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Your Ref: MP10-0076
Council Ref: DN10/0007

9 February 2011



Mr Sam Haddad
Director General
NSW Planning
23-33 Bridge Street
SYDNEY NSW 2000

Dear Mr Haddad

Reference No: MP10-0076

**Proposal: Concept Plan for Mixed Use Residential and Commercial
Development at 566-594 Princes Highway, Kirrawee Brick Pit,
Kirrawee**

Property: 566-594 Princes Highway KIRRAWEE NSW 2232

I refer to the exhibition of MP10-0076 submitted by Henroth Investment Pty Ltd seeking submissions in relation to the Concept Plan for mixed use development at the Kirrawee Brick Pit site, Nos. 566-594 Princes Highway, Kirrawee.

A review of the application has identified a number of significant shortcomings with the concept and Council wishes to raise strong objection to the proposal in its current form.

Whilst it is acknowledged that the application is a Concept Plan at this point in time, it is apparent that the fundamental approach to the project is flawed, giving rise to a number of particular issues. This submission addresses the issues that require resolution at concept stage and includes further detailed analysis of particular matters by relevant experts appended to this submission, including Council's Architectural Review Advisory Panel, Traffic and Economic Impact Review.

Council concludes that the proposal is of a scale and intensity that is inappropriate in the context of the Kirrawee centre.

The retail component is contrary to the Kirrawee Local Area Masterplan sponsored by the Department of Planning and will result in significant impacts on the Kirrawee centre and future of retail activities in the Sutherland centre.

Whilst the showroom component fronting the Princes Highway is consistent with land uses anticipated in the location, the retail use of the remainder of the proposal is of an intensity that cannot be supported.

The overall site planning fails to integrate the development successfully with the existing Kirrawee centre and it serves to operate in isolation from the Kirrawee centre and the surrounding residential neighbourhood.

The area required for the retention of the remnant Sydney Turpentine Ironbark Forest and water feature selected by the applicant also serves to further disenfranchise the proposal from the Kirrawee shopping strip.

The scale of the highly visible residential component is anomalous with the locality and the buildings sit well above the surrounding tree canopy. The three residential towers will read as a large building from a distance, particularly given the elevation of the site and the various locations from which the site will be visible, both within close proximity and from a significant distance.

In terms of traffic, the proposal goes beyond existing capacity and constraints of the site and will impact on the operational capacity of the surrounding road network.

It is concluded that the application fails to demonstrate that the proposal represents the most suitable land use for the site and is at an intensity that is compatible with the surrounding environment. These concerns are not matters of detail but relate to the fundamental nature of the concept.

Given the significant shortcomings of the proposal and interests of the community and the local area, Council raises strong objection to the proposal currently before the Department of Planning.

Council is aware this application requires determination by the Planning Assessment Commission.

Council formally requests (Mayoral Minute No 3/10-11) that the Minister and Chairperson of the Planning Assessment Commission hold an open enquiry where residents and Council can appear before it and that Council be allowed input to every amended proposal submitted by the proponents.

1.0 Background

The main issues identified in the 2009 refusal by the Land & Environment Court of a previous application are still, in the Council's opinion, relevant to the current application. The following table demonstrates the considerable increase in the size of the development, which in Council's view is not justified for the reasons outlined in this submission.

| 2009 (Court Refused Application) | 2010 (Current Part 3A Proposal) | Variation |
|--|--|------------------------------|
| 250 dwellings | 450 dwellings (reports) 495 dwellings (plans) * | 80% increase 98% increase |
| 6,693m ² total retail floor area of which 4500m ² is supermarket | 14,340m ² total retail floor area of which 5270m ² is supermarkets + 1280m ² mini major | 114% increase |
| 4,581m ² commercial floor area (GFA) | 840m ² commercial floor area (GFA) | 445% reduction |
| 0.9ha public park | 0.9ha public park | Nil |
| 927 car parking spaces | 1349 car parking spaces (including 200 commuter parking) | 46% increase |
| 2-6 storey height | 4-15 storey height | 150% increase |
| 1:1 Density (42,045m ² GFA) | 1.52:1 Density (64,837m ² GFA) | 52% increase |

* The information in the applicant's submission is inconsistent.

