



566-594 Princes Highway, Kirrawee
S75W Modification to Concept Plan
MP10_0076

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566-594 PRINCES HIGHWAY, KIRRAWEE

Amend Condition No. 14 to clarify that future
non-residential uses are not to be constrained by
the non-residential car parking provision

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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. 14 which provides maximum rates for the non-residential parking provision.

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. The approved development provided the maximum possible non-residential parking provision for the development of 541 car parking spaces, noting that less non-residential car parking could also have been approved on the basis that the car parking rates within Condition No. 14 of the Concept Plan are maximum, not minimum, rates.

However, the Development Consent DA15/1134 included Condition No. 5(iii) which stated that the parking demand of the non-residential uses within the development must not exceed the parking provision and that future commercial uses are to be restricted to ensure sufficient parking is provided.

Section 96 application MA17/0129 was lodged with Sutherland Shire Council in April 2017 for a range of amendments including the deletion of the restriction within Condition No. 5(iii) on the basis that such a restriction on future commercial uses based on parking provision is fundamentally contrary to the terms of Condition No. 14 of the Concept Plan which provides that the commercial car parking rates are maximum, not minimum, rates. The Section 96 application was determined in December 2017 and whilst Condition No. 5(iii) was amended to incorporate some of the wording of Condition No. 14 of the Concept Plan including the reference to maximum parking rates, the condition retained the restriction that the parking demand for the non-residential uses must not exceed the parking provision.

The maximum car parking control for non-residential uses under Condition No. 14 of the Concept Plan MP10_0076 (MOD 3) is intended to restrict the level of on-site parking provided, in order to reduce traffic

generation and to encourage alternative forms of transport. It was not imposed in order to restrict the non-residential floor space or mix of uses within the shopping centre for the life of the development. In fact, the development proposal could have proposed significantly less car parking for the non-residential component of the development and remained compliant with Condition No. 14 of the Concept Plan.

The demand limit imposed by Condition 5(iii) of Development Consent DA15/1134 effectively treats the maximum car parking rates as minimum rates and is considered to be not “generally consistent” with the Concept Plan Approval as required by clause 3B(2)(c) of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as it fails to give effect to the car parking development standard adopted by the Concept Plan Approval.

A Section 96 application will be lodged with Sutherland Shire Council concurrent with this application to delete the restriction under Condition No. 5(iii) of Development Consent DA15/1134. In order to assist Council in their further consideration of this forthcoming application, it is proposed to amend Condition No. 14 of Concept Plan MP10_0076 in order to provide clarification that the car parking rates are maximums and the future non-residential uses within the development are not to be constrained by the non-residential car parking provision.

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:

- 24,265m² increase of GFA (from 60,735m² to 85,000m²), comprising: 69,310m² of residential; 14,190m² of retail/commercial (including 4,740m² supermarket and 1,450m² discount supermarket); and 1,500m² 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.

In relation to car parking provision, the Planning Assessment Commission report dated January 2015 provided the following (page 7):

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.

Condition No. B4 was deleted and Condition No. 14 was amended to read as follows (emphasis added):

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development **shall not exceed** the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

b) An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.

c) Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.

d) The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.

e) the provision and implementation of a car share scheme.

f) All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.

g) South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.

h) A community bus and taxi drop off to the main central Flora Street pedestrian entry, shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

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 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, 9000m² public park with lake and surrounding forest, 1500m² 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

The approved development has an apartment mix comprising 189 one-bed units (25%), 403 two-bed units (54%), and 157 three-bed units (21%).

The development consent included Condition No. 5(iii) as follows:

Based on the generation rates outlined in the Concept Approval, the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.

3.8 Section 96 (MOD17/0129) to Development Consent DA15/1134

MOD 17/0129 was lodged with Sutherland Shire Council in April 2017 to undertake a range of amendments to the approval, including the following amendment to Condition No. 5(iii):

~~Based on the generation rates outlined in the Concept Approval, the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.~~

The total amount of car parking to be provided as part of the development shall not exceed 1,150 spaces. Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

The Council assessment report recommended the following amendment to Condition No. 5(iii):

Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

(a) residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

(b) non-residential component of the replacement of 40 street car parking spaces development displaced by (including the the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

An updated schedule of parking allocation for the site shall be prepared and submitted with each subsequent application.

The parking demand for the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.

Submissions were made to the Sydney South Planning Panel that the Council's proposed amended wording for Condition No. 5(iii) was fundamentally inconsistent with the terms of Condition No. 14 of the Concept Plan on the basis that it would have the effect of imposing a minimum rather than maximum car parking control. The Panel acknowledged this concern and amended the wording of Condition No. 5(iii) to delete Council's suggested last sentence, however, the retention of the first sentence of the last paragraph still results in the same outcome:

The Section 96 application was determined by the Sydney South Planning Panel on 13 December 2017 and the final wording of Condition No. 5(iii) is as follows:

Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

(a) residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

(b) non-residential component of the replacement of 40 street car parking spaces development displaced by (including the the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

An updated schedule of parking allocation for the site shall be prepared and submitted with each subsequent application.

