

## ASSESSMENT REPORT

### MIXED-USE DEVELOPMENT, KIRRAWEE BRICK PIT MP 10\_0076 MOD 8

#### 1. INTRODUCTION

This report is an assessment of a request to modify a 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 Shire Council (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to remove the requirement for a lake within a public park.

#### 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 10\_0076 for the redevelopment of the site for the following purposes:

- a mixed use development with associated open space
- indicative building envelopes for nine buildings to a maximum height of 14 storeys
- 60,735m<sup>2</sup> of gross floor area, comprising 45,505m<sup>2</sup> of residential (432 dwellings) and 15,230m<sup>2</sup> of retail/commercial floor space (including 3,900m<sup>2</sup> of supermarket and 1,470m<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
- a public park, lake and surrounding forest
- landscaped areas throughout the site.

The Concept Plan has been modified on eight 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 85,000m<sup>2</sup> and 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 car parking rates.</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 October 2017
6	<ul style="list-style-type: none"><li>• Amend FEAR 14 to clarify that parking for non-residential uses are not constrained by a minimum provision.</li></ul>	23 July 2018
7	<ul style="list-style-type: none"><li>• Amend ToA A11A to modify the timing of entry into the Voluntary Planning Agreement.</li></ul>	12 April 2018
9	<ul style="list-style-type: none"><li>• Amend FEAR 14 to clarify the allocation of parking for apartments.</li></ul>	15 August 2018

### 4. PROPOSED MODIFICATION

On 28 February 2017, the Proponent lodged a section 75W modification request (MP 10\_0076 MOD 8) seeking approval to remove the requirement to provide a lake within the public park. The removal of the lake would provide additional useable space for the community.

The proposal also seeks approval to modify the location and size of the STIF regeneration areas.

It is proposed to modify the following Terms of Approval (ToA) to remove references to the lake and reference the updated landscape plan:

- A1 - Development Description
- A2 - Development in Accordance with the Plans
- A11 - Public Park

- A11A - Voluntary Planning Agreement - Community Benefits

The requirement for the lake was included in the original consent, as it was thought the site provided a critical drinking water source for the Grey-headed Flying Fox (GHFF) and the Eastern Bent-Wing Bat.

The modification is requested on the basis that, since the original approval, on-site monitoring has confirmed that these species do not rely upon the site as a resource for drinking water. Therefore, the provision of the lake is no longer necessary.

## 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 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 an objection.

## 6. CONSULTATION

The modification request was made publicly available on the Department's website and referred to the Office of Environment and Heritage (OEH).

OEH raised no concern about the removal of the lake, but did raise concern about the provision of Sydney Turpentine Ironbark Forest (STIF) shown on the proposed landscape plan. OEH raised concern about the STIF removed as part of the widening of Oak Road, and provided the following comments:

- The Proponent should clarify why the proposal shows a reduced area of ‘existing STIF retained’ on the site, compared to that approved under MOD 3
- The Proponent should clarify if the MOD 8 proposal provides an additional 800m<sup>2</sup> of planted STIF within the public park
- A revised plan should be provided, clearly showing the location and area of:
  - ‘existing STIF retained’ on the site
  - the 800m<sup>2</sup> of additional STIF to be planted for the lake removal
  - the 700m<sup>2</sup> of additional STIF to be planted as an offset for the widening of Oak Road
  - the location of the 907m<sup>2</sup> of new STIF required by the approved MOD 3 STIF Impacts Comparison Plan.
- The 800m<sup>2</sup> of planted STIF should be contiguous with existing STIF

- ToA A11 and A11A should be amended to reference an updated landscape plan in accordance with the advice, and to remove the reference to the NSW Office of Water's Guideline for vegetation plans on waterfront land.

No **public** submissions were received.

## 6.1 Response to Submissions

The Proponent provided a response to the issues raised by OEH, including updated plans showing:

- the proposed STIF on the site compared to that approved under MOD 3
- the deletion of the boardwalk from the south-eastern corner through existing STIF, to provide an additional 115m<sup>2</sup> of undisturbed STIF to compensate for the widening of Oak Road
- potential locations for the additional 800m<sup>2</sup> of STIF to be planted due to the removal of the lake.

The Proponent also provided details about the widening of Oak Road, noting it was undertaken pursuant to Part 5 and appropriate arrangements were made for the removal of STIF.

