

ASSESSMENT REPORT

MIXED-USE DEVELOPMENT, KIRRAWEE BRICK PIT MP 10_0076 MOD 7

1. INTRODUCTION

This report is an assessment of a request to modify the Concept Approval (MP 10_0076) for a mixed-use development at the former Kirrawee Brick Pit in the Sutherland Shire local government area.

The request has been lodged by Sutherland Planning & Associates on behalf of South Village Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to amend Term of Approval (ToA) A11A to modify the timing of entering into a Voluntary Planning Agreement (VPA) and to update the Staging Plan to be consistent with the Development Application (DA) Staging Plans.

2. SUBJECT SITE

The subject site is located at 566-594 Princes Highway in the suburb of Kirrawee, approximately 25 kilometres (km) south-west of the Sydney CBD. It is located on the southern side of the Princes Highway and east of the Oak Road North intersection (see **Figure 1**).

The site is located approximately 250 metres to the north of Kirrawee Village Centre and train station and was formally used as a Brick Pit.



Figure 1: Site location (Base source: Google Maps)

3. APPROVAL HISTORY

On 23 August 2012, the then Planning Assessment Commission (the Commission) granted Concept Approval for the redevelopment of the site for the following purposes:

- mixed use development with associated open space
- indicative building envelopes for nine buildings to a maximum height of 14 storeys
- 60,735m² of gross floor area, comprising 45,505m² of residential (432 dwellings) and 15,230m² of retail/commercial floor space (including 3,900m² of supermarket and 1,470m² of discount supermarket); basement level, ground and above ground car parking (1,150 spaces)
- road layout to support the development
- public pedestrian and cycle pathway
- the public park, lake and surrounding forest
- landscaped areas throughout the site.

The Concept Plan has been modified on six occasions, as summarised in **Table 1**.

Table 1 – Modifications to the approved Concept Plan

MOD	Key Modifications	Approved
1	<ul style="list-style-type: none">• Amend the wording of the Future Environmental Assessment Requirement (FEAR) 18, by removing the need for development below the finished ground level to exhibit design excellence.	17/01/13
2	<ul style="list-style-type: none">• Amend FEARs B1 and B2 relating to building envelopes and building design modifications to enable the commencement of early works and amend the Statement of Commitments.	16/05/14
3	<ul style="list-style-type: none">• Increase GFA from 60,735 m² to 85,000m² and reduce the total number of building envelopes from nine to seven• Reconfigure envelopes, footprints, heights, separation distances and setbacks• Amend construction staging and timing of delivery of open space• Removal of car parking cap and imposition of car parking rates.	20/11/14
4	<ul style="list-style-type: none">• Defer requirements for the execution of the works authorisation deed, construction traffic management and control plans to enable early works to proceed.	30/01/15
5	<ul style="list-style-type: none">• Increase number of apartments from 749 to 808 apartments.	18/10/17
6	<ul style="list-style-type: none">• Amend FEAR 14 to clarify that parking for non-residential uses are not constrained by a minimum provision.	Under assessment

4. PROPOSED MODIFICATION

The Proponent lodged a section 75W modification request (MP 10_0076 MOD 5) seeking approval to amend ToA A11A to modify the timing of entering into a VPA until the final stage of construction. The request also seeks to update the Staging Plan to be consistent with the staging plans approved by Council under DA 15/1134.

Term of Approval A11A requires the Proponent to enter into a VPA with Council prior to the release of the first Occupation Certificate for the first substantive development application. The VPA is to provide for construction, embellishment and dedication of public open space as shown as the 'new park' on the plans, among other things.

The modification is requested on the basis that the final design of the park has not been resolved by Council, and is delaying the issuing of an Occupation Certificate for Stage 1.

The proposed modified ToA is outlined below:

A11A Voluntary Planning Agreement – Community Benefits

The proponent shall enter into a Voluntary Planning Agreement (VPA) with Sutherland Shire Council prior to the **final stage of construction** ~~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 1,500m² 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. STATUTORY CONSIDERATION

5.1 Section 75W

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The power to modify transitional Part 3A projects under section 75W of the Act as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the carrying out of the project under section 75W of the EP&A Act.

The Department is satisfied that the proposed changes are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application.

5.2 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Executive Director, Key Sites and Industry Assessments, may determine the request under delegation as:

- the relevant local council has not made an objection; and
- a political disclosure statement has been made, but only in respect of a previous related application; and
- there are no public submissions in the nature of objections.

6. CONSULTATION

The modification request was made publicly available on the Department's website and referred to Sutherland Shire Council (Council).

Council raised no objection to the proposal, but requested the ToA be amended to require the VPA to be entered into before 1 December 2018.

No **public** submissions were received.

7. ASSESSMENT

The proposal seeks approval to extend the timing of the VPA from prior to the release of the first Occupation Certificate for the first substantive development application, to prior to the final stage of construction. The Proponent seeks to modify the timing of the VPA as the final design of the park (which is to be delivered through the VPA) has not yet been resolved by Council and is delaying the issuing of an Occupation Certificate for Stage 1.

Council did not object to the proposal, but suggested that the ToA be amended to require the VPA to be entered into before 1 December 2018, rather than the prior to the final stage of construction.

The Department agrees with Council that the VPA should be entered into at an earlier stage than before the final stage of construction. This would ensure appropriate contributions and facilities are provided to meet the demand generated by the early stages of the development. As an additional safeguard, the Department recommends that the timing of the VPA should also be linked to a Stage of development. The Department has therefore recommended the VPA entered into prior to 1 December 2018 or prior to the issue of any Occupation Certificate for Stage 2, whichever occurs first.

Council and the Proponent raised no objection to the revised timing recommended by the Department, however, the Proponent requested that the Concept staging plans be updated to be consistent with the staging plans approved by Council under DA 15/1134.

The Concept staging plan includes Buildings A, B and C as part of Stage 2, whereas the DA staging plans include these buildings as part of Stage 1. The Department is satisfied the updated staging plans would ensure the reference to Stage 2 in the modified ToA is accurate and would allow the Occupation Certificate for Buildings A, B and C to be issued prior to entering into the VPA. Further, the Department is satisfied the revised staging plans would not change the nature or timing of other requirements in the Concept Approval. Council confirmed it raises no objection to the update of the staging plans, as it would facilitate the execution of the VPA in accordance with its advice.

Subject to the revised ToA, the Department considers the proposal is acceptable as it would allow an Occupation Certificate to be issued for the first stage of the development while still ensuring the VPA is entered into at an early stage. The additional time would also allow the design of the park to be finalised, to the satisfaction of Council. The Department also considers the replacement of the Staging Plan with the DA Staging Plans is acceptable, as it would provide consistency between the approvals and ensure the proposed modified Condition relates to the appropriate Stage 2.

9. RECOMMENDATION

It is recommended that the Executive Director, Key Sites and Industry Assessments, as delegate for the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **determines** that the request falls within the scope of section 75W of the EP&A Act;
- **approves** the modification request MP 10_0076 MOD 7, subject to conditions; and
- **signs** the attached notice of modification (**Appendix A**).

Recommended by:



Anthony Witherdin
Director
Modification Assessments

DECISION

Approved by:



Anthea Sargeant 12/4/18
Executive Director
Key Sites and Industry Assessments
as delegate of the Minister for Planning.

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9086

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9086

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9086

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9086