

South Village

580 (also known as 566-594) Princes Highway, Kirrawee



Section 75W Modification to Concept Plan MP 10_0076 (Amended gross floor area) (MOD 10)

Prepared on behalf of

Mirvac Capital Pty Limited as trustee of the Mirvac Kirrawee Trust and Kirrawee South Centre Pty Limited as trustee of the Kirrawee South Centre Trust

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1.0 Introduction and background

1.1 Preliminaries

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 (EP&A Act)*.

It relates to 580 (aka 566-594) Princess Highway, Kirrawee (the **site**). The site was formerly occupied by the Kirrawee Brick Pits and is now known as South Village.

This report has been prepared by Robinson Urban Planning Pty Ltd (**RUP**) on behalf of the owners of the South Village Shopping Centre (Mirvac Capital Pty Limited as trustee of the Mirvac Kirrawee Trust and Kirrawee South Centre Pty Limited as trustee of the Kirrawee South Centre Trust) (the proponent).

The proponent met with Sutherland Council officers before lodging this application.

1.2 Background

On 23 August 2012, the then Planning Assessment Commission (**PAC**) granted Concept Approval for development on the site (MP10_0076). The Concept Plan, which has been modified on nine occasions, provides for:

- Use of the site for a mixed use development with associated public open space;
- Indicative building envelopes for seven buildings to a maximum height of 14 levels;
- 85,000m² of gross floor area¹ (**GFA**), comprising 69,310m² of residential floor space (749 dwellings) and 14,190m² of retail/commercial floor space (including a 4,740m² supermarket and 1,450m² discount supermarket) and a 1,500m² community facility;
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park; and
- Landscaping areas throughout the site.

On 2 May 2016, the Sydney East Joint Regional Planning Panel granted consent to a Part 4 development application (DA15/1134) which approved the detailed design of the approved Concept Plan comprising a mixed use retail, commercial and residential development and

¹ Pursuant to Sutherland LEP 2015:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

(a) the area of a mezzanine, and

(b) habitable rooms in a basement or an attic, and

(c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

(d) any area for common vertical circulation, such as lifts and stairs, and

(e) any basement:

(i) storage, and

(ii) vehicular access, loading areas, garbage and services, and

(f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and

(g) car parking to meet any requirements of the consent authority (including access to that car parking), and

(h) any space used for the loading or unloading of goods (including access to it), and

(i) terraces and balconies with outer walls less than 1.4 metres high, and

(j) voids above a floor at the level of a storey or storey above.

associated public park including 749 dwellings, fitout and use of two supermarkets, one liquor store, 9,000m² public park, 1,500m² community facility, Torrens title subdivision for road dedication, Torrens title subdivision of one lot into two lots for public reserve dedication, five lot stratum subdivision and signage strategy.

On 16 September 2014, Sutherland Shire Council granted consent to development application (DA14/0368) for early works.

Construction of the approved mixed use retail, commercial and residential development is nearly complete with the development is now known as “South Village”. The South Village Shopping Centre opened on 14 November 2018.

1.3 Proposed modifications

1.3.1 Summary

The modification described in this statement proposes a small increase in the approved Concept Plan GFA (104m² which equates to an increase of 0.12%).

1.3.2 Explanation of proposed modification

The South Village Shopping Centre includes a mall open at the southern, northern and western elevations. The approved Concept Plan GFA does not include the floor space of the open mall.

During inclement weather, the amenity of the open mall at its southern end has been compromised by strong winds and driving rain (see attached **Appendix A** which provides a letter from the South Village Shopping Centre Manager, documenting the results of weather station monitors in the Shopping Centre).

With dining seats/tables and retail tenancies addressing this part of the mall, the amenity provided for shoppers, diners and retailers is inadequate and the Centre Manager has received numerous complaints.

As a large amount of water enters the Shopping Centre during severe weather events, safety issues arise given the high risk of people slipping.

