

Environment and Planning

26/09/2011 **EAP069-12**

Kirrawee Brick Pit - Draft Voluntary Planning Agreement

File Number: LP/06/430130

Director: Environmental Services (BM)

Councillor Comment:

▼ **Report Item**

(Attachments to this report are available electronically only)

REPORT IN BRIEF

Purpose

The purpose of this report is to advise Council of the progress of negotiations regarding the provision of a park and a draft voluntary planning agreement as part of the development of the Kirrawee Brick Pit site.

Summary

Significant improvements have been made to the design of the public open space park on the Kirrawee Brick Pit site. The proposed park design now achieves Council's requirements for:

- conservation of the Sydney Turpentine Ironbark Forest,
- accessibility of the site for the public,
- accessibility for maintenance,
- water quality of the lake for human contact,
- water quality of the lake for consumption by flying foxes,
- amount of usable recreation space, and
- the configuration of the open space as an accessible public open space.

The park concept plan is accompanied by landscape design specifications, detailing the methods of construction, planting and facilities.

Accordingly, it is appropriate that Council indicate its support for the proposed park and the finalisation of a draft Voluntary Planning Agreement (VPA). Preferably, the VPA will need to be entered into prior to approval of the Part 3A concept application, in order to ensure that development is accompanied by the provision of the park. The VPA will need to be publicly exhibited in accordance with the Act.

It is recommended that Council endorse the park design for inclusion in a

draft VPA to be publicly exhibited and then executed by the General Manager. It is also recommended that Council request the Minister and the Department of Planning to ensure that approval of the Part 3A concept application does not occur prior to execution of the VPA.

Given the progress of the VPA, it is recommended that Council abandon the Sutherland Shire Draft Local Environmental Plan Amendment 10 to rezone part of the site from Zone 13 Public Open Space to Zone 7 Mixed Use - Kirrawee.

REPORT IN FULL

Background

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 over the Brick Pit site.

The LAM identified that the form of future housing would need to meet the changing needs of the Shire's population, in particular 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 planning provisions of the LAM were subsequently incorporated into objectives and development controls in SSDCP2006 and SSLEP2006.

The site was subsequently sold by the State Government. Development Application (DA08/0347) for mixed use development was subsequently refused by Council and Council successfully defended its refusal upon appeal.

On 15 July 2010 Council was advised that the application by Henroth Investments Pty Ltd to declare the development at the Kirrawee Brick Pit site a Major Project under Part 3A of the Environmental Planning and Assessment Act, 1979 (the Act) was successful. Director General's requirements for the Environmental Assessment were issued by the Department of Planning on 24 August 2010.

This Part 3A application proposes significantly greater development than permitted by the current development controls. The proposal raises a number of concerns, particularly traffic impacts, impacts on centre and retail activities in the Shire, and scale and visual intrusion resulting from the height and density of the proposal.

The proposal was exhibited from 15 December 2010 to 11 February 2011. In February 2011 Council resolved to forward to the State Government its formal objections to the proposal (EAP088-11¹). The proponent is currently reviewing public submissions.

Of particular concern was the design and location of the proposed public park. Whilst the proponent offered to enter into a Voluntary Planning Agreement (VPA) with Council, at that time (February 2011) it was concluded that there was little demonstrable benefit in the park.

Council was particularly concerned that the park had a number of design flaws. Specifically the future public utility and public benefit of the proposed open space is far less than anticipated because:

- the finished level of the park is significantly below what was anticipated when the Kirrawee Masterplan was developed.
- the scale of the ornamental lake reduces useable recreational space.
- the difficulty in ensuring the lake retains adequate water quality to provide a suitable water source for endangered flying foxes, particularly given its proximity to the shopping centre forecourt.
- lack of general storm water management considerations resulting in unknown ongoing maintenance costs.
- the lack of space for active recreational activities.
- the extremely limited connectivity of the proposed park to the Kirrawee village due to the topography of the parkland and level changes.
- public liability and safety issues associated with the gradients proposed and the level of public surveillance.

