



Planning & Environment

MODIFICATION REQUEST:

Mixed Use Development, Kirrawee Brick Pit Concept Plan

566-594 Princes Highway, Kirrawee

MP 10_0076 Modification 2



Secretary's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

May 2014

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1. BACKGROUND

The purpose of this report is to assess a request to modify the approved Kirrawee Brick Pit Concept Plan (MP 10_0076) for construction of a mixed use development pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The application seeks to amend the approved Concept Plan to enable early works to be carried out on the site, and also amend the approved Biodiversity Management Plan (BMP) and Dewatering and Groundwater Management Plan (DGMP).

1.1 The Site in Context

The Kirrawee Brick Pit site is known as 566-594 Princes Highway, Kirrawee located within the Sutherland Local Government Area. It is approximately 25km south-west of the Sydney CBD (see **Figure 1**).

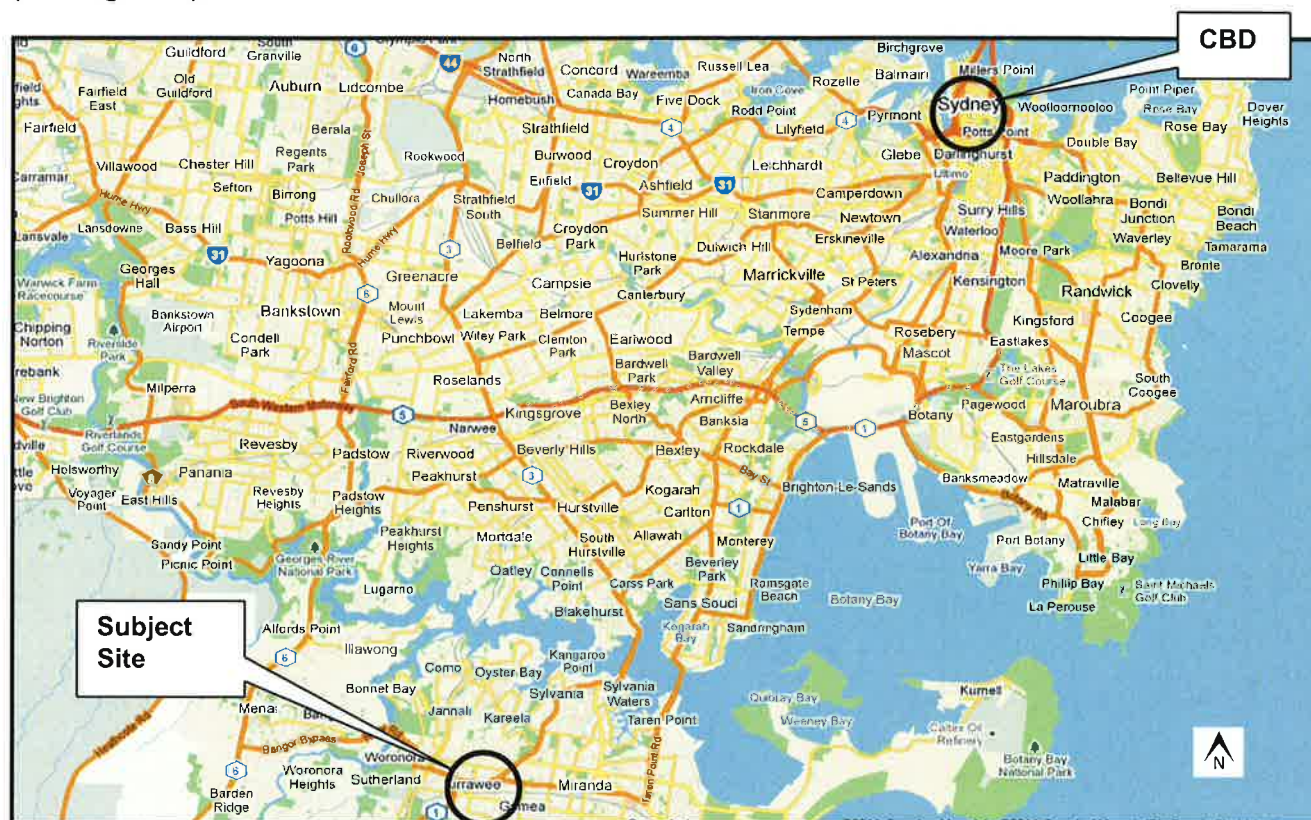


Figure 1: Regional context plan of Kirrawee, Sydney (Source: Director-General's Assessment Report, June 2012)

