



566-594 Princes Highway, Kirrawee

S75W Modification to Concept Plan  
MP10\_0076

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**566-594 PRINCES HIGHWAY, KIRRAWEE**

Amend Condition No. A11A to modify the timing  
for the Voluntary Planning Agreement to be  
entered into

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## 1.0 INTRODUCTION

This Statement has been prepared in support of an application to modify an approved Concept Plan pursuant to Section 75W and Clauses 2(1)(a) and 3(1) of Schedule 6A of the Environmental Planning and Assessment Act, 1979.

On 30 January 2015, as delegate of the Minister for Planning, the Planning Assessment Commission (PAC) approved Concept Plan MP10\_0076 (MOD 3) for a mixed use development at 566-594 Princes Highway, Kirrawee. The Concept Plan provides for the following:

- Use of the site for a mixed use development with associated public open space;
- Indicative building envelopes for 7 buildings to a maximum height of 14 levels;
- 85,000 square metres of gross floor area, comprising 69,310 square metres of residential floor space (749 dwellings) and 14,190 square metres of retail/commercial floor space (including a 4,740 square metre supermarket and 1,450 square metre discount supermarket) and a 1,500 square metre community facility;
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

The PAC issued future environmental assessment requirements for subsequent stages of the development pursuant to section 75P(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act) and determined that all future stages will be subject to the provisions of Part 4 of the EP&A Act, as provided for under section 75P(1)(b).

In particular, the Concept Plan MP10\_0076 (MOD 3) approval includes Condition No. A11A which requires the proponent to enter into a Voluntary Planning Agreement with Sutherland Shire Council for a range of public benefits including the construction and dedication of a new park, prior to release of the first Occupation Certificate for the first substantive stage of construction.

On 2 May 2016, the Sydney East Joint Regional Planning Panel subsequently granted consent to a Part 4 development application DA15/1134 which was lodged pursuant to the Part 3A Concept Plan and which provided for a mixed use retail, commercial and residential development containing 749 apartment on the site.

Since development consent was issued, the developer has been working closely with Council to finalise a design for the park. However, Council has not yet decided on a final design and is presently unable to enter into the Voluntary Planning Agreement with the developer. The first substantive component of the development is nearing completion and in the absence of Council confirming a final design for the park and entering into a Voluntary Planning Agreement, the developer will be unable to obtain an Occupation Certificate. In order to provide Council with sufficient time to achieve a resolution in relation to their preferred design of the park without unreasonably preventing release of the first Occupation Certificate, it is proposed to amend Condition No. A11A to amend the timing for entering into the Voluntary Planning Agreement until 1 December 2018.

This proposed amendment has been discussed with Council who have indicated in-principle support for this date.

## 2.0 SITE DESCRIPTION AND LOCATION

### 2.1 Site Description

The site is located within the suburb of Kirrawee, which is located within the Sutherland Shire Local Government Area. The site is approximately 25km south west of the Sydney CBD and 1.5km east of Sutherland Town Centre.

The site is legally described as Lots 1 and 2 in DP 1215969 and is known as No. 566-594 Princes Highway, Kirrawee. The site is located on the southern side of the Princes Highway and east of the Oak Road intersection. The site is rectangular in shape with frontages of 252.13 metres to the Princes Highway to the north, 160.75 metres to Oak Road to the west, 251.66 metres to Flora Street to the south, and 177.85 metres to the existing industrial area located immediately east. The site, which comprises three lots, has a total area of 42,542 square metres.

Construction of the approved development is currently underway as illustrated in the image below.



Photograph 1:

Progress photograph of construction currently underway on site

### 2.2 Surrounding Development

Surrounding development includes light industrial units to the south across Flora Street, immediately adjacent to the east and to the north of the site across the Princes Highway. To the south-west of the site along Oak Road are the Kirrawee village shops and Kirrawee train station is located beyond the shops approximately 250 metres to the south. A variety of residential flat buildings of between one and three storeys in height are located to the west of the site along Oak Road.

## 3.0 BACKGROUND

### 3.1 Major Projects MP10\_0076

On 23 August 2012, as delegate of the Minister for Planning and Infrastructure, the Planning Assessment Commission granted approval for Concept Plan MP10\_0076 for the subject site.

