted.

The amended Development Designs shall be submitted to and approved by the Department prior to determination of any future application, **except applications for de-watering works, remediation works and earthworks.**

2. *Modification of the project description to include reference to 'gross leaseable area' (modification of Part A of Schedule 1 and Condition A1 of Schedule 2)*

The proponent requests that the approved project description be modified to reference the two approved supermarkets in terms of 'gross leaseable area' (GLA) not 'gross floor area' (GFA). The current project description reads as follows:

"Mixed use development, including:

- (a) Use of the site for a mixed use development with associated public open space;*
- (b) Indicative building envelopes for 9 buildings to a maximum height of 14 Storeys;*
- (c) 60,735m² of Gross Floor Area, comprising 45,505m² of residential (432 dwellings) and 15, 230m² of retail/commercial floor space (including 3,900m² supermarket and 1,470m² discount supermarket);*
- (d) Basement level, ground and above ground car parking;*
- (e) Road layout to support the development;*
- (f) Public pedestrian and cycle pathway;*
- (g) Public park with lake and surrounding forest; and*
- (h) Landscaping areas throughout the site."*

Essentially the proponent argues that the project description should be amended to refer to the supermarkets in terms of GLA, making it consistent with the retail assessment reports (particularly the report prepared by Leyshon Consulting) which informed the determination of the project application and which referred to retail floorspace in terms of GLA.

Council broadly supports the notion of the terms of the consent reflecting the underpinning retail assessment, but sees the following problems with the proponent's position:

- 'Gross leaseable area' (GLA) is a measure of floorspace used by the property industry to refer to a floor area which is subject to a lease and may exclude non-trading areas such as areas for loading, plant and services, staff facilities and public circulation areas. GLA is not a statutory planning term and has no standard definition. Its use in this case for statutory planning purposes is therefore not appropriate;

- In contrast, 'Gross floor area' (GFA) is a recognised measure of floorspace for statutory planning purposes and is appropriate in this case. The definition of gross floor area in Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006) is relevant and is as follows:

"gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes:*
 - (d) any area for common vertical circulation, such as lifts and stairs, and*
 - (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
 - (h) any space used for the loading or unloading of goods (including access to it), and*
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and*
 - (j) voids above a floor at the level of a storey or storey above."*

The above definition of GFA applies to the concept approval in accordance with clause 3B(2)(f) of Schedule 6A of the Act, the effect of which is that the provisions of SSLEP 2006 have effect to the extent to which they are consistent with the terms of the Concept Approval;

- It is noted that the project description clearly identifies the supermarkets in terms of gross floor area (GFA). In addition, the relevant approved plan (titled, Indicative Staging - Lower Ground Stage 1, Drawing Number 0600 Revision B, prepared by Woodhead and dated 19/10/11) identifies the two supermarkets as having areas of 3,900m² and 1,470m² but excluding common circulation areas, which should be included in the measurement of GFA under SSLEP 2006. In addition the approved supermarket areas appear to include an area for staff amenities (which would possibly be excluded under a GLA measurement); and
- In relation to the area for staff amenities - the advice to the proponent from Leyshon Consulting indicates that its retail assessment was based on two supermarkets with GLAs of 3810m² and 1460m². These areas are marginally smaller than the approved supermarket GFAs of 3,900m² and 1,470m² respectively. It appears from this comparison and the relevant approved plan that the approved GFAs may already include a small allowance for non-GLA area such as staff amenities.

In view of the above, the approved GFAs of the two supermarkets appear to approximate the relevant GLAs used in the assessment which informed the Concept

Approval except that the approved GFAs exclude common circulation areas (which should be included in the measurement of GFA under SSLEP 2006) and already include an allowance which may account for staff amenities.

