

Emma Butcher

From: Mark Adamson <MAdamson@ssc.nsw.gov.au>
Sent: Wednesday, 16 May 2018 2:40 PM
To: Emma Butcher
Subject: URGENT: MP10-0076 75W MOD 6 Kirrawee Brick Pit 580 Princes Hwy, Kirrawee 2232

Follow Up Flag: Follow up
Flag Status: Completed

Emma,
Please see comments below I was in the midst of sending just prior to our discussion yesterday.
Thanks,
Mark Adamson

Emma,
I refer to our telephone discussion on the 8th May and Council's previous correspondence regarding S75W Modification (MOD 6) condition 14, relating to car parking at the Kirrawee Brick Pit. During our discussion you advised that you had suggested the applicant meet with Council staff to narrow the issues raised in Council's submission. I had been trying to make contact with you since the 9th May without success, having left many messages. It is Council's position that the content of our submission remains as a significant concern. Not having had the opportunity to discuss the matter further with you we cannot see any utility in meeting with the applicant to adjust our submission.

As highlighted in previous letters and emails, Council does not support the amendments to Condition 14. In short, the proposed changes will circumvent the ability for Council to assess and make an informed decision(s) on future development applications for non-residential/commercial land uses.

The provisions of the Act requires all development applications be assessed against relevant planning instruments and Development Control Plans (to name a few). The proposed amendments by the applicant will remove Council's power to prevent unsuitable non-residential/commercial land use developments, particularly regarding a lack of car parking and related impacts.

The Brick Pit site only has 541 car parking spaces available for non-residential/commercial uses. If an application was submitted that requires a significant increase to the 541 spaces, for example an entertainment facility or function centre, Council will have no power to prevent the unsuitable development. Not having any power to prevent land uses based on car parking shortfalls means that the Brick Pit site and surrounds will be overwhelmed with traffic, further congesting the local road networks. This will be problematic during peak AM and PM times.

Council has reviewed its proposed wording to Condition 14 and can advise that there is no value including a table detailing car parking rates for non-residential/commercial land uses that are not listed in Condition 14(a)(ii). The proposed wording by Council already details all future non-residential application must either satisfy the parking rates in Condition 14 or satisfy the parking rates listed in Roads and Maritime Service Guide to Traffic Generating Developments or Council's Development Control Plan.

Council is aware that there may be some uncertainty in the wording of the condition. It is recommended that the words "*whichever is lesser*" be included to provide certainty in the preparation and assessment of future development applications. Therefore, the condition must be worded as follows:

14. CAR PARKING

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket – 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) – 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) – 4.2 spaces per 100m²;
- Showroom – 2.4 spaces per 100m²;
- Office – 2.5 spaces per 100m²; and
- Medical – 0.9 spaces per 100m².

*iii. Where a land use activity is not listed above is proposed, parking shall satisfy the parking provision based on the rates in Sutherland Shire Council's DCP or the rates in the RMS Guide to Traffic Generating Development, **whichever is lesser** (irrespective of whether or not the car parking control is expressed as a minimum, maximum or absolute standard).*

Explanatory Note: The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation allocated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use.

Please confirm your position on this matter as soon as possible.

Regards,



Mark Adamson

Manager Major Development

Assessment Shire Planning

02 9710 0623

madamson@ssc.nsw.gov.au

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Emma Butcher

From: Aaron Sutherland <aaron@sutherlandplanning.com.au>
Sent: Tuesday, 8 May 2018 9:35 AM
To: Emma Butcher
Cc: Chris Ryan; Adrian Kilburn; Piran Trethewey
Subject: RE: DA18/0231, DA18/0233 and DA18/0234 - 580 Princes Highway, Kirrawee
Attachments: Architectural Package - DA1.pdf; Architectural Package - DA2.pdf; Architectural Package - DA3.pdf; Statement of Environmental Effects (DA3 - retail) - 580 Princes Highway, Kirrawee.pdf

Follow Up Flag: Follow up
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Hi Emma,

I am following up on the phone message that I left with you yesterday concerning the S75W amendment in relation to car parking at the Kirrawee Brick Pit. We really need this reported to the PAC as soon as possible now. We have attempted to meet with Council and had a meeting scheduled for today, however, they have now cancelled the meeting.

You will recall that based on Council's approach towards car parking, where they are treating it as a minimum, we have "exhausted" the car parking provision in our three fitout and use DAs which are currently under assessment and yet we have still not proposed a fitout and use of the ground floor of Building B. In addition, Council are now suggesting that we have to provide even more car parking in order to have outdoor dining within the plaza areas of the development – obviously we cannot simply just provide more car parking as the basements are already constructed, so the logical conclusion of Council's approach is that we simply can't have any outdoor dining which would be a ridiculous outcome and a poor result for the amenity and enjoyment of the shopping centre by customers. Below is an email from Council where their approach towards car parking as a minimum is now becoming a fundamental block in relation to our current fitout and use DAs on the basis that they are 'consuming' too much car parking (Note: I have removed other issues that Council have raised in their email which are not relevant to the car parking issue).

Unfortunately, this email from Council has confirmed our fears about this issue and is an actual example of why it is absolutely critical that the proposed S75W is approved because otherwise we are unable to put ordinary tenants into this shopping centre as would be expected, or provide outdoor dining, because Council consider there to be a 'parking shortfall'. There is nothing unusual or exceptional in our currently proposed fitout and use DAs (I have attached the plans which show very normal uses such as bank, barber, optometrist, cafes, butcher, etc etc) and this is an unreasonable position for us to be in at such a late stage of the project when the Concept Plan established a maximum car parking control for the development.

I trust that the below email and attachments assist you and bring some perspective around why this is such a critical issue. If you think it would help, we are happy to meet with you again to talk through this issue in greater detail.

We trust that you are able to support our proposal in order to resolve this absurd situation that we find ourselves in with Council. Are you able to advise when the application will be reported to the PAC?

Kind regards

AARON SUTHERLAND
Director

SUTHERLAND & ASSOCIATES PLANNING
PO Box 6332, Baulkham Hills BC, NSW, 2154
m: 0410 452 371

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From: Evan Phillips [<mailto:EPhillips@ssc.nsw.gov.au>]
Sent: Friday, 4 May 2018 10:07 AM
To: Chris Ryan <cryan@imanager.net.au>
Cc: David Sheehan <DSheehan@ssc.nsw.gov.au>
Subject: DA18/0231, DA18/0233 and DA18/0234 - 580 Princes Highway, Kirrawee

Hi Chris.

Thank you for meeting with Council on Tuesday, 1 May 2018 to discuss your application. As identified at that meeting there are matters which require resolution prior to further processing your fitout and signage applications. A response to the following matters is required:

A. **Parking**

The provided parking schedule serves to illustrate that the proposed uses currently under assessment will absorb all 541 spaces provided for commercial use, however the application has failed to account for all commercial floor space within the overall development. In the event the three fitout applications are approved as proposed, available parking for commercial use will be exhausted. The applications have failed to provide Council with reasons demonstrating that it would be orderly and prudent to utilise the full parking allocation without consideration for the future use of unallocated commercial space.

Justification is also requested in relation to:

***the proposed outdoor dining areas and any consequent parking generation beyond that calculated by floor area of each respective tenancy; and
any potential for further traffic generation impacts associated with the re-subdivision of shops.***

The above information should be provided within 14 days. Please contact the assessment officer, David Sheehan on 02 9710 0965 or via dsheehan@ssc.nsw.gov.au prior to the end of this period should you require additional time to provide a response or wish to discuss.

SUTHERLANDSHIRE



Evan Phillips

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Emma Butcher

From: Aaron Sutherland <aaron@sutherlandplanning.com.au>
Sent: Thursday, 19 April 2018 4:56 PM
To: Emma Butcher
Cc: Chris Ryan; dominic@payce.com.au; Piran Trethewey
Subject: RE: Kirrawee Brick Pit - S75W - MOD 6 - car parking
Attachments: S75W Modification - 566-594 Princes Highway, Kirrawee (rev 3).pdf

Follow Up Flag: Follow up
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Hi Emma,

Thank you for sending through Council's latest comments and also your suggested wording.

In reviewing Council's letter dated 9 April 2018, we have identified that they have raised concern about potential "parking shortfalls". This is of profound concern to us because it clearly demonstrates that they do in fact intend to assess subsequent use development applications on the basis of a *minimum* car parking provision and that if 'insufficient' parking has been provided in their opinion, they will refuse the development application on this basis.

This approach towards car parking is diametrically opposed to the fundamental principle embodied in the Concept Plan approval which is that car parking is capped in order to influence and control traffic impacts. The cap on parking is not intended to restrict commercial uses within the shopping centre. This principle is well understood and has been adopted by the Department and many inner city Council's such as the City of Sydney and others.

Council's letter has illustrated the need for the wording of Condition No. 14 to provide absolute clarity for Council that they must not refuse future development applications on the basis of a 'parking shortfall'. To this end, we have taken the opportunity to further revise the wording for Condition No. 14 which is reflected in the attached Rev 3 (dated April 2018) of the S75W Planning Statement which represents our formal response to the Department.

We request that the Department consider and support the proposed amendment. We understand that this will need to be notified to the Council yet again, however, given the length of time that has elapsed with this application we request that Council are provided with 7 days within which to respond. In the unfortunate circumstance that Council insist on objecting, we request that the matter be reported as soon as possible to the Planning Assessment Commission, who we are confident will support our proposed amendment to bring clarification to the intent of Condition No. 14.

If you have any questions at all concerning this final amendment, we are very happy to come and meet you at short notice to discuss.

Thank you in advance for your ongoing assistance with this matter, it is greatly appreciated.

Kind regards

AARON SUTHERLAND
Director

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From: Emma Butcher <Emma.Butcher@planning.nsw.gov.au>
Sent: Tuesday, 17 April 2018 4:34 PM
To: Aaron Sutherland <aaron@sutherlandplanning.com.au>
Subject: RE: Kirrawee Brick Pit - S75W - MOD 6 - car parking

Hi Aaron,

Please see Council's submission on MOD 6 attached.

I discussed with Anthony, and we are happy to support the wording as proposed stating the DCP rates are to be used as a maximum. We have recommended the last sentence of the explanatory note is removed in accordance with Council's submission.

The proposed modified condition is outlined below.

I have sent this to Council, to confirm whether they maintain an objection, given the removal of the last sentence. Once we receive their response, I will confirm whether the application will need to go to the IPC. In the meantime, I will continue writing the assessment report.

CAR PARKING

Future applications shall address the following:

Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket – 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) – 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) – 4.2 spaces per 100m²;
- Showroom – 2.4 spaces per 100m²;
- Office – 2.5 spaces per 100m²; and
- Medical – 0.9 spaces per 100m².

- iii. Where a proposed development is not listed in these controls, parking **shall not exceed** the parking provision based on the rates in Sutherland Shire Council's DCP or the rates in the RMS Guide to Traffic Generating Development (irrespective of whether or not the car parking control is expressed as a minimum, maximum or absolute standard).

Explanatory Note: The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation allocated with the development and to encourage alternative forms of transport such as cycling and public transport use.

An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.

Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.

The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.
the provision and implementation of a car share scheme.
All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.
Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.
A community bus and taxi drop off shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

Kind regards

Emma Butcher

Planning Officer, Regional Assessments

NSW Department of Planning & Environment

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**Planning &
Environment**

From: Aaron Sutherland [<mailto:aaron@sutherlandplanning.com.au>]
Sent: Monday, 16 April 2018 6:17 PM
To: Emma Butcher <Emma.Butcher@planning.nsw.gov.au>
Cc: Chris Ryan <cryan@imanager.net.au>; Daniel Lukic <dlukic@ssc.nsw.gov.au>
Subject: RE: Kirrawee Brick Pit - S75W - MOD 6 - car parking

Emma - we understand from Daniel Lukic that he has finished his response to you and that it is with his Director for sign off, so it will hopefully be with you in the next day or so (unless you have received it today?)

Luke – if the letter hasn't been signed yet by Peter Barber, would you be able to follow up with him? As you know, we can't proceed with a DA for the ground floor of Building B until this issue is resolved.

