

JRPP No:	2014SYE002
DA No:	DA13/1192
LGA:	Sutherland Shire
Proposed Development:	Construction, Fit-Out and Use of a Building as a Shop with Basement Parking
Site/Street Address:	Lot A, Lot B, Lot C & Part Lot D DP 373329 and Part Lot B DP 373473 28 – 38 Flora Street, Kirrawee
Applicant:	Macroplan Dimasi
Submissions:	5
Recommendation:	Refusal
Report By:	Brad Harris, Environmental Assessment Officer - Planner Sutherland Shire Council

Assessment Report and Recommendation

1.0 EXECUTIVE SUMMARY

1.1 Reason for Report

Pursuant to the requirements of State Environmental Planning Policy (Major Development) 2005, this application is referred to the Joint Regional Planning Panel (JRPP) as the development has a capital investment of more than \$20,000,000. The application submitted to Council nominates the value of the project as \$24,440,000.

1.2 Proposal

The proposed development is for the demolition of existing factory buildings and the construction of a supermarket with an attached liquor outlet. Parking is provided at grade and in a basement.

1.3 The Site

The subject site is known as 28-38 Flora Street, Kirrawee. The site is located on the southern side of Flora Street between Oak Road and Bath Road. The site has a frontage of 100.6m and adjoins the Sutherland-Cronulla Railway line at the rear. The site area is 7,940m².

1.4 The Issues

The main issues identified are as follows:

- Urban design
- Inconsistency with planning objectives
- Traffic impacts
- Economic Impact

1.5 Conclusion

Following detailed assessment of the proposed development the current application is considered to have significant shortcomings, and it will be recommended that it be refused for the reasons outlined in this report.

In particular, this report concludes that the form of the proposed building will detract significantly from the desired future character of the Kirrawee Centre and that the traffic and economic implications of the proposal are unacceptable when considered in conjunction with the approved redevelopment of the adjacent Kirrawee Brick Pits site.

2.0 DESCRIPTION OF PROPOSAL

The proposed development is for the demolition of the existing factory buildings on the site and the construction and fit-out of a supermarket (Woolworths) with an attached liquor outlet (BWS).

The proposed supermarket will have a gross floor area of 4,800m², inclusive of an upper level office component of 200m². A plant room, also to be located on an upper level, occupies an area of 194m².

A total of 229 car parking spaces are provided on site, accessed from two separate driveways off Flora Street. 49 spaces are on ground level at the western side of the building and 180 spaces are located in a basement. A ramp at the rear of the site (near the railway line) links the basement and ground level parking areas.

A loading dock is located toward the eastern side of the building. This is accessed off a separate driveway for service vehicles and a manoeuvring area provided adjacent to the Flora Street frontage that is intended to allow service vehicles to enter the site in a forward direction, reverse into the loading dock and leave the site in a forward direction. The configuration of the loading area will require trucks (semi-trailers and large rigid vehicles) to enter the site by travelling west along Flora Street.