The Concept Plan provides for a mixed use development of the site comprising the following:

- Use of the site for a mixed use development with associated public open space;
- Indicative building envelopes for 9 buildings to a maximum height of 14 levels above podium;
- 60,735 square metres of gross floor area, comprising 45,505 square metres of residential floor space (432 dwellings) and 15,230 square metres of retail/commercial floor space (including a 3,900 square metre supermarket and 1,470 square metre discount supermarket);
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

In addition, the PAC issued future environmental assessment requirements for subsequent stages of the development pursuant to section 75P(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act), and determined that all future stages will be subject to the provisions of Part 4 of the EP&A Act, as provided for under section 75P(1)(b).

In relation to car parking provision, the Director General's Assessment Report dated June 2012 specifically advocates reduced car parking for the residential component on the basis of the proximity of the site to Kirrawee train station. In relation to the non-residential parking provision, the report states (page 28):

NSW Transport has recommended that the car parking for the retail/commercial component should be reduced and that this can be required to be assessed as part of a Workplace Travel Plan for any future application. The Department is supportive of this approach as the site is well located to utilise the existing public transport infrastructure and should be further considered at development application stage.

### 3.2 Major Projects MP10\_0076 (MOD 1)

The Concept Plan was modified (MOD 1) on 17 January 2013 to amend the wording of Environmental Assessment Requirement No. 18 so that the design excellence provisions only relate to above ground works.

### 3.3 Major Projects MP10\_0076 (MOD 2)

The Concept Plan was modified (MOD 2) on 16 May 2014 to achieve the following:

- amendment of several of the conditions of consent to defer their satisfaction to allow the commencement of early works on the site as soon as possible including dewatering, bulk excavation and remediation.
- a minor amendment the methodology for dewatering including an addendum to the Biodiversity Management Plan, and an addendum to the Geotechnical Report and an updated Dewatering Report.



### 3.4 Major Projects MP10\_0076 (MOD 3)

The Concept Plan was modified (MOD 3) on 30 January 2015 to achieve the following:

- 24,265m<sup>2</sup> increase of GFA (from 60,735m<sup>2</sup> to 85,000m<sup>2</sup>), comprising: 69,310m<sup>2</sup> of residential; 14,190m<sup>2</sup> of retail/commercial (including 4,740m<sup>2</sup> supermarket and 1,450m<sup>2</sup> discount supermarket); and 1,500m<sup>2</sup> community facility.
- reduction of the total number of building envelopes from nine to seven and reconfiguration and amendment of building envelope locations, footprints, heights, separation distances and setbacks;
- amended construction staging and timing of the delivery of the open space; and
- removal of the car parking cap and imposition of car parking rates.

The amended Concept Plan is described as follows:

- Use of the site for a mixed use development with associated public open space;
- Indicative building envelopes for 7 buildings to a maximum height of 14 levels;
- 85,000 square metres of gross floor area, comprising 69,310 square metres of residential floor space (749 dwellings) and 14,190 square metres of retail/commercial floor space (including a 4,740 square metre supermarket and 1,450 square metre discount supermarket) and a 1,500 square metre community facility;
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

### 3.5 Major Projects MP10\_0076 (MOD 4)

The Concept Plan was modified (MOD 4) on 20 November 2014 to amend Condition No. 8j to allow the release of a Construction Certificate for the Early Works stage.

### 3.6 Major Projects MP10\_0076 (MOD 5)

The Concept Plan was modified (MOD 5) on 18 October 2017 to amend Condition A4A to facilitate an alternative apartments mix and an increase from 749 apartments to 808 apartments.

### 3.7 Major Projects MP10\_0076 (MOD 6)

MOD 5 to the Concept Plan was lodged in January 2018 to amend Condition No. 14 to provide clarity in relation to car parking provision and is currently under assessment.

### 3.8 Development Consent DA15/1134

On 2 May 2016, the Sydney East Joint Regional Planning Panel granted consent to development application DA15/1134 which provided for a mixed use retail, commercial and residential development and associated public park including 749 dwellings, fitout and use of 2 supermarkets, 1 liquor store, 9000m<sup>2</sup> public park with lake and surrounding forest, 1500m<sup>2</sup> community facility, torrens subdivision for road dedication, torrens subdivision of 1 lot into 2 lots for public reserve dedication, 5 lot stratum subdivision and signage strategy

