

Annette Birchall - 9710 0107  
File Ref: DN13/0061

18 February 2014



Fiona Gibson  
NSW Planning & Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Dear Ms Gibson

**Development Referral No. DN13/0061**

**Proposal: Section 75W Modification of Approved Concept Plan at Kirrawee Brick Pit Site**

**Property: 566-594 Princes Highway, Kirrawee**

I refer to the proponent's response to Council's submission 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).

The submitted 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 separation 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;
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 provided a response to the above modifications in a letter dated 2 December 2013. Council raised concern/objection to proposed modifications 1, 2 and 4. No objection was raised to modification 3 and modification 5.

In a letter dated 22 January, Sutherland and Associates Planning provided the Department of Planning & Infrastructure with the response to submissions. The Department have requested Council to comment on the relevant responses.

Council has reviewed the responses and makes the following comments:

1. Modification of Conditions B1 and B2 of Schedule 2 to end with the words '**for the residential apartments**'.

The stated aim of this modification was to facilitate the approval of applications for early works (including de-watering, remediation and bulk excavation) which would be prevented by these conditions. These were also proposed in the knowledge that a proposal to significantly modify the residential component of the Concept Plan has recently been lodged with the Department.

However, the proposed modification meant it was possible for the retail and commercial portions of the development to be determined prior to the Department's approval of the amended residential portion. Council objected to the proposed amendment as it did not *'provide for the proper assessment of the amended residential portion and it does not facilitate the orderly development of the site'*.

Council noted that it would not object to an amendment which allowed the proposed early works to proceed and provided alternate wording to Conditions B1 and B2 which would allow this.

In their response to submissions, the proponent raised no objection to the alternative amended wording proposed by Council.

Council would therefore support the modification of Conditions B1 and B2 subject to the following wording (in bold):

#### **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 Part A of Schedule 1 (project description) and Condition A1 of Schedule 2 to include reference to the two approved supermarkets in terms of 'gross leaseable area' (GLA) not 'gross floor area' (GFA).

Council opposed this amended as 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. However, it is understood that the approved floor space of the two supermarkets excludes

common circulation areas, which should be included in the measurement of GFA under the Sutherland Shire Local Environment Plan 2006.

Council therefore submitted that the proponent's requested modification of the project description could 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) 60,735m<sup>2</sup> of Gross Floor Area, comprising 45,505m<sup>2</sup> of residential (432 dwellings) and 15,230m<sup>2</sup> of retail/commercial floor space (including 3,900m<sup>2</sup> supermarket and 1,470m<sup>2</sup> 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."*

In the response to submissions, the proponent raised no objection to the alternative amended wording proposed by Council.

Council would support the modification of Part A of Schedule 1 and Condition A1 of Schedule 2 subject to the wording (in bold) detailed above.

3. Modification of Issue 9 of Schedule 4A to reference a new Dewatering Plan titled Dewatering and Groundwater Management Plan and prepared by DLA Environmental in October 2013 (the DLA Plan) instead of the dewatering plan prepared by CMJA (the CMJA Plan).

Council's Principal Environmental Scientist and Stormwater Manager reviewed the DLA and CMJA Plans and concluded that the DLA Plan contains some significant departures from the approved dewatering plan with little or no justifications for these variations. These variations had the potential to result in significant impacts to the environment and were therefore not supported by Council.

The proponent has addressed each of Council's concerns and recommended amendments in a separate letter from DLA Environmental as well as a revised Dewatering and Groundwater Management Plan.

Council's Principal Environmental Scientist and Stormwater Manager reviewed these two documents and the response from the proponent and made the following comments:

- The discharge/pumping rate has been reduced to minimise the potential impact to downstream receiving waters. This aspect is now supported however, **the DLA Report should be amended to ensure that only one pump discharges to each catchment.**
- The groundwater level monitoring requirements outlined in the Pells Sullivan Meynick report have been adopted. This is now supported.
- Discharge of water from the brickpit during wet weather events will be halted as outlined in the Pells Sullivan Meynick report. This is now supported.

- To support the revised sampling program, DLA undertook additional sampling to a depth of 4m. The revised sampling program to this depth is now supported.
- As this additional sampling did not reach the depth of the stratified layer as noted by Jewell at 4.5m depth, this there is still some potential to intercept a contaminated layer at this level and beyond. To address this, once water extraction reaches 4m depth, sampling frequency should again be increased to continuous sampling to ensure that if a stratified contaminated payer is present it is appropriately identified and managed. This was discussed and agreed to with the proponent and an amended Plan including this requirement was submitted to the Department and Council on 12 February 2014. **The amended plan should form part of the approval documentation.**
- The additional sampling by DLA included Iron and Manganese, the pollutants of concern identified previously. A trigger value for Manganese has also been included in the management plan. This is appropriate and supported. Council's Environmental Scientist concluded that a trigger value for Iron should also be included. This was discussed and agreed to with the proponent and an amended Plan including this requirement was submitted to the Department and Council on 12 February 2014.
- As either the discharge water monitoring locations or the pump locations are identified in the DLA Plan, the Plan should specify that these locations are determined in conjunction with Council.
- If Action values are reached during monitoring and a containment or filtering device is required to address the higher levels of contaminant, this device is to be determined in conjunction with Council.

Council is supportive of the amended Dewatering and Groundwater Management Plan prepared by DLA Environmental and dated February 2014 **with the following amendments:**

- The total discharge to Dents Creek catchment should not exceed 15L/s and the total discharge to Oyster Gully should not exceed 15L/s.
- Discharge water monitoring locations are to be determined in conjunction with Council prior to the commencement of any works.
- Pump locations are to be determined in conjunction with Council prior to the commencement of any works.
- If a containment or filtration device is required at any point through the dewatering process, this shall be determined in conjunction with Council prior to the recommencement of the dewatering works.

## Conclusion

In summary, Council's comments to the proponent's response to submissions are as follows:

- Council supports an amended wording of Conditions B1 and B2 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 (Part A of Schedule 1 and Condition A1 of Schedule 2) subject to an alternate wording of the description; and

- Council supports the proposed amended dewatering plan prepared by DLA and dated February 2014 subject to the amendment as outlined in this submission.

The response to Council's submission and the Dewatering Plan amended in February 2014 have generally addressed Council's initial concern with the requested amendments of the approved concept plan and is generally supported subject to amendments detailed above.

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, Annette Birchall, on 02 9710 0846 or by email at [abirchall@ssc.nsw.gov.au](mailto:abirchall@ssc.nsw.gov.au) and quote the application number in the subject.

Yours faithfully

Mark Adamson  
for J W Rayner  
General Manager