

10 February 2014

Dan Keary
Director Industry, Social Projects and Key Sites
NSW Department of Planning and Infrastructure
GPO Box 39
Sydney NSW 2001

Attention: Fiona Gibson, Planning Officer

Dear Mr Keary

**MP 10_0076 MOD 2 – MODIFICATION OF APPROVED MIXED USE DEVELOPMENT (CONCEPT PLAN)
FORMER KIRRAWEE BRICK PIT SITE, 566-594 PRINCES HIGHWAY, KIRRAWEE**

We refer to the approved concept plan for a mixed use development at the abovementioned site and the Modification Application (MP 10_0076 MOD 2) submitted to the Department of Planning and Infrastructure (DP&I) on 1 November 2013, Milestone's previous submission dated 10 December 2013 and the proponent's response dated 22 January 2014 to the submissions received by the DP&I in relation to the proposed modification. Milestone (AUST) Pty Limited (Milestone) acts on behalf of President Avenue Pty Ltd, owners of the Supabarn Supermarket site in President Avenue, Sutherland and operators of the Supabarn Supermarket at Gympsea Bay Road, Gympsea.

On behalf of our client we attach a copy of the following letter which sets out our client's concerns and objections relating to the proponent's response relating to the approved Gross Floor Area of the supermarket in MP 10_0076:

- Letter prepared by Don Fox Planning dated 10 February 2014 (Attachment A).

The attached letter outlines the inappropriateness of the revised modification sought by the proponent and highlights the significant departure of the proposed modification from the original development approved by the Planning Assessment Commission. Having regard to our previous submission to the DP&I we consider the modified proposal as outlined in the proponent's response will result in an **unacceptable planning outcome** and therefore warrants refusal. On this basis we recommend that the DP&I determine to refuse MP 10_0076 MOD 2.

We request to be kept informed of the Department's assessment of the Modification Application and advised of any further responses by the proponent and any future public notification periods.

Should you require clarification of this matter, do not hesitate to contact the undersigned.

Yours sincerely
Milestone (AUST) Pty Limited



Patrick Lebon
Associate

Encl.

ATTACHMENT A

LETTER PREPARED BY DON FOX PLANNING DATED 10 FEBRUARY 2014



planning consultants

10 February 2014
Our Ref: 7058D.1ER

Mr Patrick Lebon
Associate
Milestone (Aust) Pty Ltd

By email: patrick@milestonemanagement.com.au

Dear Patrick

Section 75W modification (MOD 2) of the Concept Approval issued for MP10_0076 for Kirrawee Brickpit development

Dear Patrick

We refer to your email dated 24 January 2014 and the documentation attached thereto, specifically the proponent's response to submissions and a submission by Sutherland Shire Council (Council) dated 2 December 2013.

We have reviewed the proponent's response and Council's submission and provide the following comments in relation to these documents.

Common Circulation Area

Point 2 of Council's submission addresses the proponent's request to modify the description of the development to include reference to 'gross leaseable area (GLA)'. Council's submission correctly points out that GLA is not a statutory term and has no standard definition and its use for statutory planning purposes is therefore not appropriate.

Council's submission then goes on to refer to the relevant approved plan which clearly identifies the supermarkets in terms of gross floor area (GFA). The plan referenced in Council's submission is a drawing titled Indicative Staging – Lower Ground Stage 1, Drawing Number 0600 Revision B, prepared by Woodhead and dated 19/10/11. According to Council's submission this plan identifies the two supermarkets as having areas of 3,900m² and 1,470m² "but excluding common circulation areas...". Council's submission states that common circulation areas would have been included in the measurement of GFA under SSLEP 2006.

We have examined the stamped approved copy of Drawing Number 0600 Revision B as it appears on the Department's website and cannot find any reference to "common circulation areas" on that plan. It does not appear that the areas identified as 'mall' have been included as part of the GFA of the development as no area measurement (in terms of m²) has been identified on approved plan for the mall area. This drawing clearly shows the area to be occupied by Supermarket 1 as being 3,900m² and Supermarket 2 as having an area of 1,470m². There is no delineation on this drawing for areas which may constitute 'common circulation areas'.

We note that the SSLEP 2006 definition of *gross floor area* is the same as that contained in the Standard Instrument LEP. Neither definition makes reference to 'common circulation areas' (although any area for common **vertical** [our emphasis] circulation, such as lifts and stairs is excluded). The Council clearly acknowledges in their submission that, in their opinion, 'common circulation areas' should be included as GFA in accordance with SSLEP 2006.



In view of the above, we are at a loss to understand how Council has concluded that exclusion of 'common circulation areas' from the calculation of the GFA of the two supermarkets is reasonable or appropriate.

We believe that there is no logic to the Council's position for the following reasons:

1. The approved plans do not identify which areas might comprise "common circulation areas". According to Mr Leyshon's advice (dated 24 October 2013), the difference between the GFA and GLA of the larger supermarket is in the order of 400m². It is not clear if the 'common circulation areas' equate to the difference between the GFA and GLA.
2. The plan referenced by Council (Drawing No. 0600 Rev B dated 19/10/11) already excluded the loading dock from the calculation of GFA (as per the Standard Instrument LEP definition). In addition, corridor areas external to the supermarket 'boxes' and the entry mall areas do not appear to have been included in the area identified as comprising the supermarkets, both of which are coloured purple on the plan. Therefore it is not clear how Council has arrived at a conclusion that exclusion of the 'common circulation areas' is acceptable if they don't actually know what those areas comprise.
3. In our experience all facilities associated with a supermarket including all back of house (BOH) areas (but excluding the loading dock) comprise the GFA and should be included.
4. Common circulation areas are not specifically identified as an area to be excluded for the purposes of assessing GFA and therefore, by default will be included. Exclusion of these areas is contrary to the definition of GFA as per SSLEP 2006 and the Standard Instrument LEP.

Furthermore, the proponent has specifically requested that the description of the development be amended to include a reference to GLA in relation to the supermarket components of the development. The proponent has not requested that the modification exclude 'common circulation areas'. The Department is required to determine the modification based on the proponent's request. Clearly, Council is of the opinion that inclusion of a reference to gross leaseable area within the description of the project is inappropriate and we agree with that position.

Conclusion

Despite the Council's opinion that exclusion of 'common circulation areas' is acceptable for the purposes of calculating GFA, we disagree for the reasons identified above and because we do not believe the Department has the authority to determine the modification to include a reference to 'common circulation areas', notwithstanding that the proponent's consultant has indicated that this would be an acceptable alternative. We believe that any modification that approved the exclusion of 'common circulation area' without the benefit of a plan identifying those areas could be an invalid determination. Should such a plan be provided, we would expect that this would be made available for comment.

We reiterate our previous advice that any modification to this development that seeks to vary the approved GFA of the supermarkets is inappropriate.



Should you have any questions regarding this matter, please do not hesitate to contact me on 9473 4903.

Yours faithfully

DFP PLANNING CONSULTANTS

A handwritten signature in black ink, appearing to read 'ER', with a large, stylized loop at the end.

**ELLEN ROBERTSHAW
PARTNER**

erobertshaw@dfpplanning.com.au