The proposal represents a considerable increase in scale and intensity that exceeds the development previously considered by Council and refused by the Land and Environment Court. The need to consider the site's context has been overlooked as the development relates poorly to its surroundings. The applicant's reference to the height of the brick stacks on the site to justify the building height is not supported by Council and will result in a building mass and form not in keeping with its surroundings.

Council is not supportive of the building height and density proposed which is contrary to current LEP, DCP and Master plan policies for the site and region. The increase in retail floor space to the original scheme will further affect the structure of centres within the Sutherland Shire and the provision of two supermarkets would have dire consequences on the retail function of other centres and traffic flow.

As a result of the substantial increase in floor area and intensity of the development Council has identified the following issues as relevant to the proposal and requires further consideration by the Department of Planning:

- Intensity and best use of the site.
- Economic impacts.
- Impact on Kirrawee centre.
- Traffic impacts.
- Public transport capacity.
- Useability of Park/Public domain/open space and accessibility.
- Ecology.
- Context - Built form and urban design.
- Architecture and site planning.

- Strategic context, housing and economic.
- Environmental and residential amenity.
- Drainage and stormwater management.
- Heritage.

2.0 Local Area Masterplan (LAM)

The proposal fails to respond to the design objectives outlined in the Kirrawee Living Centres project established by the Department of Planning in June 2001.

The development of the Kirrawee Brick Pit was seen as a significant opportunity to achieve the Government's urban consolidation objectives and employment generation possibilities, due to its location. The Living Centres Project resulted in the creation of the 'Kirrawee Local Area Masterplan' (LAM) adopted by Sutherland Shire Council in 2003. The LAM envisaged approximately 290 new dwellings, in predominantly 3-4 storey buildings and employment floor area of approximately 10,000m².

Of the residential housing the LAM identified that the form of housing would need to meet the changing needs of the Shire's population, particularly in providing housing for older persons and people with disabilities. The LAM also identified that the proposed employment uses would support the retail strip, possibly inspiring different retail uses to evolve over the years.

The applicant states in its Environmental Assessment that *"at the time of the formulation of the LAM, population and jobs targets were not at their current levels and concepts of transit orientated development were not as clearly recognised by the NSW government in its formal policy settings. The current local planning controls are premised on the earlier planning context and the "block form" urban design principles in vogue at that time"*.

However, there are number of objectives raised within the LAM document which are still relevant to the site and its context. It is considered that a number of elements of the applicant's concept plan are contrary to the basic planning principles established through the Living Centres project. The current proposal ignores the sites context and constraints and will lead to the development of an insular community turning its back on the existing neighbourhood.

The applicant's approach in preparing this Concept Plan is to justify the increase in size and scale of the development on a strategic level in that it meets a need of the Sydney metropolitan area providing much needed housing, delivering jobs and ensuring that housing is provided close to public transport.

While these are valid considerations they should not outweigh the basic planning principles established through the Sutherland Shire Local Environmental Plan 2006, Sutherland Shire Development Control Plan 2006 and the local area masterplan.

Indeed the development would still deliver much needed housing, located close to public transport, and employment opportunities even if delivered at a smaller scale. However, a smaller proposal would be more sympathetic to its immediate environment, of a scale that can be readily absorbed into the local area and part of the local area rather than an insular, isolated community.

3.0 South Subregional Strategy

The Subregional Strategy translates objectives of the NSW Government's Metropolitan Strategy and State Plan to the local level. When finalised, the South Subregional Strategy will continue to guide land-use planning until 2031 in the Sutherland area. This subregional strategy will remain a key planning tool for Sutherland Council to implement the metropolitan strategy.

In relation to employment and centres, Sutherland is recognised as a "town centre" within the subregional strategy and therefore within the hierarchy of centres serves an important subregional role. Kirrawee centre is identified within the subregional strategy as a "village" and consequently its subregional status is more limited. The subregional strategy identifies a village as follows:

"A strip of shops and surrounding residential area within a 5 to 10 minute walk contains a small supermarket, hairdresser, take-away food shops. Contain between 2,100 and 5,500 dwellings."