Draft Voluntary Planning Agreement

In October 2010 (EAP047-11¹) Council resolved that the General Manager be authorised to co-ordinate initial discussions towards the preparation of a draft voluntary planning agreement that would facilitate the provision of an area of open space to satisfy the anticipated increased demand for public open space in Kirrawee.

Section 93F of the Environmental Planning and Assessment Act, 1979 (EPA Act) allows for the negotiation of voluntary planning agreements (VPA) between councils, developers, and/or other planning authorities for the provision of public purposes. Council must be a party to the VPA as the offer involves waiving of all developer contributions otherwise attributable to the development of the site, acceptance of ownership of the transferred land, and ultimately the maintenance of the park. Council has previously considered similar requests (Kurnell Australand Breen VPA) where the benefits to the community were substantial.

In preparing a VPA, Council must decide whether the offer for construction and dedication of the proposed park creates a significant open space resource - a significant benefit to the community in accordance with the vision expressed in the Kirrawee Local Area Management (LAM) Plan. Council should be satisfied that the benefits of this proposed park are equal or in excess of the contribution generated by the contribution plans. Under the current traditional section 94 plans an applicant may transfer land to Council in full or partial satisfaction of a condition of consent requiring a Section 94 contribution under this plan.

Council must also be mindful of the ongoing maintenance costs associated with accepting the dedication of such land. Should the proposed VPA be supported, Council must exhibit with the VPA, and an assessment of the merits of the proposed agreement, including the impact (positive or negative) on the public.

Following Council's submission to the State Government on the Part 3A application in February (EAP088-111), Council officers drafted principles for the park plan, including requirements for conservation of the Sydney Turpentine Ironbark forest, accessibility of the site for the public, accessibility for maintenance, water quality of the lake for human contact and for consumption by flying foxes, the amount of usable recreation space, and the configuration of the open space as an accessible public open space.

Since then, the proponent's landscape architects have worked collaboratively with Council officers to achieve a design for the park that satisfies the principles above. The proponent has made a detailed submission on the draft Voluntary Planning Agreement (Appendix 1) and this is further discussed below.

Park Design

The proposed park comprises the water body (Brick Pit Lake), recirculating managed wetland, a grassed picnic area (Quarry Park), STIF revegetated area (forest) with boardwalk access, and a civic address/stairs and promenade to Flora Street (Civic Address, Amphitheatre and Flora Plaza). The proposed 9,000m² park provides a suitable recreation area for inhabitants and the community. The Kirrawee Brick Pit Landscape Design Report is attached as Appendix 2.

Of significant concern, initially, was the level of the water body and the potential for parking substrata below the water body. This substrata has since been abandoned as the SRA did not want additional commuter parking. The level of the water body sets the grades of the surrounding land and how well the park integrates with Oak Road, Flora Street and the

Kirrawee town centre. The highest point of the site is about 105 metres above Australian Height Datum (AHD), and the land slopes towards the south eastern corner at 94AHD. The water body is to be set at a minimum level of 97.5AHD.

Whilst the water body will be marginally lower than Oak Road (5-6m), the level of the park has been substantially increased and finished ground levels are now suitable for disabled access to the water body, grassed area, and building forecourt. Boardwalk access to the park will be available from the corner of Oak Road and Flora Street, through augmented Sydney Turpentine Ironbark Forest (STIF) planting. Additional stair and lift (off park site) access is provided from Flora Street to the park level and building forecourt, water body and grassed picnic area. Batters will not exceed 1 in 2.5 and appropriate maintenance access will be provided. Lighting and park facilities (seating, water fountains and BBQ areas) are included in the park design.

As the levels have been increased, the park now provides greater connection to the town centre. The retention of the Sydney Turpentine Ironbark Forest is a significant site constraint and limits how the development can connect with the town centre. Given these constraints the park design maximises connections through the park to the development site.

A detailed landscape specification has been prepared in consultation with Council officers (Appendix 3) to ensure that the proposed park is constructed to Council standards.