To resolve this, whilst still maintaining the fresh air amenity in the open mall, the proponent intends to install louvres and fixed glass to part of the southern elevation of the mall. The default position for the louvres would be open to retain passive natural ventilation of the mall. During high winds or rain only, the louvres would automatically close.

There would be no increase in retail/commercial floor space/lettable area, but the proposed louvres and fixed glass would technically increase the GFA on the site by 104m². This application seeks consent to modify Concept Approval MP10_0076 to provide for this technical increase in GFA.

A concurrent Section 4.55(1A) application to modify DA15/1134 will be lodged with Sutherland Council to modify the approved plans and elevations.

2.0 Overview of the site

The key characteristics and planning constraints affecting the site are summarised below:

Location	The site is located on the former Kirrawee Brick Pits at 580 (AKA 566-594) Princes Highway, Kirrawee (see Figure 1 - Site location plan). The site is on the southern side of the Princes Highway and the proposed alterations are located on the southern elevation of South Village, facing Flora Street (see Figure 2 – Photograph of South Village – southern elevation to Flora Street). The proposed works relevant to this comprise new louvres and fixed glass to part of the southern elevation of the ground floor South Village Shopping Centre (see photographs at Figures 3 and 4).
Lots/DP	Lot 1 DP 1215830 (being the South Village Shopping Centre lot)
Site area	The entire site has an area of 42,542m ²
LGA	Sutherland
LEP/DCP	Sutherland Local Environmental Plan 2015 (Sutherland LEP 2015) Sutherland Development Control Plan 2015 (Sutherland DCP 2015)
Zoning	Zone B4 – Mixed Use (LZN_005A)
Heritage	The site is a local heritage Item – Archaeological described as the site of former brickworks, Sutherland Brick Company clay pits (see Sutherland LEP 2015 HER_005A). Council has resolved to amend the heritage listing in Sutherland LEP 2015 to limit the heritage listing to the extent of the former brick pit on Princes Highway only. This LEP amendment, known as <i>Planning Proposal - Minor Amendments – Heritage Items 2019</i>, has been adopted by the Sutherland Local Planning Panel and Sutherland Council is awaiting a gateway determination.
Height standard	50m (HOB_005A)
FSR Standard	2:1 (FSR_005A)
Other planning constraints	The site is identified as Environmentally Sensitive Land (Sutherland LEP 2015, BIO_005A). SDCP 2015 Protected Species and Communities of High Conservation Significance Map 26 shows that the site accommodates threatened species and threatened species buffer. Given the intensity of development on the Shopping Centre site, this mapping is not relevant to the proposed modification.
Adjoining development	Light industrial units exist to the south across Flora Street, to the east and to the north across the Princes Highway. Kirrawee village is to the south-west along Oak Road. Kirrawee railway station is located beyond the shops approximately 250 metres to the south.

