

30 January 2015

## **NSW Planning Assessment Commission Determination Report**

### **MODIFICATION REQUEST (MP10\_0076 MOD3): Concept Plan Application for Mixed Use Development at Kirrawee Brick Pit 566 – 594 Princes Highway, Kirrawee**

#### **1. INTRODUCTION**

Sutherland & Associates (the Proponent) has submitted an application to modify the Concept Plan approval (MP10\_0076) for the Kirrawee Brick Pit redevelopment at 566-594 Prince Highway, Kirrawee. The modification application has been lodged pursuant to section 75W of the Environmental Planning and Assessment Act 1979 (EP&A Act) which continues to apply to transitional Part 3A projects.

The 42,524m<sup>2</sup> site is located within the Sutherland Shire Local Government Area, adjacent to a major arterial road, and approximately 250 metres from the Kirrawee Village Centre and Kirrawee Railway Station.

The existing Concept Plan approval for the site was issued by the Planning Assessment Commission (PAC) in August 2012. Following this approval, Sutherland Shire Council (Council) nominated the Kirrawee centre as an Urban Activation Precinct. In addition, the Draft *Sutherland Shire Local Environmental Plan 2013* (LEP), zoned the land B4 *Mixed Use* and RE1 *Public Recreation* with a Floor Space Ratio (FSR) increase from 1.1 to 2.1 and building height increase from 12-15 metres to 50 metres, reflecting the development density approved in the Concept Plan.

#### **2. PREVIOUS APPROVALS**

The Concept Plan (MP 10\_0076) approval of 23 August 2012 incorporated the following elements:

- Mixed use development and associated open space;
- 60,735m<sup>2</sup> of gross floor area (GFA), 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);
- Indicative building envelopes for nine buildings to a maximum height of 14 storeys;
- Basement level, ground and above ground car parking (1,150 spaces);
- Public park, lake and surrounding forest of 9,000m<sup>2</sup>;
- Internal roads, and public pedestrian and cycle pathways; and
- Landscaped areas throughout the site.

Subsequently ownership of the site has changed, and three minor modifications to the Concept Plan were approved by the Department of Planning and Environment (DP&E) to remove the need for design excellence below the finished ground level, to enable early works to commence, and to defer requirements for the execution of the works authorisation deed, construction traffic management and control plans to enable early works to proceed.

### **3. CURRENT MODIFICATION REQUEST (MP10\_0076 MOD3)**

On 27 November 2013, the Proponent submitted a modification request to increase the density of the development and amend the building envelope heights and layout as well as the indicative open space design and staging of delivery.

The modification request was exhibited by DP&E from 19 February 2014 to 11 April 2014. A total of 21 submissions were received in response to this exhibition, comprising six submissions from public authorities and 15 from the general public (11 of which were objections). Council objected to the modification application, raising a broad range of issues in relation to density, residential amenity, traffic impacts, heights and impact on the development potential of neighbouring sites.

Subsequent to the exhibition, the Proponent provided a response to issues raised in submissions by way of a Response to Submissions report (RtS) that was exhibited by DP&E from 23 July 2014 to 22 August 2014.

13 submissions were received in response to the exhibition of the RtS, comprising seven submissions from public authorities and six submissions from the general public (five of which were objections). Council maintained their objection to the amended Concept Plan, expressing particular concern with the increase in scale and mass, while reiterating issues raised previously.

The modification application, as amended by the RtS proposes:

- Increase of total GFA by 21,287.5m<sup>2</sup> (45%); from 60,735m<sup>2</sup> to 82,022.5m<sup>2</sup>, comprising residential GFA of 67,832.5m<sup>2</sup>
- Decrease of commercial GFA by 1,048m<sup>2</sup> to a total of 14,189m<sup>2</sup> (including 4,740m<sup>2</sup> supermarket and 1,451m<sup>2</sup> discount supermarket);
- Reduction of the total number of building envelopes from nine to seven and reconfiguration of building envelope locations and shape;
- Amended construction staging and timing of the delivery of the public park;
- Removal of references to total dwelling numbers and car parking space numbers; and
- Amendments to administrative conditions, Future Environmental Assessment Requirements (FEARS) and the Statement of Commitments.

