



Ms Carolyn McNally
Secretary
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

23 July 2018

Dear Ms McNally,

**Determination of Modification to Kirrawee Brick Pit Concept Approval
(MP 10_0076 MOD 6)**

1. Thank you for your Department's letter, received on 2 July 2018, referring the modification application above to the Independent Planning Commission NSW (the **Commission**) for determination. The Department has referred the modification request to the Commission for determination as the Department received an objection from Sutherland Shire Council.
2. On 1 March 2018, the *Environmental Planning and Assessment Act 1979 (EP&A Act)* was amended. The project is a transitional Part 3A project under Schedule 2 of the *Environmental Planning and Assessment (Savings and Transitional and Other Provisions) Regulation 2017*.
3. The ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued, however as the request for this modification was made before 1 March 2018, the provisions of Schedule 2 continue to apply.
4. Professor Mary O'Kane AC, Chair of Commission, nominated Mr Stephen O'Connor (Chair) and Mr Peter Duncan AM to constitute the Commission to determine the modification request.
5. On 23 August 2012, the then Planning Assessment Commission granted Concept Approval (**MP 10_0076**) for the redevelopment of the site and placed a cap of 1150 car parking spaces to be provided on the site. The Concept Approval has been modified on six occasions, including MOD 3, which was approved on 30 January 2015. MOD 3 removed the car parking cap and imposed maximum car parking rates for residential and commercial development.
6. Sutherland Planning & Associates on behalf of South Village Proprietary Limited (the **proponent**) seeks approval to modify the Concept Approval by amending the Future Environmental Assessment Requirement (**FEAR**) 14 for a mixed-use development at the former Kirrawee Brick Pit in the Sutherland Shire local government area, as outlined on page 4 of the Department's assessment report.
7. The proponent lodged this modification application to clarify that maximum car parking rates apply to non-residential land uses on the site and that parking shall not exceed the rates in the Sutherland Shire Council Development Control Plan (**DCP**) or the Roads and Maritime Services (**RMS**) Guide to Traffic Generating Development.

8. The Department received the modification application from the proponent on 22 January 2018 and it was made publicly available on their website on 28 January 2018. The Commission notes that no written submissions from the public or government agencies in relation to the project were received by the Department.
9. As part of its assessment, the Commission met with the Department and the proponent on 11 July 2018. Sutherland Shire Council (**Council**) did not wish to discuss the project with the Commission and declined the offer of a meeting. All meeting notes are available on the Commission's website.
10. In determining this modification application, the Commission considered:
 - the original Concept Approval (MP 10_0076), dated 23 August 2012;
 - all information provided by the proponent to the Department, dated January 2018, March 2018, 16 March 2018, 22 March 2018 and April 2018, and correspondence between the proponent and the Department, dated 3 April 2018, 16 April 2018, 19 April 2018 and 8 May 2018;
 - the Department's assessment report, dated 26 June 2018 and the proposed Modification of Concept Approval - Instrument MP 10_0076;
 - Council's submissions, dated 23 February 2018 and 9 April 2018, correspondence between the Council and the Commission dated 10 July 2018 and correspondence between Council and the Department, dated 16 April 2018, 19 April 2018, 8 May 2018 and 16 May 2018; and
 - section 75W of the EP&A Act, the likely impacts to the environment, social and economic impacts in the Kirrawee locality, and the public interest.
11. The Commission accepts the Department's report that the key issues for this modification request, as considered by the Department, include car parking and traffic impacts.

Proponent's consideration

12. In its submissions to the Department, dated January 2018 and March 2018, the proponent stated that it seeks to amend FEAR 14 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.”*
13. In its correspondence with the Department, dated 19 April 2018, the proponent states that the Council's intention to assess development applications on the basis of a minimum car parking provision is not consistent with the Concept Approval. The proponent also stated that they should not be able to apply minimum car parking rates as the basement car park has been built and no additional spaces can be provided.
14. Details of the proponent's proposed amendments to FEAR 14 are outlined in their submissions to the Department, dated January 2018 and March 2018.