## 7. ASSESSMENT

In assessing the merits of the proposal, the Department has considered:

- the modification application and associated documents
- the Environmental Assessment and conditions of approval for the original project
- all submissions received on the proposal
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

The proposal seeks approval to remove the requirement for a lake within the public park on the site. The impacts on threatened bat species, STIF regeneration areas within the park, and the reduction of existing STIF on the site as a result of the proposal. These issues are discussed below.

### Threatened Species

The site originally contained a water body within the abandoned brick pit, which was thought to provide a critical drinking water source for threatened bat species (Grey-headed Flying Fox and Eastern Bent-wing Bat). To minimise the potential impacts of the development on these species, the approval required the provision of a lake within the public park as a compensatory water body.

The proposal seeks to remove the requirement for the lake within the park, as on-site monitoring has confirmed the site has not been used by the threatened bat species as a drinking water source.

OEH raised no concern about the removal of the lake, noting the surveys confirm the bat species do not use the site as a drinking water source. OEH also noted there are other sites that provide water for the threatened bat species in the vicinity of the site.

The Department therefore considers the proposal to remove the lake is acceptable, as it would not adversely impact on the Grey-headed Flying Fox and Eastern Bent-wing Bat and it would provide additional open space for the community.

### STIF Regeneration Areas

The proposal seeks approval to remove the lake from within the park and redesign it to provide additional open space. This has resulted in changes to the size and location of the STIF regeneration areas across the site.

MOD 3 requires 907 m<sup>2</sup> of STIF regeneration within a consolidated area of the park, shown in **Figure 2**. The proposal seeks to amend the regeneration area and plant 944 m<sup>2</sup> of STIF across five separate sites as shown in **Figure 3**.

While the proposal exceeds the total amount of STIF required to be planted on the site, OEH raised concern that certain areas (C and D) are sub-optimal from a conservation perspective, as they have a high perimeter to area ratio, and are isolated from the existing STIF. OEH raised concern that these areas should not be included in the total area of STIF regeneration.

In response, the Proponent:

- identified possible areas for an additional 800 m<sup>2</sup> of STIF regeneration as a result of the removal of the lake (see **Figure 4**)
- noted Areas C and D are located to provide a visual buffer, and that the majority of regenerating STIF is within proximity to existing STIF
- noted that with the increased density approved on the site, the demand for recreation facilities has increased, making it difficult to provide contiguous areas of STIF.

The Department notes OEH's concerns about the location of Areas C and D of regenerating STIF and accepts that these areas should not be included in the calculation towards the required 907 m<sup>2</sup> of STIF regeneration.

However, the Department considers the proposal (excluding Areas C and D from calculations) would still provide an acceptable outcome, as:

- the inclusion of the 800 m<sup>2</sup> would ensure the total amount of STIF regeneration on the site (excluding Areas C and D) is still 646 m<sup>2</sup> more than that approved under MOD 3
- the 800 m<sup>2</sup> of additional STIF would be located so that it is contiguous with existing STIF
- a visual buffer would be provided between the park and the development through the retention of Areas C and D.

The Department considers the proposal would result in an acceptable outcome as the total amount of STIF to be regenerated on the site would increase by 20% compared to the original approval. The Department has also recommended a condition requiring the 800 m<sup>2</sup> of additional STIF to be located generally in accordance with the plan provided (**Figure 4**), or as otherwise agreed to in writing by OEH.