### **4. DELEGATION TO THE COMMISSION**

The modification request has been referred to the Commission for determination under Ministerial delegation dated 14 September 2011, as Council objected to the proposal. The matter was received by the Commission on 8 December 2014.

The Commission panel nominated to determine the concept plan application consists of Ms Abigail Goldberg (Chair) and Ms Annabelle Pegrum AM.

### **5. SITE VISIT**

Ms Goldberg is familiar with the site through previous involvement with the project and therefore did not visit the site on this occasion. Ms Pegrum visited the site and surrounding area on 16 December 2014.

### **6. DEPARTMENT'S ASSESSMENT REPORT**

The Department's Assessment Report identified the following key issues:

- Density and indicative dwelling numbers;
- Car parking provision and traffic impacts;

- Amendments to building envelopes; and
- Open space and biodiversity.

The Department assessed the merits of the proposed modification and supported the project need and justification that the modification proposal reinforces the goals of the NSW 2012 State Plan, Draft Metropolitan Strategy for Sydney to 2013 and Draft South Subregional Strategy as well as the Urban Activation Precinct program.

The Assessment Report concludes that *'the proposed modification is reasonable and results in a form and scale of development which is consistent with the desired future character of the area'*. The Department recommended that the Commission *'approve the proposed modification subject to amended terms of approval, modifications and future assessment requirements'*.

## **7. MEETINGS**

### **7.1 Sutherland Shire Council**

The Commission met with the Mayor and Council officers on 23 December 2014 to hear Council's view on the findings and recommendations of the Assessment Report. In general, Council noted that the proposed modification improves on the urban design of the original Concept Plan approval.

Issues raised by Council included:

#### Scale of the development:

- The height of buildings on the northern side of the site as proposed in the initial modification were supported as they offer a landmark entry to Kirrawee, subject to performance requirements for sunlight penetration to and achievement of plant diversity in the lake. Preference was expressed for a taller but slimmer building on the corner of the Princes Highway and Oak Road North;
- The height of mixed-use buildings on the eastern boundary of the site is considered to be excessive as it may restrict the development potential of the adjoining property;
- Amenity within private courtyards may be detrimentally affected by overshadowing due to the height of buildings. Likewise Flora Street may be impacted by overshadowing.
- Objection to the Proponent's method of calculating FSR on the site.

#### Public domain

- Viability of the proposed wetland planting surrounding the lake, particularly if affected by overshadowing. Council asserted that the location of the lake should achieve at least 4 hours of sunlight exposure daily to support appropriate plants;
- Council welcomes the redesign of the parkland to achieve a contiguous and accessible public domain; and
- Greater attention to requirements for water sensitive urban design is required.

#### Traffic

- Council questioned the proponent's claim that the traffic generation rate would be reduced by 9% albeit that density is increased;
- Northern side of the district (the other side of the Princes Highway) will be developed over time and cumulative impact on the traffic in the precinct would need to be managed; and
- Providing less parking at the target site could put pressure on on-street parking.

### Developer contributions

- Council noted that the DP&E Assessment Report overlooked the two draft Voluntary Planning Agreements (VPAs) in relation to the original approval. The first VPA relates to the biodiversity offset package. This VPA is advanced and there are no unresolved issues between Council and the Proponent on this matter. The second VPA deals with community benefits, which would extinguish Section 94 contributions, and has not been progressed since the original approval. Moreover, should the current application be approved with additional yield then commensurate additional developer contributions should be required;
- Council proposed that a positive community benefit would result from the delivery of community space within the development, made possible by a provision of 1,500 – 1,800m<sup>2</sup> of space adjacent to the park (within building G), which could accommodate a child care or library facility;
- Council also nominated streetscape upgrades to Flora Street, Oak Road south of the Princes Highway to Kirrawee Railway Station, beautification works to the Kirrawee shopping precinct and integration of Oak Road north into the development as being of public benefit;
- Council proposed in addition a contribution to a trust fund for the upgrade of community and sporting facilities in the Kirrawee/Gymea precinct.