The site is located on the southern side of the Princes Highway and east of the Oak Road intersection (see **Figure 2**). The site is a rectangular shape with frontages of approximately 252 metres along the Princes Highway to the north, 160 metres to Oak Road to the west, 251 metres to Flora Street to the south, and 177 metres to the existing industrial area located immediately east. The site has a total area of 42,524m² and slopes from the south-western corner down approximately 5 metres to the north-western corner, and 10 metres to the eastern boundary. The former brick pit itself forms a body of water. It occupies the southern half of the site, and is approximately 215m in length, 90m wide and 6m deep. The water contained in the brick pit comes from surface runoff and groundwater inflow where a survey in 2006 estimated the volume to be 42,717m³.

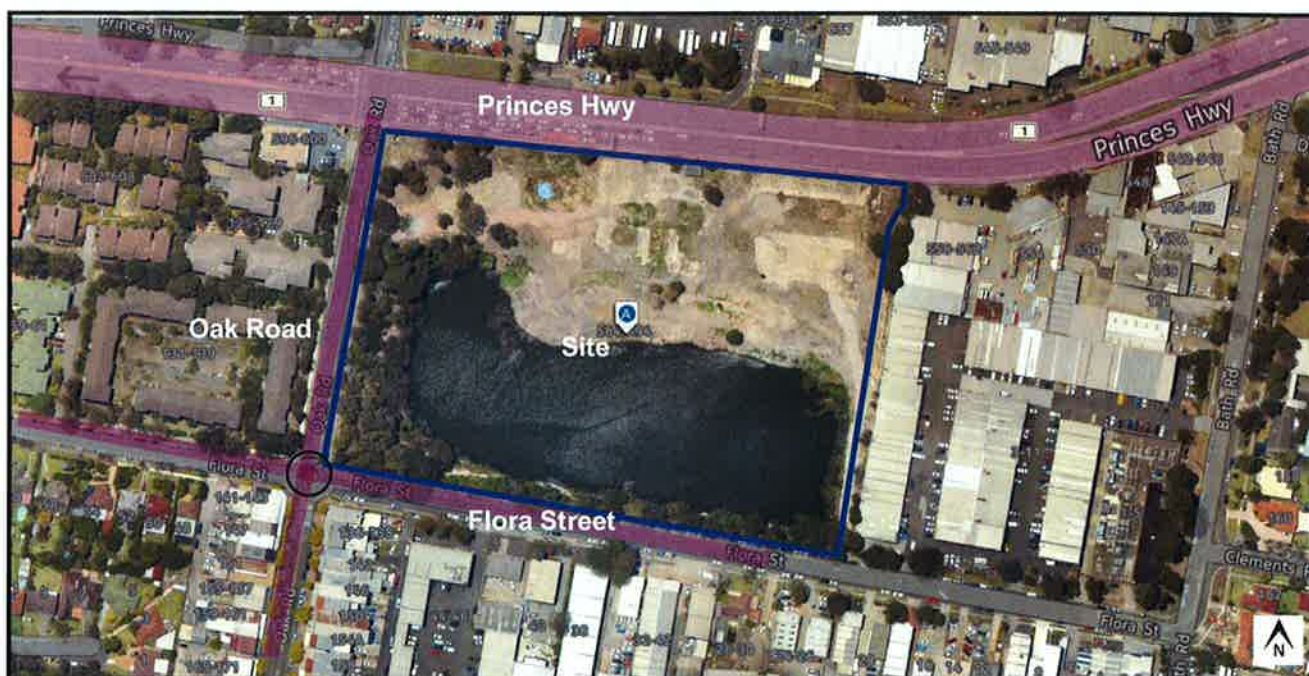


Figure 2: Kirrawee Brick Pit Site (Source: Nearmaps, December 2013)