Water body

The proposed park provides a water body of sufficient size to accommodate the ecological needs of the Grey Headed Flying Foxes and the Eastern Bentwing Bat. The water body also achieves an attractive landscape feature for passive recreation. The size of the water body was based on findings in the previous court case and water bodies serving flying foxes at Engadine and Kurnell. The water body will accommodate site runoff management (a portion of the park drains to the open water body) and this is further discussed below.

The proponent has advised how appropriate water quality in the water body can be achieved for both the flying foxes and human contact (Kirrawee Brickpit Grey Headed Flying Fox Water Quality Requirements Final – prepared and revised by Equatica September 2011). The water body has been designed as a recirculating wetland cell. This is a natural method of controlling and improving water quality. The first part of the cell will be located around the edge of the existing wetland and will be integrated into the edge vegetation of the pond and the surrounding land vegetation. The

second part of the cell will be integrated into the swale drain which will convey any surface runoff of the surrounding forested and park areas. The pond water will be reticulated through the swale and water levels topped up from the adjacent development. Appropriate agreements can be included in the VPA to ensure water levels are sustainable. It should be noted that an interim alternate water body will be provided on site during construction.

The water quality report (by Equatica consultants - Appendix 4) demonstrates that appropriate water quality in the water body can be achieved for both the flying foxes and human contact. The report details site specific water quality guidelines, as opposed to the ANZECC guidelines.

Sydney Turpentine Ironbark Forest

The site contains a Sydney Turpentine Ironbark Forest (“STIF”) community. It is noted that the STIF community, is listed as an Endangered Ecological Community under the NSW Threatened Species Conservation Act 1997, and as Critically Endangered under the Commonwealth Environment Protection and Biodiversity Act 1999. However the small extent of the community within the site precludes it from falling within the definition of Turpentine-Ironbark Forest under the Environmental Protection and Biodiversity Act. The revised park design accommodates a large area of STIF and additional complementary planting is proposed in the park.

The long term impacts of the proposed development on the STIF are expected to be minimal. Based on final calculations, the total extent of STIF to be removed is 2792.72 sq m and the offset required, at a ratio of 2:1 (offset: vegetation to be removed) is 5585.45 sq m. The 2:1 ratio was determined as part of the previous court proceedings. Some compensatory planting of STIF vegetation is proposed to be carried out off-site, and in parks or reserves close to the site, as identified by Council officers.

Geo-technical and Stormwater issues

The site is a former flooded brick works that must be drained and partially filled for development. Draining of the water body may cause changes in the water table and possibly some ground instability along Flora Street and the southern boundary of the site. Stability of the site during and after construction, including removal of ground anchors installed in Flora Street by previous owners, has been addressed in specialised reports as part of the Part 3A concept application supporting documentation (geo-technical report by Jeffery and Katauskas Pty Ltd Consulting Geo-technical and Environmental Engineers and de-watering plan by CMJAC. M. Jewell & Associates Pty Ltd).

The applicant has submitted that fill for the proposed park area will be

achieved by using select site material 'won' from excavating the proposed basement. This fill material shall be suitable for achieving compaction to 95% standard dry density and filling is likely to be undertaken in (nom.) 200mm layers subject to the material.

However it is recommended that further details of any stabilisation methods to provide long-term support of the face of the pit are to be approved by Council prior to commencement of construction. De-watering of the pit must be carried out under the direction and supervision of a geo-technical engineer.

Additional stormwater management details submitted by consultants Northrop (September 2011) on behalf of the applicant indicate that any discharges from the pond and park will be fed into the detention system for the remainder of the site, and as such there will be no discharges from the pond directly into Council's stormwater system. Recycled rainwater will be separately stored on the development site to supply to the compensatory habitat water body, and the podium water feature (on the development site). Agreements will be set in place to ensure that sufficient water is maintained in the water body. Council's Stormwater Manager is satisfied that stormwater can be accommodated by the development.

Essentially the applicant has demonstrated that proposed park can be accommodated on site without adverse environmental impacts. However, it is recommended that the VPA contain additional provisions requiring approval of detailed construction methods prior to commencement of construction of the park.