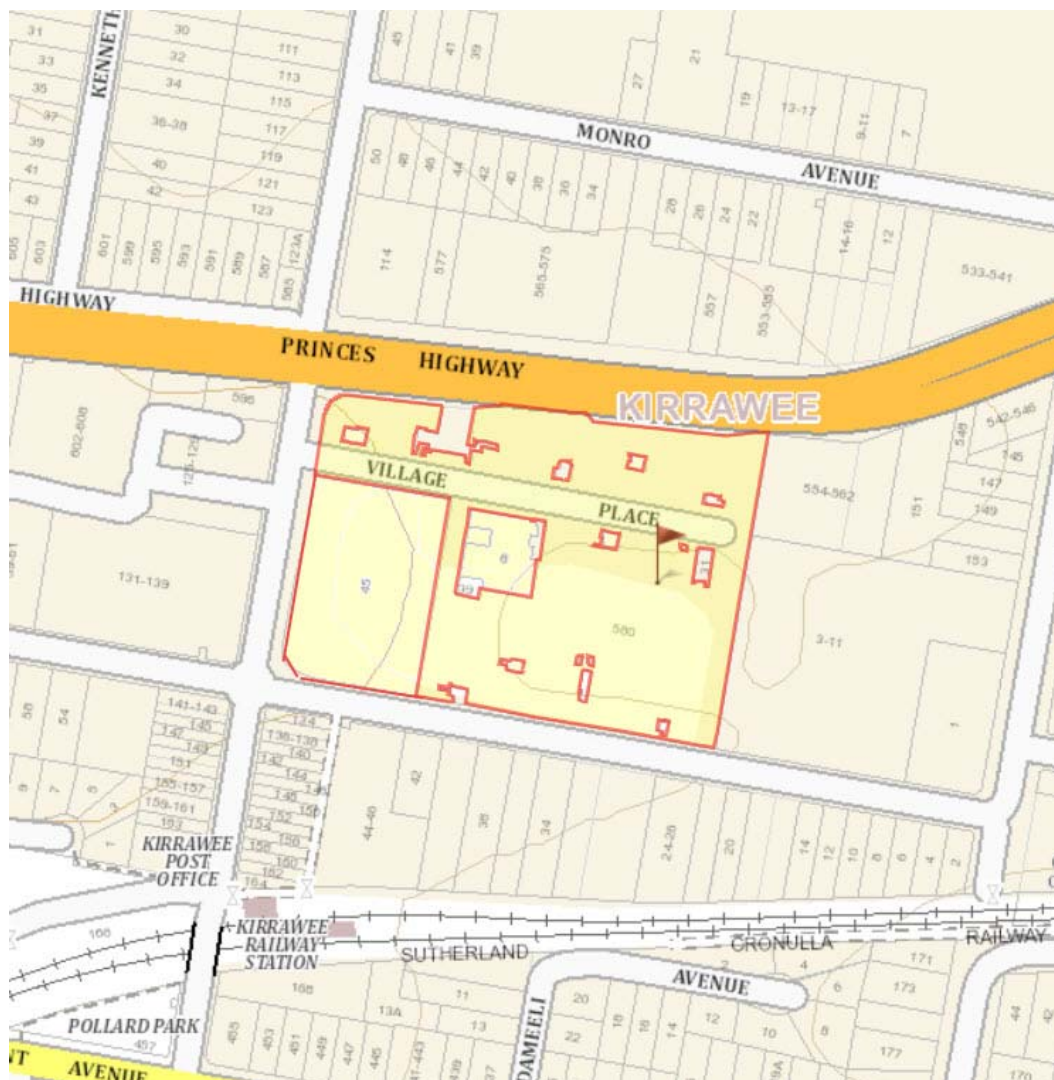


Figure 1 – Site location plan (Source: Six Maps)



Figure 2 – Photograph of South Village Shopping Centre: Southern elevation to Flora Street to be altered



Figure 3 – Photographs of South Village Shopping Centre: Mall area adjoining south elevation