1.2 Kirrawee Brick Pit Concept Plan 2012

On 23 August 2012, the Planning Assessment Commission (PAC) approved a Concept Plan (MP 10_0076), permitting the redevelopment of the site for the following purposes:

- use of the site for a mixed use development with associated open space;
- indicative building envelopes for 9 buildings to a maximum height of 14 storeys;
- 60,735m² of gross floor area, comprising 45,505m² of residential (432 dwellings) and 15,230m² of retail/commercial floor space (including 3,900m² of supermarket and 1,470m² of discount supermarket);
- basement level, ground and above ground car parking;
- road layout to support the development;
- public pedestrian and cycle pathway;
- the public park, lake and surrounding forest; and
- landscaped areas throughout the site.

As part of the Concept Plan approval, modifications B1 and B2 were applied to ensure the building envelopes comply with the minimum separation requirements of the Residential Flat Design Code and other design matters are resolved. Amended plans and designs are required to be submitted to and approved by the department, prior to determination of any future application.

On 17 January 2013, **MOD 1** was approved by the Deputy Director-General of Development Assessment Systems and Performance as delegate for the Minister for Planning and Infrastructure to amend the wording of the Future Environmental Assessment Requirement 18, by removing the need for development below the finished ground level to exhibit design excellence.

A subsequent modification application **MOD 3** is currently under assessment by the Department of Planning & Environment, (the department) seeking approval for design changes to the Concept Plan approval.

2. PROPOSED MODIFICATION

The proposal seeks to:

- amend the modifications B1 and B2, which relate to building envelope and development design modifications to allow for the commencement of early works (including de-watering, remediation and bulk excavation) prior to these requirements being satisfied; and
- amend the Statement of Commitments to include an addendum to the Biodiversity BMP and a revised DGMP.

The modification is supported by a series of technical reports and plans to ensure appropriate environmental management processes are undertaken throughout the life of the development.

The application also originally included a request to amend the reference for the supermarket floor space from GFA (Gross Floor Area) to GLA (Gross Leasable Area) in the development description. The proponent has removed this from the proposal following discussions with Council and the department.

Further details of the proposed modification are provided in **Appendix A**.

3. STATUTORY CONTEXT

3.1 Continuation of Part 3A

Under Clause 3C of Schedule 6A to the *Environmental Planning & Assessment Act 1979* (the Act), Section 75W of the Act (as in force immediately before its repeal on 1 October 2011) continues to apply for the purpose of the modification of a Concept Plan approved before or after the repeal of Part 3A.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations. The department may approve or disapprove the modification to the Concept Plan under Section 75W of the Act.

3.2 Modification of the Minister's Approval

The modification application has been lodged with the Department pursuant to Section 75W of the Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval".

The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval. However, in this instance, the proposal seeks to modify fundamental aspects of the Concept Plan approval and therefore, approval to modify the application is required.

3.3 Environmental Assessment Requirements

Section 75W(3) of the EP&A Act provides that the Department may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

No additional environmental assessment requirements were issued with respect to the proposed modifications, as sufficient information was provided to the department in order to consider the application and the issues raised remain consistent with the key assessment requirements addressed in the original application.

3.4 Delegated Authority

In accordance with the Ministers delegation of 4 April 2013 the Executive Director, Development Assessment Systems and Approvals may determine the application as:

- the relevant local Council has not made an objection;
- a political disclosure statement has been made, but only in respect of a previous related application; and
- there are less than 10 public submissions in the nature of objections.

4. CONSULTATION AND SUBMISSIONS

4.1. Exhibition

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However the application and all supporting documentation was placed on the department's website. This satisfies the requirements in Section 75H(3) of the EP&A Act. Due to the nature of the changes requested in the proposal, the modification request was not exhibited by any other means.

The modification request was referred to Sutherland Shire Council, the Department of Primary Industries (NSW Office of Water), Sydney Water and the Office of Environment and Heritage, who referred the application to the Environmental Protection Authority. A summary of the issues raised in the public authority submissions is provided below in **Section 4.2**. No comments were received from Sydney Water.