The applicant's proposal, if approved, would upgrade the status of Kirrawee centre to a town centre and will compromise the Subregional strategy. The current proposal, as a result of the considerable provision of retail floor space, will be contrary to the objectives of the subregional strategy and would undermine the Centres hierarchy within the Sutherland Shire.

4.0 Court Refused Scheme (DA08/0347)

In considering the current application it is important to understand the threshold tests imposed by the Court in relation to the scale and intensity of the previous proposal and the extent to which the current proposal further intensifies the issues.

The principal areas of concern expressed within the Court decision in relation to the applicant's amended proposal were largely centred on:

- a) The strategic context.
- b) Economic impact
- c) Ecological and water quality and quantity issues.
- d) Urban design and landscape
- e) Traffic.

Expert evidence was offered on behalf of both Council and the Applicant relative to these issues. In their Judgment, Commissioners Tuor and Taylor found that intensive

retail land uses such as large supermarkets were not appropriate, and the proposed retail component of the development was inconsistent with the strategic framework and the role for Zone 7 and the Brick Pit Precinct established by LEP 2006 and DCP 2006.

On this basis, the appeal was dismissed and development consent was refused.

It was also held that the proposal had the potential to impact upon the future role of Sutherland as an urban centre as well as elevating the role of Kirrawee beyond that of a local centre.

In terms of ecological impacts, the Court was not satisfied that the proposal was adequately resolved to demonstrate it would not have a significant impact on the water volume and quality, and the threatened species reliant on it, and concluded the proposal remained inadequate for approval.

In terms of traffic, notwithstanding the divergence of opinion between the traffic experts on the effect of the development on the surrounding traffic networks, the court did not specifically adjudicate on the areas of disagreement between the experts as the application before it failed on a number of other grounds. Therefore, there was no resolution of the traffic impact of the development. However, Council's experts have concluded that a development of this size and scale will have significant impacts on the surrounding road network which cannot be resolved through detailed design or conditions of consent.

Environmental Impact

Council staff and external consultants (on behalf of Council) have considered the information submitted with the Part 3A proposal and have identified a number of issues in relation to the concept plan submitted. In some cases the issues can be addressed by condition or further information but for the most part the issues are so significant that the Concept Plan cannot be supported and to do so would have major detrimental impacts on the surrounding area.

5.0 Retail and Employment Issues

5.1 Retail

The applicant seeks to justify the new proposal from a strategic and economic perspective. However, according to the conclusions of a review prepared by Don Fox Planning on behalf of Council, the applicant's study ('A Centres Study for Sutherland Shire, 2010' prepared by Hill PDA), represents an inappropriate economic outcome.

The review prepared by Don Fox Planning (Attachment "A" to the submission) concludes that the Hill PDA study contains a number of opportune inconsistencies in support of the proposal. It also concludes that the proposed development is much larger than a local centre. The scale and nature of the retail component is contrary to the Kirrawee Local Area Masterplan and could threaten the viability of both the

Kirrawee and Gymea centres, as well as the supermarkets in Sutherland Centre. In addition, the magnitude of retail component could challenge the planned hierarchy of other area centres, which would be contrary to the metropolitan strategy.

The review also finds that some limited convenience retailing, in conjunction with mixed-use development, is warranted however, it must be of an appropriate scale. Given that the previous application was rejected by the Court and was considerably smaller, there is a strong case to not support the current proposal.

Whilst the showroom component fronting the Princes Highway is consistent with land uses anticipated in the location, the retail use of the remainder of the proposal is of an intensity that cannot be supported. Council raises strong objection to the size of the retail floor area and to the provision of two supermarkets on the site. The impact of approving such a proposal will have dire consequences for the hierarchy of centres within Sutherland and will have considerable impact on existing centres.

This site should seek to meet the demands of the immediate area and provide innovative retail options which respect the existing and future planned growth within the Sutherland Shire, and Kirrawee in particular.