It is therefore submitted that the proponent's requested modification of the project description should be supported subject to the following wording (Part A of Schedule 1 and Condition A1 of Schedule 2):

"Mixed use development, including:

- (a) Use of the site for a mixed use development with associated public open space;*
- (b) Indicative building envelopes for 9 buildings to a maximum height of 14 Storeys;*
- (c) 60,735m² of Gross Floor Area, comprising 45,505m² of residential (432 dwellings) and 15, 230m² of retail/commercial floor space (including 3,900m² supermarket and 1,470m² discount supermarket **and excluding common circulation areas**);*
- (d) Basement level, ground and above ground car parking;*
- (e) Road layout to support the development;*
- (f) Public pedestrian and cycle pathway;*
- (g) Public park with lake and surrounding forest; and*
- (h) Landscaping areas throughout the site."*

Should the proponent wish to substantially amend the floorspace of the development then this should be done through a comprehensive development application and supported by appropriate retail, traffic and other assessments.

3. Amendment of the Biodiversity Management Plan to permit construction of a temporary water body in conjunction with dewatering, rather than prior to dewatering (modification of Condition A2 of Schedule 2 and Issues 2 and 8 of Schedule 4)

It is acknowledged that the proposed addendum to the Biodiversity Management Plan (BMP) achieves the intended outcome of the approved BMP, which is to maintain a suitable water body for the threatened bat species throughout the progress of the works. It is noted that the proposed addendum provides a limitation on dewatering the brick pit below a water area of 800m², until the temporary water source is complete and achieves a minimum water area of 800m². Council also notes that the proposed addendum provides for the translocation of native aquatic species if encountered during the dewatering process – this is an improvement on the approved BMP.

Council therefore raises no objection to the proposal to construct a temporary water body in conjunction with dewatering, rather than prior to dewatering (modification of Condition A2 of Schedule 2 and Issues 2 and 8 of Schedule 4).

4. A new Dewatering Plan (modification of Issue 9 of Schedule 4)

The proponent proposes a new dewatering plan titled Dewatering and Groundwater Management Plan and prepared by DLA Environmental in October 2013 (the DLA Plan) to replace the approved dewatering plan prepared by CMJA (the CMJA Plan).

Council's Principal Environmental Scientist and Stormwater Manager have reviewed the DLA and CMJA Plans.

The DLA Plan contains some significant departures from the approved dewatering plan with little or no justifications for these variations. These variations have potential to result in significant impacts to the environment. Deficiencies and problems with the DLA Plan are outlined below:

- The approved dewatering plan noted high levels of iron and manganese in stratified layers below 4.5m in depth which require treatment. The DLA Plan contains no consideration of these high levels - testing for these pollutants was not included in the DLA sampling of 2013 and testing was only undertaken to a depth of 2m (ie not into the stratified layer). Accordingly, the DLA conclusion that *"the brickpit water quality represents no concerns in its present state, and as such it is considered reasonable to allow discharge to the stormwater system"*, cannot be supported;
- The DLA Plan proposes to abandon continual testing of water quality proposed by CMJA in favour of weekly testing. This proposal is based on "Contaminant Trigger and Action Levels" shown Table 3 of the DLA Plan. However, the table does not include testing for iron and manganese - the two pollutants of concern identified in previous studies. Given the presence of pollutants of concern, the DLA proposal to abandon continual testing of water quality cannot be supported. Water quality testing and treatment in accordance with the approved CMJA Plan is therefore recommended;
- The DLA Plan proposes an increase in pump discharge rate for dewatering the brickpit from the approved 15L/s to 25L/s. There is no information provided to support this increased level of discharge. A discharge rate of 15L/s was agreed between the original proponent of the project and Council as the maximum rate at which discharge could occur without having an adverse impact on downstream receiving environments. An increase in discharge rate of 66% without supporting documentation cannot be supported. It is noted that discharge to the stormwater system is subject to the approval of Council under section 138 of the *Roads Act 1993*;
- Discharge of water from the brickpit should halt during wet weather events to ensure sufficient capacity is maintained within Council's stormwater system. This measure is also lacking from the DLA Plan. Water discharge rates and methodology is therefore recommended to be maintained in accordance with the approved CMJA Plan;
- The DLA Plan notes that it contains a Groundwater Management Plan, however the plan addresses only groundwater quality and not other possible environmental impacts. Changes to groundwater levels have potential to impact on the environment of the site and surrounds. The associated reports prepared on behalf of the proponent by Pells Sullivan Meynink contain a range of recommended geotechnical monitoring requirements during dewatering (see

comments under point 5 below) which are not reflected in the DLA Plan. The DLA Plan is considered deficient in this area.