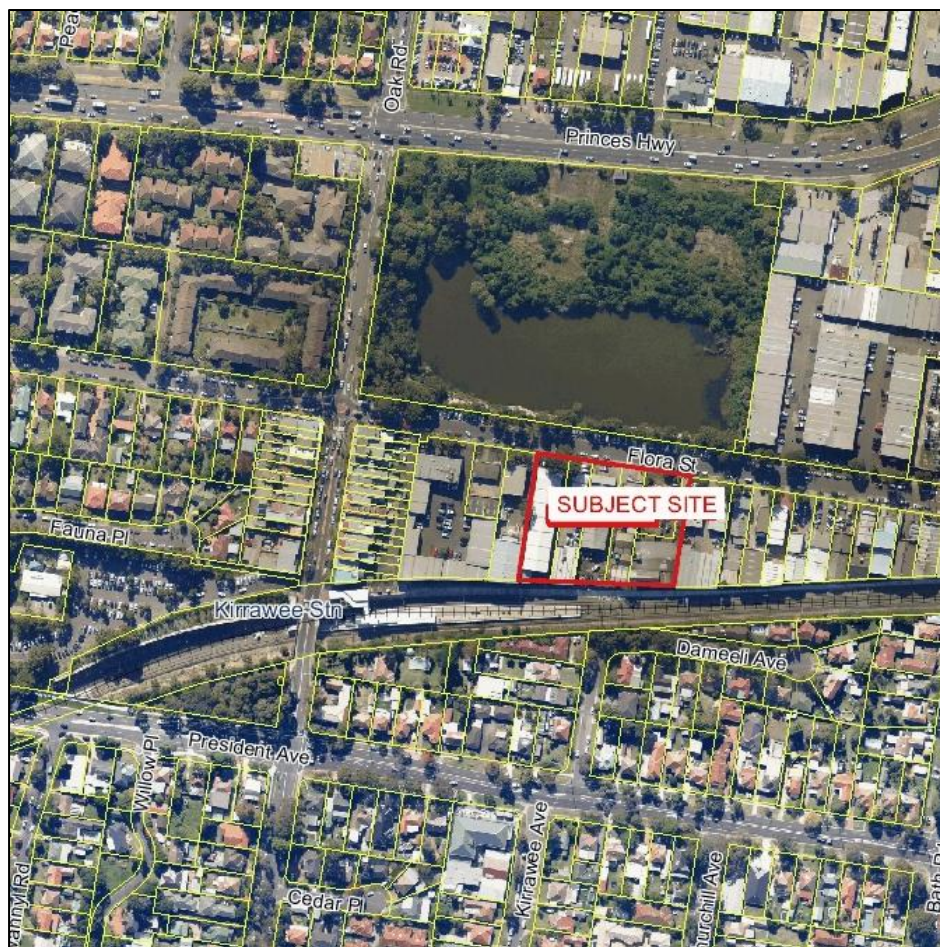
3.0 SITE DESCRIPTION AND LOCALITY

The site is located at 28-38 Flora Street, Kirrawee. It consists of five (5) separate lots and is currently occupied by freestanding industrial buildings and 'factory unit' style developments.

The site is located on the southern side of Flora Street between Oak Road and Bath Road. It has a frontage of 100.6m and is 101.6m wide at the rear boundary, which adjoins the Cronulla Railway line. The side boundaries are 83.9m (east) and 72.1m (west). The site has a total area of 7,940m².

The land slopes from the street to the rear and stormwater is proposed to be discharged to the rail corridor at the rear (subject to approval from RailCorp). There is an approximate change of levels between the street and the rear of the property of approximately three (3) metres.

The streetscape in the immediate vicinity of the subject land is characterised by older style industrial development. To the west and south (beyond the railway line) is high and low density residential development. Directly opposite the site is a vacant parcel of land known as the Kirrawee Brick Pit site. The Planning and Assessment Commission has approved a large scale mixed-use Concept Plan on the site, which includes multiple towers of apartments over a retail podium including a full-line supermarket and other major anchor tenancies. This approval has significant bearing on the assessment of the Woolworths application currently before the Panel.



Location of Subject Site

4.0 BACKGROUND

A history of the development proposal is as follows:

- A pre-application discussion (PAD) was held on 8 October 2013 regarding the development. A formal letter of response was issued by Council dated 23 October 2013. A full copy of the advice provided to the applicant is contained within Appendix 'A' of this report. The main issues raised by Council in respect to the proposal were as follows:
 - Does not satisfy zone objectives.
 - Not consistent with the desired future character of the area.

- Poor urban design outcome.
- Traffic Impacts, including number of driveways and potential cumulative impacts associated with the Brick Pit development.
- Removal of significant trees.
- Poor landscape design.
- A pre-DA consideration of the proposal was undertaken by Council's Architectural Review Advisory Panel (ARAP) on 24 October 2013. A copy of ARAP's report forms Appendix 'B'
- The current application was submitted on 20 December 2013.
- The application was placed on exhibition, with the last date for public submissions being 30 January 2014. Five (5) submissions were received.
- The development application was considered by ARAP on 16 January 2014. ARAP's report forms Appendix 'C'.