Car Parking

Whilst it is desirable to provide on street parking for the park, opportunities are limited. It will not be possible to provide angled car spaces along the frontages of the park as there will not be sufficient space in addition to the required 3.5m verge, given the proposed widening of Oak Road and Flora Street. The proponent is, however, maintaining the current provision of rear to kerb parking that is present along the Flora Street frontage of the site by providing new parallel spaces on Flora Street. An additional 40 spaces will be provided in the basement car park for public use. Access from the basement would be compliant with the DDA (Disability Discrimination Act) and would use the same lift near the Flora Street park entrance that is proposed to take people from Flora Street to the park and plaza levels. It is noted that the original proposal did involve surface parking on the northern boundary of the park within the site (6 spaces - the number suggested by Council staff at that time), but this was not supported by the RTA.

Maintenance

The proposed park will require maintenance as per other parks in the Shire. However, the park has been designed to minimise maintenance requirements. A solar pump powers reticulation of the wetland cell. Macrophytes – wetland plants, will aerate and clean the water. These plants will need specific maintenance every 5-10 years and the applicant is proposing a sinking fund to cover the cost of this work. The park will meet lighting standards for the pathways only (due to potential impacts on species). Lighting is to be installed down the stairs from Flora Street into / out of the plaza area.

An estimate of the annual maintenance costs of the water body has been made by Equatica Consultants:

Recirculating Wetland: \$6,000 annually

- *allow \$5,000 for running costs including vegetation management, litter management, sediment etc (this is equivalent to 4 hours per week maintenance)*
- *allow \$1,000 annually for renewal/adaption costs (maintenance requirements occurring on a 5 year to 10 year period such significant desilting/replanting/structural repairs/etc)*

Solar Pump: \$1250 annually

- *allow \$500 for running costs including additional energy annually*
- *allow \$500 for an annual service of the pump by a contractor*
- *allow \$250 annually for replacement of parts and pump replacement (every 10 years).*

The proponent has submitted that, given the substantial community benefits of the park, the ongoing maintenance costs to Council are considered "wholly reasonable and insignificant".

The water body is currently located on the land zoned for open space and the mixed use development site. Council officers have always maintained the position that Council is willing to share responsibility of providing a water source for the bats, by accepting that the water body will be on the public park. However, it is considered that the maintenance of the water body should be funded by the developer for at least 20 years. It is recommended that Council request the developer provide an appropriate sinking fund for the maintenance of the water body.

Easements

The park will require some ongoing connection from the adjacent development site for access, support of fill, and water provision. At the same time the proponents want some assurance that the land will remain as an open accessible park. The proponent has advised that the following legal

instruments should be referenced in the draft VPA:

- *A cross easement for support (to retain the fill etc) between the park and the balance of the proponent's development site,*
- *A positive covenant on the proponent's development site to supply sufficient water as per the Northrop report to keep the water level in park water body at RL98;*
- *Reciprocal rights of pedestrian access between and over the proponent's site and the park;*
- *A right of carriageway over the proponent's site to allow maintenance vehicles to enter at Oak Road and to service the park;*
- *A restrictive covenant on the Council park to not substantially alter the agreed finished levels and general conditions of the land (including any 'dividing' fencing);*
- *A restrictive covenant on the private lands to not substantially alter the agreed finished levels and general conditions of the land within 3 metres of the boundary of the park;*
- *Council covenants to maintain STIF located on-site and off-site;*
- *Council covenants to maintain the park area; and*
- *A positive covenant over the park in favour of the proponent's site that the land will be retained in perpetuity for use as a public park incorporating a range of recreational and conservation experiences.*

It is recommended that any draft VPA include details of these proposed easements and covenants, subject to further legal advice.

VPA Administrative provisions

The draft VPA will ensure that the park is constructed to Council's requirements. It will include schedules detailing the park concept plan, Council's landscape specification, geo-technical, de-watering, stormwater and water quality plans. These plans have been submitted to council as part of the draft VPA process.

Any draft VPA must address whether the VPA excludes the application of S94 or S94 contributions. In this case the proponent has requested that the VPA waives the requirement for any further S94 contributions.

It should be noted that Clause 93F (3A) of the Environmental Planning and assessment Act states:

A planning agreement cannot exclude the application of section 94 or 94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement.

