



Kirrawee Brick Pit Mixed-Use Development

*Modification Assessment
(MP 10_0076 MOD 10)*

June 2019

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Glossary

Abbreviation	Definition
Consent	Development Consent
Council	Sutherland Shire Council
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSD	State Significant Development



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1. Introduction

1.1 Background

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 Shire Council (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to increase the GFA by 104m² to allow for part of the southern elevation of the shopping centre to be enclosed by glass and louvres.

1.2 The 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.

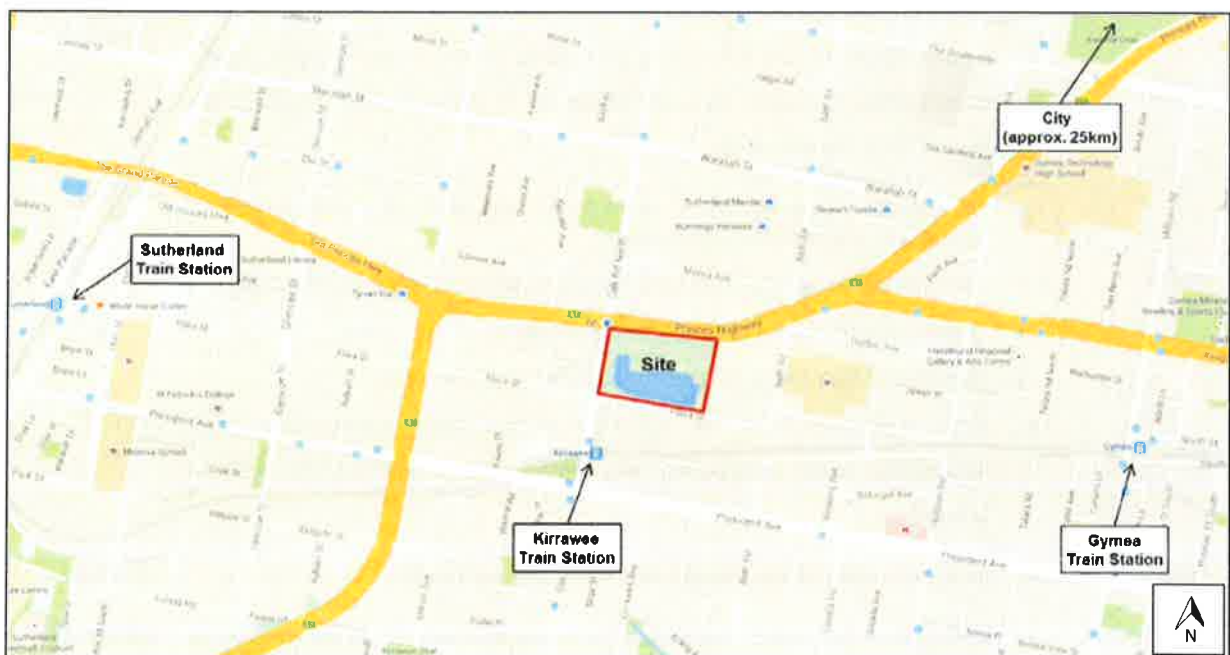


Figure 1: Site location (Base source: Google Maps)

1.3 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 nine occasions, as summarised in **Table 1**.

Reference	Description of Modification	Approved
MOD 1	• 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
MOD 2	• 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
MOD 3	• 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
MOD 4	• 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
MOD 5	• Increase number of apartments from 749 to 808 apartments.	18/10/17
MOD 6	• Amend FEAR 14 to clarify that parking for non-residential uses are not constrained by a minimum provision.	23/07/18
MOD 7	• Amend ToA A11A to modify the timing of entry into the Voluntary Planning Agreement.	12/04/18
MOD 8	• Amendment of various Terms of Approval to remove the requirement for the lake within the public park.	14/09/18
MOD 9	• Amend FEAR 14 to clarify the allocation of parking for apartments.	15/08/18



2. Proposed Modification

The proposal seeks approval to increase the GFA by 104m² to allow for part of the southern elevation of the shopping centre to be enclosed by glass and louvres.

The proposed changes are outlined in **Figures 2 to 4** below.

The Concept Plan imposed a maximum GFA of 85,000m² for the development, but the detailed plans were approved under a Development Application assessed by Council (DA15/1134). The assessment of the GFA did not include the part of the shopping centre highlighted in pink in **Figure 2**, as it was not enclosed by walls greater than 1.4 m high.

A modification to Term of Approval A1 of the Concept Plan is required to permit the additional 104m² of GFA that would be created as a result of enclosing the southern elevation of the shopping centre, resulting in a total GFA of 85,104m² for the site. A concurrent section 4.55(1A) application to modify DA15/1134 will be lodged with Council to amend the approved plans.

The modification is requested on the basis that this part of the mall has been impacted by rain and wind, during extreme weather events, affecting the amenity of shoppers. It is proposed that the default position for the louvres would be open to retain passive natural ventilation of the mall, and they would be closed during high winds or rain only.