Also of relevance to the application is a significant commercial retail development approved by the Planning and Assessment Commission at the Kirrawee Brick Pit site directly to the north. The site is bounded by Flora Street, Oak Road and Princes Highway and has been approved for a mixed use development comprising nine (9) buildings between 7 and 14 storeys in height, 45,000m² of residential floor space or approximately 480 apartments, 15230m² in retail floor space including a full-line supermarket (~4000m²) and parking for 1150 cars.

At the time of reporting, an application to modify this approval has been lodged with NSW Planning & Infrastructure to increase residential floor space to 70,810m², reduce retail floor space to 14,190m² and increase car parking to 1566 spaces. It is also proposed to make significant changes to the arrangement of buildings and open space and the overall scale and massing of buildings on the site.

The particular relevance to the Brick Pit approval to the subject application is in relation to economic considerations and the potential effect on the established retail hierarchy within Sutherland Shire, particularly on the Kirrawee and Sutherland shopping centres. This is discussed within the body of this report.

5.0 ADEQUACY OF APPLICANT'S SUBMISSION

In relation to the Statement of Environmental Effects, plans and other documentation submitted with the application, or after a request from Council, the applicant has provided sufficient information to enable a thorough assessment of this application. However the following information is considered inadequate:

- *The preliminary environmental site assessment ('PESA' – a contamination report) does not meet the sampling density recommended by the NSW EPA for site characterisation.*
- *The submitted traffic report has not addressed the impact of the proposal in the event that the Brick Pit development does not proceed.*

6.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Chapter 12 of Sutherland Shire Development Control Plan 2006 (SSDCP 2006). 442 adjoining or affected owners were notified of the proposal and five (5) submissions were received as a result.

Submissions were received from the following properties:

Author/Address	Date of Letter/s	Issues
Sutherland and Associates Planning (on behalf of South Village P/L)	30 January 2014	1,2 and 3
Gadens Lawyers(on behalf of South Village P/L)	17 February 2014	1,2 and 4
Henroth Investments	6 February 2014	3
150 Oak Road, Kirrawee	29 January 2014	1 and 3
48/81 Flora Street, Kirrawee	27 January 2014	In support

The issues raised in these submissions are as follows:

6.1 Issue 1 – Economic Impacts

The concerns raised in the submissions relate to the potential economic impact the proposal will have on the role and function of the Kirrawee shopping centre in Oak Road as a Village Centre within the established retail hierarchy within the Sutherland Shire.

Comment: This matter is addressed below in the “Assessment” section of this report.

6.2 Issue 2 – Urban Design

Submissions express concern that the proposal represents a poor urban design response to the site and is inconsistent with the provisions of SSLEP 2006 and SSDCP 2006 in relation to required urban design outcomes.

Comment: This matter is addressed below in the “Assessment” section of this report.

6.3 Issue 3 – Parking and Traffic Impacts

Concerns are expressed in the submissions that the traffic report supporting the proposed development assumes the future traffic generation of the Brick Pit development and the required implementation of traffic works to accommodate that development but does not consider the traffic impacts of the proposed development in isolation of those works.

Comment: This matter is addressed below in the “Assessment” section of this report.

6.4 Issue 4 – Site Contamination

Concern has been raised in one submission that insufficient information has been provided to enable an assessment of the level of site contamination.

Comment: This matter is addressed below in the “Assessment” section of this report.

7.0 STATUTORY CONSIDERATIONS

The subject land is located within *Zone 7 – Mixed Use Kirrawee* pursuant to the provisions of Sutherland Shire Local Environmental Plan 2006. The proposed development, being a shop, is a permissible land use within the zone with development consent. Zoning objectives are discussed in the “Assessment” section of this report.

The following Environmental Planning Instruments (EPI's), Development Control Plans (DCP's), Codes or Policies are relevant to this application:

- Sutherland Shire Local Environmental Plan 2006 (SSLEP 2006)
- Sutherland Shire Development Control Plan 2006 (SSDCP 2006)
- Draft Sutherland Shire Local Environmental Plan 2013 (DSSLEP 2013)
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)
- Mixed Use Kirrawee Section 94 Plan

8.0 STATEMENT OF COMPLIANCE

The statement of compliance below contains a summary of applicable development standards and controls and a compliance checklist relative to these:

Standard/Control	Required	Proposed	Complies? (% Variation)
Sutherland Shire Local Environmental Plan 2006			
Clause 33 – Building Height	Max. 3 storeys (Height and Density Map)	Part 1 storey and Part 2 storeys	Yes
Clause 35 – Building Density	Max FSR 1:1 (Height and Density Map)	0.60:1	Yes
Sutherland Shire Development Control Plan 2006			
Chapter 7 - Parking	202 spaces (as per RMS Guidelines)	229 spaces	Yes

Chapter 3 - Setbacks	Nil boundary setback permitted in Urban zones	Front 6m-12m Side 11m and 19m Rear 1m	Yes
-------------------------	---	---	-----

9.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

The application was referred to the following internal and external specialists for assessment and the following comments were received:

9.1. Roads and Maritime Services

Roads and Maritime Services responded on 31 January 2014 indicating that no objections were raised to the proposal as it “*will not have a significant traffic impact on the classified road network.*” Council’s Traffic and Transport Manager has concerns regarding the above response and requested that RMS reconsider the matter in respect to:

- No consideration of interim scenario with the brick pit development.
- Under-estimation of trip generation.
- Analysis of intersections in isolation with no consideration of residual queuing at these intersections and across the whole network.
- Design of the loading dock.

No response was received. Further comments on traffic are provided below.

9.2. NSW Police

Sutherland Local Area Command replied on 21 January 2014 indicating that “*the proposed development may introduce new (potential) victims, crime opportunities and offenders to the development site and its surroundings. It is possible, therefore, that reported crime will increase in the future*”. A Crime Risk Evaluation was undertaken by the Police and recommendation made in respect of Crime Prevention through Environmental Design. The extent of the recommendations indicates that the design of the development results in a poor outcome in terms of crime prevention. The Police response is attached at Appendix ‘D’.

9.3. Ausgrid

Ausgrid responded on 16 January 2014 advising that no objections were raised to the proposed development subject to the applicant liaising with Ausgrid in relation to the method of electricity supply and the proposed relocation of the kiosk substation.

9.4. RailCorp

Letters were sent on 23 December 2013 and 20 February 2014 advising RailCorp that its concurrence to the proposal was required under the provisions of State Environmental Planning Policy (Infrastructure) 2007. At the time of preparing this report RailCorp had not responded to Council’s request to provide its concurrence to the proposed development.

Clause 86(5) of the SEPP provides:

(5) The consent authority may grant consent to development to which this clause applies without the concurrence of the chief executive officer of the rail authority for the rail corridor if:

(a) the consent authority has given the chief executive officer notice of the development application, and

(b) 21 days have passed since giving the notice and the chief executive officer has not granted or refused to grant concurrence. (Emphasis added)

Accordingly, given RailCorp's Failure to respond, concurrence may be assumed. Further attempts to gain input from RailCorp will be made between the date of compiling this report and the JRPP meeting date.

9.5. Civil Assets/Engineering

Council's Civil Assets Manager has undertaken an assessment of the application and raised the following concerns:

- The proposed access locations conflict with the Brick Pit development's access locations, in particular the loading access at the eastern end of the site and the central access to the basement. This will result in unacceptable conflict within the road carriageway.
- The number of proposed access points across the site frontage is excessive. The proposal results in only six (6) on-street parking spaces being available over a frontage of more than 100 metres in length.
- The layout of the loading dock and manoeuvring area is unacceptable. The angle of the manoeuvring area parallel to the road frontage will lead to articulated vehicles crossing the footpath area at an acute angle, resulting in an unacceptable impact on pedestrian safety. The design is deficient and too tight, which will more than likely lead to articulated vehicles reversing into the loading dock from the road carriageway. This would adversely impact on both pedestrian and vehicular safety along Flora Street.
- The existing road and intersection network in the vicinity of the proposed development is incapable of handling articulated vehicles, as illustrated by the Brick Pit traffic studies. The applicant needs to demonstrate what actions are proposed to ensure the adequacy of the surrounding road and intersection network in light of the possibility that this development will proceed prior to the Brick Pit development.