Correspondence was received from Council on 31 December 2014 outlining subsequent discussions between Council and the Proponent regarding developer contributions and VPA requirements related to these matters.

The Commission met with Council again on 22 January 2015. The focus of this meeting was on progress regarding the draft community benefits VPA. Council advised at this meeting that they were satisfied with negotiations to date and that they were in support of a draft VPA that addressed community benefits as follows:

- Provision of the public park on site, and its design and management requirements;
- 1,500m<sup>2</sup> of space for community facilities within the development close to public areas;
- Developer contributions to infrastructure upgrades in proximity of the development, being:
  - A financial contribution in the amount of \$500,000 for the beautification of the Kirrawee shopping precinct;
  - A financial contribution in the amount of \$250,000 for the streetscape upgrade of the Oak Road between Flora Street and the Princes Highway;

However, Council noted that they were seeking delivery of the park as early as possible within the project delivery period. These matters were confirmed in correspondence received from Council on 30 January 2015 (see Appendix 1).

## **7.2 The Proponent**

The Commission met with the Proponent and its consultants on 23 December 2014 to discuss the findings and recommendations of the Department's Assessment Report.

The Proponent's representatives outlined the urban design approach of the proposed modification and how they believe it improves on the original concept design and provides a superior public domain outcome. Improvements were asserted to include:

- Perimeter development in a regularised street grid improving legibility and creating discrete and attractive courtyards between building blocks;

- Positive integration of the development with the surrounding area with increased permeability and public access;
- Enhanced public domain with a contiguous and accessible parkland integrated with the mixed use centre and surrounding neighbourhood; and
- Loading dock moved from Oak Street into a more discreet entry off Flora Street.

The Proponent's Traffic Consultant clarified the revised traffic generation analyses, based on RMS traffic guidelines that have been updated since the initial Concept Plan application with a resultant reduction in requirements for parking spaces. Following discussion with the Commission, the Proponent confirmed their support for a conveniently located, accessible community bus stop.

The height of buildings along the Princes Highway was discussed, with the Proponent asserting the urban design benefits of a higher building on the corner of the Princes Highway and Oak Road (as also supported by Council). The Proponent agreed that adequate sunlight exposure for the lake was important for biodiversity and amenity and advised that appropriate sunlight requirements could be achieved in design development. The Proponent's opinion regarding their method of calculating FSR was reiterated. The matter of development contributions was discussed, and requests from Council in this regard outlined. The Proponent indicated a willingness to resolve this matter with Council and to update and revise the draft VPA to this end.

Correspondence from the Proponent received on 5 January 2015 provided information on subsequent meetings held with Council in relation to developer contributions. The Proponent also identified alternative locations for the lake, and provided associated solar analyses referencing sunlight penetration to the water body.

Further correspondence was received from the Proponent on 15 January, 20 January and 22 January 2015, including two draft VPA options addressing community benefits. A separate draft VPA regarding the biodiversity offset was also provided for the information of the Commission, confirming that negotiations with Council on this VPA are advanced and agreement is imminent.

The Commission met again with the Proponent and its consultants on 22 January 2015 to discuss progress on the draft community benefits VPA and proposed revised staging plan. The Proponent advised at this meeting that discussions with Council on the draft VPA were proceeding satisfactorily. The Proponent also noted Council's preference for early delivery of the park, supported by the Commission, and provided a revised staging plan on 23 January 2015, bringing forward the delivery of this facility.