Kind regards

AARON SUTHERLAND

Director

SUTHERLAND & ASSOCIATES PLANNING

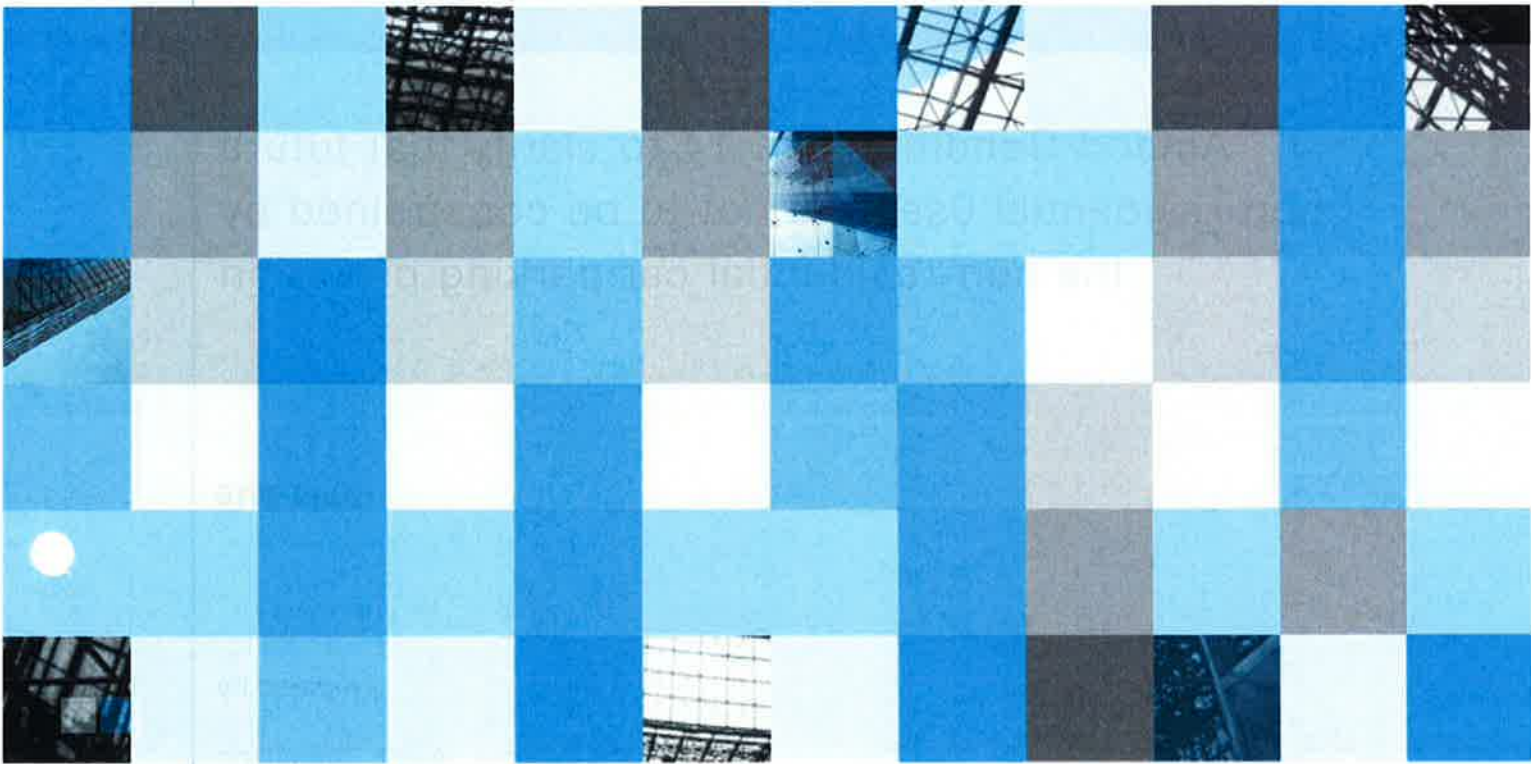
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566-594 Princes Highway, Kirrawee

S75W Modification to Concept Plan
MP10_0076

S75W Modification to Concept Plan MP10_0076

566-594 PRINCES HIGHWAY, KIRRAWEE

Amend Condition No. 14 to clarify that future
non-residential uses are not to be constrained by
the non-residential car parking provision

April 2018

Prepared by

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1.0 INTRODUCTION

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.

On 30 January 2015, as delegate of the Minister for Planning, the Planning Assessment Commission (PAC) approved Concept Plan MP10_0076 (MOD 3) for a mixed use development at 566-594 Princes Highway, Kirrawee. The Concept Plan provides for the following:

- 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 levels;
- 85,000 square metres of gross floor area, comprising 69,310 square metres of residential floor space (749 dwellings) and 14,190 square metres of retail/commercial floor space (including a 4,740 square metre supermarket and 1,450 square metre discount supermarket) and a 1,500 square metre community facility;
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

The PAC issued future environmental assessment requirements for subsequent stages of the development pursuant to section 75P(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act), and determined that all future stages will be subject to the provisions of Part 4 of the EP&A Act, as provided for under section 75P(1)(b). In particular, the Concept Plan MP10_0076 (MOD 3) approval includes Condition No. 14 which provides maximum rates for the non-residential parking provision.

On 2 May 2016, the Sydney East Joint Regional Planning Panel subsequently granted consent to a Part 4 development application DA15/1134 which was lodged pursuant to the Part 3A Concept Plan and which provided for a mixed use retail, commercial and residential development containing 749 apartment on the site. The approved development provided the maximum possible non-residential parking provision for the development of 541 car parking spaces, noting that less non-residential car parking could also have been approved on the basis that the car parking rates within Condition No. 14 of the Concept Plan are maximum, not minimum, rates.

However, the Development Consent DA15/1134 included Condition No. 5(iii) which stated that the parking demand of the non-residential uses within the development must not exceed the parking provision and that future commercial uses are to be restricted to ensure sufficient parking is provided.

Section 96 application MA17/0129 was lodged with Sutherland Shire Council in April 2017 for a range of amendments including the deletion of the restriction within Condition No. 5(iii) on the basis that such a restriction on future commercial uses based on parking provision is fundamentally contrary to the terms of Condition No. 14 of the Concept Plan which provides that the commercial car parking rates are maximum, not minimum, rates. The Section 96 application was determined in December 2017 and whilst Condition No. 5(iii) was amended to incorporate some of the wording of Condition No. 14 of the Concept Plan including the reference to maximum parking rates, the condition retained the restriction that the parking demand for the non-residential uses must not exceed the parking provision.

The maximum car parking control for non-residential uses under Condition No. 14 of the Concept Plan MP10_0076 (MOD 3) is intended to restrict the level of on-site parking provided, in order to reduce traffic

generation and to encourage alternative forms of transport. It was not imposed in order to restrict the non-residential floor space or mix of uses within the shopping centre for the life of the development. In fact, the development proposal could have proposed significantly less car parking for the non-residential component of the development and remained compliant with Condition No. 14 of the Concept Plan.

The demand limit imposed by Condition 5(iii) of Development Consent DA15/1134 effectively treats the maximum car parking rates as minimum rates and is considered to be not "generally consistent" with the Concept Plan Approval as required by clause 3B(2)(c) of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as it fails to give effect to the car parking development standard adopted by the Concept Plan Approval.

A Section 96 application will be lodged with Sutherland Shire Council concurrent with this application to delete the restriction under Condition No. 5(iii) of Development Consent DA15/1134. In order to assist Council in their further consideration of this forthcoming application, it is proposed to amend Condition No. 14 of Concept Plan MP10_0076 in order to provide clarification that the car parking rates are maximums and the future non-residential uses within the development are not to be constrained by the non-residential car parking provision.

2.0 SITE DESCRIPTION AND LOCATION

2.1 Site Description

The site is located within the suburb of Kirrawee, which is located within the Sutherland Shire Local Government Area. The site is approximately 25km south west of the Sydney CBD and 1.5km east of Sutherland Town Centre.

The site is legally described as Lots 1 and 2 in DP 1215969 and is known as No. 566-594 Princes Highway, Kirrawee. The site is located on the southern side of the Princes Highway and east of the Oak Road intersection. The site is rectangular in shape with frontages of 252.13 metres to the Princes Highway to the north, 160.75 metres to Oak Road to the west, 251.66 metres to Flora Street to the south, and 177.85 metres to the existing industrial area located immediately east. The site, which comprises three lots, has a total area of 42,542 square metres.

Construction of the approved development is currently underway as illustrated in the image below.



Photograph 1:

Progress photograph of construction currently underway on site

2.2 Surrounding Development

Surrounding development includes light industrial units to the south across Flora Street, immediately adjacent to the east and to the north of the site across the Princes Highway. To the south-west of the site along Oak Road are the Kirrawee village shops and Kirrawee train station is located beyond the shops approximately 250 metres to the south. A variety of residential flat buildings of between one and three storeys in height are located to the west of the site along Oak Road.

3.0 BACKGROUND

3.1 Major Projects MP10_0076

On 23 August 2012, as delegate of the Minister for Planning and Infrastructure, the Planning Assessment Commission granted approval for Concept Plan MP10_0076 for the subject site.

The Concept Plan provides for a mixed use development of the site comprising the following:

- Use of the site for a mixed use development with associated public open space;
- Indicative building envelopes for 9 buildings to a maximum height of 14 levels above podium;
- 60,735 square metres of gross floor area, comprising 45,505 square metres of residential floor space (432 dwellings) and 15,230 square metres of retail/commercial floor space (including a 3,900 square metre supermarket and 1,470 square metre discount supermarket);
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

In addition, the PAC issued future environmental assessment requirements for subsequent stages of the development pursuant to section 75P(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act), and determined that all future stages will be subject to the provisions of Part 4 of the EP&A Act, as provided for under section 75P(1)(b).

In relation to car parking provision, the Director General's Assessment Report dated June 2012 specifically advocates reduced car parking for the residential component on the basis of the proximity of the site to Kirrawee train station. In relation to the non-residential parking provision, the report states (page 28):

NSW Transport has recommended that the car parking for the retail/commercial component should be reduced and that this can be required to be assessed as part of a Workplace Travel Plan for any future application. The Department is supportive of this approach as the site is well located to utilise the existing public transport infrastructure and should be further considered at development application stage.

3.2 Major Projects MP10_0076 (MOD 1)

The Concept Plan was modified (MOD 1) on 17 January 2013 to amend the wording of Environmental Assessment Requirement No. 18 so that the design excellence provisions only relate to above ground works.

3.3 Major Projects MP10_0076 (MOD 2)

The Concept Plan was modified (MOD 2) on 16 May 2014 to achieve the following:

- amendment of several of the conditions of consent to defer their satisfaction to allow the commencement of early works on the site as soon as possible including dewatering, bulk excavation and remediation.
- a minor amendment the methodology for dewatering including an addendum to the Biodiversity Management Plan, and an addendum to the Geotechnical Report and an updated Dewatering Report.

3.4 Major Projects MP10_0076 (MOD 3)

The Concept Plan was modified (MOD 3) on 30 January 2015 to achieve the following:

- 24,265m² increase of GFA (from 60,735m² to 85,000m²), comprising: 69,310m² of residential; 14,190m² of retail/commercial (including 4,740m² supermarket and 1,450m² discount supermarket); and 1,500m² community facility.
- reduction of the total number of building envelopes from nine to seven and reconfiguration and amendment of building envelope locations, footprints, heights, separation distances and setbacks;
- amended construction staging and timing of the delivery of the open space; and
- removal of the car parking cap and imposition of car parking rates.

The amended Concept Plan is described as follows:

- 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 levels;
- 85,000 square metres of gross floor area, comprising 69,310 square metres of residential floor space (749 dwellings) and 14,190 square metres of retail/commercial floor space (including a 4,740 square metre supermarket and 1,450 square metre discount supermarket) and a 1,500 square metre community facility;
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

In relation to car parking provision, the Planning Assessment Commission report dated January 2015 provided the following (page 7):

Council's concerns regarding traffic generation are noted, however the Commission considers these have been adequately addressed in the Assessment Report. The Commission notes the changes to parking requirements as a result of updates to RMS guidelines, and supports the Department's move to impose parking ratios rather than a parking maxima. Conditions have been tightened to ensure provision is made for public transport and an accessible community bus stop.

Condition No. B4 was deleted and Condition No. 14 was amended to read as follows (emphasis added):

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development **shall not exceed** the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

b) An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.

c) Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.

d) The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.

e) the provision and implementation of a car share scheme.

f) All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.

g) South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.

h) A community bus and taxi drop off to the main central Flora Street pedestrian entry, shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

3.5 Major Projects MP10_0076 (MOD 4)

The Concept Plan was modified (MOD 4) on 20 November 2014 to amend Condition No. 8j to allow the release of a Construction Certificate for the Early Works stage.

3.6 Major Projects MP10_0076 (MOD 5)

The Concept Plan was modified (MOD 5) on 18 October 2017 to amend Condition A4A to facilitate an alternative apartments mix and an increase from 749 apartments to 808 apartments.

3.7 Development Consent DA15/1134

On 2 May 2016, the Sydney East Joint Regional Planning Panel granted consent to development application DA15/1134 which provided for a mixed use retail, commercial and residential development and associated

public park including 749 dwellings, fitout and use of 2 supermarkets, 1 liquor store, 9000m2 public park with lake and surrounding forest, 1500m2 community facility, torrens subdivision for road dedication, torrens subdivision of 1 lot into 2 lots for public reserve dedication, 5 lot stratum subdivision and signage strategy

The approved development has an apartment mix comprising 189 one-bed units (25%), 403 two-bed units (54%), and 157 three-bed units (21%).

The development consent included Condition No. 5(iii) as follows:

Based on the generation rates outlined in the Concept Approval, the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.

3.8 Section 96 (MOD17/0129) to Development Consent DA15/1134

MOD 17/0129 was lodged with Sutherland Shire Council in April 2017 to undertake a range of amendments to the approval, including the following amendment to Condition No. 5(iii):

~~Based on the generation rates outlined in the Concept Approval, the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.~~

The total amount of car parking to be provided as part of the development shall not exceed 1,150 spaces. Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m2;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m2;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m2;
- Showroom - 2.4 spaces per 100m2;
- Office - 2.5 spaces per 100m2; and
- Medical - 0.9 spaces per 100m2.

The Council assessment report recommended the following amendment to Condition No. 5(iii):

Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

(a) residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

(b) non-residential component of the replacement of 40 street car parking spaces development displaced by (including the the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

An updated schedule of parking allocation for the site shall be prepared and submitted with each subsequent application.

The parking demand for the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.