4.2. Public Authority Submissions

Sutherland Shire Council

Council initially raised the following key concerns:

- the proposed amended wording to the modifications B1 and B2 would allow applications for retail or commercial components of the development to be determined prior to those modifications being satisfied;
- that the proposed GLA measurement of the approved supermarket's floor space (rather than GFA) is not a statutory planning term and is not appropriate, and alternate wording is recommended to identify that the size of the supermarkets excludes common circulation areas; and
- that a number of proposed changes to the DGMP dated October 2013 have been inadequately justified and may have significant environmental impacts. The plan should be amended to include water quality testing and treatment, include a maximum pump discharge rate of water, and to not allow any discharge of water during rainfall events.

The proponent responded to these issues by providing a revised DGMP dated January 2014, and amending the description for the measurement of the supermarket floor space as per Council's recommended wording.

Council has reviewed the proponent's response and advised that it supports:

- the amended wording of modifications B1 and B2 to allow applications for early works to proceed prior to these requirements being satisfied;
- the revised DGMP dated January 2014 subject to additional amendments to address the total rate of water discharged, monitoring and pump locations, and requirement of a filtration device during the dewatering process; and
- the modification to the description of the measurement of the supermarket floor space excluding common circulation areas.

In response to Council's revised comments, the proponent submitted a further revised DGMP (February 2014) addressing Council's requirements as outlined in **Section 5.2**. The proponent has also confirmed that it no longer seeks to pursue the amendment to the description of the supermarket floor space.

Office of Environment and Heritage (OEH)

OEH noted that it does not raise any concerns with the amended dewatering methodology provided that:

- a minimum 800m² of water surface area is maintained at all times; and
- the water level, quality and clarity of the pond is in accordance with the water quality guidelines as outlined by Equatica8 and Northrop, (being the environmental consultant reports prepared in respect of the original Concept Plan).

The proponent responded to these comments which are explained in **Section 5.1**.

Environmental Protection Authority (EPA)

The EPA commented that the proponent should ensure the dewatering does not cause pollution of water (under Section 120 of the *Protection of the Environment Operations Act 1997*), or result in scour and resultant discharge of sediments from the base of the brick pit or drainage channels.

The proponent responded to the EPA's comments noting the information has been included in the amended DGMP. The department notes the proponent has satisfactorily addressed the EPA comments and the responsibility of the management plan to ensure the dewatering does not result in further impacts to the surrounding environment.

Department of Primary Industries (DP&I) – NSW Office of Water

NSW Office of Water (NOW) provided comments on the proposed DGMP. NOW recommends that further information be provided in the Plan to include details on the threshold levels for groundwater levels and a dewatering management protocol for groundwater levels.

The proponent responded to these comments with further information which is explained in **Section 5.2**.

4.3. Public Submissions

The department received a submission from Milestone Management (AUST) Pty Ltd on behalf of President Avenue Pty Ltd, together with supporting documentation from Don Fox Planning Pty Ltd. This submission was made on behalf of the retail landholder Superbarn Supermarket Sutherland and Gympie. The issues raised included:

- potential economic impacts of the retail /supermarket component;
- consistent use of the term GFA in the Concept Plan; and
- insufficient public notification.

The applicant has confirmed that the amended retail floor space description of the request is now no longer required. The department therefore notes this is no longer an issue.

Further details of the proponent's response to submissions can be found in **Appendix C**.

5. ASSESSMENT

The department's assessment of the modification to the Concept Plan approval is provided below:

5.1 Methodology for Dewatering

The Concept Plan's BMP currently requires a temporary water body to be provided on the site during the development process, which was previously approved to be constructed prior to the commencement of dewatering the brick pit. For the site to be appropriately dewatered, the current and temporary water body must have a minimum water surface area of 800m² to ensure protection of the current habitat of GHFF (Grey Headed Flying Fox) bats and other native species.

