



# Modification to concept plan (MP10\_0076 MOD 8)

Kirrawee brick pit mixed-use development  
566-594 Princes Highway, Kirrawee

Proposed modification to remove the lake from the development

## Application report

Prepared by  
Sutherland Shire Council  
February 2018

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# 1 Introduction

This report has been prepared in support of an application to modify the approved concept plan (MP10\_0076) for mixed-use development of the Kirrawee brick pit at 566-594 Princes Highway, Kirrawee (the project).

The application is submitted to the Minister for Planning pursuant to section 75W and Clause 3C of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## 1.1 The purpose of this modification application

The Concept Plan approval (MP10\_0076) allows for development of the following components:

- use of the site for a mixed use development with associated public open space;
- indicative building envelopes for residential buildings and retail/commercial floor space;
- basement level, ground and above ground car parking;
- road layout to support the development;
- public pedestrian and cycle pathway;
- public park **with lake** (emphasis added) and surrounding forest; and
- landscaping areas throughout the site.

In short, this section 75W application seeks to modify the approved concept plan to allow the removal of the 'lake' from the public park component of the project.

## 1.2 The reason for this modification application

As set out in this report the modification is proposed as a result of changed circumstances and the original purpose for providing the lake (as understood in the original concept approval) being no longer necessary.

In the original 2012 concept approval, the purpose of the lake was to provide a drinking source that was thought to be critical to the survival of threatened bat species (the Grey-headed Flying Fox and Eastern Bent-wing Bat). However, since then on-site monitoring has confirmed that threatened bat species do not rely upon the former brick pit site as a critical resource. Therefore the provision of the lake as originally purposed is no longer necessary.

Further, it has been assessed that the deletion of the lake will allow for the provision of an additional 800m<sup>2</sup> of the endangered ecological community (EEC) Sydney Turpentine Ironbark Forest (STIF) to be provided within the public park. This added provision of STIF has added significance given that necessary road widening on the perimeter of the park has meant that some 350m<sup>2</sup> of STIF must be removed which was not anticipated in 2012.

Overall then it is argued that the original planning purpose for the inclusion of the lake is no longer relevant and the removal of the lake from the concept plan will result in a more effective ecological outcome through provision of additional STIF. The removal of the lake will also result in an enhanced community benefit arising from the additional STIF being integrated into the design of the public park.

### **1.3 Preparation and content of this report**

This report has been prepared by Sutherland Shire Council on behalf of the proponent, South Village Pty Ltd. The report describes the background to the application, details the proposed modifications and provides an environmental assessment.

This report is supported and accompanied by the following appendices:

- Appendix A Ecological assessment
- Appendix B Monitoring of flying fox and bat activity;
- Appendix C Monitoring of flying fox and bat activity – supplement;
- Appendix D Summarised history of the Kareela flying-fox camp; and
- Appendix E Letter from the Office of Environment and Heritage dated 25.7.16
- Appendix F Preferred landscape plan for the public park

## 2 Background

### 2.1 Original concept plan approval

On 23 August 2012, the Planning Assessment Commission (PAC), as delegate of the Minister for Planning and Infrastructure, granted approval to concept plan MP10\_0076 for the site. That original approval provided for a mixed use development including:

- 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 storeys;
- 60,735m<sup>2</sup> of gross floor area, comprising 45,50m<sup>2</sup> metres 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;
- Basement level, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park **with lake** (emphasis added) and surrounding forest; and
- Landscaping areas throughout the site.

The lake was included in the concept plan approval as a compensatory water body for threatened bat species which visited the site at that time. This is confirmed by Commitment 8 Drainage and stormwater management in Schedule 4 of the concept plan, which states:

*“Subsequent applications will be based on the stormwater concept design prepared by Northrop Engineers dated 29 October 2010 with the exception of the proposed water quality standard for the compensatory water body for the threatened bat species which is dealt with in the revised Biodiversity Management Plan at Appendix 7 of the PPR and Equatica report at Appendix 19.”*

### 2.2 Changes to usage of the site by threatened bats since 2012

Prior to development, the site contained a large water body that provided habitat for a range of species. This 'lake' or pond, formed by the former clay extraction pit on the site, covered about a third of the site (see Figure 1 below).





*Figure 1: The original 'lake' on the site prior to development*

Historical records and observations indicate usage of this lake/pond by threatened bats including the Grey-headed Flying Fox and the Little Bent-wing Bat.