Submissions were made to the Sydney South Planning Panel that the Council's proposed amended wording for Condition No. 5(iii) was fundamentally inconsistent with the terms of Condition No. 14 of the Concept Plan on the basis that it would have the effect of imposing a minimum rather than maximum car parking control. The Panel acknowledged this concern and amended the wording of Condition No. 5(iii) to delete Council's suggested last sentence, however, the retention of the first sentence of the last paragraph still results in the same outcome:

The Section 96 application was determined by the Sydney South Planning Panel on 13 December 2017 and the final wording of Condition No. 5(iii) is as follows:

Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

(a) residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

(b) non-residential component of the replacement of 40 street car parking spaces development displaced by (including the the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

An updated schedule of parking allocation for the site shall be prepared and submitted with each subsequent application.

The parking demand for the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces).

4.0 PROPOSED MODIFICATION

4.1 Description of Proposed Modification

This application seeks to modify the approved Concept Plan (MP07_0076 MOD 4), pursuant to S75W of the Environmental Planning and Assessment Act 1979 by amending Condition No. 14 as follows:

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development **must be minimised in order to reduce the traffic impacts of the development and the parking provided for each use must ~~shall~~ not exceed the following car parking rates (with no minimum car parking requirement):**

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

iii. *Where a use is not listed above, the maximum parking rate for that use will be based on the rates in Sutherland Shire Council's DCP or the rates in the RMS Guide to Traffic Generating Development (Irrespective of whether or not the relevant DCP or RMS rate is expressed as a minimum, maximum or absolute standard, it is to be applied as a maximum rate for the purpose of this condition and there is no minimum car parking requirement)*

Explanatory Note: *The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation associated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use. Any parking provision that does not exceed the maximum parking provision is compliant and acceptable.*

b) An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application **to ensure that the maximum parking provision is not exceeded.**

c) Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.

- d) The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.
- e) the provision and implementation of a car share scheme.
- f) All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.
- g) South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.
- h) A community bus and taxi drop off to the main central Flora Street pedestrian entry, shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

5.0 STATUTORY PLANNING FRAMEWORK

5.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act), Section 75W as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects. The proposed modification merely seeks to clarify the original intent of Condition No. 14 of the Concept Plan and accordingly will have no impact beyond that associated with the approved Concept Plan. (see *Barrick Australia Ltd v Williams* [2009] NSWCA 275).

5.2 Modification of the Minister's Approval

Section 75W(2) of the EP&A Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the approval of the project, as modified, would be consistent with the original approval. As the proposed modification seeks to amend the wording of Condition No. 14, the modification will require the Minister's approval.

5.3 Environmental Assessment Requirements

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

5.4 Strategic Planning Controls

The objectives, targets and initiatives of the NSW State Plan 2010, A Plan for Growing Sydney, the Metropolitan Transport Plan: Connecting the City of Cities, Integrating Land Use and Transport policy package, Planning Guidelines for Walking and Cycling and the Healthy Urban Development Checklist all support reduced reliance on car use in favour of walking, cycling and public transport usage.

Under the State Plan, the NSW Government has set specific transport related targets that include an increase in the number of commute trips made by public transport by 28% and an increase in rates of walking and cycling.

This is also reflected within the objectives of the B4 Mixed Use zone under the Sutherland Shire Local Environmental Plan 2015 within which the site is located which aim to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

6.0 ENVIRONMENTAL ASSESSMENT

A limitation on car parking to control traffic impacts is a recognised planning mechanism which is consistently adopted by many Council's and the Department of Planning & Environment and its purpose is to reduce traffic generation and therefore traffic impacts associated with development and also to encourage alternative forms of transport including walking, cycling and public transport use.

The maximum car parking control for non-residential uses under Condition No. 14 of the Concept Plan MP10_0076 (MOD 3) is intended to achieve these outcomes and to ensure that further traffic impacts do not result from alternative mixes of non-residential uses which will reasonably occur over the life of the development.

The implementation of a cap on car parking provision under Condition No. 14 was not intended as a reverse engineering mechanism to potentially limit the maximum non-residential gross floor area within the development or to dictate the potential mix of non-residential uses which can be accommodated within the development for the life of the development.

The imposition of Condition 5(iii) under Development Consent DA15/1134 is unreasonable and unpractical for the following reasons:

- It has the effect of converting a maximum car parking control into a minimum car parking control which is inconsistent with the terms of Condition No. 14 of the Concept Plan and in breach of clause 3B(2)(c) of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- It is contrary to the objective of a limitation on parking provision to encourage alternative forms of transport
- It is likely to result in a circumstance where a certain quantum of approved and constructed non-residential floor space within the development will be unable to be occupied if the intensity of other approved uses within the development were deemed by Council to have exhausted the constructed non-residential car parking capacity of 541 spaces
- It would require the creation and maintenance of a car parking/uses register for the entire building for the life of the development. The responsibility for ownership, maintenance and verification of such a register is unclear and onerous.
- The future flexibility of the non-residential components of the development to respond to community demand and needs will be constrained and limited to only those indicative uses first identified in development application DA15/1134.

Having regard to the above, it is proposed to amend Condition No. 14 of the Concept Plan to provide clarity as to the intended purpose of the imposition of a maximum non-residential car parking rate.

A concurrent Section 96 application will be lodged with Sutherland Shire Council to delete the last two sentences of Condition No. 5(iii) of Development Consent DA15/1134, relying on the clarity proposed for Condition No. 14 of the Concept Plan as part of this S75W application.

7.0 CONCLUSION

The proposed modification seeks to amend Condition No 14 of the Concept Plan to provide clarification that:

- The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation associated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use;
- The maximum non-residential car parking rate is not intended as a mechanism to limit future non-residential uses based on car parking demand;
- The final provision of non-residential car parking spaces within the development is intended to provide a pool of parking to serve all future permissible non-residential uses within the development for the life of the development; and
- Future use of the non-residential components of the development for permissible uses shall not be restricted based on parking provision.

This clarification is consistent with the strategic planning hierarchy governing the site, submissions made by Transport for NSW in relation to the Concept Plan, and the Department's previous consideration of this issue.

This clarification is necessary to assist in Council's consideration of a Section 96 application which will be lodged with Sutherland Shire Council concurrent with this application to delete the restriction under Condition No. 5(iii) of Development Consent DA15/1134.

Emma Butcher

From: Daniel Lukic <dlukic@ssc.nsw.gov.au>
Sent: Thursday, 19 April 2018 10:24 AM
To: Emma Butcher
Subject: RE: 580 Princes Highway, Kirrawee - MP 10_0076 MOD 7 - Amend Condition A11A

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning Emma

Thank you for your email in response to Council's letter to the Department dated 9 April 2018.

Council has reviewed the proposed changes to the wording of Condition 14 of the Concept Approval and can advise that it is not supportive of the words "*shall not exceed*" in lieu of "*shall satisfy*".

Council is of the opinion that words "*shall not exceed*" will have the effect as the last sentence originally proposed by the applicant in the Explanatory Note, being "*Future use of the non-residential components of the development shall not be restricted based on parking provision*" which Council objected to for the reasons provided in Paragraph 2, Page 2 in its letter dated 9 April 2018.

That is, the words "*shall not exceed*" is another way to embody the intent of the last sentence of the Explanatory Note, circumventing a proper merits based assessment for any future land use application within the commercial precinct of the South Village Kirrawee development site pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 for commercial land use activities that are not listed in Condition 14A(ii).

As an alternate, Council will be in a position to recommend a change to "*shall be assessed against*" as a compromise to provide the persons and/or entity having the benefit of this consent some comfort in the assessment of future land use applications within the commercial precinct of the development. As stated in Paragraph 2, Page 2 in its letter dated 9 April 2018, Council will be in a position to undertake a merits based assessment and give consideration to variations to parking rates.

However, the onus remains on applicants to justify and provide sufficient information to Council so that an informed decision can be made, which is already a requirement subject of Condition 14A(b).

Further, in the first line of Condition 14A(iii) "*proposed development*" is used in place of "*land use*". There is no reason given for the change and as such, the term "*land use*" must be maintained, which is reflective of those land uses nominated in Condition 14A(ii).

Based on the above, it is recommended that the condition be worded as follows:

14. CAR PARKING

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket – 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) – 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) – 4.2 spaces per 100m²;
- Showroom – 2.4 spaces per 100m²;
- Office – 2.5 spaces per 100m²; and
- Medical – 0.9 spaces per 100m².

iii. Where a **proposed development land use is** not listed above is proposed, parking ~~shall satisfy~~ **shall be assessed against** the parking provision based on the rates in Sutherland Shire Council's DCP or the rates in the RMS Guide to Traffic Generating Development (irrespective of whether or not the car parking control is expressed as a minimum, maximum or absolute standard).

Explanatory Note: The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation allocated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use.

b) *An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.*

c) *Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.*

d) *The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.*

e) *The provision and implementation of a car share scheme.*

f) *All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.*

g) *South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.*

h) *A community bus and taxi drop off shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.*

I trust this assists with the determination of the modification application Mod 7 to the Concept Plan approval (MP 10_0076).

Thank you and regards

SUTHERLANDSHIRE



Daniel Lukic

Environmental Assessment Officer - Major Projects

T: 02 97100668

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sutherlandshire.nsw.gov.au

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From: Emma Butcher [mailto:Emma.Butcher@planning.nsw.gov.au]

Sent: Tuesday, 17 April 2018 4:32 PM

To: Daniel Lukic

Subject: RE: 580 Princes Highway, Kirrawee - MP 10_0076 MOD 7 - Amend Condition A11A

Hi Daniel,

Please see the below a proposed modified condition for Kirrawee MOD 6.

It is proposed to remove the last sentence of the explanatory note stating 'future use of the non-residential components of the development shall not be restricted based on parking provision'.

It is also proposed to list the DCP controls for uses not listed as a maximum.

Could Council please confirm whether it raises any objection to the below condition?

1. CAR PARKING

Future applications shall address the following:

- i) Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:
 - i. residential component of the development:
 - 1 space per 1 bedroom unit;
 - 1.25 spaces per 2 bedroom unit;
 - 1.5 spaces per 3 bedroom unit; and
 - 0.125 visitor space per unit (1 space per 8 units).
 - ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):
 - Supermarket – 4.5 spaces per 100m²;
 - Mini-Major (faster trade retail) – 4.0 spaces per 100m²;
 - Speciality Retail (incl. secondary retail, kiosks) – 4.2 spaces per 100m²;
 - Showroom – 2.4 spaces per 100m²;
 - Office – 2.5 spaces per 100m²; and
 - Medical – 0.9 spaces per 100m².

- iii. Where a proposed development is not listed in these controls, parking **shall not exceed** the parking provision based on the rates in Sutherland Shire Council's DCP or the rates in the RMS Guide to Traffic Generating Development (irrespective of whether or not the car parking control is expressed as a minimum, maximum or absolute standard).

Explanatory Note: The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation allocated with the development and to encourage alternative forms of transport such as cycling and public transport use.

- b) An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.
- c) Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.
- d) The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.
- e) the provision and implementation of a car share scheme.
- f) All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.
- g) Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.
- h) A community bus and taxi drop off shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

Kind regards

Emma Butcher

Planning Officer, Regional Assessments

NSW Department of Planning & Environment

320 Pitt Street, Sydney

GPO Box 39 | Sydney NSW 2001 | T 02 8289 6607 | E Emma.Butcher@planning.nsw.gov.au



Planning &
Environment

From: Daniel Lukic [<mailto:dlukic@ssc.nsw.gov.au>]

Sent: Tuesday, 10 April 2018 9:48 AM

To: Emma Butcher <Emma.Butcher@planning.nsw.gov.au>

Cc: Peter Anderson <PAnderson@ssc.nsw.gov.au>

Subject: RE: 580 Princes Highway, Kirrawee - MP 10_0076 MOD 7 - Amend Condition A11A

Hi Emma

The response for the traffic condition has been drafted and is with my Director for review and signing

I am working on drafting the response for the staging today. I may need some extra time to review the background.

I thought that there were only two stages to the Concept Plan approval so I will need to review the construct of the consent and then draft my response through the director.

Apologies for the delay. My workloads are exceptionally high at the moment and I am trying to juggle many DAs and panel reports at the same time.

Thanks and Regards



Daniel Lukic
Major Projects - Environmental Assessment Planner
(02) 9710 0668

dlukic@ssc.nsw.gov.au

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From: Emma Butcher [<mailto:Emma.Butcher@planning.nsw.gov.au>]

Sent: Tuesday, 10 April 2018 9:39 AM

To: Daniel Lukic

Cc: Peter Anderson

Subject: RE: 580 Princes Highway, Kirrawee - MP 10_0076 MOD 7 - Amend Condition A11A

Hi Daniel,

We are hoping to finalise this modification in the next few days. If Council could please confirm whether they are happy with the proposed changes to the staging plan ASAP, that would be great.

Thank you.

Kind regards

Emma Butcher

Planning Officer, Modification Assessments

NSW Department of Planning & Environment

320 Pitt Street, Sydney

GPO Box 39 | Sydney NSW 2001 | T 02 8289 6607 | E Emma.Butcher@planning.nsw.gov.au



**Planning &
Environment**

From: Emma Butcher

Sent: Wednesday, 4 April 2018 10:40 AM

To: Daniel Lukic <dlukic@ssc.nsw.gov.au>

Subject: FW: 580 Princes Highway, Kirrawee - MP 10_0076 MOD 7 - Amend Condition A11A

Hi Daniel,

The Proponent has raised concern about the inclusion of the term Stage 2, which differs between the Concept Approval and DA, as outlined below.