### **7.3 The Department of Planning and Environment**

On 22 January 2015 the Commission met with Departmental officers regarding the proposed amendments to the project and the status of negotiations between the Council and the Proponent. Having reviewed the supplementary information provided by both Council and the Proponent, Departmental officers indicated their support for a draft community benefits VPA addressing the public park, provision of community space within the development and financial contributions to the improvement of offsite infrastructure in close proximity to the development.

Progress on the separate biodiversity offset VPA was noted.

The matter of the height of the building on the corner of the Princes Highway and Oak Road (Building A) was discussed. The Department explained their rationale for seeking 11 storeys (rather

than the 13 storeys proposed by the Proponent) as being in response to concerns about the scale and relationship to neighbouring properties, including those on the northern side of the Pacific Highway. The Department noted that other buildings on the site were proposed as 13 storeys (with one at 14 storeys) and that the corner site could be considered as a landmark.

Various refinement matters were discussed regarding FEARs proposed by the Department.

## **8. COMMISSION'S CONSIDERATION**

Having considered the information available to it, the Commission identified the following key issues in relation to the modification request:

- Built form;
- FSR and community benefits;
- Public park and lake;
- Traffic, parking and public transport;
- Water sensitive urban design; and
- Crime prevention through environmental design.

### **8.1 Built form**

The Commission notes the improved urban design outcome of the modified Concept Plan, and Council's support of this.

While recognising the Department's concerns regarding the scale of Building A, on the corner of Oak Road North and the Princes Highway, the Commission notes that Council has asserted that they support the proposed 13 storey height, as long as the need for commensurate community infrastructure is addressed.

The Commission has independently considered the height of Building A on its merit, as well as the overall proposed increase in density on the site. The Commission is of the view that the proposed increase of GFA across the Concept Plan area, and the exhibited height of buildings, including Building A at 13 storeys, are in alignment with the objectives of Council's Draft LEP 2013, the designation of Kirrawee as an urban activation precinct, and is also reasonable for a large infill site such as this that is situated near a railway station and alongside a major arterial road. The Commission considers that the height of Building A fits the development potential of the area, and will also herald the entry into the Kirrawee shopping precinct from the Princes Highway. The Commission is also satisfied that the building could be designed to ensure that there will be sufficient sunlight penetration to the lake to support plant diversity and a healthy water body. Conditions have been modified to address the sustainability of the water body.

The Commission considers that the project should generally comply with guidelines in the Residential Flat Design Code as application of these will assist in moderating overshadowing impacts, spaces between buildings and the depth of buildings at the Development Application stage. However, the Commission accepts the Assessment Report's findings that future development of the adjacent site along the eastern boundary would not be unreasonably jeopardised by the proposed nine metre (rather than 12 metre) building separation setback along this shared boundary. Conditions have been modified to address this exception. The Commission notes that only Building D along this boundary is proposed at 13 storeys (with part at nine storeys) with the other buildings along the eastern boundary limited to seven storey development.

## **8.2 FSR calculation and community benefits**

The Proponent and Council disagree about the method for calculating FSR for the site. The specific point of difference is whether the proposed park should be included within the site area calculation. Notwithstanding this, Council have advised that they are not averse to the proposed development density, as long as commensurate developer contributions are made.

The Commission does not take a position on the matter of the method of the FSR calculation as the application was originally assessed under Part 3A of the Act, and transitional legal arrangements require that all subsequent modifications continue to be assessed on their merit, and may not entirely comply with local planning instruments.

The Commission has examined the merits of the increased scale of development and the implications for developer contributions. As the Commission is of the view that the development is of an appropriate scale and form, it is satisfied to note that a draft VPA is being progressed that will enable commensurate community benefits to be provided. A condition addressing the community benefits VPA has been included in the instrument.

## **8.3 Public park and lake**

During the exhibition period, NSW Office of Water (NOW), Council and public submissions raised concerns in relation to the potential overshadowing of the lake by Building A. Solar analyses provided by the Proponent at the Commission's request indicated that the detail design of Building A along with the careful location of the lake will ensure appropriate sun penetration to the water body. To ensure this outcome is achieved, the Commission has amended the recommended conditions to require appropriate solar access for the water body to achieve and maintain acceptable water quality and sustainable biodiversity within the park.