9.6 Traffic

Council's Traffic and Transport Manager has reviewed the traffic report prepared by Colston Budd Hunt and Kafes (CBHK) and submitted with the development application. Assessment concluded that the findings of the report are fundamentally flawed in that it:

- Uses incorrect trip generation rates.
- Fails to analyse the impact on the existing road network.

- Fails to properly analyse the impact on the potential future road network.

The proposed access and egress and servicing arrangements are also considered unsatisfactory.

It is noted that the future road improvements required by the brick pit proposal are essentially to maintain current road network performance and concludes that *“the addition of another full line supermarket with associated traffic generation will significantly impact on the capacity of this network. Similarly the existing network, without improvement has insufficient capacity to cater for the proposed development.”*

Further comments on traffic issues are provided below under the Assessment section of this report.

9.7 Landscape Architect

Council's landscape architect has reviewed the proposal and has noted that most of the concerns that were raised at pre-DA stage have not been satisfactorily addressed by the applicant.

In summary the concerns raised in relation to landscape design are as follows:

- The proposed removal of three large Ironbarks (*Eucalyptus paniculata*) in the north-western corner of the site, which are remnants of the Sydney Turpentine Ironbark Forest vegetation community (STIF), an Ecologically Endangered Community, is not supported. The driveway should be relocated and the building entrance/underground car park reconfigured to allow these trees to be retained as part of an entry forecourt to the supermarket.
- The footpath between the car park and Flora Street adjoining the western end of the lobby, which was shown in the earlier pre-DA scheme, has now been removed. This is a poor outcome for pedestrians.
- The proposed at grade car park on the western side of the supermarket will be hot and unattractive, particularly when the adjacent site is later developed. No canopy trees are proposed in the car park area and only grasses are proposed in the deep soil strip along the western boundary. Indigenous canopy trees in planter boxes, preferably fully or partially set down into the slab, should be incorporated to break up the car parking and provide shade and shelter. Additional plantings of small trees and shrubs should be provided in the deep soil strip along the western boundary and in the south-western corner to cool and enhance the space.

9.8 Environmental Scientist

Council's Environmental Scientist has reviewed the preliminary environmental site assessment (ESA) undertaken on the subject site on behalf of the applicant. The assessment identified a number of potential contamination sources but has not been undertaken strictly in accordance with the NSW EPA guidelines.

10.0 ASSESSMENT

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and the provisions of relevant environmental planning instruments, development control plans, codes and policies, the following matters are considered important to this application.

10.1 Height and Density

Clause 33 of the SSLEP 2006 stipulates a maximum height for the development as shown on the height and density controls maps contained within SSLEP 2006. In the case of this site the maps stipulate a maximum height of three (3) storeys. A relevant extract from the height and density map is shown below:



SSLEP 2006 Height Map

The development is predominantly one (1) storey in height, with a small section of second storey office provided at the south-western corner. Compliance with the maximum height requirement is thus achieved, however further comments in relation to building height in regard to the relevant Locality Strategy contained in SSDCP 2006 are made under the heading "Urban Design".

The development has a floor space ratio (FSR) of 0.6:1 and compliance with the maximum building density requirement of 1:1 (see map below) is achieved.