Can you please confirm that Council is referring to Stage 2 in the staging plans for the DA, not the Concept Approval and is happy for the Concept to be amended to reference the DA staging plans.

Thank you.

Kind regards

Emma Butcher

Planning Officer, Modification Assessments
NSW Department of Planning & Environment
320 Pitt Street, Sydney

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**Planning &
Environment**

From: Aaron Sutherland [<mailto:aaron@sutherlandplanning.com.au>]

Sent: Tuesday, 3 April 2018 9:44 AM

To: Emma Butcher <Emma.Butcher@planning.nsw.gov.au>

Cc: Chris Ryan <cryan@imanager.net.au>; gcolbran@deicorp.com.au

Subject: RE: 580 Princes Highway, Kirrawee - MP 10_0076 MOD 7 - Amend Condition A11A

Dear Emma,

We have identified a significant issue in relation to the use of the term "Stage 2" in the proposed amended wording to Condition No. A11A of the Concept Plan.

When Council referred to "Stage 2", they are referring to "Stage 2" in the staging plan for the DA. (Stage 1 is essentially all basement and podium works as well as buildings A, B and C, whilst Stage 2 are all remaining buildings). This is also the "Stage 2" that we were thinking of when we confirmed acceptance of the amended condition.

Buildings A, B and C are nearing completion and the entire point of the proposed amendment is to allow achievement of an Occupation Certificate for buildings A, B and C prior to execution of the VPA. However, the Concept Plan actually has a different staging plan and Stage 2 *includes* buildings A, B and C.

I have attached both the Concept Plan staging plan and also the DA staging plan.

It is critical that the Occupation Certificate for buildings A, B and C can be achieved prior to the VPA being executed.

The solution is to bring alignment between the Concept Plan staging plan and the DA staging plan. To this end, can you please also amend Condition No. A2 to replace plan A-SK-700-004 GA Plans – Illustrative Staging Plan dated 22/01/15 with the attached DA staging plans?

This issue is of paramount importance to the project. Once you have reviewed this request, could you please phone me to discuss as it is essential that the correct staging plan is implemented.

Thank you in advance for your assistance.

Kind regards

AARON SUTHERLAND
Director

SUTHERLAND & ASSOCIATES PLANNING

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From: Daniel Lukic [<mailto:dlukic@ssc.nsw.gov.au>]

Sent: Monday, 12 March 2018 3:24 PM

To: Emma Butcher <Emma.Butcher@planning.nsw.gov.au>

Subject: RE: 580 Princes Highway, Kirrawee - DN18/0004 - Amend Condition A11A

Good afternoon Emma

Regarding your email, Council can advise that Condition A11A be amended to read as follows regarding an alternate to the finalisation of the VPA (amendments highlighted in red):

A11A Voluntary Planning Agreement – Community Benefits

*The proponent shall enter into a Voluntary Planning Agreement (VPA) with Sutherland Shire Council prior to **1 December 2018 or prior to the issue of any Occupation Certificate for Stage 2, whichever comes first.** The VPA shall be generally consistent with the draft VPA prepared by Gadens Lawyers ((reference 21009015.1 DTS DTS) and Council's comments in its letter to the PAC (attached as Appendix 1 to the PAC determination report dated 30 January 2015) to provide for:*

- a) Construction, embellishment and dedication of public open space as shown as 'new park' on drawing A-SK-700-005*
- b) Construction and dedication of a 1,500m² community facility;*
- c) Monetary contribution towards the beautification of Kirrawee Shopping Precinct (between Flora Street and Kirrawee Station); and*
- d) Monetary contribution towards the upgrade of Oak Road (between Flora Street and the Princes Highway).*

I trust this addresses your enquiries.

Please call if you have any further questions about this matter.

Thanks and Regards



Daniel Lukic
Major Projects - Environmental Assessment Planner
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Daniel Lukic - 9710 0668
File Ref: DN18/0003

09 April 2018


Emma Butcher
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Email: Emma.Butcher@planning.nsw.gov.au

Dear Ms Butcher

Development Referral No: DN18/0003

Property: 580 Princes Highway KIRRAWEE NSW 2232

Proposal: Section 75W Modification (MOD 6) to Concept Plan for Kirrawee Brick Pit (MP10-0076) - Amend Condition No. 14 to clarify that future non-residential uses are not to be constrained by the non-residential car parking provision

Thank you for the opportunity to review the revised s75W Modification Application documentation in response to Council's letter of 23 February, 2018. A comprehensive assessment has been undertaken and the following comments are provided for your assistance.

As stated in its original response, Council does not raise any objection to the proposed amendments to Condition 14 of the Concept Approval in terms of clarifying the 'maximum vs. minimum' aspect.

Council's concerns relate to the range of permissible land uses that are not listed in the condition. Council's last letter suggested that *"perhaps the condition ought to be modified so that uses outside those listed in it are considered on their merit at the time of application with regard to parking."* This would allow Council to properly discharge its responsibility to assess impact under s.4.15 of the EP&A Act at the appropriate time.

As highlighted in previous responses to s75W applications, the local road system is under substantial pressure as a result of the South Village development, the court approved supermarket opposite on Flora Street, and other developments within the area. It is imperative that Council be afforded the opportunity to assess the commercial uses proposed for South Village so as to ensure that the public road system operates satisfactorily and that existing on-street parking does not suffer as a direct result of higher traffic and parking generating land uses occupying the site than were anticipated during assessment of the Concept Plan.

It is disappointing that the author of the supplementary traffic report questions *"Council's ability to undertake a subjective merit assessment when it comes to development at the South Village site"* (page 7, paragraph 8). The author cannot provide any certainty that future development applications will not result in vehicular conflict and parking shortfalls due to the nature of the uses, but seeks to deny the opportunity for this to be assessed in future.

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Council does not support the adoption of the last sentence in the explanatory note (extract provided below). Council is of the opinion that its adoption is contrary to Condition 14(b) of the Concept Plan approval whereby an "updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application."

The adoption of the wording proposed by the applicant will circumvent a proper merits based assessment of future development applications within the commercial component of South Village against s4.15(1)(a)(iii) of the EP&A Act, relating to Development Control Plans. Council will consider variations for land uses that are not listed in Condition 14(a)(ii), however, the onus should be on future applicants to justify and provide sufficient information for Council to make an informed decision on the merits of each case.

Based on the above, it is recommended that the Department amend Condition 14 as follows:

14. CAR PARKING

Future applications shall address the following:

a) *Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:*

i. *residential component of the development:*

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. *non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):*

- Supermarket – 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) – 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) – 4.2 spaces per 100m²;
- Showroom – 2.4 spaces per 100m²;
- Office – 2.5 spaces per 100m²; and
- Medical – 0.9 spaces per 100m².

iii. *Where a land use not listed above is proposed, parking shall satisfy the rates in Sutherland Shire Council's DCP at Chapter ~7 (B2 Local Centre B4 Mixed Use Kirrawee) or Chapter 36 (Roads, Vehicular Access, Traffic, Parking and Bicycles) or the rates in the RMS Guide to Traffic Generating Development (irrespective of whether or not the car parking control is expressed as a minimum, maximum or absolute standard).*

Explanatory Note: The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation allocated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use. Future use of the non-residential components of the development shall not be restricted based on parking provision.

b) *An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.*

- c) *Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.*
- d) *The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.*
- e) *The provision and implementation of a car share scheme.*
- f) *All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.*
- g) *South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.*
- h) *A community bus and taxi drop off shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.*

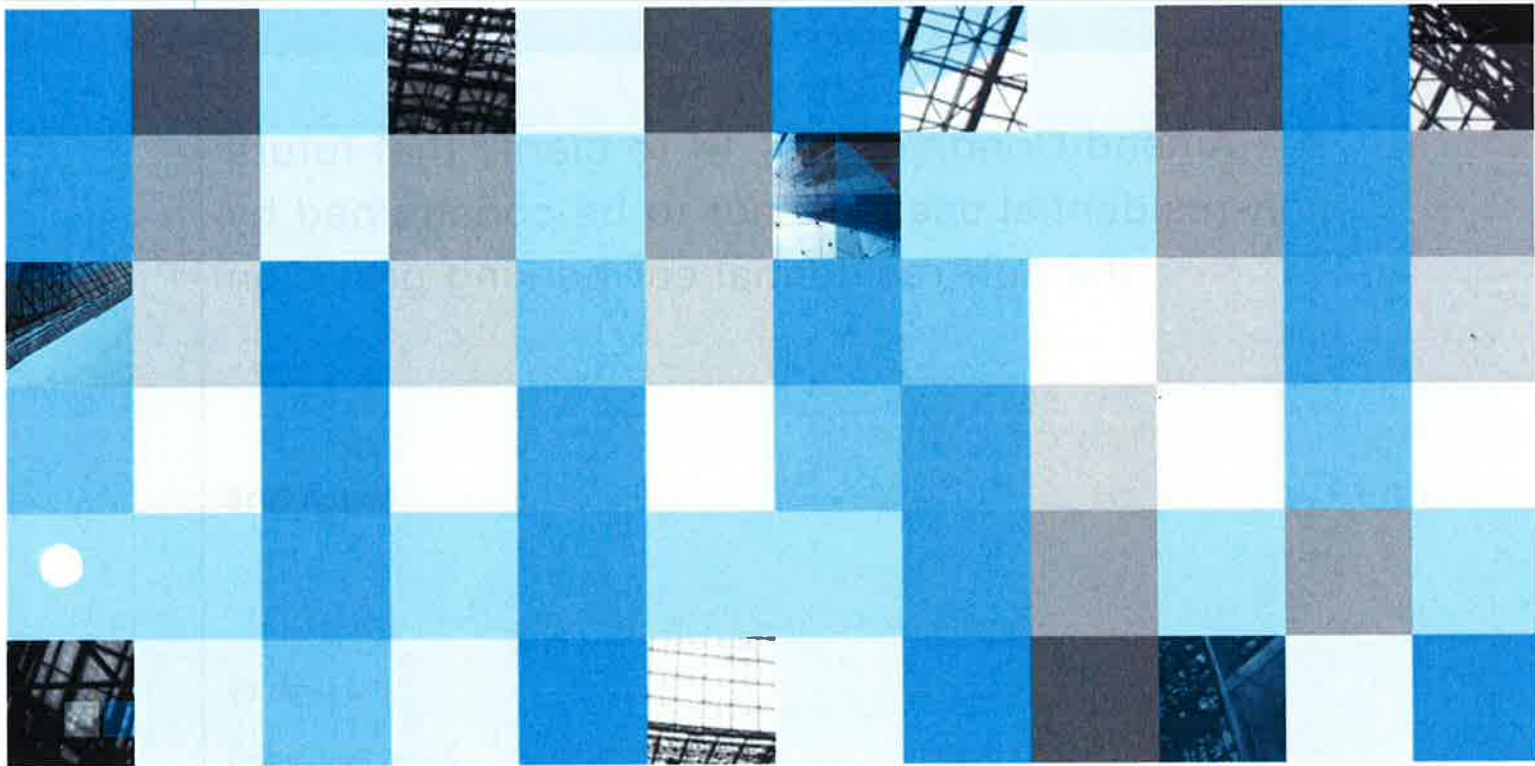
I trust this assists with the assessment and determination of the modification application.

If you need further clarification of the above comments, please contact Daniel Lukic, Development Assessment Officer on 9710 0668 or email dlukic@ssc.nsw.gov.au and quote the application number in the subject.

Yours sincerely



Peter Barber
Director Shire Planning



566-594 Princes Highway, Kirrawee

S75W Modification to Concept Plan

MP10_0076

S75W Modification to Concept Plan MP10_0076

566-594 PRINCES HIGHWAY, KIRRAWEE

Amend Condition No. 14 to clarify that future
non-residential uses are not to be constrained by
the non-residential car parking provision

March 2018

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1.0 INTRODUCTION

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.

On 30 January 2015, as delegate of the Minister for Planning, the Planning Assessment Commission (PAC) approved Concept Plan MP10_0076 (MOD 3) for a mixed use development at 566-594 Princes Highway, Kirrawee. The Concept Plan provides for the following:

- 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 levels;
- 85,000 square metres of gross floor area, comprising 69,310 square metres of residential floor space (749 dwellings) and 14,190 square metres of retail/commercial floor space (including a 4,740 square metre supermarket and 1,450 square metre discount supermarket) and a 1,500 square metre community facility;
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

The PAC issued future environmental assessment requirements for subsequent stages of the development pursuant to section 75P(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act), and determined that all future stages will be subject to the provisions of Part 4 of the EP&A Act, as provided for under section 75P(1)(b). In particular, the Concept Plan MP10_0076 (MOD 3) approval includes Condition No. 14 which provides maximum rates for the non-residential parking provision.

On 2 May 2016, the Sydney East Joint Regional Planning Panel subsequently granted consent to a Part 4 development application DA15/1134 which was lodged pursuant to the Part 3A Concept Plan and which provided for a mixed use retail, commercial and residential development containing 749 apartment on the site. The approved development provided the maximum possible non-residential parking provision for the development of 541 car parking spaces, noting that less non-residential car parking could also have been approved on the basis that the car parking rates within Condition No. 14 of the Concept Plan are maximum, not minimum, rates.

However, the Development Consent DA15/1134 included Condition No. 5(iii) which stated that the parking demand of the non-residential uses within the development must not exceed the parking provision and that future commercial uses are to be restricted to ensure sufficient parking is provided.