It is now proposed to simultaneously dewater the brick pit whilst constructing the temporary water body. The proponent notes that this will improve the efficiency of construction works on the site with no adverse impacts to the bat species. This change in the dewatering methodology would result in allowing some of the water, which is to be removed from the current brick pit, to be recycled into the temporary water body.

Council is supportive of the proposed arrangement noting that the temporary water body will compensate for the loss of the current brick pit water body during the development period.

OEH is also supportive of the amended methodology so long as:

- the minimum 800m² of water surface area is maintained; and
- the water level, quality and clarity of the pond is in accordance with the guidelines originally adopted by the Concept Plan approval.

The department notes that the approved BMP maintains these requirements. In addition the addendum to the BMP submitted within the current proposal confirms that:

- initial drainage of the existing pit will commence and continue only until a minimum 800m² of water surface area is maintained; and
- the water level, quality and clarity is in accordance with the water quality guidelines as part of the Concept Plan approval.

Noting the above the department is satisfied that the safeguards suggested by OEH in this regard are maintained.

The department has assessed the proposed methodology for dewatering and considers that it provides for a more efficient methodology to the dewatering process and limits potential environmental impacts. As such the department supports this aspect of the modification.

5.2 Dewatering and Groundwater Management

The proposal seeks to update the dewatering and groundwater management as set out in the DGMP prepared by DLA Environmental, dated October 2013. This plan provides initiatives for the management of dewatering and groundwater issues that may occur from an environmental perspective during the dewatering process.

Council and NOW initially raised concerns with the abovementioned plan. In particular Council sought that the plan be amended to include water quality testing and treatment, a maximum pump discharge rate of water, and to not allow any discharge of water during rainfall events. In response to this, the proponent provided an updated DGMP (January 2014) incorporating the additional information sought, which included:

- a commitment for continuous water monitoring once the water level drops below 4 metres;
- an appropriate trigger for iron levels; and

- discharge of water from the brick pit to cease during wet weather events.

Council further commented advising that it was supportive of the updated DGMP subject to further amendments relating to the total rate of water discharged, monitoring and pump locations, and a requirement for a filtration device during the dewatering process. The proponent has further amended the DGMP in accordance with these recommendations. The final DGMP (February 2014) has been referred to Council, who advised that it has no further concerns. The department therefore considers that Council's comments have been resolved in this regard.

The department notes that NOW has sought the DGMP to be amended, requesting further information on the threshold levels of groundwater levels, and a dewatering management protocol for groundwater levels. In response to this the proponent has amended the DGMP to include:

- an additional protocol for groundwater level management by incorporating weekly monitoring of groundwater levels during discharge; and
- a change in groundwater levels of 1m from pre-dewatering levels will be utilised as a trigger for increased frequency groundwater level monitoring.

The department is satisfied that NOW's comments have been resolved in this regard.

The revised DGMP (February 2014) is considered to adequately meet the requirements to manage the dewatering of the brick pit and groundwater on the site as requested by Council and NOW. It provides measures to ensure the local surrounding environment is maintained and therefore the department supports the amendments to the proponent's Statement of Commitments.

6. CONCLUSION AND RECOMMENDATION

The department has assessed the merits of the proposed modifications taking into consideration the issues raised in all submissions and is satisfied that the impacts have been satisfactorily addressed within the proposal and the recommended modifications. It is considered that the proposed modifications are reasonable and consistent with the existing Concept Plan approval and will allow for early works to be carried out on the site.

It is therefore recommended that the Acting Executive Director, Development Assessment Systems and Approvals, as delegate for the Minister for Planning:

- (a) **consider** the findings and recommendations of this report;
- (b) **approve** the modifications subject to conditions under Section 75W of the *Environmental Planning and Assessment Act 1979*; and
- (c) **sign** the attached modifying instrument (**Appendix D**).

Prepared by:



5/05/2014

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Approved by:

Acting Executive Director
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APPENDIX A MODIFICATION REQUEST

See the department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6239

APPENDIX B SUBMISSIONS

See the departments at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6239

APPENDIX C RESPONSE TO SUBMISSIONS

See the department's website at

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APPENDIX D RECOMMENDED INSTRUMENT OF APPROVAL