As noted above it was considered in the 2012 concept plan approval that retention a suitably sized pond on site (a temporary pond during construction followed by a permanent pond) would provide a continued source of drinking water in particular for these threatened species. This was the original purpose of the concept approval for the 'lake'.

Since development of the site commenced, and the original pond drained, a temporary pond has been provided as an off-set, to continue to provide a source of drinking water for bats in the area.

However, since 2012 there have been considerable changes in the activity of the threatened species both at the site and across the Sutherland Shire.

Anecdotal reports have indicated that threatened bat species were no longer visiting the site and the council has undertaken ecological assessment including monitoring of bat activity to verify these reports.

The council's ecological assessment has found that the threatened bat species are no longer visiting the site and accordingly a lake or pond within the park cannot be considered a critical resource.

See Section 4.1 of this report for Council's ecological assessment.

### **2.3 Previous modifications to the concept plan approval**

Since the concept plan was first approved in 2012 a number of modifications have been approved (or are under assessment) as shown by the table below:



Table: Previous modifications to the concept plan approval

MOD No.	Purpose	Approval status
MOD 1	to remove the need for design excellence below the finished ground level	approved 17 Jan 2013
MOD 2	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	approved 16 May 2014
MOD 3	to increase the GFA; to amend building envelopes, staging and timing of open space delivery; and to remove car parking cap and imposition of parking rates	approved 30 Jan 2015
MOD 4	to modify Future Environmental Assessment Requirement relating to NSW Transport Roads & Maritime Services requirement 8j - Construction Certificate	approved 20 Nov 2014
MOD 5	to facilitate an alternative mix of apartments and an increase from 749 to 808 apartments	approved 18 Oct 2017
MOD 6	to clarify that the intent of term of approval A14 is to control traffic generation and to encourage alternative forms of transport; and not to limit future use of the non-residential components of the development	under assessment
MOD 7	to amend the date prior to which a VPA with Sutherland Shire Council must be entered into	under assessment

Development has proceeded on the basis of the concept approval as modified and construction of the project is well underway. (see Figure 2 below).



Figure: Aerial view of the project under construction  
(Source: Sutherland & Associates Planning)

Implementation of the concept plan approval has resulted in impacts on the lake and public park components:

- Required road widening and traffic control lights at the Flora Street and Oak Road intersection has resulted in the need to remove some 350m<sup>2</sup> of STIF from the perimeter of the public park site.
- The approval of MOD 3 and MOD 5 to the concept plan has substantially increased the number of dwellings on the site (from 423 as originally approved to 808 – an increase of 376 dwellings) and placed additional demand on the park for usable open space.

## 2.4 Preferred design for the public park

The proponent has been working closely with Sutherland Shire Council to finalise a Voluntary Planning Agreement (VPA) and preferred design for the public park component of the approved concept plan.

The Landscape Plan contained in Appendix F (and see Figure 3 below) is council's preferred design for the public park (Drawing No. LD-SK102 Rev 3 prepared by Scott Carver, landscape architects).



Figure 3: Council's preferred landscape plan for the park (see Appendix F)  
Source: Scott Carver

### 2.4.1 Key features of the preferred Landscape Plan

The preferred Landscape Plan:

- removes the lake;
- includes an additional 800m<sup>2</sup> of STIF (corresponding to the area required for the lake);
- reflects necessary road widening in Flora Street and Oak Road (and related removal of 350m<sup>2</sup> of STIF);

- provides a larger area of usable open space or “village green” compared with the lake included;
- provides a larger adventure playground area; and
- allows for heritage interpretation of the former brick pit

#### ***2.4.2 Factors informing the preferred landscape plan design***

Preparation of the preferred Landscape Plan has followed an iterative design process which has been informed by the following key considerations:

- Monitoring of bat activity and further ecological assessment undertaken by the council (see Section 3.4 of this report) strongly supported the view that the lake could not be considered a critical resource for the threatened bats and therefore could be removed from the park design without likely adverse impacts on the bats.
- The removal of the lake from the park allows for a corresponding increased provision of STIF within the park, thereby achieving a better ecological outcome in the circumstances. The importance of providing additional STIF has added importance when the necessary loss of STIF resulting from road widening is taken into account.
- As noted earlier, the approval of MOD 3 and MOD 5 to the concept plan substantially increases the number of dwellings on the site and places additional demand on the park for usable open space. A park design without the lake will allow a larger and more effective provision of usable open space to be achieved.

The preferred Landscape Plan reflects the decision of the council at its meeting on 19 June 2017 to support the entire removal of the lake from the concept plan to optimise the provision of useable open space at the project site (Min No. 392 SER002A-17).