Section 96 application MA17/0129 was lodged with Sutherland Shire Council in April 2017 for a range of amendments including the deletion of the restriction within Condition No. 5(iii) on the basis that such a restriction on future commercial uses based on parking provision is fundamentally contrary to the terms of Condition No. 14 of the Concept Plan which provides that the commercial car parking rates are maximum, not minimum, rates. The Section 96 application was determined in December 2017 and whilst Condition No. 5(iii) was amended to incorporate some of the wording of Condition No. 14 of the Concept Plan including the reference to maximum parking rates, the condition retained the restriction that the parking demand for the non-residential uses must not exceed the parking provision.

The maximum car parking control for non-residential uses under Condition No. 14 of the Concept Plan MP10_0076 (MOD 3) is intended to restrict the level of on-site parking provided, in order to reduce traffic

generation and to encourage alternative forms of transport. It was not imposed in order to restrict the non-residential floor space or mix of uses within the shopping centre for the life of the development. In fact, the development proposal could have proposed significantly less car parking for the non-residential component of the development and remained compliant with Condition No. 14 of the Concept Plan.

The demand limit imposed by Condition 5(iii) of Development Consent DA15/1134 effectively treats the maximum car parking rates as minimum rates and is considered to be not "generally consistent" with the Concept Plan Approval as required by clause 3B(2)(c) of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as it fails to give effect to the car parking development standard adopted by the Concept Plan Approval.

A Section 96 application will be lodged with Sutherland Shire Council concurrent with this application to delete the restriction under Condition No. 5(iii) of Development Consent DA15/1134. In order to assist Council in their further consideration of this forthcoming application, it is proposed to amend Condition No. 14 of Concept Plan MP10_0076 in order to provide clarification that the car parking rates are maximums and the future non-residential uses within the development are not to be constrained by the non-residential car parking provision.

2.0 SITE DESCRIPTION AND LOCATION

2.1 Site Description

The site is located within the suburb of Kirrawee, which is located within the Sutherland Shire Local Government Area. The site is approximately 25km south west of the Sydney CBD and 1.5km east of Sutherland Town Centre.

The site is legally described as Lots 1 and 2 in DP 1215969 and is known as No. 566-594 Princes Highway, Kirrawee. The site is located on the southern side of the Princes Highway and east of the Oak Road intersection. The site is rectangular in shape with frontages of 252.13 metres to the Princes Highway to the north, 160.75 metres to Oak Road to the west, 251.66 metres to Flora Street to the south, and 177.85 metres to the existing industrial area located immediately east. The site, which comprises three lots, has a total area of 42,542 square metres.

Construction of the approved development is currently underway as illustrated in the image below.



Photograph 1:

Progress photograph of construction currently underway on site

2.2 Surrounding Development

Surrounding development includes light industrial units to the south across Flora Street, immediately adjacent to the east and to the north of the site across the Princes Highway. To the south-west of the site along Oak Road are the Kirrawee village shops and Kirrawee train station is located beyond the shops approximately 250 metres to the south. A variety of residential flat buildings of between one and three storeys in height are located to the west of the site along Oak Road.

3.0 BACKGROUND

3.1 Major Projects MP10_0076

On 23 August 2012, as delegate of the Minister for Planning and Infrastructure, the Planning Assessment Commission granted approval for Concept Plan MP10_0076 for the subject site.

The Concept Plan provides for a mixed use development of the site comprising the following:

- Use of the site for a mixed use development with associated public open space;
- Indicative building envelopes for 9 buildings to a maximum height of 14 levels above podium;
- 60,735 square metres of gross floor area, comprising 45,505 square metres of residential floor space (432 dwellings) and 15,230 square metres of retail/commercial floor space (including a 3,900 square metre supermarket and 1,470 square metre discount supermarket);
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

In addition, the PAC issued future environmental assessment requirements for subsequent stages of the development pursuant to section 75P(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act), and determined that all future stages will be subject to the provisions of Part 4 of the EP&A Act, as provided for under section 75P(1)(b).

In relation to car parking provision, the Director General's Assessment Report dated June 2012 specifically advocates reduced car parking for the residential component on the basis of the proximity of the site to Kirrawee train station. In relation to the non-residential parking provision, the report states (page 28):

NSW Transport has recommended that the car parking for the retail/commercial component should be reduced and that this can be required to be assessed as part of a Workplace Travel Plan for any future application. The Department is supportive of this approach as the site is well located to utilise the existing public transport infrastructure and should be further considered at development application stage.

3.2 Major Projects MP10_0076 (MOD 1)

The Concept Plan was modified (MOD 1) on 17 January 2013 to amend the wording of Environmental Assessment Requirement No. 18 so that the design excellence provisions only relate to above ground works.

3.3 Major Projects MP10_0076 (MOD 2)

The Concept Plan was modified (MOD 2) on 16 May 2014 to achieve the following:

- amendment of several of the conditions of consent to defer their satisfaction to allow the commencement of early works on the site as soon as possible including dewatering, bulk excavation and remediation.
- a minor amendment the methodology for dewatering including an addendum to the Biodiversity Management Plan, and an addendum to the Geotechnical Report and an updated Dewatering Report.

3.4 Major Projects MP10_0076 (MOD 3)

The Concept Plan was modified (MOD 3) on 30 January 2015 to achieve the following:

- 24,265m² increase of GFA (from 60,735m² to 85,000m²), comprising: 69,310m² of residential; 14,190m² of retail/commercial (including 4,740m² supermarket and 1,450m² discount supermarket); and 1,500m² community facility.
- reduction of the total number of building envelopes from nine to seven and reconfiguration and amendment of building envelope locations, footprints, heights, separation distances and setbacks;
- amended construction staging and timing of the delivery of the open space; and
- removal of the car parking cap and imposition of car parking rates.

The amended Concept Plan is described as follows:

- 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 levels;
- 85,000 square metres of gross floor area, comprising 69,310 square metres of residential floor space (749 dwellings) and 14,190 square metres of retail/commercial floor space (including a 4,740 square metre supermarket and 1,450 square metre discount supermarket) and a 1,500 square metre community facility;
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

In relation to car parking provision, the Planning Assessment Commission report dated January 2015 provided the following (page 7):

Council's concerns regarding traffic generation are noted, however the Commission considers these have been adequately addressed in the Assessment Report. The Commission notes the changes to parking requirements as a result of updates to RMS guidelines, and supports the Department's move to impose parking ratios rather than a parking maxima. Conditions have been tightened to ensure provision is made for public transport and an accessible community bus stop.

Condition No. B4 was deleted and Condition No. 14 was amended to read as follows (emphasis added):

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development **shall not exceed** the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

b) An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.

c) Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.

d) The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.

e) the provision and implementation of a car share scheme.

f) All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.

g) South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.

h) A community bus and taxi drop off to the main central Flora Street pedestrian entry, shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

3.5 Major Projects MP10_0076 (MOD 4)

The Concept Plan was modified (MOD 4) on 20 November 2014 to amend Condition No. 8j to allow the release of a Construction Certificate for the Early Works stage.

3.6 Major Projects MP10_0076 (MOD 5)

The Concept Plan was modified (MOD 5) on 18 October 2017 to amend Condition A4A to facilitate an alternative apartments mix and an increase from 749 apartments to 808 apartments.

3.7 Development Consent DA15/1134

On 2 May 2016, the Sydney East Joint Regional Planning Panel granted consent to development application DA15/1134 which provided for a mixed use retail, commercial and residential development and associated

public park including 749 dwellings, fitout and use of 2 supermarkets, 1 liquor store, 9000m² public park with lake and surrounding forest, 1500m² community facility, torrens subdivision for road dedication, torrens subdivision of 1 lot into 2 lots for public reserve dedication, 5 lot stratum subdivision and signage strategy

The approved development has an apartment mix comprising 189 one-bed units (25%), 403 two-bed units (54%), and 157 three-bed units (21%).

The development consent included Condition No. 5(iii) as follows:

Based on the generation rates outlined in the Concept Approval, the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.

3.8 Section 96 (MOD17/0129) to Development Consent DA15/1134

MOD 17/0129 was lodged with Sutherland Shire Council in April 2017 to undertake a range of amendments to the approval, including the following amendment to Condition No. 5(iii):

~~Based on the generation rates outlined in the Concept Approval, the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.~~

The total amount of car parking to be provided as part of the development shall not exceed 1,150 spaces. Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

The Council assessment report recommended the following amendment to Condition No. 5(iii):

Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

(a) residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

(b) non-residential component of the replacement of 40 street car parking spaces development displaced by (including the the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

An updated schedule of parking allocation for the site shall be prepared and submitted with each subsequent application.

The parking demand for the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.

Submissions were made to the Sydney South Planning Panel that the Council's proposed amended wording for Condition No. 5(iii) was fundamentally inconsistent with the terms of Condition No. 14 of the Concept Plan on the basis that it would have the effect of imposing a minimum rather than maximum car parking control. The Panel acknowledged this concern and amended the wording of Condition No. 5(iii) to delete Council's suggested last sentence, however, the retention of the first sentence of the last paragraph still results in the same outcome:

The Section 96 application was determined by the Sydney South Planning Panel on 13 December 2017 and the final wording of Condition No. 5(iii) is as follows:

Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

(a) residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

(b) non-residential component of the replacement of 40 street car parking spaces development displaced by (including the the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

An updated schedule of parking allocation for the site shall be prepared and submitted with each subsequent application.

The parking demand for the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces).

4.0 PROPOSED MODIFICATION

4.1 Description of Proposed Modification

This application seeks to modify the approved Concept Plan (MP07_0076 MOD 4), pursuant to S75W of the Environmental Planning and Assessment Act 1979 by amending Condition No. 14 as follows:

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

iii. Where a proposed development is not listed in these controls, parking shall not exceed the parking provision based on the rates in Sutherland Shire Council's DCP [at Chapter 17 (B2 Local Centre B4 Mixed Use - Kirrawee) or Chapter 36 (Roads, Vehicular Access, Traffic, Parking and Bicycles)] or the rates in the RMS Guide to Traffic Generating Development (irrespective of whether or not the car parking control is expressed as a minimum, maximum or absolute standard)

Explanatory Note: The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation associated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use. [Future use of the non-residential components of the development shall not be restricted based on parking provision.]

b) An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.

c) Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.

d) The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.

e) the provision and implementation of a car share scheme.

f) All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.

g) South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.

h) A community bus and taxi drop off to the main central Flora Street pedestrian entry, shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

5.0 STATUTORY PLANNING FRAMEWORK

5.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act), Section 75W as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects. The proposed modification merely seeks to clarify the original intent of Condition No. 14 of the Concept Plan and accordingly will have no impact beyond that associated with the approved Concept Plan. (see *Barrick Australia Ltd v Williams* [2009] NSWCA 275).

5.2 Modification of the Minister's Approval

Section 75W(2) of the EP&A Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the approval of the project, as modified, would be consistent with the original approval. As the proposed modification seeks to amend the wording of Condition No. 14, the modification will require the Minister's approval.

5.3 Environmental Assessment Requirements

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

5.4 Strategic Planning Controls

The objectives, targets and initiatives of the NSW State Plan 2010, A Plan for Growing Sydney, the Metropolitan Transport Plan: Connecting the City of Cities, Integrating Land Use and Transport policy package, Planning Guidelines for Walking and Cycling and the Healthy Urban Development Checklist all support reduced reliance on car use in favour of walking, cycling and public transport usage.

Under the State Plan, the NSW Government has set specific transport related targets that include an increase in the number of commute trips made by public transport by 28% and an increase in rates of walking and cycling.

This is also reflected within the objectives of the B4 Mixed Use zone under the Sutherland Shire Local Environmental Plan 2015 within which the site is located which aim to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

6.0 ENVIRONMENTAL ASSESSMENT

A limitation on car parking to control traffic impacts is a recognised planning mechanism which is consistently adopted by many Council's and the Department of Planning & Environment and its purpose is to reduce traffic generation and therefore traffic impacts associated with development and also to encourage alternative forms of transport including walking, cycling and public transport use.

The maximum car parking control for non-residential uses under Condition No. 14 of the Concept Plan MP10_0076 (MOD 3) is intended to achieve these outcomes and to ensure that further traffic impacts do not result from alternative mixes of non-residential uses which will reasonably occur over the life of the development.

The implementation of a cap on car parking provision under Condition No. 14 was not intended as a reverse engineering mechanism to potentially limit the maximum non-residential gross floor area within the development or to dictate the potential mix of non-residential uses which can be accommodated within the development for the life of the development.

The imposition of Condition 5(iii) under Development Consent DA15/1134 is unreasonable and unpractical for the following reasons:

- It has the effect of converting a maximum car parking control into a minimum car parking control which is inconsistent with the terms of Condition No. 14 of the Concept Plan and in breach of clause 3B(2)(c) of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- It is contrary to the objective of a limitation on parking provision to encourage alternative forms of transport
- It is likely to result in a circumstance where a certain quantum of approved and constructed non-residential floor space within the development will be unable to be occupied if the intensity of other approved uses within the development were deemed by Council to have exhausted the constructed non-residential car parking capacity of 541 spaces
- It would require the creation and maintenance of a car parking/uses register for the entire building for the life of the development. The responsibility for ownership, maintenance and verification of such a register is unclear and onerous.
- The future flexibility of the non-residential components of the development to respond to community demand and needs will be constrained and limited to only those indicative uses first identified in development application DA15/1134.