Given that the estimated cost of development is \$242 million, it is unlikely

that Council will be determining the Development Applications for the site. Further advice has been sought from the Department of Planning and Infrastructure regarding this provision.

Cost / Benefit

Monetary Value:

The Environmental Assessment submitted in support of the Concept Plan Application currently being considered by the Department of Planning and Infrastructure estimates the value of the fully embellished park to be between \$8-10 million. This includes the value of the land. However the full cost is subject to detailed design estimates.

The proposed development is subject to three (3) section 94 contribution plans - two (2) traditional plans and one (1) levy plan. The plans generate a contribution ranging from \$2.38 million to \$4.3 million. A contribution in the order of \$4 million from the traditional plans (based on the residential development) is likely. Given the average cost of open space acquisition (\$1000/sq.m) and embellishment (\$100/sq.m.), it is evident that the dedication and construction of the park far outweighs the monetary contribution that could be expected from the development. The offer to deliver the park is also in lieu of any infrastructure contributions.

The final cost of providing the park and water body will be submitted to Council prior to the execution of the VPA.

Community Benefits:

The proponent has submitted that the proposed park will provide the following benefits:

- *Construct at no cost to Council a fully embellished high quality public park consistent with the design principles agreed with Council staff (including measures for STIF conservation and water body for threatened fauna);*
- *Transfer at no cost to the Council a minimum of 9,000m² of the site designated for the park;*
- *As indicated above, the Concept Plan Application places a significant capital value on this offer (which, even though the exact amount remains to be verified based on the final approval and other matters, will nonetheless be considerable);*
- *The value of the offer will be considerably more than Council can expect in the absence of the offer. Council's current liabilities under the Sutherland LEP to purchase the Zone 13 land at market value and its ability to levy developer contributions of either \$2.2mil (under S.94A) or \$4.3mil (under S.94) in respect of the proponent's proposed development of the Brick Pit*

site (as estimated by Council);

- Under the latter scenario the Council is unlikely to be able to deliver an equivalent park to that offered by the proponent within the same timeframe without significant additional funding sources (such as rates revenue) having to be utilised;*
- The normal ongoing costs of providing water to the water body within the park will be borne by the proponent (by means of any required plant for that purpose being located on and maintained on the proponent's site); and*
- The public park will be augmented by approximately 3,000 m² of directly adjoining publicly accessible piazza and open space on the proponent's site.*

The proponent submits that costs of maintenance of the park “are ordinarily considered to be justified on the basis of the recreational and environmental benefits derived from them by the local community”.

Timing and Surety

The proponent has advised that the fully embellished park will be constructed and dedicated to Council as part of the Stage 1 works. The proponent has also advised:

In satisfaction of s93F(3)(g) of the Act, the proponent will offer within the draft VPA sufficient surety in the form of Bank Guarantee(s) (obtained prior to the issuing of the Stage 1 Construction Certificate) as security for the full delivery cost of the park in the event that it is not fully completed at the time of the Stage 1 Occupation Certificate application.

The final costs are subject to detailed design estimates.

It should be noted that Council has no role in the determination of the Part 3A concept plan and potentially any subsequent development application (as the proposal is likely to reach the thresholds for determination by the JRPP). Consequently Council must be certain that the park will be delivered as part of the Part 3A process.

It is recommended that Council request that the Department of Planning and the Minister not approve the Part 3A application prior to Council entering into a VPA with the proponent. It is recommended that Council obtain further legal advice to determine how Council can best ensure that the park is delivered and that appropriate mechanisms be included in the VPA.

The VPA, along with an explanatory note must be exhibited for 28 days.

Defects liability period

The proponent has advised that the proposed defects liability period will be twelve (12) months.

Draft Rezoning

Council, mindful of its acquisition liability for the area currently zoned for open space, in January 2011 resolved to amend the zoning (EAP102-111) so that the entire Brick Pit site would be zoned Mixed Use. The planning proposal sought to rezone part of 566-594 Princes Highway, Kirrawee from Zone 13 – Public Open Space to Zone 7 – Mixed Use – Kirrawee under SSLEP 2006. Council originally resolved not to acquire the area zoned for open space and therefore to rezone the land due to the poor utility of the proposed park as shown under the Part 3A Application.