The parking demand for the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces).

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. 14 as follows:

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

iii. Where a proposed development is not listed in these controls, parking shall not exceed the parking provision based on the rates in Sutherland Shire Council's DCP at Chapter 17 (B2 Local Centre B4 Mixed Use - Kirrawee) or Chapter 36 (Roads, Vehicular Access, Traffic, Parking and Bicycles) or the rates in the RMS Guide to Traffic Generating Development (irrespective of whether or not the car parking control is expressed as a minimum, maximum or absolute standard)

Explanatory Note: *The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation associated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use. Future use of the non-residential components of the development shall not be restricted based on parking provision.*

b) An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.

c) Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.

d) The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.

e) the provision and implementation of a car share scheme.

f) All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.

g) South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.

h) A community bus and taxi drop off to the main central Flora Street pedestrian entry, shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

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 clarify the original intent of Condition No. 14 of the Concept Plan and accordingly 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. 14, 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.

5.4 Strategic Planning Controls

The objectives, targets and initiatives of the NSW State Plan 2010, A Plan for Growing Sydney, the Metropolitan Transport Plan: Connecting the City of Cities, Integrating Land Use and Transport policy package, Planning Guidelines for Walking and Cycling and the Healthy Urban Development Checklist all support reduced reliance on car use in favour of walking, cycling and public transport usage.

Under the State Plan, the NSW Government has set specific transport related targets that include an increase in the number of commute trips made by public transport by 28% and an increase in rates of walking and cycling.

This is also reflected within the objectives of the B4 Mixed Use zone under the Sutherland Shire Local Environmental Plan 2015 within which the site is located which aim to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

6.0 ENVIRONMENTAL ASSESSMENT

A limitation on car parking to control traffic impacts is a recognised planning mechanism which is consistently adopted by many Council's and the Department of Planning & Environment and its purpose is to reduce traffic generation and therefore traffic impacts associated with development and also to encourage alternative forms of transport including walking, cycling and public transport use.

The maximum car parking control for non-residential uses under Condition No. 14 of the Concept Plan MP10_0076 (MOD 3) is intended to achieve these outcomes and to ensure that further traffic impacts do not result from alternative mixes of non-residential uses which will reasonably occur over the life of the development.

The implementation of a cap on car parking provision under Condition No. 14 was not intended as a reverse engineering mechanism to potentially limit the maximum non-residential gross floor area within the development or to dictate the potential mix of non-residential uses which can be accommodated within the development for the life of the development.

The imposition of Condition 5(iii) under Development Consent DA15/1134 is unreasonable and impractical for the following reasons:

- It has the effect of converting a maximum car parking control into a minimum car parking control which is inconsistent with the terms of Condition No. 14 of the Concept Plan and in breach of clause 3B(2)(c) of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- It is contrary to the objective of a limitation on parking provision to encourage alternative forms of transport
- It is likely to result in a circumstance where a certain quantum of approved and constructed non-residential floor space within the development will be unable to be occupied if the intensity of other approved uses within the development were deemed by Council to have exhausted the constructed non-residential car parking capacity of 541 spaces
- It would require the creation and maintenance of a car parking/uses register for the entire building for the life of the development. The responsibility for ownership, maintenance and verification of such a register is unclear and onerous.
- The future flexibility of the non-residential components of the development to respond to community demand and needs will be constrained and limited to only those indicative uses first identified in development application DA15/1134.

Having regard to the above, it is proposed to amend Condition No. 14 of the Concept Plan to provide clarity as to the intended purpose of the imposition of a maximum non-residential car parking rate.

A concurrent Section 96 application will be lodged with Sutherland Shire Council to delete the last two sentences of Condition No. 5(iii) of Development Consent DA15/1134, relying on the clarity proposed for Condition No. 14 of the Concept Plan as part of this S75W application.

7.0 CONCLUSION

The proposed modification seeks to amend Condition No 14 of the Concept Plan to provide clarification that:

- The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation associated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use;
- The maximum non-residential car parking rate is not intended as a mechanism to limit future non-residential uses based on car parking demand;
- The final provision of non-residential car parking spaces within the development is intended to provide a pool of parking to serve all future permissible non-residential uses within the development for the life of the development; and
- Future use of the non-residential components of the development for permissible uses shall not be restricted based on parking provision.

This clarification is consistent with the strategic planning hierarchy governing the site, submissions made by Transport for NSW in relation to the Concept Plan, and the Department's previous consideration of this issue.

This clarification is necessary to assist in Council's consideration of a Section 96 application which will be lodged with Sutherland Shire Council concurrent with this application to delete the restriction under Condition No. 5(iii) of Development Consent DA15/1134.