Having regard to the above, it is proposed to amend Condition No. 14 of the Concept Plan to provide clarity as to the intended purpose of the imposition of a maximum non-residential car parking rate.

A concurrent Section 96 application will be lodged with Sutherland Shire Council to delete the last two sentences of Condition No. 5(iii) of Development Consent DA15/1134, relying on the clarity proposed for Condition No. 14 of the Concept Plan as part of this S75W application.

7.0 CONCLUSION

The proposed modification seeks to amend Condition No 14 of the Concept Plan to provide clarification that:

- The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation associated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use;
- The maximum non-residential car parking rate is not intended as a mechanism to limit future non-residential uses based on car parking demand;
- The final provision of non-residential car parking spaces within the development is intended to provide a pool of parking to serve all future permissible non-residential uses within the development for the life of the development; and
- Future use of the non-residential components of the development for permissible uses shall not be restricted based on parking provision.

This clarification is consistent with the strategic planning hierarchy governing the site, submissions made by Transport for NSW in relation to the Concept Plan, and the Department's previous consideration of this issue.

This clarification is necessary to assist in Council's consideration of a Section 96 application which will be lodged with Sutherland Shire Council concurrent with this application to delete the restriction under Condition No. 5(iii) of Development Consent DA15/1134.

Reference: 0326104v1

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16 March 2018

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Attention: Aaron Sutherland – Director of Sutherland & Associates Planning (SAP)

Proposal: S75W Modification to Concept Plan MP10_0076
Property: South Village, 566-594 Princes Highway, Kirrawee

Dear Aaron,

Ason Group has been commissioned by South Village Pty Ltd (the Applicant) to provide transport and traffic consultancy services to support the proposed modifications to the approved Development Application (DA) for mixed-use development at 566-594 Princes Highway, Kirrawee (the Site). The Site is located within the local government area of Sutherland Shire Council.

This work has most recently focussed on the Section 75W Modification (MOD6) to the Concept Plan for Kirrawee Brick Pit (MP10_0076) – amendment to Condition 14 to clarify that future non-residential uses are not to be constrained by the non-residential car parking provision. As requested, the following provides our comments and recommendations following a review of your MOD6 Planning report dated January 2018 (the SAP report) and Council's submission letter dated 23 February 2018 (the Council letter).

Based on the Council letter, the following summarises Council's position on key points:

1. Out of due respect to the PAC and the JRPP, Council assumes that their decisions to approve the original and revised Concept Plans were well considered and properly made.
2. No objection to the proposed amendments to Condition 14 of the Concept Approval in terms of clarifying the maximum vs minimum aspect.
3. The condition does not account for a range of other land use activities permitted with consent, as these were not proposed or perhaps envisaged back at that time.
4. It is likely that these land uses would create a higher demand for parking than could be absorbed within the allocated 541 non-residential parking spaces.
5. The condition ought to be modified so that uses outside those listed in it are considered on their merit at the time of application with regard to parking.

Council's position in Points 1. and 2. are welcomed. As the lead traffic consultant on the original and revised Concept Plan, I am aware of the extent that DPE went to (via TfNSW) to impose maximum parking restrictions that recognised the high-level of public transport accessibility of the Site and the potential for internalisation of trips afforded by a mixed-use commercial/residential development, and therefore the opportunity to use constrained maximum parking provisions to manage traffic demand on the local road network.

Indeed, due to the recognised benefits of parking restriction, it is important to note that the original version of Condition 14 attached to the 2012 approved Concept Plan, DPE/TfNSW included the following clause that put a cap on the total car parking spaces permitted on the Site:

14.a) The total amount of car parking to be provided as part of the development shall not exceed 1,150 spaces.



Regarding Point 3., I accept that proposed Condition 14 could benefit from rewording to clarify the process to be undertaken for uses that are permissible but fall outside the range of specific uses that were considered at Concept Plan phase.

However, with regard to Point 4., Council's concern about the potential for the centre to generate a higher demand for car parking than can be accommodated by the 541 spaces, is incompatible with their stated position in Points 1. and 2. that maximum parking rates (for any use) are supported. Furthermore, I disagree with their proposed additional wording in Point 5., not only because it arises from Council's misguided concerns with theoretically higher parking demand, but because this condition – with such wording – would fail to achieve its intended goal of a car parking control that provides clarity and certainty around parking requirements. I provide my justification for my conflicting view to Council's herewith.

With regard to the potential for higher car parking demand than can be accommodated by the 541 proposed parking spaces, it must be recognised that if Council raises no objection to the maximum parking rates identified for the 'listed uses' being applied as maximum parking rates, then they effectively accept that car parking demand (based on the rates) can exceed car parking provision. To demonstrate this, the following presents the car parking demand and provision extracted from the Ason Group report that supported the approved 2017 DA, which identifies the 541 non-residential car parking space maximum limit and provision.

Table 4: Proposed Car Parking Provisions

Land Use	No / Area (m ²)	Approved Parking Rate	Maximum Permissible Parking	Parking Proposed
<i>Residential</i>				
1 Bedroom Units	189	1.0 spaces / unit	189	
2 Bedroom Units	403	1.25 spaces / unit	504	929
3 Bedroom Units	157	1.5 spaces / unit	236	
Visitor	749	1.0 spaces / 8 units	94	94
<i>Non Residential</i>				
Supermarket (incl. discount supermarket)	5,880	4.5 spaces / 100m ²	264.6	
Mini-Major	1,250	4.0 spaces / 100m ²	50.0	
Specialty Retail	1,909	4.2 spaces / 100m ²	80.2	
Showroom	3,902	2.4 spaces / 100m ²	93.6	541
Medical Centre	316	0.9 spaces / 100m ²	2.8	
Flora Street Replacement	n/a	n/a	40	
Car Share	n/a	n/a	10	
Total Parking Provision			1,564	1,564

NOTE: All rates are in trips / 100m² of GLA, except for the Showroom which is GFA and residential which is in trips / unit.

The table above shows that the different listed uses have different maximum parking rates and that the 541-space provision was based on the anticipated mix of those uses at the time.

However, it is clear that a shift in the mix of listed uses (without any additional GFA) could result in additional demand above the 541-space provision. For example, if 1,000m² of approved showroom was subsequently proposed for a Mini-Major use, then its parking demand (based on the rates) would increase by 16 spaces from 24 spaces (at 2.4 spaces per 100m² of showroom) to 40 spaces (at 4.0 spaces per 100m²).

Council's stated position in Point 2. is that the above scenario – whereby the parking demand of listed uses is higher than the parking provision – is acceptable. Therefore, it can be assumed that parking demand that exceeds provision is not a genuine concern of Council's, regardless of whether it is for listed uses or unlisted permissible uses.

It is worth noting here that in Council's Kirrawee specific DCP Chapter 17 (B2 Local Centre B4 Mixed Use – Kirrawee), the parking rates at Section 13.2 that govern the Site and the surrounding area are 1 spaces per 30m² for Business premises, Retail premises (including food & drink premises) and Community uses (health & medical, etc). Therefore, all the non-residential uses proposed would require just 492 parking spaces based on the application of Council's site-specific DCP, just shy of 50-spaces fewer than will be provided.

Therefore, it is clear that Council's objection to recent proposals – based on their opinion that 541-spaces would be insufficient car parking to meet demands – is unacceptable as the requirements based on the application of Council's own DCP requires significantly less parking. Furthermore, measures should be taken to avoid Council from implementing conditions that seek to set the Concept Plan parking rates as minimum parking rates, as to do so would again conflict with Council's own DCP and effectively require South Village to provide parking above the levels of parking required on neighbouring sites.

As stated, my primary objection to Council's wording in Point 5., is that the condition does not result in a clear car parking control through the introduction of a 'merit assessment'. My secondary concern is Council's ability to perform a reasonable merit assessment and to demonstrate this I use the child care example Council referred to in their submission. As the traffic consultants for the Proposal that introduced the child care centre as an 'unlisted use', we provided a comprehensive assessment that demonstrated that the child care centre was acceptable in terms of parking because:

1. The parking demand generated by a child care centre is greatest during the weekday morning peak period, a time when the shopping centre would be generating limited parking demands,
2. The parking demand generated by the child care centre is moderately busy during the afternoon through to evening peak period on weekdays, a time when the shopping centre would also be moderately busy,
3. The parking demand generated by the child care centre would be non-existent on weekends, a time when the shopping centre would be busiest, particularly around midday.

The analysis above is not particularly innovative, but in fact represents a well-used parking argument for the acceptability of child care facilities at shopping centres. Therefore, Council's decision to oppose the child care centre is clear evidence of my concern with their ability to undertake a subjective merit assessment when it comes to development at the South Village site.

It is worth noting here that the flexibility of maximum parking rates also responds to the flexible nature of tenants and uses that shopping centres cater for. For example, tenants can change on a regular basis in a shopping centre, and whilst the different uses are all permissible, strict application of parking guidelines would suggest that different uses can have different parking requirements that are based on the peak demand of each use. However, parking requirements at shopping centres are often determined having consideration for the varying demand profiles, as noted above with the child care centre versus retail example. Other examples are restaurants and cinemas are busy in the evening when retail is often closed, and commercial tenants like bank branches are often closed on weekends when the shopping centre is busiest. It is for these reasons that a flexible approach to parking is a necessity for shopping centres, and therefore the maximum parking rates attached by DPE to the Concept Plan must be protected from attempts by Council to make them minimum (and therefore absolute) parking rates, as has previously been the case.

In light of the above, it is my recommendation that proposed Condition 14 in the SAP report (Section 4.1) should be revised at clause 14.a) as follows; it should be noted that in the drafting of this revised condition, I have considered the wording often found in SEPP guidance for parking controls.

Future applications shall address the following:

a) **A consent authority must not refuse consent on the grounds of car parking to a development application made pursuant to this Concept Plan approval that provides a total number of car parking spaces that does not exceed the following car parking rates:**

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

iii. Where a proposed development is not listed in these controls, parking shall not exceed the parking provision based on the rates in Sutherland Shire Council's DCP at Chapter 16 (B2 Local Centre B4 Mixed Use - Kirrawee) or Chapter 36 (Roads, Vehicular Access, Traffic, Parking and Bicycles) or the rates in the RMS Guide to Traffic Generating Development

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In summary, the proposed modified condition above:

- Is consistent with all prior approved Concept Plan conditions and retains (and enforces) the intent of DPE/TfNSW to implement parking restraint on the South Village site a measure to manage traffic demand on the local road network.
- It provides a condition that provides clear instructions around car parking that covers all permissible uses, listed or unlisted, and prohibits Council from imposing any unreasonable condition that seeks to make the maximum parking rates minimum parking rates also.

Should you have any questions, please contact the undersigned.

Yours sincerely,



Piran Trethewey

Director – Ason Group

Email: piran.trethewey@asongroup.com.au



File Ref: DN18/0003

23 February 2018

Emma Butcher
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Email: Emma.Butcher@planning.nsw.gov.au

Dear Ms Butcher

Development Referral No. DN18/0003

Proposal: Section 75W Modification (MOD 6) to Concept Plan for Kirrawee Brick Pit (MP10_0076) - amend Condition 14 to clarify that future non-residential uses are not to be constrained by the non-residential car parking provision

Property: 580 Princes Highway, Kirrawee

Thank you for the opportunity to make a submission regarding the Section 75W modification referred above.

The approval of the Concept Plan by the Planning Assessment Commission in August 2012, and the subsequent approval of the detailed development application by the Joint Regional Planning Panel in December 2017 were more than 5 years apart. Out of due respect for those authorities, Council assumes that their decisions were well considered and properly made. It may be that contextual changes, like the gazettal of a new local environmental plan in June 2015 that increased development potential in Kirrawee, were relevant factors in the JRPP's determination in regard to parking.

Regardless, council does not raise any objection to the proposed amendments to Condition 14 of the Concept Approval in terms of clarifying the maximum vs minimum aspect.

The condition does not, however, account for a range of other land use activities permitted with consent, as these were not proposed or perhaps envisaged back at that time. Permissible land uses such as child care centres, entertainment facilities, function centres, and recreation facilities, create a higher demand for car parking and higher traffic generation than was taken into consideration during the assessment of the Concept Plan and subsequent applications.

It is likely that these land uses would create a higher demand for parking than could be absorbed within the allocated 541 non-residential parking spaces.

For example, Council recently received, but did not support a development application for a child care centre which took up the whole ground floor of one building. At the time of the assessment, issues were raised with additional parking demand and traffic movements.

The proposed modifications to the condition that seek to bind the future assessment of development applications by prohibiting the consideration of parking demand, particularly for uses that are not covered in condition 14, are inconsistent with the obligations of a consent authority under s.79C.

For example, if an application for a function centre is received, the condition essentially says that parking generation and the impact of it cannot form part of the assessment of the application – yet the impact of such a use was not assessed at concept plan stage and is not addressed in condition 14.

* Perhaps the condition ought to be modified so that uses outside those listed in it are considered on their merit at the time of application with regard to parking.

It is noted that the intention of the condition is to 'encourage other forms of transport' to cater for parking shortfalls. Council is of the opinion that the applicant cannot default to 'other forms of transport' as a means to justify variations to Council's Development Control Plan parking rates. A more likely outcome of under-provision of parking in a suburban area is pressure being increased on the limited supply of on-street parking in the adjacent residential and employment areas, which would be inequitable.