Council's consideration

15. In its submissions to the Department, dated 23 February 2018 and 9 April 2018, Council did not raise any objection to the proposed amendments to FEAR 14 of the Concept Approval in terms of clarifying the 'maximum vs. minimum' car parking rates aspect of the proponent's modification application.
16. Council initially stated in its submission to the Department, dated 9 April 2018, that their concerns related to the range of permissible land uses that are not listed in the FEAR, such as child care centres, entertainment facilities and function centres. Council noted that these land uses create a higher demand for car parking and higher traffic generation than was taken into consideration during the assessment of the Concept Approval and any subsequent development applications.
17. Council suggested in its submission to the Department, dated 23 February 2018 that the FEAR be modified so that uses outside those listed in it are considered on their merit at the time of application with regard to car parking. Council states in its submission to the Department, dated 9 April 2018, that this would allow it to properly discharge its responsibility to assess impact under section 4.15 of the EP&A Act.
18. However, Council then stated in its correspondence with the Department, dated 16 May 2018, that it had reviewed its proposed wording to FEAR 14, and advised that:
"there is no value including a table detailing car parking rates for non-residential/commercial land uses that are not listed in FEAR 14 (a)(ii)".
19. Council states that this is because the FEAR wording already details all future non-residential development applications must either satisfy the parking rates in FEAR 14 or satisfy the parking rates listed in the RMS' Guide to Traffic Generating Development or Council's DCP.
20. In addition, Council has recommended the words *"whichever is lesser"* be included in FEAR 14, with regards to the maximum parking rates being based on rates in Sutherland Shire's DCP or the RMS' Guide to Traffic Generating Development, to provide certainty in the preparation and assessment of future development applications.
21. Council states in its submission to the Department, dated 9 April 2018, that it also does not support the adoption of the last sentence in the explanatory note of FEAR 14, which states:
"Future use of the non-residential components of the development shall not be restricted based on parking provision."
22. This wording was provided by the proponent in its submission dated March 2018. Council states that the adoption of this wording proposed will circumvent a proper merits based assessment of future development applications within the commercial component of South Village against section 4.15(1)(a)(iii) of the EP&A Act, relating to DCPs.
23. In its submission to the Department, dated 9 April 2018, Council also requested amendments to the numbering of FEAR 14.

Department's consideration

24. The Department's assessment report states that they,
"supported applying maximum car parking rates for the development, given the site's

proximity to Kirrawee train station and the need to minimise traffic generation in the area.”

25. The Department states in its assessment report that applying maximum car parking rates is an accepted method of minimising traffic generation and encouraging the use of alternate forms of transport. The Department also notes that they have routinely applied this approach for development located within close proximity to train stations.
26. The Department states that the then Planning Assessment Commission supported this approach and approved Concept Approval MOD 3 on 30 January 2015, which set maximum car parking rates for the residential and non-residential development across the site.
27. In its assessment report, the Department states,
“Council objects to the proposal as it considers minimum car parking rates should apply to those non-residential uses not listed in FEAR 14. Council are concerned that applying maximum car parking rates would result in a shortfall in car parking, leading to increased traffic congestion in the area.”
28. The Department also notes Council’s concern, raised in its submission dated 9 April 2018, regarding amendments to the wording of FEAR 14, as they state that it could limit Council’s ability to assess the suitability of future uses based on traffic and parking impacts. The Department also states that:
29. The Department considers in its assessment report that the Council’s request to apply minimum car parking rates is unreasonable because:
 - *“there is no ability to provide additional basement car parking spaces;*
 - *the proposal already complies with Council’s car parking requirements;*
 - *applying a minimum car parking rate would be inconsistent with the Concept Plan approval; and*
 - *applying a minimum car parking rate would unnecessarily restrict development.”*
30. The Department notes that it has always intended to apply maximum car parking rates to all non-residential development, and not only those uses listed in the FEAR.
31. The Department has recommended amendments to the FEAR to ensure Council can still assess and determine the most appropriate distribution of the remaining car parking spaces for future uses. The Department has excluded the wording, outlined in paragraph 21 of this Statement of Reasons, from the explanatory note of FEAR 14, based on a request by Council in its submission to the Department, dated 9 April 2018. However, the Commission notes that the Department has not recommended the words *“whichever is lesser”* be included in the FEAR, which was also requested by Council, as outlined in paragraph 20 of this Statement of Reasons.
32. The Department considers the proponent’s proposed amendments to FEAR 14, outlined in their submissions to the Department, dated January 2018 and March 2018, are supportable.

Commission’s consideration

33. The Commission notes that the proponent’s amendment to FEAR 14 to clarify that maximum parking rates apply to non-residential uses has been accepted by both Council and the Department. The Commission accepts the Department’s conclusion in paragraph 25, and

finds that this amendment is reasonable as it would be consistent with the intent of the Concept Approval.

34. The Commission finds that the Council's recommended wording outlined in paragraph 20 of this Statement of Reasons is reasonable as it would provide certainty to the proponent and Council in the preparation and assessment of future development applications.
35. The Commission has amended FEAR 14 of the Concept Approval to reflect its findings in paragraph 33 and 34 and Council's requested numbering, as mentioned in paragraph 23 of this Statement of Reasons.
36. The Commission finds that the proposed modification application is of minimal environmental impact. The proposed changes are within the broad scope of section 75W of the EP&A Act and as a result satisfies the requirements of the section.
37. The Commission is satisfied that the finding in paragraph 33 demonstrates that the modification application is in the public interest because it satisfies the requirements of section 75W of the EP&A Act and represents an orderly and economic use of the land in accordance with section 1.3 (b) and (c) of the EP&A Act.
38. Therefore, the Commission has determined to approve the modification request, subject to the attached modification instrument, for the reasons set out in paragraph 33, 34, 36 and 37.
39. The reasons for the Decision are given in this Statement of Reasons for Decision dated 23 July 2018.



Mr Stephen O'Connor (Chair)
Member of the Commission



Mr Peter Duncan AM
Member of the Commission

cc. The Hon. Anthony Roberts, MP
Minister for Planning
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