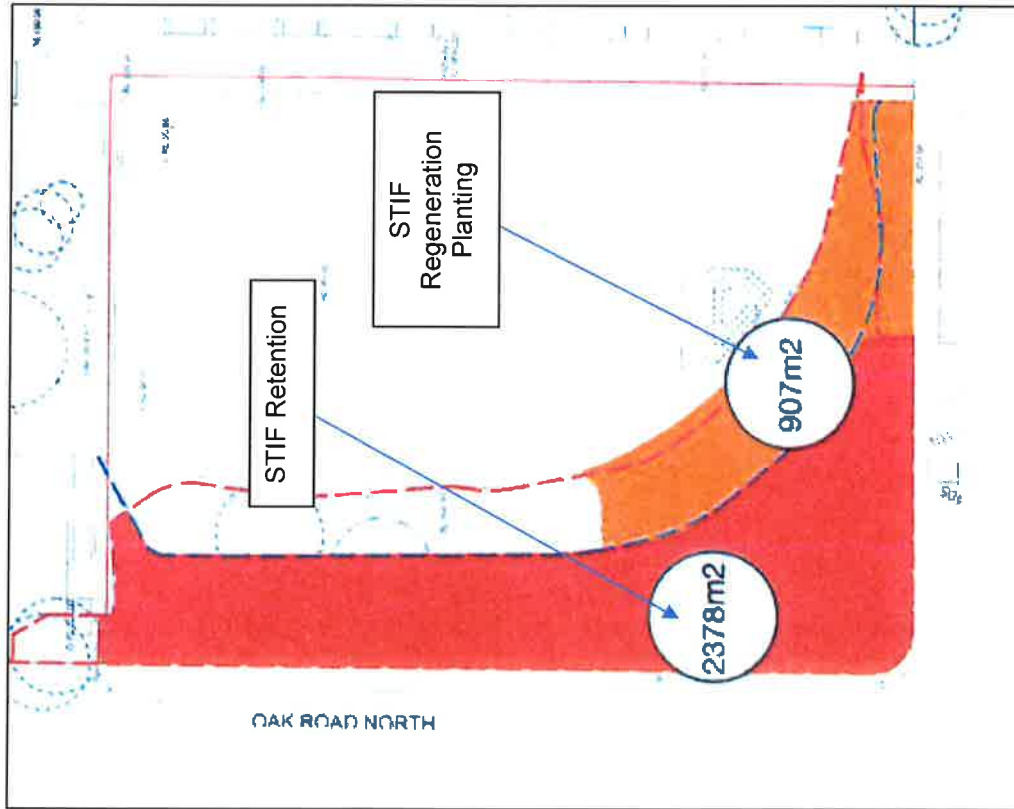


Figure 2: MOD 3 STIF Regeneration Plan.