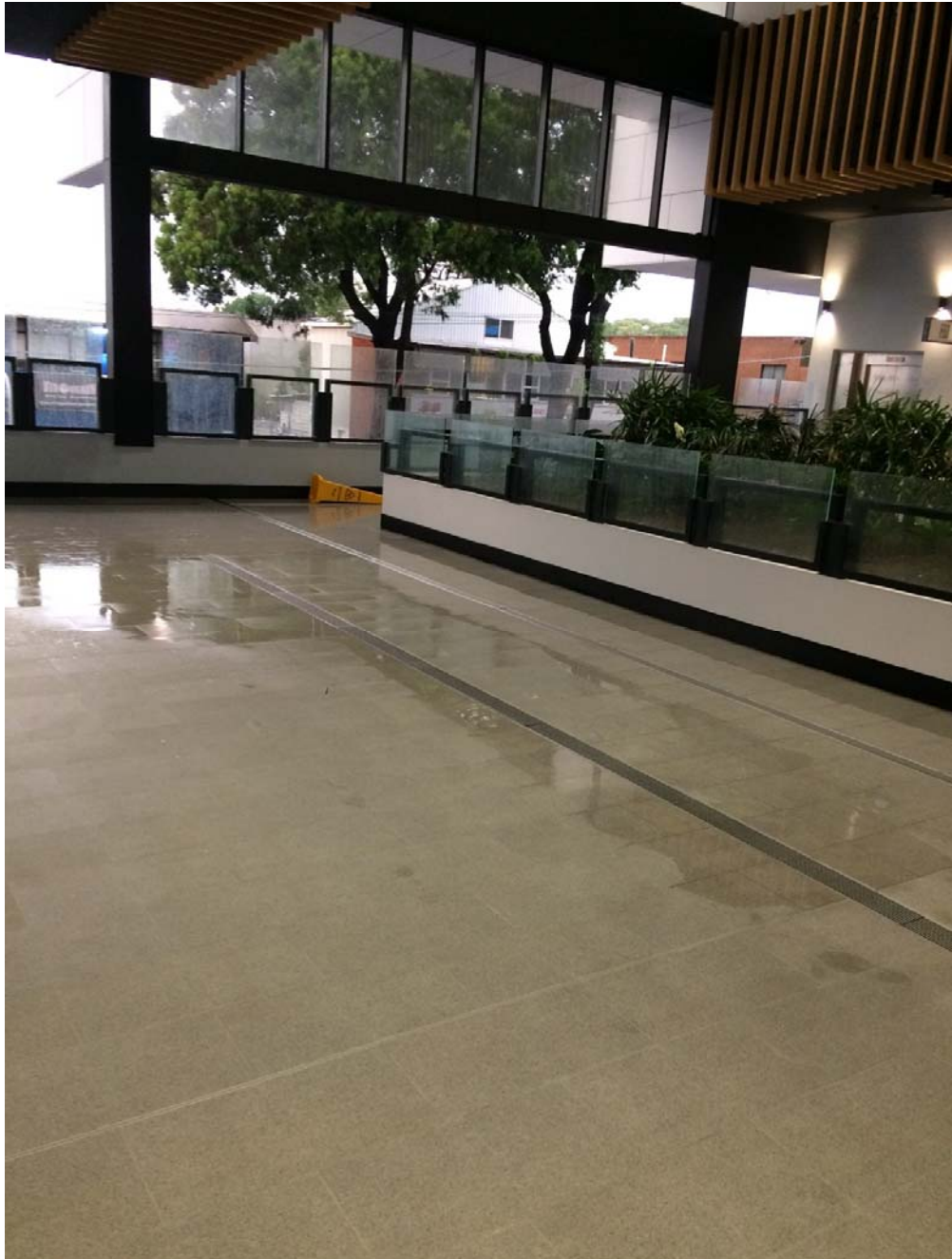


Figure 4 – Photograph of South Village Shopping Centre: Mall area adjoining south elevation showing water penetration

3.0 Proposed modification

3.1 Proposed alterations

To address the extreme weather conditions described at Section 1.3.2 and **Appendix A**, whilst still maintaining the fresh air amenity in the open mall, the proponent intends to install louvres and fixed glass to part of the southern elevation of the mall. The default position for the louvres would be open to retain passive natural ventilation of the mall. During high winds or rain only, the louvres would be closed.

There would be no increase in retail/commercial floor space/lettable area, but the proposed louvres and fixed glass would technically increase the GFA on the site by 104m². This application seeks consent to modify Concept Approval MP10_0076 to provide for this increase in GFA (describing the additional GFA as enclosed mall/horizontal circulation). Modified Concept Plan GFA diagrams have been prepared by Turner (see **Appendix B** and Ground Floor extract at **Figure 5**).

A concurrent Section 4.55(1A) application to modify DA15/1134 will be lodged with Sutherland Council to modify the approved plans and elevations.