The Commission agrees with Council that the design, management and tenure of the park should be addressed in the terms of the draft VPA regarding community benefits. Moreover, the timing of the delivery of the park should be brought forward to ensure that the local community and new residents benefit at the earliest possible time. For this reason, the Commission has, following discussion with the Proponent, amended conditions to ensure the delivery of the public park in Stage 2C of the development.

Conditions have also been amended to ensure that detailed landscaping plans for both the park and the public domain are submitted to the satisfaction of Council in the short term.

## **8.4 Traffic, parking and public transport**

Council's concerns regarding traffic generation are noted, however the Commission considers these have been adequately addressed in the Assessment Report. The Commission notes the changes to parking requirements as a result of updates to RMS guidelines, and supports the Department's move to impose parking ratios rather than a parking maxima. Conditions have been tightened to ensure provision is made for public transport and an accessible community bus stop.

## **8.5 Water sensitive urban design (WSUD)**

The Commission notes the existing approval paid particular attention to WSUD in the public domain that has not been carried over in the modification proposal. A condition has been inserted to ensure this is addressed going forward.


### **8.6 Crime prevention through environmental design (CPTED)**

The Commission supports the Department's conditions relating to CPTED and has reinforced conditions to encourage the maximisation of passive surveillance opportunities over the public domain. Under these conditions particular attention to the detailed design of the podium wall of Building **D** along the eastern boundary is expected.

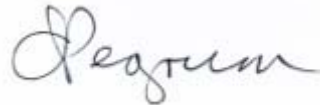
### **9. COMMISSION'S DETERMINATION**

The Commission has considered the Department's Assessment Report, information in relation to the modification request, public submissions and the views of Council, the Proponent and the Department. Taking these matters into account, the Commission is satisfied that the issues identified in the Assessment Report and by the Commission have been adequately addressed. The recommendation of the DP&E for approval subject to conditions is reasonable. The application is approved subject to recommended conditions as modified by the Commission to address:

- a) Revised urban design including increased density and redistribution of building heights;
- b) The need to secure community benefits by way of a voluntary planning agreement;
- c) Timing of delivery of the public park;
- d) Sustainability of the lake;
- e) The provision of detailed landscape designs for the park and public domain;
- f) Inclusion of water sensitive urban design requirements for the public domain; and
- g) Maximisation of passive surveillance opportunities.



**Abigail Goldberg (Chair)**  
**Member of the Commission**



**Annabelle Pegrum AM**  
**Member of the Commission**



## **APPENDIX 1**

### **Letter from Sutherland Shire Council**



File Reference: CRMS 772834720

Ms Tatjana Djuric- Simovic  
NSW Planning Assessment Commission  
[pac@pac.nsw.gov.au](mailto:pac@pac.nsw.gov.au)

Dear Tatjana,

**Modification of Mixed Use Development at Kirrawee Brick Pit  
566-594 Highway Kirrawee**

Thank you for the opportunity for Council staff and the Mayor to brief the Planning and Assessment Commission again on 22 January 2015 regarding the concept plan for the Brick Pit development at 566-594 Princes Highway, Kirrawee.

At the meeting the Commission indicated general support for the proposal as amended, so discussion focused on a potential Voluntary Planning Agreement between the parties.

Council is in agreement that a VPA is the preferred way to proceed, rather than s.94 contributions. Council is comfortable with any modified consent setting out the matters to be contained in a VPA and for the detailed agreement(s) to be prepared and negotiated subsequently.

Following your request to further assist the Commission in defining the terms of the Draft VPA, I can confirm that Council is generally supportive of the matters contained in Schedule 1 of the draft VPA prepared by Gadens Lawyers (Ref AQW/DTS :33615880) and "Attachment C" Schedule 2 –Terms of Approval (provided at the meeting and understood to have been prepared by Department of Planning). These matters relate to the construction and dedication of public open space, provision and dedication of a community facility and public domain upgrades of Kirrawee Shopping Precinct and Oak Road.