SSLEP 2006 Density Map

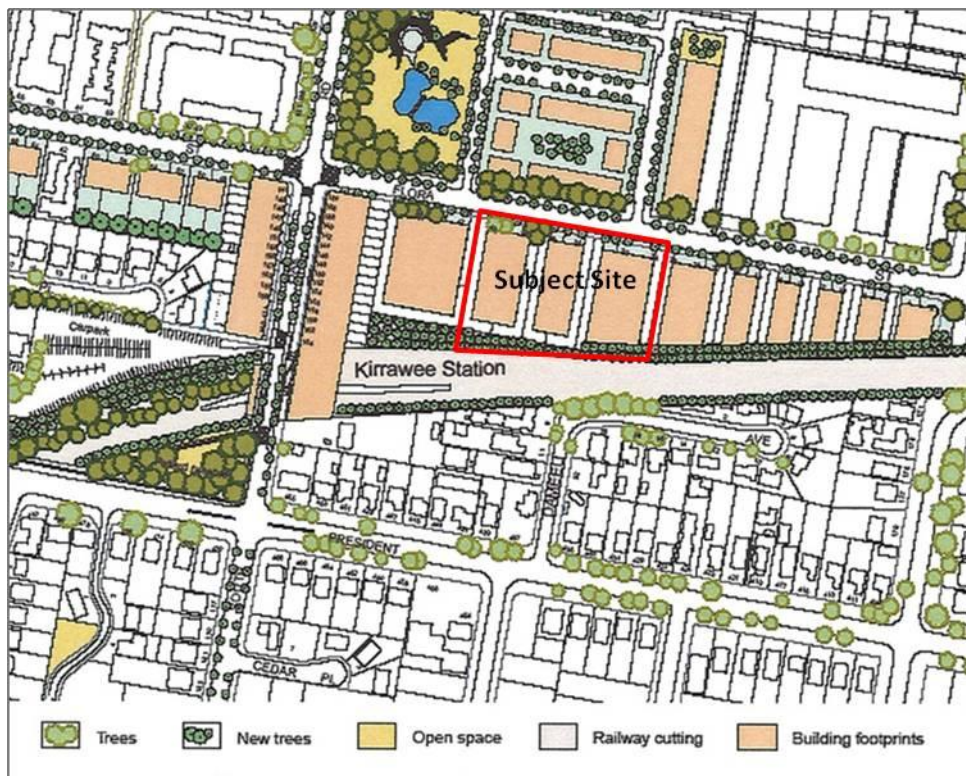
10.2 Urban Design

The proposal is significantly under the expected height and bulk of buildings contemplated by Council's LEP and DCP in the future along Flora Street, particularly taking into account the future urban form which will take cues from the Brick Pit redevelopment. The low-mass building is expected to result in a 'missing tooth' in the streetscape as the area is redeveloped over time.

The main façade of the proposed building maintains setbacks of 6m and 12m to Flora Street. The 12m setback incorporates the truck manoeuvring area, which extends for approximately 40% of the frontage of the site. This, coupled with the two (2) additional driveway crossings into the site for customer parking, represents a poor urban design outcome that the applicant has struggled to resolve on-site due to constraints associated with grades, loading clearances and the desired retail yield. Council's preference for trucks to 'cycle' around the rear of the building was not pursued by the applicant as this would lead to trucks clashing with customer vehicles.

The setback of 11m to the eastern side boundary incorporates the service driveway accessing the loading dock, and a 19m setback to the western side boundary makes provision for an at-grade parking area and driveway access to the basement parking area. A 1m setback is provided to the rear boundary, which adjoins a railway corridor, whereas Council's DCP requires a much more significant setback to the railway, including an area of vegetated public open space (for all sites on the southern side of this part of Flora Street).

The proposal as presented fails to achieve the desired urban structure for Flora Street, which will become a major pedestrian and vehicular artery between Kirrawee and Sutherland, presenting only a low-rise shopfront, loading dock, and car park to the street, where active frontages are essential and urban-scale residential buildings have been planned. The shopfront of the proposed supermarket faces out to the west, onto its own car park, not onto the street, as does the bottle shop and office. Virtually no mind has been given to the 'fifth facade' (roof elevation, including plant and equipment) of the building, which is an important component given that multi-storey residential buildings are approved only 35m away from the site. The planned 'green link' along the railway corridor will be irretrievably disrupted (see map below).



Kirrawee Locality Strategy - Map 3 (Open Space and Landscape)

Council's Architectural Review Advisory Panel (ARAP) reviewed the proposal at its Meeting held on 16 January 2014.

The Panel did not support the proposal, which was considered to have fundamental deficiencies. As a minimum, the Panel considered that support could not be provided without:

- A reduced store area.
- An increased rear setback.
- Redesign and relocation of the vehicle manoeuvring area.
- Improvements to the building's design and landscaping/street planting to improve the interface with the public domain.

It should be noted that the proposal as submitted was largely unchanged from a concept plan which was considered as a pre-DA submission and heavily critiqued by ARAP prior to the lodging of the development application.