5.2 Employment

Given the size and regional significance of the subject site, and the wider State planning directives (e.g. improving employment self-containment and matching future jobs to local skill sets), the proposed development neither aligns with the site's employment generating potential nor delivers the types of employment opportunities Sutherland Shire residents need into the future. Consequently, from an employment perspective, the subject development on the brick pit site comes with unacceptably high opportunity costs.

According to data provided by the applicant ('A Centres Study for Sutherland Shire, 2010'), once operational, the retail component of the proposed development will supply approximately 486 new, direct employment opportunities. Nearly two-thirds (i.e. 330) of these are expected to be part-time positions. While part-time retail sales jobs meet the employment needs of an important subset of the working population, on balance they do not correspond with the local skill sets or employment demands of the majority of the Shire's resident workforce as identified in the independent, 'Building Employment Opportunities in Sydney's South (2010)' study.

The remaining number of full-time retail positions delivered by this proposal represents less than 2% of the Sutherland Shire employment capacity target of 8,000 new jobs by 2031, as set in the draft South Subregional Strategy (2008). Therefore, 'employment generation' is not a credible justification for the significant increase in the retail floor space component of this proposal over the applicant's previous application.

The retail sector is currently Sutherland Shire's largest employer by industry type and, according to the applicant's own study, the proportion of retail jobs in Sutherland Shire is already greater than for the Sydney GMA as a whole. However, only 10% of the Shire's resident workforce is employed in retail sales. Local retailers must therefore recruit from outside the local government area to fill sales positions. This effectively

makes Sutherland Shire a net importer of retail workers. The scale of the retail component proposed in this development exacerbates this imbalance.

In contrast to the Shire's oversupply of retail positions relative to the resident workforce, there is a pronounced undersupply of professional and managerial employment opportunities available to Shire residents. Thirty-seven percent (37%) of the Shire's resident population is employed in professional and managerial positions. This cohort represents the largest proportion of the Shire's resident workforce. However, the majority of these workers must commute outside the Shire to their workplace. This shortage of professional employment opportunities is a major contributor to Sutherland Shire's poor employment self-containment quotient.

As the Sutherland Shire (and Australia) continues its transition to a more knowledge based economy, Sutherland Shire Council seeks to expand the provision of high-skill employment opportunities locally, thus reap the economic, social and environmental benefits of improved employment self-containment. This vision was enshrined in Sutherland Shire's Employment Strategy 2031, adopted by Council in 2009, which aims to attract new, high-quality employers to large sites that can support and are zoned for commercial office development, such as the subject site.

Whereas there was general support by Council and the Land & Environment Court for the commercial component of the previous development proposal for this site, which included 4581m² of commercial floor space. The current proposal now includes only 840m² of commercial floor space and is projected to create just 28 new white-collar jobs. (As noted above, it was the scale of the retail component that was critical in the LEC judgment). This proposal therefore makes very little contribution to achieving the objectives of Council's Employment Strategy.

For the reasons stated above, from an economic and employment perspective, Sutherland Shire Council raises objection to the subject proposal and the information used to support the employment strategy for the site. The proposal will not meet the employment needs of the community and will place additional pressure on the road network and train services by relying heavily on retail workers from outside the area. This approach does little to support a sustainable approach to development and would be contrary to Government policies which seek to limit the environmental impact of development.

6.0 Centres and Accuracy of Population Data

The Centres Study prepared by Hill PDA provides an overview of the planning framework established by the DoP, including relevant housing and employment targets to accommodate growth to 2036. However, the study does not provide an open and balanced analysis of the opportunities and constraints influencing the growth of centres within the Sutherland Shire. Instead the report promotes the development as a means to achieving some of the required growth without any real justification.

The housing targets identified within Part 3 of the Study are indicative and should not be relied upon as a conclusive figure. The report does not take into account the release of the Metropolitan Plan for Sydney 2036 by the DoP in December 2010. The Metropolitan Plan sets a revised target of 58,000 additional new homes for the south subregion by 2036. However, the Metropolitan Plan does not provide the revised target for each LGA within the subregion. As such, the target for Sutherland Shire is unclear. The study applies the same ratio applied by the Draft South Subregional Strategy although this ratio may be amended when the Strategy is updated.