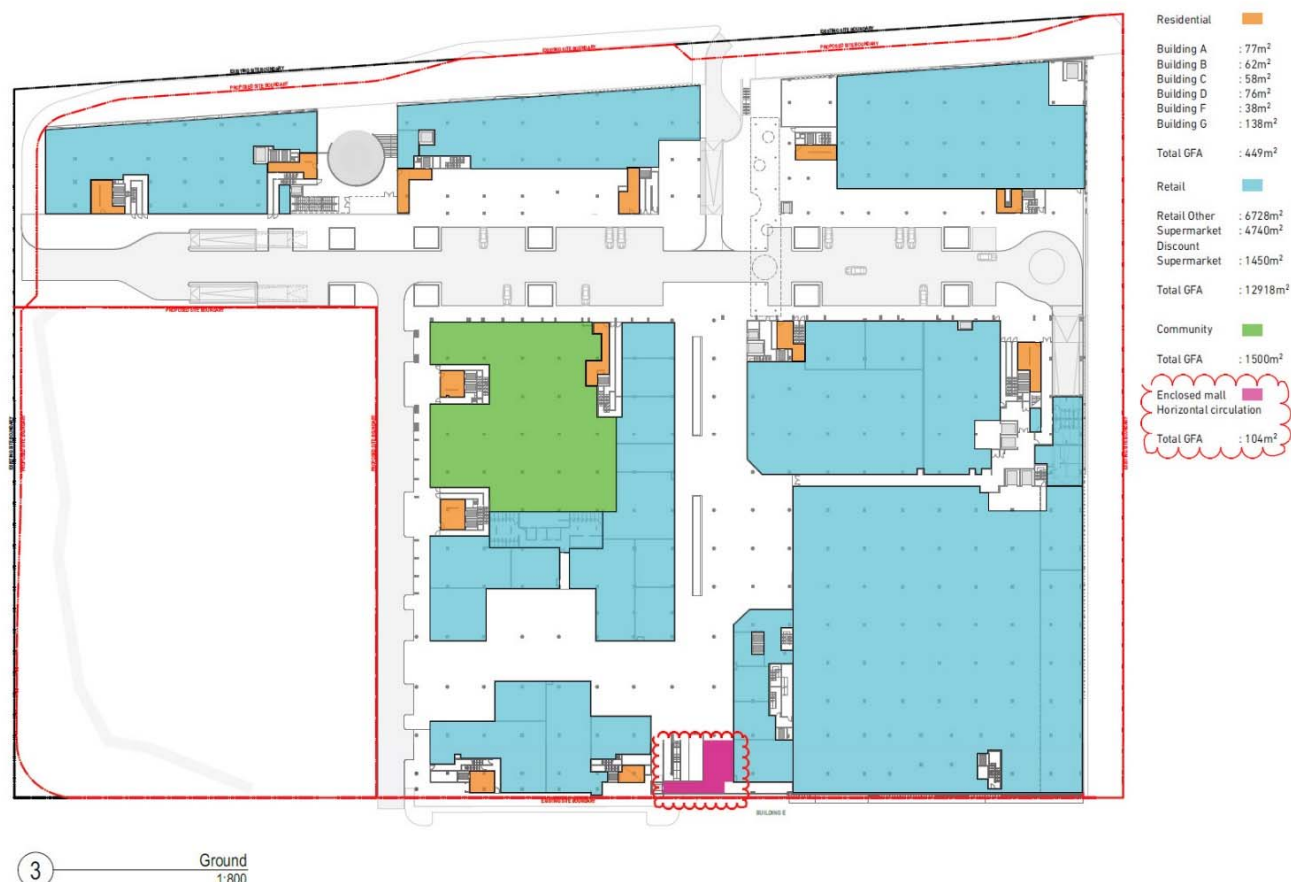


Figure 5 – Modified GFA Diagrams: Ground Floor (Source: Turner)