The Panel noted that Council's vision as set out in SSDCP 2006 was for a 'boulevard-like' upgrade of Flora Street and it was considered that the proposed large manoeuvring area at the street frontage would compromise the presence, attractiveness and general activity of the building on the street. The lack of a rear boundary setback as required by the DCP would also prevent opportunity for a continuous line of trees and pedestrian access along the rail boundary.

The Panel's full commentary is provided as Appendix 'C'. The applicant was asked to address the Panel's concerns and in response advised that as the proposal was not for a mixed-use development many of the issues raised by the Panel were not relevant. The applicant's architect considered that the overall design would add value to the streetscape of Flora Street, encourage linkage between Kirrawee Centre and the Brick Pit development and activate the southern side of Flora Street. The full response by the applicant forms Appendix 'E'.

Comment:

The proposal provides for what is essentially a single storey building with a large open area provided at the street frontage for truck manoeuvring. The relatively low scale of the building and the large area of setback dedicated to truck manoeuvring are considered to be poor design outcomes and are contrary to the objectives of SSDCP 2006. The DCP, which provides Locality Strategies for various areas, identifies the Flora Street East Precinct in Kirrawee (Precinct 3) as an area which "*should be a mixed use zone with commercial office and possibly some retail space at ground level and residential above.*"

Significantly, SSDCP 2006 states the following under the section relating to the Kirrawee Centre Strategy:

"..the key aspect of the approach is to prioritise the public domain, which means that new development should be designed in response to the scale and character of the streets and open space areas. This approach recognises that development controls in the private domain need to be flexible to meet market demand".

The strategy expresses the following objectives:

- *Optimise the connectivity of the street network for pedestrians, cyclists and vehicles, and provide future connections to the broader context such as the primary school and adjacent Industrial uses.*
- *Enhance the accessibility of the proposed and existing open spaces.*
- *Design block sizes and shapes to increase permeability for pedestrians and cyclists. On major streets where a continuous street frontage is required to contribute to commercial and retail activity,*

provide through-block pedestrian links at reasonable intervals as shown on the drawings.

The proposed development provides three (3) separate vehicular access points off Flora Street and includes a truck manoeuvring area at the street frontage. This is considered highly undesirable from a streetscape point of view as more than 30% of the built form at the street alignment is interrupted by driveway openings. This is unsatisfactory from a traffic and pedestrian safety perspective and does not contribute to a highly active commercial frontage as anticipated by the zone objectives in SSLEP 2006 or the urban design outcomes of SSDCP 2006.

From a Safer by Design standpoint, the large truck manoeuvring area at the street frontage provides opportunities for people to gather or hide and any attempt to secure this area from public entry would be impractical from an operational perspective and undesirable aesthetically.

A key part of the Kirrawee Strategy is to provide for a rear setback (minimum 6m) for properties in the Flora Road East Precinct to provide for deep soil planting. This would provide a visual screen to development when viewed from Kirrawee Railway Station and from passing trains. It would also provide opportunities for improved pedestrian linkages as envisaged in the Kirrawee Locality Strategy. Despite being advised of the need to address this issue as part of the design, the applicant has chosen to submit a plan that satisfies a "Woolworths" corporate model and that provides only a minimal 1m rear setback. Throughout the application, it is apparent that this tension between site size and retail 'offer' has resulted in urban quality being sacrificed for Woolworths' desired quantum of retail floor space.

Further the scale of the building, together with three (3) separate driveways and a large truck turning area at the street frontage, results in a significant 'missing tooth' effect in the streetscape which is intended under SSDCP provisions to be primarily a commercial precinct with an active streetscape at street level and residential development above. The current planning controls provide for three (3) storey development on the site, and greater heights have been considered under Council's draft LEP; whilst six (6) storeys have been approved across the street on the Brick Pit site (where significantly increased heights of up to 14 storeys fronting Flora Street are currently under assessment).

The design of the supermarket fails to satisfy the zoning objectives applicable to the site, particularly objectives (g) and (i) which, respectively, require development to *'be carried out in a way that addresses the street concerned (achieving an attractive and vibrant streetscape) and reinforces surveillance of the public domain'* and *'provide a substantial area of public open space'*.