The draft plan was publicly exhibited for a period of 28 days between 5 April 2011 and 2 May 2011. Two (2) submissions were received objecting to the proposed rezoning, one (1) from the general public and the other from the Office of Environment and Heritage (OEH). The Department of Transport also made a submission concerning traffic issues albeit did not specifically object to the rezoning proceeding.

On the conclusion of the public exhibition period, Council commenced negotiations with the Brick Pit owners in order to find a reasonable outcome for the provision of a public park on the site. Negotiations have been successful and a Voluntary Planning Agreement is to be drafted that will ensure the provision of a public park that has utility and will be manageable in terms of long term maintenance costs for Council. There is benefit to be gained through the provision of a public park on the site for both the future residents of the brick pit site and the wider community.

Given that both parties have reached agreement over the provision of a public park on the site and its maintenance, the rezoning proposal is unnecessary. It is recommended that the draft plan to rezone the site be abandoned.

Summary of issues raised in submissions to draft rezoning

Two (2) submissions were received objecting to the proposed rezoning, one (1) from the general public and the other from the Office of Environment and Heritage (formerly DECCW). The Department of Transport also made a submission concerning traffic issues albeit did not specifically object to the rezoning proceeding. The submissions are attached at Appendix 6.

Office of Environment and Heritage (formerly DECCW) – impact on threatened species

The OEH object to and does not support the proposed rezoning to Zone 7 stating it's inappropriate given the significant environmental site constraints. The site contains habitat for two (2) threatened species, the Grey-headed Flying Fox and Eastern Bent-Wing Bat and also remnant endangered

ecological community of Sydney Turpentine Ironbark Forest. The OEH is concerned with the adverse environmental impacts if the subject land was developed due to the increased development potential and range of uses permitted under Zone 7. The primary concern is that the current zoning affords more protection for the threatened and endangered species on the site while the proposed zoning to mixed use would reduce the protection and fails to reflect the biodiversity values of the subject land. An E2 zone was suggested as being more appropriate for the subject land.

OEH also pointed out that Part 3A of the Act removes the need for an assessment of significance or the preparation of a Species Impact Statement under the Threatened Species Conservation Act. However, Council has no control over Part 3A legislation or applications before the DoPI and this concern is outside the scope of this particular rezoning request.

The proposed re-zoning is under SSLEP2006 and as such the threatened and endangered species on the land is protected by the Threatened Species Conservation Act which applies regardless of the zoning. The concerns regarding a greater range of permissible uses under a mixed use zone are noted as compared to the existing zoning. However, if any DA was lodged the Threatened Species Conservation Act would apply and the species would need to be protected in accordance with that Act.

Council officers had a meeting with the OEH to discuss their objections on 18 May, 2011. Since this time, Council has negotiated with the owners of the brick pit over a park design for the site. As such, the park can accommodate the STIF and Council is unlikely to proceed with the rezoning proposal.

Department of Transport

The DoT noted the potential for the rezoning proposal to increase the commercial and residential floor space on the site and thereby increase the traffic impacts on the road network and affect public transport services. The DoT requested that the rezoning not be considered in isolation and that the cumulative impacts be assessed with the overall Brick Pit site Part 3A application. Given that the rezoning is proposed to be abandoned these issues are not relevant. The potential traffic impacts are pertinent to the Part 3A proposal that needs to be considered by the DoPI.

Public Submission

A local resident raised a number of concerns with the proposed rezoning in terms of:

- The loss of public open space, concern that no alternative location for park has been identified nearby and why a simple park is too expensive for

Council to deliver.

- Traffic impacts.

Some of the concerns are not relevant to the proposed rezoning and specifically relate to the Part 3A concept plan application such as the scale of the proposal and the consequent pressure on local parking and amenity impacts, changes to the village character of the area and the need for an additional shopping centre was questioned.