Figure 2: Area of additional GFA



Figure 3: Existing southern elevation



Figure 4: Proposed southern elevation



3. Statutory Context

3.1 Section 75W

The Concept Approval was originally approved under Part 3A of the EP&A Act. The power to modify concept plans approved under Part 3A of the EP&A Act under former section 75W of the EP&A Act is being wound up. Clauses 3BA(2) and (3) of Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A (ST&OP) Regulations) provide that an approved concept plan cannot be modified under section 75W on or after the cut-off date of 1 March 2018, unless the request to modify was lodged before 1 March 2018.

However, Clause 3BA(5) of Schedule 2 to the EP&A (ST&OP) Regulations provides that a concept plan may continue to be modified under section 75W in response to a request lodged before or after 1 March 2018 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 proposal seeks to make minor changes to the southern façade of the shopping centre, resulting in an increase in GFA. The Department is satisfied that the proposal is within the scope of clauses 3BA(5)(b) and (c) as it is of minimal environmental impact and the project as modified is substantially the same as the project to which the Concept Plan currently relates.

3.2 Consent Authority

The Minister for Planning is the approval authority for the request. However, the Director, Regional Assessments may determine the request under delegation as:

- the relevant local council has not made an objection;
- a political donation disclosure statement has not been made; and
- there are no public submissions in the nature of objections.



4. Engagement

The modification request was made publicly available on the Department's website, referred to Sutherland Shire Council (Council) for comment and land owners within the site were notified in writing.

Council advised it supports the provision of improved amenity in the shopping centre, however it raised concern about the enclosure of the façade resulting in additional GFA that could be used for retail of commercial purposes in the future, and that additional active commercial space would increase traffic generation and parking demand beyond that anticipated in the original approval.

In order to address these issues, Council requested that a plan be provided which delineates which areas are available to be leased for retail/commercial activity and which areas are to be kept for circulation and ancillary uses such as seating.

No **public** submissions were received.



5. Assessment

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

- the modification request and associated documents
- the Environmental Assessment and conditions of approval for the original project, as modified
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

5.1 Amendments to southern elevation and GFA

The modification seeks approval to increase the GFA by 104m² to allow for part of the southern elevation of the shopping centre to be enclosed by glass and louvres.

The Department notes the plans for the proposal will be assessed by Council under a modification to DA15/1134, but the Concept Plan is required to be modified to permit the increased GFA.

Council raised concern that although the proposal does not seek approval for additional retail/commercial space, the enclosed area could be converted to these uses in the future, which could impact on traffic generation and parking demand.

The Department notes that the modified Term of Approval A1 would specify that the 104 m² of additional GFA is for enclosed mall/horizontal circulation only, and any changes to this use would require a modification to the Concept Approval. However, to further address Council's concerns, the Department recommends a new Future Environmental Assessment Requirement (FEAR) 7A stating that the additional 104m² of GFA shall not be used for commercial or retail purposes, and any future application to Council shall include a plan showing this area labelled as circulation space only.

The proposed FEAR is outlined below:

7A. CIRCULATION SPACE

The newly enclosed southern elevation of the shopping centre, the subject of this modification application, shall continue to be used for the purposes of circulation space only and not commercial/retail space. Any future application to construct the enclosed area approved under MP 10_0076 MOD 10 shall be accompanied by a plan clearly labelled to show the area as "Circulation space only".

Subject to the recommend FEAR, the Department considers the proposed modification to the southern elevation, and subsequent increase in GFA is acceptable, as:

- the increase in GFA is a result of enclosing an existing area, and the proposal would not change the approved building envelop or significantly alter the appearance of the façade
- the installation of glass louvres and panels would provide protection from the weather when required, allow for natural ventilation and improve the overall amenity of the space
- the recommended FEAR 7A would prevent the space from being converted into a retail or commercial use, which addresses Council's concerns about potential traffic and parking impacts.

The Department also notes the open design of the southern façade was not required as part of the original assessment for any design or sustainability purposes.

The Department is therefore satisfied the proposal is acceptable as it would improve the amenity of the shopping centre and would not result in any adverse impacts beyond those already assessed and approved.



6. *Evaluation*

The Department has assessed the modification request and supporting information in accordance with the relevant requirements in the EP&A Act. The Department's assessment concludes the proposed modification is appropriate on the basis that it would provide protection from the weather when required, allow for natural ventilation and would not alter the appearance of the façade. Further, the proposal would not generate any additional traffic or increase parking demand as the additional GFA would be used for circulation space only. Consequently, the Department considers the proposal is in the public interest and recommends the modification be approved in accordance with the modification instrument as at **Appendix C**.



7. *Recommendation*

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application
- **modify** the consent MP 10_0076
- **signs** the attached approval of the modification (Appendix C)

Recommended by:

Silvio Falato

Team Leader

Regional Assessments



8. *Determination*

The recommendation is: **Adopted by:**

Adopted:

Anthony Witherdin

Director

Regional Assessments



Appendices

Appendix A – Environmental Assessment

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9976

Appendix B – Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9976

Appendix C – Notice of Modification

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