3.2 Proposed modification to the terms of approval (MP07_0076)

This application seeks to modify the approved Concept Plan (MP07_0076), pursuant to S75W of the EP&A Act by amending Schedule 2 - Part A - Term of Approval:

- Condition No. A1 - DEVELOPMENT DESCRIPTION
- Condition No. A2 - DEVELOPMENT IN ACCORDANCE WITH THE PLANS AND DOCUMENTATION as follows (new words are show in **bold underlined** with deleted words ~~struckout~~:

"A1 DEVELOPMENT DESCRIPTION

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

- 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 Storeys;*
- 85,104m²** ~~85,000m²~~ of Gross Floor Area, comprising 69,310m² of residential floor space (749 dwellings) and 14,190m² of retail/commercial floor space (including a 4,740m² supermarket and 1,450m² discount supermarket), **104m² of enclosed mall/horizontal circulation** and a 1,500m² community facility;*
- Basement level, ground and above ground car parking;*
- Road layout to support the development;*
- Public pedestrian and cycle pathway;*
- Public park and surrounding forest; and*
- Landscaping areas throughout the site.*

Subject to compliance with the modifications in this approval."

"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~~*

- *Section 75W Modification to Concept Plan MP 10_0076 (MOD 7), prepared by Sutherland and Associates, dated February 2018, as amended by correspondence from Aaron Sutherland dated 3 April 2018; ~~and~~*
 - *Section 75W Modification to Concept Plan MP 10_0076 (MOD 8), prepared by Sutherland Shire Council, dated February 2018, as amended by Response to Submissions dated 23 May 2018- ; and*
 - **Section 75W Modification to Concept Plan MP 10_0076 (MOD 10), prepared by Robinson Urban Planning, dated April 2019.**
 - *the following drawings*
- ...

4.0 Statutory planning framework

4.1 Continuing operation of Part 3A to modify approvals

In accordance with Clause 3BA(5) of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional, and Other Provisions) Regulation (Transitional Reg)*:

3BA Winding-up of transitional Part 3A modification provisions on cut-off date of 1 March 2018 and other provisions relating to modifications

...

- (5) *A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that:*
- (a) *the proposed modification is to correct a minor error, misdescription or miscalculation, or*
 - (b) *the proposed modification is of minimal environmental impact, or*
 - (c) *the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).*

This Section 75W application is lodged after the cut-off date of 1 March 2018, however, Schedule 2 Clause 3BA(5) of the Transitional Reg applies as the application:

- Proposes a modification with a ‘minimal environmental impact’; and
 - Satisfies the ‘substantially the same development’ test
- as detailed below (noting that only one test must be satisfied).

4.1.1 Minimal environmental impact

The proposed modification would have a minimal environmental effect, consistent with subclause 3BA(5)(b) above as:

- There would be no increase in the retail/commercial GFA, therefore the intensity of development on the site would not change
- As the intensity of development on the site would not change, there would be no increase in traffic generation or car parking demand
- There would be no additional shops or increase in the approved retail/commercial lettable floor space and therefore no change to the social and economic impacts of the approved Concept Plan
- The default position for the louvres would be open to retain passive natural ventilation of the mall. During high winds or rain only, the louvres would be closed
- The proposed alterations have been designed to ensure that they do not affect the BCA compliance or fire engineering performance of the South Village Shopping Centre
- The proposed alterations have been designed by Turner, the architect for the South Village development. The alterations have been designed as a seamless element in the southern elevation, as illustrated by the photomontage which is to be submitted to Sutherland Council as part of the separate Section 4.55(1A) application to modify DA15/1134 (see at **Figure 6**)
- The technical increase in GFA (104m² of enclosed mall/horizontal circulation) is contained within the existing/approved building envelope and would not add to the bulk of the development. Accordingly, there would be no change to the approved building bulk, scale, height or shadow impacts.