The Proponent

During and since the exhibition, CityPlan Services (representing the owners of the land Henroth) made a number of submissions requesting an extension of time to make a submission. In correspondence dated 14 July 2011 CityPlan noted that *“rezoning of the site to commercial uses would not preclude the use of the site for a park and negotiations on the park design and VPA can continue notwithstanding Council’s actions in relation to the various draft LEP options over the site.*

In conclusion, this letter has been issued conscious of the fact that Council has given until 14 July to make representations on the current draft LEP Amendment. We wish to make it clear, however, that it represents a position statement rather than a formal submission under the Act. It is our client’s view that decisions relating to the appropriate zoning of the ‘park site’ should preferably be deferred until the current negotiations have been finalised. It is our understanding, given the positive and constructive discussions with Council to date, that additional time will be granted to Henroth to make a formal submission under the Act on the draft LEP, should it so wish, prior to Council’s formal resolution on the making or otherwise of the Plan.”

On 16 September 2011 Cityplan consultants, on behalf of the proponent, made a submission on the draft Local Environmental Plan (Appendix 5). The proponent noted the substantial progress on the park concept design and VPA negotiations. The proponents have “offered to deliver the park in conjunction with the current Concept Plan application regardless of the zoning”. The proponent has not raised any objection to the draft rezoning.

Discussion

Future residents of the subject site and the surrounding locality will no doubt benefit from improved access to open space for active or passive recreation. Providing an attractive and functional park on the subject land would allow the development to become a focus for the local community and enhance the residential amenity of future residents. The park will provide significant benefit to the site’s residents and shoppers.

The proposed park is well in excess of what could be expected by traditional S94 development contributions. However, the park comes with ongoing maintenance, particularly in regard to the water body that must be maintained for the bats – a development constraint of the site. Additionally the site must retain and accommodate the STIF – another development constraint.

On balance, a Voluntary Planning Agreement is the most appropriate path to realising a design for a space that is acceptable to both parties and it appears that a park will be dedicated to Council's satisfaction.

In relation to traffic it is noted that the rezoning of the site to mixed use would allow for an additional range of uses. The amenity and traffic impacts of such would be dealt with and managed at the Development Application stage. The Part 3A concept plan currently before the DoPI will need to address these concerns.

It is recommended that Council abandon the draft Local Environmental Plan to rezone part of the site from Zone 13 Public Open Space to Zone 7 Mixed Use - Kirrawee as significant progress has been made on the construction and dedication of a suitable park to Council, and the Department of Planning be advised accordingly.

Conclusion

The proposed park concept plan achieves the design principles set by Council. The park will provide a useable area of open space, a water body suitable for bats and human contact, retention of the Sydney Turpentine Ironbark Forest, and connectivity to the Kirrawee town centre. The level of the water body is appropriate given site constraints.

It is recommended that Council endorse the offer of the proponent to enter into a voluntary planning agreement (VPA) for the construction and dedication of the public park. The VPA will need to be entered into prior to approval of the Part 3A concept application, in order to ensure that development is accompanied by the provision of the park. The VPA will need to be publicly exhibited in accordance with the Act.

It is recommended that the General Manager be authorised to finalise the VPA and that the VPA be publicly exhibited and then executed by the General Manager. It is also recommended that Council request the Minister and the Department of Planning to ensure that approval of the Part 3A concept application does not occur prior to execution of the VPA.

Given the progress of the VPA, it is recommended that Council abandon the Sutherland Shire Draft Local Environmental Plan Amendment 10 to rezone

part of the site from Zone 13 Public Open Space to Zone 7 Mixed Use - Kirrawee.