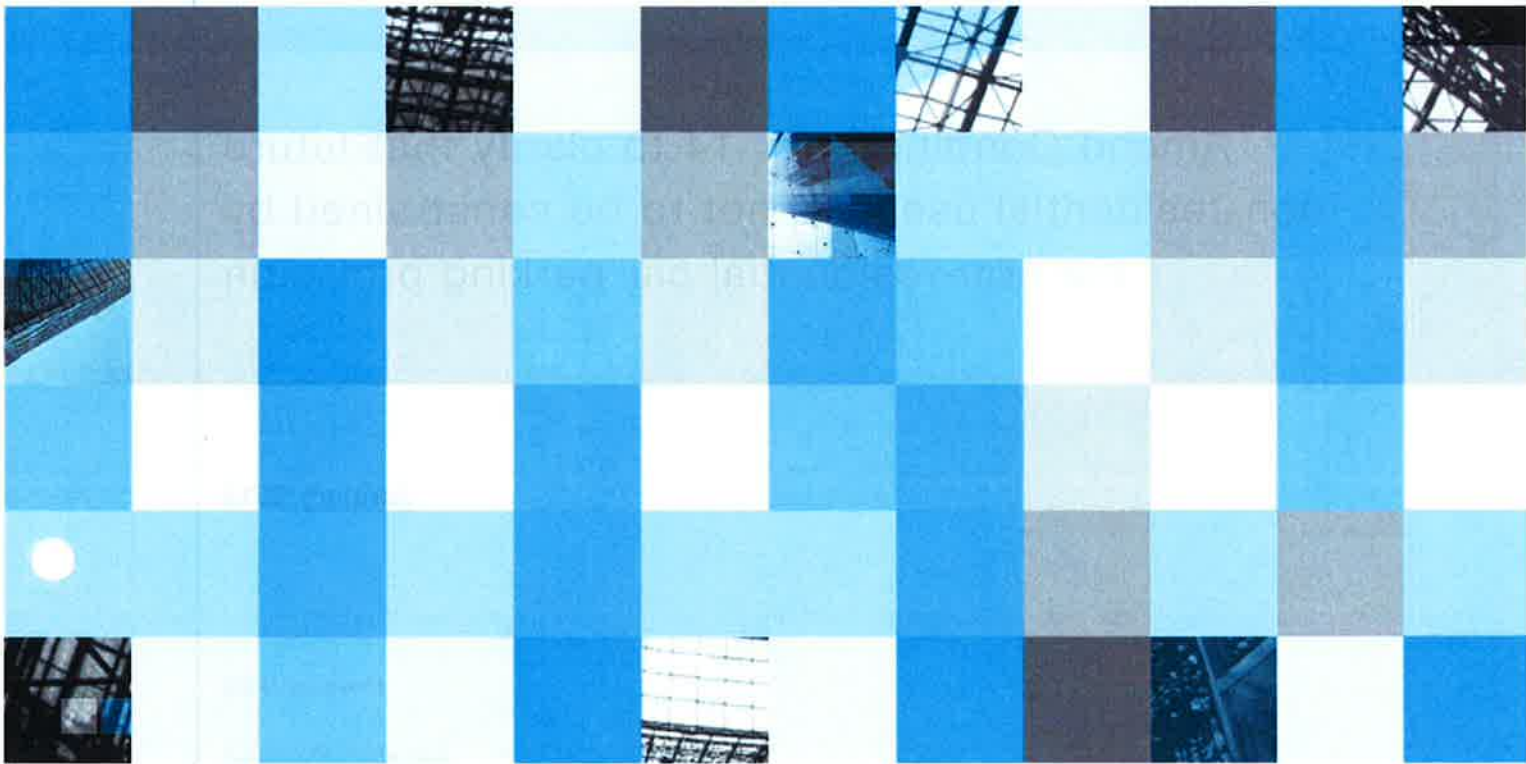
It is imperative that the applicant submit documentation to satisfy Condition 14(b) so that allocation and use of parking can be monitored over time.

If you need further clarification of the above comments, please contact Daniel Lukic, Development Assessment Officer on 9710 0668 or email dlukic@ssc.nsw.gov.au and quote the application number in the subject.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Barber', with a horizontal line extending to the right.

Peter Barber
Director Shire Planning



566-594 Princes Highway, Kirrawee

S75W Modification to Concept Plan
MP10_0076

S75W Modification to Concept Plan MP10_0076

566-594 PRINCES HIGHWAY, KIRRAWEE

Amend Condition No. 14 to clarify that future
non-residential uses are not to be constrained by
the non-residential car parking provision

January 2018

Prepared by

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1.0 INTRODUCTION

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.

On 30 January 2015, as delegate of the Minister for Planning, the Planning Assessment Commission (PAC) approved Concept Plan MP10_0076 (MOD 3) for a mixed use development at 566-594 Princes Highway, Kirrawee. The Concept Plan provides for the following:

- 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 levels;
- 85,000 square metres of gross floor area, comprising 69,310 square metres of residential floor space (749 dwellings) and 14,190 square metres of retail/commercial floor space (including a 4,740 square metre supermarket and 1,450 square metre discount supermarket) and a 1,500 square metre community facility;
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

The PAC issued future environmental assessment requirements for subsequent stages of the development pursuant to section 75P(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act), and determined that all future stages will be subject to the provisions of Part 4 of the EP&A Act, as provided for under section 75P(1)(b). In particular, the Concept Plan MP10_0076 (MOD 3) approval includes Condition No. 14 which provides maximum rates for the non-residential parking provision.

On 2 May 2016, the Sydney East Joint Regional Planning Panel subsequently granted consent to a Part 4 development application DA15/1134 which was lodged pursuant to the Part 3A Concept Plan and which provided for a mixed use retail, commercial and residential development containing 749 apartment on the site. The approved development provided the maximum possible non-residential parking provision for the development of 541 car parking spaces, noting that less non-residential car parking could also have been approved on the basis that the car parking rates within Condition No. 14 of the Concept Plan are maximum, not minimum, rates.

However, the Development Consent DA15/1134 included Condition No. 5(iii) which stated that the parking demand of the non-residential uses within the development must not exceed the parking provision and that future commercial uses are to be restricted to ensure sufficient parking is provided.

Section 96 application MA17/0129 was lodged with Sutherland Shire Council in April 2017 for a range of amendments including the deletion of the restriction within Condition No. 5(iii) on the basis that such a restriction on future commercial uses based on parking provision is fundamentally contrary to the terms of Condition No. 14 of the Concept Plan which provides that the commercial car parking rates are maximum, not minimum, rates. The Section 96 application was determined in December 2017 and whilst Condition No. 5(iii) was amended to incorporate some of the wording of Condition No. 14 of the Concept Plan including the reference to maximum parking rates, the condition retained the restriction that the parking demand for the non-residential uses must not exceed the parking provision.

The maximum car parking control for non-residential uses under Condition No. 14 of the Concept Plan MP10_0076 (MOD 3) is intended to restrict the level of on-site parking provided, in order to reduce traffic

generation and to encourage alternative forms of transport. It was not imposed in order to restrict the non-residential floor space or mix of uses within the shopping centre for the life of the development. In fact, the development proposal could have proposed significantly less car parking for the non-residential component of the development and remained compliant with Condition No. 14 of the Concept Plan.

The demand limit imposed by Condition 5(iii) of Development Consent DA15/1134 effectively treats the maximum car parking rates as minimum rates and is considered to be not "generally consistent" with the Concept Plan Approval as required by clause 3B(2)(c) of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act) as it fails to give effect to the car parking development standard adopted by the Concept Plan Approval.

A Section 96 application will be lodged with Sutherland Shire Council concurrent with this application to delete the restriction under Condition No. 5(iii) of Development Consent DA15/1134. In order to assist Council in their further consideration of this forthcoming application, it is proposed to amend Condition No. 14 of Concept Plan MP10_0076 in order to provide clarification that the car parking rates are maximums and the future non-residential uses within the development are not to be constrained by the non-residential car parking provision.

2.0 SITE DESCRIPTION AND LOCATION

2.1 Site Description

The site is located within the suburb of Kirrawee, which is located within the Sutherland Shire Local Government Area. The site is approximately 25km south west of the Sydney CBD and 1.5km east of Sutherland Town Centre.

The site is legally described as Lots 1 and 2 in DP 1215969 and is known as No. 566-594 Princes Highway, Kirrawee. The site is located on the southern side of the Princes Highway and east of the Oak Road intersection. The site is rectangular in shape with frontages of 252.13 metres to the Princes Highway to the north, 160.75 metres to Oak Road to the west, 251.66 metres to Flora Street to the south, and 177.85 metres to the existing industrial area located immediately east. The site, which comprises three lots, has a total area of 42,542 square metres.

Construction of the approved development is currently underway as illustrated in the image below.



Photograph 1:

Progress photograph of construction currently underway on site

2.2 Surrounding Development

Surrounding development includes light industrial units to the south across Flora Street, immediately adjacent to the east and to the north of the site across the Princes Highway. To the south-west of the site along Oak Road are the Kirrawee village shops and Kirrawee train station is located beyond the shops approximately 250 metres to the south. A variety of residential flat buildings of between one and three storeys in height are located to the west of the site along Oak Road.

3.0 BACKGROUND

3.1 Major Projects MP10_0076

On 23 August 2012, as delegate of the Minister for Planning and Infrastructure, the Planning Assessment Commission granted approval for Concept Plan MP10_0076 for the subject site.

The Concept Plan provides for a mixed use development of the site comprising the following:

- Use of the site for a mixed use development with associated public open space;
- Indicative building envelopes for 9 buildings to a maximum height of 14 levels above podium;
- 60,735 square metres of gross floor area, comprising 45,505 square metres of residential floor space (432 dwellings) and 15,230 square metres of retail/commercial floor space (including a 3,900 square metre supermarket and 1,470 square metre discount supermarket);
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

In addition, the PAC issued future environmental assessment requirements for subsequent stages of the development pursuant to section 75P(1)(a) of the Environmental Planning and Assessment Act 1979 (EP&A Act), and determined that all future stages will be subject to the provisions of Part 4 of the EP&A Act, as provided for under section 75P(1)(b).

In relation to car parking provision, the Director General's Assessment Report dated June 2012 specifically advocates reduced car parking for the residential component on the basis of the proximity of the site to Kirrawee train station. In relation to the non-residential parking provision, the report states (page 28):

NSW Transport has recommended that the car parking for the retail/commercial component should be reduced and that this can be required to be assessed as part of a Workplace Travel Plan for any future application. The Department is supportive of this approach as the site is well located to utilise the existing public transport infrastructure and should be further considered at development application stage.

3.2 Major Projects MP10_0076 (MOD 1)

The Concept Plan was modified (MOD 1) on 17 January 2013 to amend the wording of Environmental Assessment Requirement No. 18 so that the design excellence provisions only relate to above ground works.

3.3 Major Projects MP10_0076 (MOD 2)

The Concept Plan was modified (MOD 2) on 16 May 2014 to achieve the following:

- amendment of several of the conditions of consent to defer their satisfaction to allow the commencement of early works on the site as soon as possible including dewatering, bulk excavation and remediation.
- a minor amendment the methodology for dewatering including an addendum to the Biodiversity Management Plan, and an addendum to the Geotechnical Report and an updated Dewatering Report.

3.4 Major Projects MP10_0076 (MOD 3)

The Concept Plan was modified (MOD 3) on 30 January 2015 to achieve the following:

- 24,265m² increase of GFA (from 60,735m² to 85,000m²), comprising: 69,310m² of residential; 14,190m² of retail/commercial (including 4,740m² supermarket and 1,450m² discount supermarket); and 1,500m² community facility.
- reduction of the total number of building envelopes from nine to seven and reconfiguration and amendment of building envelope locations, footprints, heights, separation distances and setbacks;
- amended construction staging and timing of the delivery of the open space; and
- removal of the car parking cap and imposition of car parking rates.

The amended Concept Plan is described as follows:

- 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 levels;
- 85,000 square metres of gross floor area, comprising 69,310 square metres of residential floor space (749 dwellings) and 14,190 square metres of retail/commercial floor space (including a 4,740 square metre supermarket and 1,450 square metre discount supermarket) and a 1,500 square metre community facility;
- Basement, ground and above ground car parking;
- Road layout to support the development;
- Public pedestrian and cycle pathway;
- Public park with lake and surrounding forest; and
- Landscaping areas throughout the site.

In relation to car parking provision, the Planning Assessment Commission report dated January 2015 provided the following (page 7):

Council's concerns regarding traffic generation are noted, however the Commission considers these have been adequately addressed in the Assessment Report. The Commission notes the changes to parking requirements as a result of updates to RMS guidelines, and supports the Department's move to impose parking ratios rather than a parking maxima. Conditions have been tightened to ensure provision is made for public transport and an accessible community bus stop.

Condition No. B4 was deleted and Condition No. 14 was amended to read as follows (emphasis added):

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development **shall not exceed** the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

b) An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.

c) Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.

d) The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.

e) the provision and implementation of a car share scheme.

f) All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.

g) South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.

h) A community bus and taxi drop off to the main central Flora Street pedestrian entry, shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

3.5 Major Projects MP10_0076 (MOD 4)

The Concept Plan was modified (MOD 4) on 20 November 2014 to amend Condition No. 8j to allow the release of a Construction Certificate for the Early Works stage.