Having regard to the above deficiencies and problems, Council does not support the DLA Plan. Accordingly, it is submitted that the approved dewatering plan prepared by CMJA should stand and that the proponent's request to modify its commitments with respect to dewatering should be refused or significantly reinforced with a proper assessment to address Council's concerns.

In the event that the Minister determines to accept the DLA Plan, then Council submits that the DLA Plan should be amended as follows:

- To require water quality testing and treatment in accordance with the approved CMJA Plan;
- To have proper regard to, and co-coordinate with, the recommendations of the following reports for the project prepared by Pells Sullivan Meynink:
 - Geotechnical Groundwater and Assessment Report (Ref PSM2124-008L dated 31 October 2013); and
 - Geotechnical Monitoring Plan During Dewatering (Ref PSM2124-009L dated 1 November 2013);
- To require a maximum discharge water pumping rate of 15L/s or a maximum pumping rate determined by a detailed assessment of the minimum capacity of Council's relevant stormwater system and subject to written agreement with Council; and
- To require no discharge of water during rainfall events.

5. An amended approach to geotechnical issues including a geotechnical monitoring plan (modification of Issue/Action 11 of Schedule 4)

In support of a revised approach to geotechnical matters, Pells Sullivan Meynink (PSM) have prepared the following assessment report and geotechnical monitoring plan (the PSM Reports) on behalf of the proponent:

- A Geotechnical Groundwater and Assessment Report, Ref PSM2124-008L and dated 31 October 2013; and
- A Geotechnical Monitoring Plan During Dewatering, Ref PSM2124-009L and dated 1 November 2013.

The proponent proposes that the project be subject to the engineering solutions detailed in the approved Geotechnical Report prepared by Jeffrey and Katauskas and dated October 2010 (the J&K Report) except where varied by the by PSM Reports. Council's Principal Environmental Scientist has reviewed the above documents.

It is recognised that the recommendations of the approved J&K Report are of a preliminary nature and that the report identified the need for additional geotechnical investigations to be carried out. The PSM Reports take a different engineering approach to the J&K Report on some matters (for example in relation to batters). However, the PSM Reports are broadly consistent with and extend the

recommendations of the J&K Report, in particular through the introduction of the geotechnical monitoring plan during dewatering.

Having regard to the above, Council raises no objection to the proposed modification of the proponent's commitment in relation to geotechnical matters (Issue 11 of Schedule 4).

Conclusion

In summary, Council's response to the requested modifications of the terms of the Concept Approval are as follows:

- Council does not support the proponent's preferred wording of the modification of Conditions B1 and B2. Council supports an amended wording which allows only 'early works' applications to proceed ahead of the amended residential design being approved by the Department;
- Council supports the requested modification of the project description subject to an alternate wording of the description;
- Council raises no objection to the amended Biodiversity Management Plan which provides a suitable water body for the threatened bat species throughout the progress of the works;
- Council does not support the proposed dewatering plan prepared by DLA and submits that the approved dewatering plan should remain in place. In the event that the Minister determines to accept the DLA Plan, then Council submits that the DLA Plan should be amended as outlined in this submission; and
- Council raises no objection to the proposed modification of the proponent's commitment in relation to geotechnical matters.

In Council's view, the project as modified by the requested modifications (in particular the requested modifications to Conditions B1 and B2, the project description and the new dewatering plan) is not consistent with the approved concept plan and therefore the modifications require the Minister's approval in accordance with section 75W(2) of the Act.

Notwithstanding the concerns raised in this submission, Council is broadly supportive of a proposal that is consistent with the Concept Approval.

The Kirrawee Brick Pit site is an important landmark of the Shire with significant development opportunities and challenges. Council looks forward to working with all stakeholders to achieve a development of the site which is to the highest standards and which yields strong benefits for all.

If you need any clarification of the above comments, please contact Council's Development Assessment Officer, Mark Naylor, on 02 9710 0107 or by email at mnaylor@ssc.nsw.gov.au and quote the application number in the subject.

Yours faithfully



Mark Adamson
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for J W Rayner
General Manager