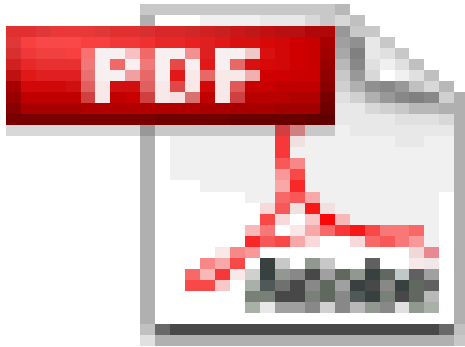
▼ **Report Recommendation:**

1. That the concept plan for a public park attached as Appendix 1 and 2 be endorsed by Council.
2. That the General Manager be authorised to finalise a Voluntary Planning Agreement for the construction and dedication of a park on the Kirrawee Brick Pit site as detailed in Appendix 1 and 2 and that the draft VPA be exhibited in accordance with the provisions of the Environmental Planning and assessment Act.
3. That the VPA include geo-technical and environmental design schedules and appropriate easements and covenants to ensure that the park is constructed to Council's satisfaction.
4. That the proponent be requested to provide an appropriate sinking fund for the maintenance of the water body for 20 years to Council.
5. That the draft VPA include appropriate mechanisms to ensure that the park is delivered to Council's satisfaction.
6. That the Minister and the Department of Planning and Infrastructure be requested to ensure that approval of the Part 3A concept application does not occur prior to execution of the VPA.
7. That Sutherland Shire Draft Local Environmental Plan Amendment 10 be abandoned to rezone part of the site from Zone 13 Public Open Space to Zone 7 Mixed Use - Kirrawee, as significant progress has been made on the construction and dedication of a suitable park to Council, and the Department of Planning and Infrastructure be advised accordingly.

▼
APPENDIX

Kirrawee Brick Pit - Draft Voluntary Planning Agreement

Appendix 1



Appendix 2



Appendix 3



Appendix 4



Appendix 5



Appendix 6



(To view the document, double click on icon and select 'Open'. Select 'File' 'Close' to return to report.)

▼ **Committee Recommendation:**

1. That the concept plan for a public park attached as Appendix 1 and 2 be endorsed by Council as the basis for the preparation of a draft Voluntary Planning Agreement.
2. That the property owner and Department of Planning and Infrastructure, be advised that:
 - a. Council will be prepared to enter into a Voluntary Planning Agreement for the construction and dedication of a park on the Kirrawee Brick Pit site as detailed in Appendix 1 and 2.
 - b. The VPA should include:
 - i. Geo-technical and environmental design schedules, and appropriate easements and covenants.

- ii. An appropriate sinking fund for the maintenance of the water body for 20 years to be managed by Council.
- iii. Appropriate mechanisms to ensure that the park is delivered to Council's satisfaction.

3. That no further action be taken on Sutherland Shire Draft Local Environmental Plan Amendment 10 to rezone part of the site from Zone 13 Public Open Space to Zone 7 Mixed Use - Kirrawee.

4. That a further report be presented to Council to obtain approval to proceed with the finalisation of the Voluntary Planning Agreement once information is received from the Planning and Assessment Commission in relation to its decision on the development proposal.

5. That the entering into VPA discussions on the public park or reaching agreement on the VPA should not be seen as an endorsement by Council of other elements of the development application.

▼ **Council Resolution:**

1. That the concept plan for a public park attached as Appendix 1 and 2 be endorsed by Council as the basis for the preparation of a draft Voluntary Planning Agreement.

2. That the property owner and Department of Planning and Infrastructure, be advised that:

a. Council will be prepared to enter into a Voluntary Planning Agreement for the construction and dedication of a park on the Kirrawee Brick Pit site as detailed in Appendix 1 and 2.

b. The VPA should include:

i. Geo-technical and environmental design schedules, and appropriate easements and covenants.

ii. An appropriate sinking fund for the maintenance of the water body for 20 years to be managed by Council.

iii. Appropriate mechanisms to ensure that the park is delivered to Council's satisfaction.

3. That no further action be taken on Sutherland Shire Draft Local Environmental Plan Amendment 10 to rezone part of the site from Zone 13 Public Open Space to Zone 7 Mixed Use - Kirrawee.

4. That a further report be presented to Council to obtain approval to proceed with the finalisation of the Voluntary Planning Agreement once information is received from the Planning and Assessment Commission in

relation to its decision on the development proposal.

5. That the entering into VPA discussions on the public park or reaching agreement on the VPA should not be seen as an endorsement by Council of other elements of the development application.