## 4.0 PROPOSED MODIFICATION

### 4.1 Description of Proposed Modification

This application seeks to modify the approved Concept Plan (MP07\_0076 MOD 4), pursuant to S75W of the Environmental Planning and Assessment Act 1979 by amending Condition No. A11A as follows:

#### **A11A Voluntary Planning Agreement – Community Benefits**

The proponent shall enter into a Voluntary Planning Agreement (VPA) with Sutherland Shire Council prior to 1 December 2018 ~~the release of the first Occupation Certificate for the first substantive development application.~~ The VPA shall be generally consistent with the draft VPA prepared by Gadens Lawyers ((reference 21009015.1 DTS DTS) and Council's comments in its letter to the PAC (attached as Appendix 1 to the PAC determination report dated 30 January 2015) to provide for:

- a) construction, embellishment and dedication of public open space as shown as 'new park' on drawing A-SK-700-005
- b) construction and dedication of a 1,500m<sup>2</sup> community facility;
- c) monetary contribution towards the beautification of Kirrawee Shopping Precinct (between Flora Street and Kirrawee Station); and
- d) monetary contribution towards the upgrade of Oak Road (between Flora Street and the Princes Highway).



## 5.0 STATUTORY PLANNING FRAMEWORK

### 5.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act), Section 75W as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects. The proposed modification merely seeks to amend the timing for the developer to enter into the Voluntary Planning Agreement because Council has been unable to date to reach a conclusion in relation to its preferred design for the park and it is unreasonable for the developer to be unable to achieve an Occupation Certificate for the first stage of development despite its best endeavours to progress the issue. The amendment will have no impact beyond that associated with the approved Concept Plan. (see *Barrick Australia Ltd v Williams* [2009] NSWCA 275).

### 5.2 Modification of the Minister's Approval

Section 75W(2) of the EP&A Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the approval of the project, as modified, would be consistent with the original approval. As the proposed modification seeks to amend the wording of Condition No. A11A, the modification will require the Minister's approval.

### 5.3 Environmental Assessment Requirements

Section 75(3) of the EP&A Act provides the Director-General with scope to issue Environmental Assessment Requirements (DGRs) that must be complied with before the matter will, be considered by the Minister. Given the minor nature of the proposed amendment, it is considered that new or amended DGRs are not required as this application sufficiently addresses the key issues relevant to the modification request.

## 6.0 ENVIRONMENTAL ASSESSMENT

Since development consent was issued, the developer and Council have been working closely together to finalise a design for the park however the design is not yet finalised and therefore the Voluntary Planning Agreement is unable to be entered into at this point in time.

Notwithstanding that there is yet to be a Voluntary Planning Agreement in place, the developer has shown good faith and has already commenced substantial preliminary works towards the creation the park at considerable expense. In addition, the developer will complete transfer of ownership of the park to Council by the end of February 2018 and from this point on Council will own the land.

The first substantive component of the development is nearing completion and in the absence of the ability to enter into a Voluntary Planning Agreement, the developer will be unable to obtain an Occupation Certificate.

In order to provide sufficient time to finalise the preferred design of the park to enable the Voluntary Planning Agreement to be entered into without unreasonably impacting the construction program on site and preventing the first Occupation Certificate from being achieved, it is proposed to amend Condition No. A11A to amend the timing for entering into the Voluntary Planning Agreement to 1 December 2018 as agreed with Council staff.

In the circumstances the proposed amendment is reasonable, particularly having regard to the fact that the Council will have ownership of the park, upon which substantial works have already been carried out, prior to release of the first Occupation Certificate.

This proposed amendment has been discussed with Council who have indicated in-principle support.

## 7.0 CONCLUSION

The proposed modification seeks to amend Condition No A11A of the Concept Plan to provide sufficient time to finalise the preferred design for the park to enable the Voluntary Planning Agreement to be entered into by without adverse impact to the developer resulting from a delay to being able to achieve the first Occupation Certificate.

The developer has demonstrated good faith by:

- working closely with Council to achieve a satisfactory design;
- already undertaking substantial early works for the park at considerable expense even in the absence of a VPA; and
- arranging transfer of the ownership of the park to Council (completed by the end of February 2018) even in the absence of the VPA.

In the circumstance, the proposed amendment is eminently reasonable and is also necessary to ensure that the construction program for the site can continue and to avoid unjustifiable financial hardship to the developer by unreasonably preventing the achievement of the Occupation Certificate for the first stage of works.