- The Section 4.55(1A) proposal does not raise any issues of substance for further consideration with respect to the provisions of the Sutherland LEP 2015. The technical/minor increase in the total GFA and FSR is 0.12%. With a proposed FSR of 2.00047:1, the 104m² increase in floor space results in a GFA that is 20m² over the 2:1 FSR standard, as detailed in **Table 1**.

Table 1 – FSR compliance

		FSR	GFA (m ²)	%
Site area (m ²)	42,542			
Sutherland LEP 2015 FSR standard		2:1	85,084	
Approved (MP10_0076)		1.998025:1	85,000	
Section 4.55(1A) proposal		2.00047:1	85,104	
Departure from FSR Standard		0.00047:1	20	0.02%

- For the following reasons, compliance with the Sutherland LEP 2015 FSR standard is unreasonable and unnecessary in the circumstances of the case:
 - The non-compliance of 20m² or 0.02% is insignificant
 - The modification is proposed to address the adverse comfort and safety impacts of inclement weather and retention of a mall open to the south would not solve the problem
 - The additional GFA is contained within the existing building envelope therefore there would be no increase in bulk, height, scale or overshadowing
 - There is no increase in lettable retail/commercial floor space therefore the traffic, parking and economic impacts of the approved development would not change.
- There are sufficient environmental planning grounds to support the proposed increase in GFA, most notably the need to resolve the adverse comfort and safety impacts of inclement weather for users of the South Village Shopping Centre, with the efficacy of the proposed design confirmed by Windtech.
- The Section 4.55(1A) proposal is consistent with the Sutherland Shire DCP 2015 centre aims for Kirrawee in that it will continue to revitalise and reinvigorate the centre with street activation and improved amenity at South Village. The Section 4.55(1A) proposal does not raise any issues of substance for further consideration with respect to the provisions of the SSDCP 2015.



Figure 6 – Proposed photomontage: South Village south elevation to Flora Street (Source: Turner)

4.1.2 Substantially the same development

The proposed modification would be substantially the same development as the project to which the Concept Plan currently relates (as modified), consistent with subclause 3BA(5)(c) above as:

- The approved mix and distribution of residential, retail/commercial, community and public park uses approved by the Concept Plan would not change
- The technical increase in GFA (104m² of enclosed mall/horizontal circulation) is contained within the existing/approved building envelope and would not add to the bulk, height or scale of the project to which the Concept Plan currently
- The technical increase in GFA (104m² of enclosed mall/horizontal circulation) equates to an inconsequential increase in total GFA (just 0.12%).

4.2 Environmental Assessment Requirements

Section 75(3) of the EP&A Act provides the Secretary with scope to issue Environmental Assessment Requirements (**SEARs**) that must be complied with before the matter will be considered by the Minister. Given the minor nature of the proposed modification, it is considered that new or amended SEARs are not required as this application sufficiently addresses the key issues relevant to the modification request.

4.3 Strategic planning

No issues of local, regional or State strategic planning issues arise.

5.0 Conclusion

The proposed modification seeks to amend Condition No A1 and A2 of Concept Plan MP10_0076 to provide for a small increase in the approved GFA (comprising an additional 104m² of enclosed mall/horizontal circulation which equates to an increase of 0.12%).

The increase in GFA would enable the installation of louvres and fixed glass to part of the southern elevation of the open South Village Shopping Centre mall to provide weather protection during strong wind and rain events.

Consistent with Schedule 2 Clause 3BA(5) of the Transitional Reg, the application:

- Proposes a modification with a 'minimal environmental impact'; and
- Satisfies the 'substantially the same development' test.

The application therefore falls within the scope of Section 75W of the EP&A Act and is worthy of approval.

Appendix A

Letter from South Village Shopping Centre Manager on South Village Weather
Conditions (12 April 2019)

Appendix B

Modified Concept Plan GFA diagrams, by Turner (DA-710-006_15 Basement 02 to Level 01 and DA-710-100_5 Level 10 to Level 13)