

## ASSESSMENT REPORT

### MIXED-USE DEVELOPMENT, KIRRAWEE BRICK PIT MP 10\_0076 MOD 6

#### 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). The proposal seeks approval to amend the Concept Plan to clarify that maximum car parking rates apply to non-residential land uses on the site.

The Department's assessment concludes the proposal is acceptable as it would clarify that maximum car parking rates apply to non-residential uses, consistent with the intent of the Concept Plan approval and broader transport policies which seek to reduce traffic generation and promote alternative forms of transport.

#### 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 (m) 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
- 60,735 m<sup>2</sup> of gross floor area, comprising 45,505 m<sup>2</sup> of residential (432 dwellings) and 15,230 m<sup>2</sup> of retail/commercial floor space (including 3,900 m<sup>2</sup> of supermarket and 1,470 m<sup>2</sup> 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"> <li>• 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.</li> </ul>	17 January 2013
2	<ul style="list-style-type: none"> <li>• 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.</li> </ul>	16 May 2014
3	<ul style="list-style-type: none"> <li>• Increase GFA from 60,735 m<sup>2</sup> to 85,000 m<sup>2</sup>, including: <ul style="list-style-type: none"> <li>◦ 69,310m<sup>2</sup> of residential GFA (increase of 23,805m<sup>2</sup>)</li> <li>◦ 14,190m<sup>2</sup> of retail/commercial GFA (reduction of 1,040m<sup>2</sup>)</li> <li>◦ 1,500m<sup>2</sup> of community facility GFA (1,500m<sup>2</sup> increase)</li> </ul> </li> <li>• Introduction of a dwelling cap of 749 dwellings</li> <li>• Reduce the total number of building envelopes from nine to seven</li> <li>• Reconfigure envelopes, footprints, heights, separation distances and setbacks</li> <li>• Amend construction staging and timing of delivery of open space</li> <li>• Removal of car parking cap and imposition of maximum car parking rates for residential and commercial development.</li> </ul>	20 November 2014
4	<ul style="list-style-type: none"> <li>• Defer requirements for the execution of the works authorisation deed, construction traffic management and control plans to enable early works to proceed.</li> </ul>	30 January 2015
5	<ul style="list-style-type: none"> <li>• Increase number of apartments from 749 to 808 apartments.</li> </ul>	18 November 2017
7	<ul style="list-style-type: none"> <li>• Amend FEAR A11A to modify the timing of entering into the Voluntary Planning Agreement.</li> </ul>	12 April 2018
8	<ul style="list-style-type: none"> <li>• Remove the requirement to provide a lake within the public park.</li> </ul>	Under assessment

### 4. PROPOSED MODIFICATION

Future Environmental Assessment Requirement (FEAR) 14 outlines maximum car parking rates for the residential component of the development and the following non-residential uses: supermarket mini-major; specialty retail; showroom office; and medical. However, it does not reference parking provision for non-residential uses outside those listed.

Council has sought to apply minimum car parking rates for Development Applications (DAs) seeking approval for non-residential uses not listed in the FEAR. The Joint Regional Planning Panel (JRPP) also applied a minimum carparking rate through a subsequent DA approval, stating: *the parking demand for the non-residential uses must not exceed the parking provision.*

To clarify this issue, the Proponent lodged a section 75W modification request (MP 10\_0076 MOD 6) seeking approval to amend FEAR 14 to state that, for non-residential development not listed, parking shall not exceed the rates in the Sutherland Shire Council Development Control Plan (DCP) or the RMS Guide to Traffic Generating Development.

It also seeks to clarify that:

- the purpose of imposing maximum parking rates for the non-residential uses is to control traffic generation and encourage alternate forms of transport
- future non-residential uses on the site shall not be restricted based on parking provision.

In summary, the Proponent argues that the amendment to the FEAR is necessary as:

- the Concept Plan always intended to apply maximum car parking rates to the development
- it would be unreasonable to now apply minimum car parking rates as the basement car park has been built and no additional spaces can be provided
- it would limit future non-residential land uses based on car parking demand.

## **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 modification 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 Independent Planning Commission (Commission) may determine the request under delegation.

## **6. CONSULTATION**

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

**Council** raised concern that the proposed changes to the FEAR 14 do not account for a range of land uses not considered at the time of the Concept Approval, and binds the future assessment of DAs by prohibiting consideration of parking demand, which is inconsistent with the requirements of Section 4.15 of the EP&A Act.

Council suggested the condition be modified to use the DCP rates as minimum carparking rates and to remove the statement that assessment of future uses shall not be restricted based on parking provision.

No **public** submissions were received.

### **6.2 Response to Submissions**

The Proponent raised concern with Council’s suggested condition, as it would impose minimum parking rates, and potentially restrict future uses. The Proponent noted this approach is fundamentally opposed to the Concept Plan which imposed maximum car parking rates to control traffic impacts and encourage alternative forms of transport. In response to Council’s

comments, the Proponent modified FEAR 14 to clarify that the parking rates for all uses should be a maximum, and no minimum rates are applicable.