3.6 Major Projects MP10_0076 (MOD 5)

The Concept Plan was modified (MOD 5) on 18 October 2017 to amend Condition A4A to facilitate an alternative apartments mix and an increase from 749 apartments to 808 apartments.

3.7 Development Consent DA15/1134

On 2 May 2016, the Sydney East Joint Regional Planning Panel granted consent to development application DA15/1134 which provided for a mixed use retail, commercial and residential development and associated

public park including 749 dwellings, fitout and use of 2 supermarkets, 1 liquor store, 9000m2 public park with lake and surrounding forest, 1500m2 community facility, torrens subdivision for road dedication, torrens subdivision of 1 lot into 2 lots for public reserve dedication, 5 lot stratum subdivision and signage strategy

The approved development has an apartment mix comprising 189 one-bed units (25%), 403 two-bed units (54%), and 157 three-bed units (21%).

The development consent included Condition No. 5(iii) as follows:

Based on the generation rates outlined in the Concept Approval, the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.

3.8 Section 96 (MOD17/0129) to Development Consent DA15/1134

MOD 17/0129 was lodged with Sutherland Shire Council in April 2017 to undertake a range of amendments to the approval, including the following amendment to Condition No. 5(iii):

~~Based on the generation rates outlined in the Concept Approval, the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.~~

The total amount of car parking to be provided as part of the development shall not exceed 1,150 spaces. Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m2;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m2;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m2;
- Showroom - 2.4 spaces per 100m2;
- Office - 2.5 spaces per 100m2; and
- Medical - 0.9 spaces per 100m2.

The Council assessment report recommended the following amendment to Condition No. 5(iii):

Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

(a) residential component of the development;

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

(b) non-residential component of the replacement of 40 street car parking spaces development displaced by (including the the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

An updated schedule of parking allocation for the site shall be prepared and submitted with each subsequent application.

The parking demand for the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.

Submissions were made to the Sydney South Planning Panel that the Council's proposed amended wording for Condition No. 5(iii) was fundamentally inconsistent with the terms of Condition No. 14 of the Concept Plan on the basis that it would have the effect of imposing a minimum rather than maximum car parking control. The Panel acknowledged this concern and amended the wording of Condition No. 5(iii) to delete Council's suggested last sentence, however, the retention of the first sentence of the last paragraph still results in the same outcome:

The Section 96 application was determined by the Sydney South Planning Panel on 13 December 2017 and the final wording of Condition No. 5(iii) is as follows:

Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

(a) residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

(b) non-residential component of the replacement of 40 street car parking spaces development displaced by (including the the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

An updated schedule of parking allocation for the site shall be prepared and submitted with each subsequent application.

The parking demand for the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces).

4.0 PROPOSED MODIFICATION

4.1 Description of Proposed Modification

This application seeks to modify the approved Concept Plan (MP07_0076 MOD 4), pursuant to S75W of the Environmental Planning and Assessment Act 1979 by amending Condition No. 14 as follows:

Future applications shall address the following:

a) Total number of car parking spaces for the proposed development shall not exceed the following car parking rates:

i. residential component of the development:

- 1 space per 1 bedroom unit;
- 1.25 spaces per 2 bedroom unit;
- 1.5 spaces per 3 bedroom unit; and
- 0.125 visitor space per unit (1 space per 8 units).

ii. non-residential component of the development (including the replacement of 40 street car parking spaces displaced by the development):

- Supermarket - 4.5 spaces per 100m²;
- Mini-Major (faster trade retail) - 4.0 spaces per 100m²;
- Speciality Retail (incl. secondary retail, kiosks) - 4.2 spaces per 100m²;
- Showroom - 2.4 spaces per 100m²;
- Office - 2.5 spaces per 100m²; and
- Medical - 0.9 spaces per 100m².

The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation associated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use.

The maximum non-residential car parking rate is not intended as a mechanism to limit future non-residential uses based on car parking demand.

The final provision of non-residential car parking spaces within the development is intended to provide a pool of parking to serve all future permissible non-residential uses within the development for the life of the development.

Future use of the non-residential components of the development shall not be restricted based on parking provision.

b) An updated schedule of parking allocations for the site shall be prepared and submitted with each subsequent application.

c) Parking facilities (public, commercial and bicycle) shall be designed in accordance with relevant Australian Standards.

d) The design of the parking and commercial vehicle facilities shall be designed so that all vehicles, including commercial vehicles, enter and exit the development in a forward direction.

e) the provision and implementation of a car share scheme.

f) All loading and unloading associated with the use of the development shall take place wholly within the site from designated loading bays as identified in the Concept Plan. Loadings bays shall not be used for storage or any other purpose that would restrict their use for the purposes of loading and unloading.

g) South Village Pty Ltd shall enter into an agreement with Sutherland Shire Council that will delegate powers to Council to enforce regulatory parking signs within the internal road network if requested by Council.

h) A community bus and taxi drop off to the main central Flora Street pedestrian entry, shall be provided in a location and of a design that achieves reasonable accessibility for people with mobility restrictions between vehicles and the retail shops.

5.0 STATUTORY PLANNING FRAMEWORK

5.1 Continuing Operation of Part 3A to Modify Approvals

In accordance with clause 3 of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act), Section 75W as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects. The proposed modification merely seeks to clarify the original intent of Condition No. 14 of the Concept Plan and accordingly will have no impact beyond that associated with the approved Concept Plan. (see *Barrick Australia Ltd v Williams* [2009] NSWCA 275).

5.2 Modification of the Minister's Approval

Section 75W(2) of the EP&A Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The Minister's approval of a modification is not required if the approval of the project, as modified, would be consistent with the original approval. As the proposed modification seeks to amend the wording of Condition No. 14, the modification will require the Minister's approval.

5.3 Environmental Assessment Requirements

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

5.4 Strategic Planning Controls

The objectives, targets and initiatives of the NSW State Plan 2010, A Plan for Growing Sydney, the Metropolitan Transport Plan: Connecting the City of Cities, Integrating Land Use and Transport policy package, Planning Guidelines for Walking and Cycling and the Healthy Urban Development Checklist all support reduced reliance on car use in favour of walking, cycling and public transport usage.

Under the State Plan, the NSW Government has set specific transport related targets that include an increase in the number of commute trips made by public transport by 28% and an increase in rates of walking and cycling.

This is also reflected within the objectives of the B4 Mixed Use zone under the Sutherland Shire Local Environmental Plan 2015 within which the site is located which aim to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

6.0 ENVIRONMENTAL ASSESSMENT

A limitation on car parking to control traffic impacts is a recognised planning mechanism which is consistently adopted by many Council's and the Department of Planning & Environment and its purpose is to reduce traffic generation and therefore traffic impacts associated with development and also to encourage alternative forms of transport including walking, cycling and public transport use.

The maximum car parking control for non-residential uses under Condition No. 14 of the Concept Plan MP10_0076 (MOD 3) is intended to achieve these outcomes and to ensure that further traffic impacts do not result from alternative mixes of non-residential uses which will reasonably occur over the life of the development.

The implementation of a cap on car parking provision under Condition No. 14 was not intended as a reverse engineering mechanism to potentially limit the maximum non-residential gross floor area within the development or to dictate the potential mix of non-residential uses which can be accommodated within the development for the life of the development.

The imposition of Condition 5(iii) under Development Consent DA15/1134 is unreasonable and unpractical for the following reasons:

- It has the effect of converting a maximum car parking control into a minimum car parking control which is inconsistent with the terms of Condition No. 14 of the Concept Plan and in breach of clause 3B(2)(c) of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- It is contrary to the objective of a limitation on parking provision to encourage alternative forms of transport
- It is likely to result in a circumstance where a certain quantum of approved and constructed non-residential floor space within the development will be unable to be occupied if the intensity of other approved uses within the development were deemed by Council to have exhausted the constructed non-residential car parking capacity of 541 spaces
- It would require the creation and maintenance of a car parking/uses register for the entire building for the life of the development. The responsibility for ownership, maintenance and verification of such a register is unclear and onerous.
- The future flexibility of the non-residential components of the development to respond to community demand and needs will be constrained and limited to only those indicative uses first identified in development application DA15/1134.

Having regard to the above, it is proposed to amend Condition No. 14 of the Concept Plan to provide clarity as to the intended purpose of the imposition of a maximum non-residential car parking rate.

A concurrent Section 96 application will be lodged with Sutherland Shire Council to delete the last two sentences of Condition No. 5(iii) of Development Consent DA15/1134, relying on the clarity proposed for Condition

- More details on J2PP decision and proof that condition was not meant to restrict uses - excerpts from PAC report?

7.0 CONCLUSION

The proposed modification seeks to amend Condition No 14 of the Concept Plan to provide clarification that:

- The imposition of a maximum car parking rate for the non-residential component of the development is intended to control traffic generation associated with the development and to encourage alternative forms of transport such as walking, cycling and public transport use;
- The maximum non-residential car parking rate is not intended as a mechanism to limit future non-residential uses based on car parking demand;
- The final provision of non-residential car parking spaces within the development is intended to provide a pool of parking to serve all future permissible non-residential uses within the development for the life of the development; and
- Future use of the non-residential components of the development for permissible uses shall not be restricted based on parking provision.

This clarification is consistent with the strategic planning hierarchy governing the site, submissions made by Transport for NSW in relation to the Concept Plan, and the Department's previous consideration of this issue.

This clarification is necessary to assist in Council's consideration of a Section 96 application which will be lodged with Sutherland Shire Council concurrent with this application to delete the restriction under Condition No. 5(iii) of Development Consent DA15/1134.

Request to Modify a Major Project or Concept Project

Introduction & Notes

Please Note: You will be assigned one Job Number per application for a modification to a major project. If you have multiple approvals that you wish to modify you must lodge a separate modification application for each major project approval.

Schedule 6A of the *Environmental Planning & Assessment Act 1979*, provides that section 75W continues to apply for the purpose of the modification of a project applications and concept plan approved before or after the repeal of Part 3A of the Act.

A Part 4 consent which was subject to clause 8J(8) of the *Environmental Planning & Assessment Regulation 2000* prior to the repeal of Part 3A, can also be modified under section 75W.

This form should be used to request the Minister to modify a Project Approval or Concept Plan Approval under section 75W of the Act.

Before lodging this form you should contact the Department of Planning and Environment to confirm the supporting documentation required to assess the modification. The Secretary may issue environmental assessment requirements that must be complied with before your request will be considered by the Minister.

Supporting documents can be attached in Step 6 of this form. N.B. the file(s) comprising your supporting documents must be in "pdf" format, non-secured and no more than 10Mb.

Persons lodging applications are required to declare reportable political donations (including donations of \$1,000 or more) made in the previous two years. For more details, go to www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Systems/Donations-and-Gift-Disclosure.

Applicant Details

Title: Mr

Firstname: Aaron

Surname: Sutherland

Day Phone: 0410452371

Fax:

Mobile:

Email: aaron@sutherlandplanning.com.au

Company: Sutherland & Associates Planning Pty Ltd

ABN: 14118321793

Physical Address: Level 37, Chifley Tower, 2 Chifley Square Sydney, NSW 2000

Postal Address: Level 37, Chifley Tower, 2 Chifley Square Sydney, NSW 2000

Site details

Site Title: Kirrawee Brick Pit

Job Title: Modification to MP 10_0076 - Mixed Use Development, Kirrawee Brick Pit, Kirrawee

Is new land involved? no

Modification Details

Description: Amend Condition No. 14 to clarify that future non-residential uses are not to be constrained by the non-residential car parking provision

Capital Investment Value: \$0.00

Construction "jobs":

Operational "jobs":

Landowner's Consent
Provided?

Approvals

Would the development otherwise, but for section 89J of the EP&A Act, require any of the following (select all that apply)?

- the concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of that Act
- a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*
- an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*
- an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*
- an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act repealed by that Act) to clear native vegetation or State protected land
- a bush fire safety authority under section 100B of the *Rural Fires Act 1997*
- a water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the *Water Management Act 2000*

Do you require any of the following approvals in order to carry out the development (select all that apply)?

- an aquaculture permit under section 144 of the *Fisheries Management Act 1994*
- an approval under section 15 of the *Mine Subsidence Compensation Act 1961*
- a mining lease under the *Mining Act 1992*
- a petroleum production lease under the *Petroleum (Onshore) Act 1991*
- an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act)
- a consent under section 138 of the *Roads Act 1993*
- a licence under the *Pipelines Act 1967*
- an aquifer interference approval under section 91 of the *Water Management Act 2000*

Online information provided by the applicant

Supporting Documents

What supporting documents are you submitting with this application? *

Environmental Assessment
Other explanatory documentation

Landowners Consent

Note: Under clause 8F of the *Environmental Planning and Assessment Regulation 2000* as it applied prior to the repeal of Part 3A, certain applications under Part 3A of the Act do not require consent of the landowner, however, the proponent is required to give notice of the application (e.g. linear infrastructure, mining & petroleum projects).

Submitted supporting files:

Landowner's consent attached?

- yes

Submitted files:

- S75W Modification - 566-594 Princes Highway, Kirrawee.pdf
- Owners consent signed 170118.pdf

Political Donation

Persons lodging applications are required to declare reportable political donations (including donations of \$1,000 or more) made in the previous two years. For more details, go to www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Systems/Donations-and-Gift-Disclosure.

Do you need to make a political donations disclosure statement?

Online information provided by the applicant

- No

Submitter details

Name: Aaron Sutherland

Capacity:

Submitted: 2018-01-22 10:06:1516576001