### 3 Proposed modification

This section 75W modification application seeks to modify approved Concept Plan MP10\_0076 (as already modified) to allow the removal of the 'lake' from the public park component of the project. Specifically, the application seeks to modify the approval at the following terms:

- Schedule 2 Part A – Administrative Conditions;
  - Term of Approval A1 Development description;
  - Term of Approval A2 Development in accordance with the plans and documentation;
  - Term of Approval A11 Public Park; and
  - Term of Approval A11A Voluntary Planning Agreement – Community Benefits.

The proposed modifications allow for the removal of the lake from the public park component of the project, while retaining all other requirements of the approval, particularly those requirements concerning the development of a public park.

#### 3.1 Term of Approval A1 Development description

It is proposed that Term of Approval A1 (as modified), which is reproduced below, be amended by the deletion of the ~~bold struck out~~ words/numbers (in red):

- “(a) Term of Approval A1 is amended by the insertion of the **bold and underlined** words/numbers and deletion of the ~~bold struck out~~ words/numbers as follows:

#### A1 DEVELOPMENT DESCRIPTION

Concept Plan approval is granted to the development as described below:

- a) Use of the site for a mixed use development with associated public open space;
- b) Indicative building envelopes for **9** ~~7~~ buildings to a maximum height of 14 Storeys;
- c) ~~60,735~~ **85,000**m<sup>2</sup> of Gross Floor Area, comprising ~~45,505~~ **68,310**m<sup>2</sup> of residential (~~432~~ **749** dwellings) and ~~15,230~~ **14,190**m<sup>2</sup> of retail/commercial floor space (including ~~3,900~~ **4,740**m<sup>2</sup> supermarket and ~~1,470~~ **1,450**m<sup>2</sup> discount supermarket) **and 1,500m<sup>2</sup> community facility**;
- 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.

subject to compliance with the modifications of this approval.”

### 3.2 Term of Approval A2 Development in accordance with the plans and documentation

It is proposed that Term of Approval A2 (as modified), which is reproduced below, be amended by the insertion of the **bold and underlined** words/numbers (in red):

- “(b) Term of Approval A2 is amended by the insertion of the **bold and underlined** words/numbers and deletion of the ~~bold struck out~~ words/numbers as follows:

#### A2 DEVELOPMENT IN ACCORDANCE WITH THE PLANS AND DOCUMENTATION

The development shall be undertaken generally in accordance with:

- the Environmental Assessment dated December 2010 prepared by City Plan Services, except where amended by the Preferred Project Report dated 4 November 2011 including all associated documents and reports;
- the Revised Statement of Commitments prepared by Sutherland & Associates Planning Pty Ltd, dated October 2013; and
- Section 75W Modification to Concept Plan MP 10\_0076 MOD 2, prepared by Sutherland & Associates, dated October 2013 (as amended February 2014);
- **Section 75W Modification to Concept Plan MP 10\_0076 (MOD3), prepared by Sutherland & Associates, dated November 2013 as amended by Response to Submissions dated July 2014 and Response to Department of Planning & Environment Correspondence dated 3 September 2014: South Village Kirrawee – Quality of Sunlight – New Parkland, Rev 1 dated 24.12.14 prepared by Turner. Letter from IONIC to the Planning Assessment Commission dated 22 January 2015:**
- The draft Voluntary Planning Agreements prepared by Gadens Lawyers (reference 21009015.1 DTSDTA



(community benefits) and 20497267.1 DTSDTS (biodiversity offset)); and

- the following drawings:

<b>Architectural Drawings prepared by Woodhead Turner</b>			
<b>Drawing No.</b>	<b>Revision</b>	<b>Name of plan</b>	<b>Date</b>
<b>0040</b>	<b>B</b>	<b>Site Plan</b>	<b>19/10/11</b>
<b>0041</b>	<b>B</b>	<b>Landscape Plan</b>	<b>19/10/11</b>
<b>0100</b>	<b>B</b>	<b>Typical Top Level Residential Floor Plan</b>	<b>19/10/11</b>
<b>0110</b>	<b>B</b>	<b>Typical Residential Floor Plan</b>	<b>19/10/11</b>
<b>0120</b>	<b>B</b>	<b>Upper Ground Floor Plan</b>	<b>19/10/11</b>
<b>0130</b>	<b>B</b>	<b>Lower Ground Floor Plan</b>	<b>19/10/11</b>
<b>0140</b>	<b>B</b>	<b>Basement 1 Plan</b>	<b>19/10/11</b>
<b>0150</b>	<b>B</b>	<b>Basement 2 Plan</b>	<b>19/10/11</b>
<b>0160</b>	<b>B</b>	<b>Basement 3 Plan</b>	<b>19/10/11</b>
<b>0180</b>	<b>B</b>	<b>Floor Plans Buildings A to C – Sheet 1</b>	<b>19/10/11</b>
<b>0180A</b>	<b>B</b>	<b>Floor Plans Buildings A to C – Sheet 2</b>	<b>19/10/11</b>
<b>0181</b>	<b>B</b>	<b>Floor Plans Building D1, D2, E</b>	<b>19/10/11</b>
<b>0182</b>	<b>B</b>	<b>Floor Plans Building F, G &amp; H</b>	<b>19/10/11</b>
<b>0190</b>	<b>B</b>	<b>Roof Plan with indicative plant rooms</b>	<b>11/05/12</b>
<b>0300</b>	<b>C</b>	<b>Indicative Sections East West (Masterplan)</b>	<b>15/05/12</b>
<b>0301</b>	<b>C</b>	<b>Indicative Sections North South (Masterplan)</b>	<b>15/05/12</b>
<b>0500</b>	<b>B</b>	<b>Indicative Elevations North &amp; South</b>	<b>04/10/11</b>
<b>0501</b>	<b>B</b>	<b>Indicative Elevations West &amp; East</b>	<b>04/10/11</b>
<b>0600</b>	<b>C</b>	<b>Indicative Staging – Lower Ground Stage 1</b>	<b>31/10/13</b>
<b>0602</b>	<b>B</b>	<b>Indicative Staging – Upper Ground Stage 1</b>	<b>19/10/11</b>
<b>0603</b>	<b>B</b>	<b>Indicative Staging – Upper Ground Stage 2</b>	<b>19/10/11</b>
<b>0604</b>	<b>B</b>	<b>Indicative Staging – Upper Ground Stage 3</b>	<b>19/10/11</b>
<b><u>A-SK-700-</u></b>	<b><u>M</u></b>	<b><u>Envelope Plan Diagram</u></b>	<b><u>05/01/15</u></b>

001			
<u>A-SK-700-002</u>	<u>N</u>	<u>Envelope Elevation Diagrams</u>	<u>22/01/15</u>
<u>A-SK-700-003</u>	<u>N</u>	<u>Envelope Elevation Diagrams</u>	<u>22/01/15</u>
<u>A-SK-700-004</u>	<u>M</u>	<u>GA Plans – Illustrative Staging Plan</u>	<u>22/01/15</u>
<u>A-SK-700-005</u>	<u>L</u>	<u>Envelope Plan Basement</u>	<u>23/09/14</u>
<u>1306 6-S75 W 07</u>	<u>B</u>	<u>STIF Comparison Plan</u>	<u>August 2014</u>

Landscape Drawing prepared by Scott Carver			
<u>Drawing No.</u>	<u>Revision</u>	<u>Name of Plan</u>	<u>Date</u>
<u>LD-SK102</u>	<u>3</u>	<u>Landscape Plan</u>	<u>8/11/17</u>

except for as modified by the following pursuant to Section 75O(4) of the Act.”

### 3.3 Term of Approval A11 Public Park

It is proposed that Term of Approval A11 (as modified), which is reproduced below, be amended by the insertion of the **bold and underlined** words/numbers (in red) and the deletion of the **~~bold and struck out~~** words/numbers (in red):

- “(h) Term of Approval A11 is amended by the insertion of the **bold and underlined** words/numbers and deletion of the **~~bold struck out~~** words/numbers as follows:

#### A11 PUBLIC PARK

The development application for ~~the first substantive~~ stage **2A** of the development must ~~provide for~~ **include** the design, management and tenure of the public park on the land ~~within Zone 13~~ **generally as shown as ‘new park’ on drawing A-SK-700-005 LD-SK102 Revision 3 listed in Term of Approval A2.**

The public park must:

- Be designed **by a qualified landscape architect and**



~~generally in accordance with the plans and documents referred to in Condition A2; and in consultation with the Council;~~