The proposed modified FEAR is outlined below:

*Future applications shall address the following:*

a) *Total number of car parking spaces for the proposed development **must be minimised in order to reduce the traffic impacts of the development and the parking provided for each use must shall not exceed the following car parking rates (with no minimum car parking requirement):***

i. *residential component of the development:*

1. 1 space per 1 bedroom unit;
2. 1.25 spaces per 2 bedroom unit;
3. 1.5 spaces per 3 bedroom unit; and
4. 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 100m<sup>2</sup>;
- Mini-Major (faster trade retail) – 4.0 spaces per 100m<sup>2</sup>;
- Speciality Retail (incl. secondary retail, kiosks) – 4.2 spaces per 100m<sup>2</sup>;
- Showroom – 2.4 spaces per 100m<sup>2</sup>;
- Office – 2.5 spaces per 100m<sup>2</sup>; and
- Medical – 0.9 spaces per 100m<sup>2</sup>.

iii. ***Where a use is not listed above, the maximum parking rate for that use will be based on the rates in the Sutherland Shire Council's DCP or the rates in the RMS Guide to Traffic Generating Development (irrespective of whether or not the relevant DCP or RMS rate is expressed as a minimum, maximum or absolute standard, it is to be applied as a maximum rate for the purpose of this condition and there is no minimum car parking requirement).***

***Explanatory Note: The imposition of a maximum car parking rate to 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. Any parking provision that does not exceed the maximum parking provision is compliant and acceptable.***

- b) *An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application **to ensure that the maximum parking provision is not exceeded.***
- 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 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.*

**Council** confirmed that it objects to the proposed FEAR, and that the DCP or RMS rates should be applied as a minimum.

## 7. ASSESSMENT

Car parking and traffic impacts were key considerations in the Department's assessment of the Concept Plan and subsequent modification requests. The Department supported applying maximum car parking rates for the development, given the site's proximity to Kirrawee train station and the need to minimise traffic generation in the area. Transport for NSW also advocated for reduced car parking provision for the non-residential uses as a part of its strategy to reduce traffic and encourage alternate forms of transport. The then Commission supported this approach and approved MOD 3, which set maximum carparking rates for the residential and non-residential development across the site.

Council objects to the proposal as it considers minimum car parking rates should apply to those non-residential uses not listed in FEAR 14. Council are concerned that applying maximum car parking rates would result in a shortfall in car parking, leading to increased traffic congestion in the area.

The Department maintains the view that maximum car parking rates should apply to all non-residential uses given the site is located approximately 250 m walking distance from Kirrawee Train Station. This is consistent with broader strategic policies for reducing car dependency and encouraging the use of alternative forms of transport.

Applying maximum car parking rates is also an accepted method of minimising traffic generation (particularly for retail/commercial uses) and encouraging the use of alternate forms of transport. The Department has routinely applied this approach for development located within close proximity to train stations. This, together with the required road upgrades in the local area, would appropriately manage and mitigate traffic impacts associated with the development.

The Department has carefully considered Council's request to apply a minimum car parking rate. However, the Department considers applying a minimum car parking rate is unreasonable in this instance because:

- *There is no ability to provide additional basement car parking spaces*

The basement car park has already been approved and constructed, providing 541 car parking spaces for the non-residential component of the development. Therefore, it is not possible to provide additional basement car parking spaces on the site.

- *The proposal already complies with Council's car parking requirements*

Council's DCP Chapter 17 (B2 Local Centre, B4 Mixed Use – Kirrawee) sets a car parking rate of 1 space per 30 square metres for business premises, retail premises (including food and drink premises) and community uses (health and medical premises). Based on the approved non-residential floorspace of 15,690 sqm, the proposal would require a minimum of 523 car parking spaces, for typical retail/commercial and community uses. This is 18 spaces less than the 541 spaces currently provided on the site. Therefore, sufficient car parking has already been provided to meet the overall car parking demand generated by the proposal.

- *Applying a minimum car parking rate would be inconsistent with the Concept Plan approval*

The Department considers it was never intended to apply minimum car parking rates for the non-residential component of the development. If it was, the minimum car parking rates would have needed to be clearly specified in the FEAR, given the prescriptive nature of the requirement.

Further, the Department considers it was always intended to apply maximum car parking rates to all non-residential development, and not only to those uses listed in the FEAR. The list of uses in the FEAR was not intended to be an exhaustive list of all the uses that could be permitted on the site, but rather, the most typical uses that would occupy the site. The proposed modification would appropriately clarify this intention.

- *Applying a minimum car parking rate would unnecessarily restrict development*

The Department notes the overall quantum of non-residential floor space on the site was approved as a part of the Concept Plan (as modified). This was supported by economic impact assessments which found the proposal to be acceptable. As such, the Department considers it would be unreasonable to now apply minimum car parking rates to potentially restrict the commercial/retail development, as it has already been approved. Further, it could potentially lead to unoccupied floor space on the site, impacting on the amenity and vitality of the centre.

The Department also notes Council's concern about the wording of the proposed FEAR, as it could limit Council's ability to assess the suitability of future uses based on traffic and parking impacts. To address this issue, the Department has recommended amendments to the FEAR to ensure Council can still assess and determine the most appropriate distribution of the remaining car parking spaces for future uses.

Therefore, the Department supports the proposed amendments to FEAR 14, clarifying that maximum car parking rates apply to the non-residential uses not listed in the FEAR.

## **8. CONCLUSION**

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act.

The Department's assessment concludes that the proposal to modify FEAR 14 is acceptable as it would clarify that maximum car parking rates apply to non-residential uses. This is consistent with the intent of the Concept Plan approval and broader transport policies which seek to minimise traffic generation and maximise alternative forms of transport.

The Department considers Council's request to apply minimum car parking rates is unreasonable in this instance, given it is not possible to provide additional car parking spaces in the basement, the number of car parking spaces provided on the site complies with Council's DCP and restricting future uses based on carparking would result in a poor planning outcome for the site.

The Department therefore considers the proposed amendments to FEAR 14 is supportable. This assessment report is hereby presented to the Commission for determination.

Recommended by:



**Anthony Witherdin**  
**Director**  
**Modification Assessments**

Recommended by:



**Anthea Sargeant** 28/6/18  
**Executive Director**  
**Key Sites and Industry Assessments**

## **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=9060](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9060)

## **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=9060](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9060)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9060](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9060)

3. Response to Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9060](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9060)