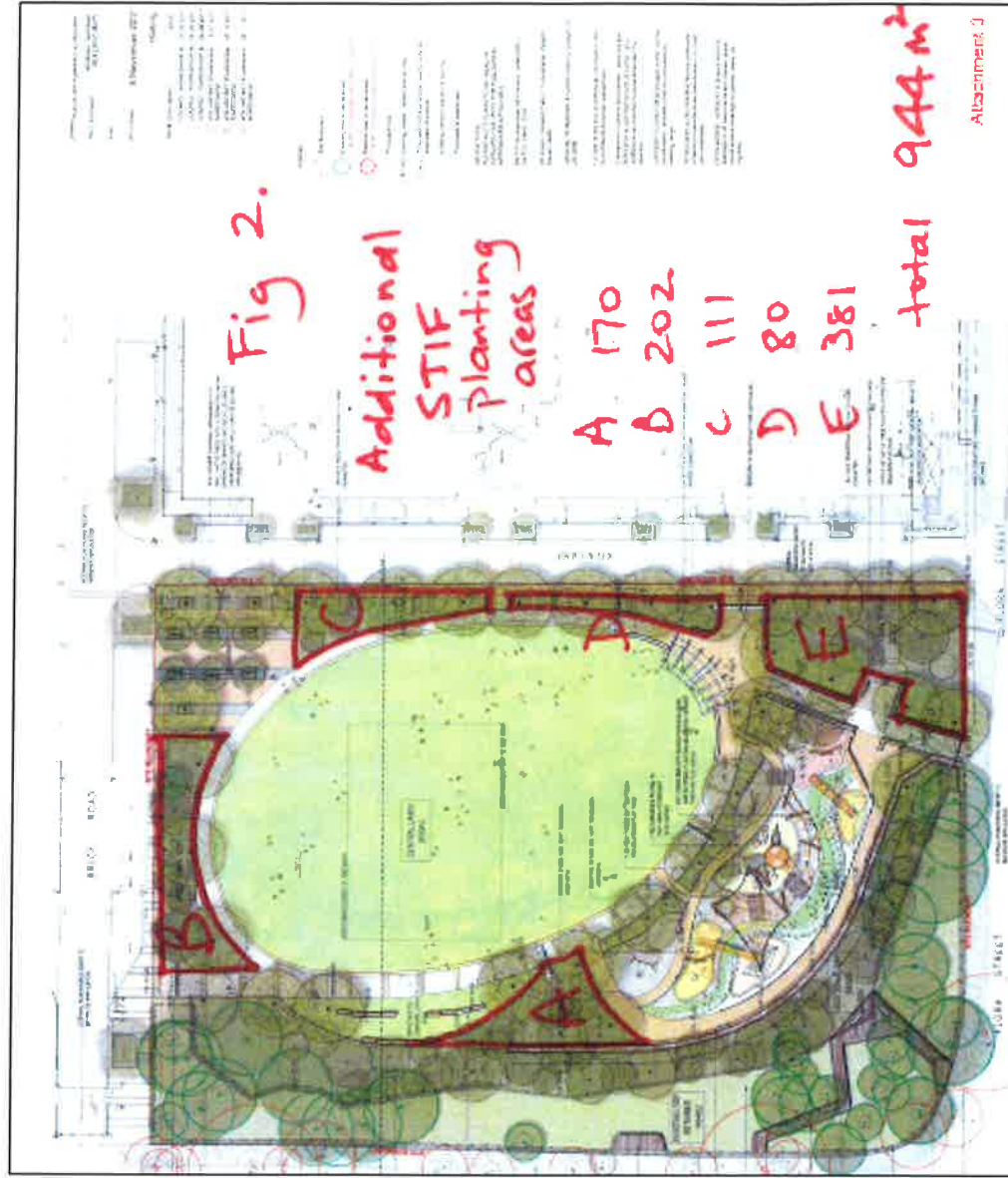


Figure 3: Proposed Areas of STIF Regeneration.



**Figure 4:** Updated Landscape Plan showing additional 800m<sup>2</sup> of STIF and removal of board walk

## Reduction of Existing STIF

OEH raised concern about the reduction in STIF to be retained on the site as a result of the widening of Oak Road (already approved under Part 5). This has reduced the total amount of STIF on the site from 2,378 m<sup>2</sup> to 2,266 m<sup>2</sup> (a reduction of 112 m<sup>2</sup>).

In response, the Proponent provided an amended plan showing the deletion of the boardwalk within the south-eastern corner of the park (shown in **Figure 4**), allowing for the retention of 115 m<sup>2</sup> of STIF to offset the 112 m<sup>2</sup> removed for the roadworks. The Proponent also noted the off-site offsets were increased to compensate for the road widening STIF removal (see **Appendix A**).

OEH supports the proposed removal of the board walk to provide an additional 115 m<sup>2</sup> of STIF retention on the site, to compensate for that removed due to the road widening.

The Department considers the proposal would result in an acceptable outcome, as the amount of STIF retained on site, marginally exceeds that approved under MOD 3.

## **8. CONCLUSION**

The Department considers the proposed removal of the lake from the park is acceptable as it would:

- not adversely affect the water supply of the Grey-headed Flying Fox or Eastern Bent-Wing Bat
- allow for an additional 800m<sup>2</sup> of STIF regeneration on the site
- provide additional useable open space for the community.

The Department's assessment therefore concludes the proposed modification is acceptable subject to the recommended conditions.

## **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 modified conditions; and
- **signs** the attached notice of modification (**Appendix B**).

Recommended by:



**Anthony Witherdin**  
**Director**  
**Regional Assessments**

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## **DECISION**

Approved by:



**Anthea Sargeant** 14/9/18  
**Executive Director**  
**Key Sites and Industry Assessments**  
as delegate of the Minister for Planning

## APPENDIX A: STIF COMPARISON TABLE

*Table 2 – STIF Comparison Table*

<b>Requirements</b>	<b>MOD 3 (m<sup>2</sup>)</b>	<b>Initially Proposed by Proponent (m<sup>2</sup>)</b>	<b>Final Proposal (m<sup>2</sup>)</b>
STIF Retention	2,378	2,266	2,266 (-112)
MOD 3 STIF Impacts Comparison Plan	907	944 <sup>1</sup>	753 <sup>2</sup> (-154)
Lake removal	-	-	800 (+800)
Road works off-set	-	700 <sup>4</sup>	115 <sup>3</sup> (-700 regeneration, + 115 retention)
Off-site offsets	2,509	5,309	5,309 (+ 2,800)
<b>Total on site</b>	<b>3,285</b>	<b>3,910</b>	<b>3,934 (+649)</b>
<b>Grand Total</b>	<b>5,794</b>	<b>9,219</b>	<b>9,243 (+3,449)</b>

- 1- Including Areas C and D
- 2- Excluding Areas C and D
- 3- Retention of existing STIF
- 4- Regeneration

## **APPENDIX B: NOTICE OF MODIFICATION**

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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=9170](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9170)

## APPENDIX C: SUPPORTING INFORMATION

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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=9170](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9170)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9170](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9170)

3. Response to Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9170](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9170)