There are, however, a number of issues that Council wishes to raise in terms of the detail:

### 1. Timing of park dedication

Council has concerns in relation to the timing of the items indicated in Schedule 1 of the draft VPA and feels very strongly that the dedication of the public open space should be prior to the release of any plan of subdivision.

If delivered as proposed by the applicant at the completion of all of the stages, the park may not be completed until many years into the future. The park would be delivered well after occupation of the vast majority of the proposal, leaving new residents' need for local public open space unsatisfied for a number of years.

It is also important to note that the park is a public open space to be enjoyed by all of the community, and is a benefit that the community is expecting to flow from what will be a very significant change and impact on their neighbourhood.

For these reasons, its delivery early in the process is imperative. Later stages of the proposal are indefinite, may be subject to the prevailing financial climate at the time and could be subject to modification by any other future applicant.

It is also noted in "Attachment C" draft schedule 2 –Terms of Approval seeks to modify condition A11(c). This condition seeks to have the requirement for the park to *be publicly accessible* deleted.

Council objects to this proposed amendment. It was imposed with the original concept approval and its deletion is contrary to both the concept of public open space, and the objectives and purpose of the zone. There is no rational benefit to either party in removing this condition.

### 2. Provision and Dedication of a Community Facility

Council is generally satisfied with the criteria nominated within Schedule 1, however, the wording; *The structure must not be used for any commercial or retail or residential use....* should be deleted as it is not uncommon for community facilities to have a retail or commercial component that is contiguous with the community use.

Council also requires some flexibility in terms of the use of the space going forward, given that the space will be in Council's ownership indefinitely. The community's needs and Council's asset portfolio will change over time, and as a consequence, so will the best use of this space.

The timing of this component of the project is satisfactory.

### 3. Public Domain Upgrades - Kirrawee Shopping Precinct

Council is generally satisfied with the terms (\$500,000 + \$250,000) and timing of this aspect, however, it is important that the area in which the upgrade and beatification of the precinct occurs be clearly articulated. The area of any works should clearly exclude the frontages of the development site fronting Oak Road, Flora Street and the Princes Highway. These areas will require upgrade and restoration as part of the project and are considered as standard frontage works associated with development.

The area of public domain upgrade is to be beyond the frontages immediately adjoining the site and should include the western side of Oak Road between the Princes Highway and Flora Street, the southern side of Flora Street opposite the site and both sides of Oak Road between Flora Street and Kirrawee Station.

### 4. A11A Voluntary Planning Agreement "Attachment C"

Council is generally satisfied with these terms with the exception of the following comment:

*The voluntary planning agreement shall be generally in accordance with the draft Voluntary Planning Agreement prepared by Gadens Lawyers*

Council is generally satisfied with the terms set out in Schedule 1 of this agreement subject to the modifications above, however, the VPA should be drafted together with Council staff and Lawyers in conjunction with the applicant's representatives. The terms and negotiation should not be dictated by the applicant's lawyer's draft documentation at this point in time. This point should be deleted or modified to reflect Schedule 1 in the draft only.

### Building on Oak Rd and Princes Highway corner

Aside from the VPA, there was brief discussion at our meeting about the building envelope proposed near the corner of Oak Road and Princes Highway. Council agrees that the Panel's proposed 13 storey height limit should include all elements of the building (such as plant).

In agreeing that a taller building might be acceptable in this location, Council expects that the building would have a significantly smaller footprint to provide better solar access (i.e. 4hr in mid-winter) to the public open space to the south. Relocating the waterbody further south does not resolve this issue, as the outcome would be an overshadowed park rather than an overshadowed pond.

Thank you for your consideration of these matters.

Yours sincerely



Peter Barber  
Director, Planning and Environment  
for John Rayner  
General Manager