- b) Include a lake, which can be located as shown on Drawing 13066-S75W07B (dated August 2014) or in a location agreed by Council;
- c) Provide for the conservation of the Sydney Turpentine Ironbark Forest; and
- d) Be publicly accessible; ~~and~~
- e) **Include high quality hard and soft landscaping and paving areas and a variety of recreation facilities;**
- f) Be contiguous with and accessible from the public domain
- g) Include a Vegetation Management Plan that is consistent with NSW Office of Water's *Guidelines for vegetation plans on waterfront land*; and
- h) **include future management requirement and an implementation program.**

~~The public park may be provided in accordance with the terms of a planning agreement offered by the proponent and the subject of a Council resolution referred to in Appendix 16 of the Preferred Project Report."~~

### 3.4 Term of Approval A11A Voluntary Planning Agreement – Community Benefits

It is proposed that Term of Approval A11A (as modified), which is reproduced below, be amended by the insertion of the **bold and underlined** words/numbers (in red) and the deletion of the ~~**bold and struck out**~~ words/numbers (in red):

- “(i) Insert a new Term of Approval A11A (Voluntary Planning Agreement) after Term of Approval 11.

#### A11A Voluntary Planning Agreement – Community Benefits

The proponent shall enter into a Voluntary Planning Agreement (VPA) with Sutherland Shire Council prior to 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 generally as shown ~~as 'new park'~~ on drawing LD-SK102 Revision 3 listed in Term of Approval A2;
- 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)."

## 4 Environmental assessment

### 4.1 Ecological assessment

Appendix A contains an Ecological Assessment Report (Ecological Report) prepared by Sutherland Shire Council's Environmental Science Unit which provides an assessment of the possible ecological impact of the removal of the lake on threatened bat species.

The Ecological Report is supported by the following documents which are also appended to this report:

- Appendix B Monitoring of flying fox and bat activity;
- Appendix C Monitoring of flying fox and bat activity – supplement;
- Appendix D Summarised history of the Kareela flying-fox camp; and
- Appendix E Letter from the Office of Environment and Heritage dated 25.7.16

The Report concludes:

*There have been significant changes to both the brickpit development and presence of Grey-headed Flying Fox within the Sutherland Shire since the original concept approval. The changes to the size of the development to the north of the pond mean that any provision of a water body within the park will be of little to no use to bats. Also the numbers and distribution of Grey-headed Flying Fox have changed significantly since the concept approval. Numbers have now decreased, and dispersal and habitat removal have also taken place. All this has served to decrease reliance of bats within the Sutherland Shire locality on any water body within the brickpit site. This has been borne out by recent monitoring of the site. While the initial presence of the Eastern Bentwing Bat on the site is questionable, changes to the site since commencement of development have resulted in very few resources for this species remaining on the site, and its presence is no longer considered likely.*

*It is considered that replacement of the 800m<sup>2</sup> water body with an additional 800m<sup>2</sup> of Sydney Turpentine Ironbark Forest represents a better ecological outcome.*

### 4.2 Community Benefit

The proposed modification will not only achieve a better ecological outcome but will benefit the community through the delivery of a more effective park design which provides a larger active open space together with adventure playground.

#### **4.2.1 Community Strategic Plan**

It is evident that the proposed modification is consistent with the desires of the local community as expressed in the *Sutherland Shire Community Strategic Plan 2017* (the CSP). The proposed modification aligns with the following relevant outcomes of the CSP:

- Outcome 2: A beautiful, protected and healthy natural environment; and
- Outcome 6: A liveable place with a high quality of life.

## 5 Conclusion

The proposed modification seeks to modify the approved concept plan to allow the removal of the 'lake' from the public park component of the project.

The provision of the lake as originally purposed in the 2012 concept plan approval, was to provide a drinking source for threatened bat species. However ecological assessment, including on-site monitoring, has since confirmed that threatened bat species no longer visit the site and any water body on site is not a critical resource for the bats. Therefore the provision of the lake as originally purposed is no longer necessary.

Further, the deletion of the lake will allow for a corresponding provision of an additional 800m<sup>2</sup> of the endangered ecological community (EEC) Sydney Turpentine Ironbark Forest (STIF) within the public park. This added provision of STIF has added importance given that necessary road widening on the perimeter of the park (which was not anticipated in 2012) has meant that some 350m<sup>2</sup> of STIF must be removed.

The council and the proponent are finalising a VPA for the provision of the park and a preferred landscape plan for the park has been prepared.

The preferred landscape plan removes the lake, provides additional STIF and achieves a larger usable area of open space in response to the increased number of dwellings on the site as a result of previous approved modifications to the concept plan approval.

Overall then, the proposed modification will result in the concept plan approval achieving better outcomes for the environment and the community.