The Study also discusses population forecasts and acknowledges that a target can differ significantly from a forecast. However, census population data shows that the population growth of Sutherland Shire has significantly slowed over the past two Census periods. A declining population was recorded between 2001 and 2006 of around 1,015 people (approx -0.15%) or 212,813 (Estimated Resident Population). As such, the demographic trends affecting the Shire do not appear to have been adequately considered as part of the Study submitted by the applicant.

The negative growth rate represents a population that has been stagnant and the lack of growth has had long term adverse consequences and will impact on retailers, particularly in smaller centres. There has also been a decline in dwelling occupancy rates for Sutherland Shire between the 1996 and 2006 Census. Occupancy rates declined from 2.82 persons per household in 1996 to 2.65 persons per household in 2006.

The number of single and two person households continues to increase making up 53% of the Shire's households. This is reflective of an ageing population and social changes affecting living patterns. This explains why Sutherland Shire requires more dwellings to simply meet the needs of its existing population. The Australian Bureau of Statistics projects that there will be a steady demand for more dwellings as the number of households grow, even if there is no population growth.

The Local Area Masterplan, previously prepared for the site and adopted by Council, is still relevant as it identified that the site would need to provide seniors housing to meet the needs of an ageing population. The application does not provide any indication of how this can be achieved, with poor accessibility to communal areas and little consideration to the needs of an ageing population.

There is a range of factors which may account for declining occupancy rates. Social factors; such as increasing rates of divorce, an increase in older people living alone, families having fewer children, people marrying later in life and people choosing to remain single. This trend is being experienced elsewhere in Australia and in many other developed countries.

The declining household occupancy rate means that more dwellings are needed each year to house the existing population. Council has considered a number of reports in 2008 which provide detailed information in this regard and these conclude that an occupancy rate of around 2.35 is a sound basis on which to measure a 2031 Housing Strategy.

This varies from the Study which adopts an occupancy rate of 2.71, taken from the last Census. This occupancy rate has been used to calculate revised dwelling targets and as such the revised dwelling targets contained within the Study will be greater than the number anticipated by Council on this basis.

Accommodating growth has required a review of the potential of each centre in the Sutherland Shire, particularly those serviced by railway stations. There are a number of options available to enhance housing supply by revising floor space ratios and building heights in order to deliver more dwellings within existing higher density zones. Alternatively, zone boundaries can be changed to provide more opportunities for higher density development. Council is currently in the process of determining its preferred solution from a range of options for increased residential development as part of the 2031 Housing Strategy.

Council has analysed twenty one centres and ten centres were identified as having potential for an increase in dwelling numbers, namely; Caringbah, Miranda, Sutherland, Engadine, Gymea, Jannali, Loftus, Woollooware, Como and Sylvania Heights. Kirrawee was also considered, however, it rated as medium in terms of its suitability. Therefore a decision was made to pursue additional growth in the aforementioned centres instead.

It is argued by the applicant that the proposed development is justified on the basis that it achieves relevant housing targets, however, this is not a valid justification in itself. This could be said of any major development. The study does not provide a balanced analysis of the opportunities and constraints of the site.

For the reasons outlined above the proposal is not considered to be worthy of support and would not be consistent with Council's housing strategy. The justification that this development meets the housing targets for the Shire is flawed and should not be supported. As identified, there are other strategies available to increase housing supply without overloading one precinct with such a large scale development.

7.0 Traffic Impacts

7.1 Road Network and Design

Council's Traffic Consultant (McLaren Traffic Engineering) has provided a detailed review of the Applicant's Traffic Management and Accessibility Plan (TMAP) submitted with the current Part 3A application (see Attachment "B"). The McLaren report references previous detailed assessment and outcomes that arose during the 2008 Land and Environment Court Appeal and details numerous flaws and deficiencies in the TMAP, the most significant of which are summarised below.

7.2 Traffic Generation

The TMAP uses flawed methodology, particularly with regard to the retail component, and significantly underestimates peak traffic generations. The McLaren report estimates a traffic generation of 1570 vehicle trips per hour to and from the site for the Saturday morning peak. This is approximately 50% higher than the estimated generation contained in the TMAP.