10.3 Traffic Impacts

Council's Traffic Engineer has reviewed the traffic report prepared by CBHK in support of the application and recommends that the application be refused on

the grounds of unsatisfactorily resolved traffic impacts. The modelling of the impact on surrounding local streets has not been properly carried out and the number and location of vehicle entry and loading points on Flora Street is unacceptable, particularly taking into account the approved redevelopment of the Brick Pit site, which is proposed to substantially intensify.

It was noted that the traffic generation rates provided were approximately half those used for the full-line supermarket in the adjacent Brick Pit development, which appears to be a significant under-estimation of the traffic impact of the proposal. The loading dock, noted above as a poor urban design and safety outcome, has also been poorly designed in traffic engineering terms. The following specific advice was offered by Council's Traffic and Transport Manager:

“Access and Egress

The access and egress arrangements are unsatisfactory in that:

- *All car parking should be serviced by a single access point.*
- *The proposed central access point is located opposite the proposed main Flora Street entry to the retail parking for the Kirrawee Brick Pit site.*

Loading Dock

The design of the loading dock is unsatisfactory and does not comply with AS2890.2 in that the driver's side of the vehicle is on the outside of the required reverse turning movement. This is compounded in that manoeuvring is extremely tight for the large articulated vehicles and there is insufficient capacity and too much conflict to cater for efficient and safe deliveries to the site. There has been no swept path analysis undertaken for manoeuvring of articulated vehicles to and from the site via the Princes Highway. This must be undertaken for the current and future road layout

Traffic Generation

Traffic generation has been significantly underestimated. The analysis must use the same generation rates adopted for the supermarket retail for the Brick Pit site being:

14.0 vtpm / 100m² GLA Thursday PM Peak

13.2 vtpm / 100m² GLA Saturday Peak

These rates are approximately double the rates used in the CBHK report.

Intersection Analysis

The report's analysis of surrounding intersections is fundamentally flawed in that it models the intersections in isolation with no consideration of residual queuing and other non free flow factors affecting the existing and future intersection performance. This is evidenced by the report stating that the intersection of Oak Road and Princes Highway is currently operating with a level of service D in the PM peak, which is clearly not the case based on site inspections and previous network modelling.

The failure of the report to properly analyse the surrounding road network is of greater significance given that the report also significantly underestimates traffic generation.

More robust network modelling is required including analysis of the critical intersections of Acacia Road/President Avenue, Princes Highway/Acacia Road, Princes Highway/Kingsway, Oak Road/President Avenue, Clements Parade/Bath Road and Flora Street/Site entry

This analysis must include the following scenarios:

- *Existing (base)*
- *Future (base plus development)*
- *Future (base plus development plus brick pit with road improvements)*

On the basis of the comments above, the Council's Traffic and Transport Manager recommends that the proposed development cannot be supported.

Further, comments from Council's Civil Assets Manager (see above) also raised concerns regarding the extent of street frontage dedicated to driveways/loading areas and the consequential loss of street parking.

10.4 Economic Impacts

The peer-reviewed, multi-layered assessment of economic impacts that has been undertaken for the retail component of the Kirrawee Brick Pit site, including at least one genuine full-line supermarket and other similar-sized 'anchor' tenancies, is relevant to the assessment of this proposal. That economic assessment, which was accepted by Council and the Land and Environment Court, concluded that the scale of retailing proposed in the Brick Pits redevelopment would disrupt the hierarchy of centres within the Sutherland Shire and have a significantly detrimental impact on the economic viability of neighbouring centres such as Sutherland (a major Urban and Civic Centre), Gymea, Jannali, (Town Centres) and Kareela (a Local Centre) as well as the existing Kirrawee 'main street'.

In particular, the ability of these centres to attract major 'anchor' retailers, cornerstones of ongoing economic vitality, would be affected by the Brick Pit redevelopment. The current proposal to add another full-line supermarket to Flora Street will inevitably exacerbate this problem by adding to the 'primacy' of the Brick Pit and its immediate neighbourhood and reducing the potential for neighbouring centres to attract major retailing opportunities.

In support of the application an Economic Impact Assessment has been undertaken by the applicant, MacroPlan Dimasi. The assessment notes that the Woolworth's proposal does not include any specialty retail shops and "*will not directly compete with the existing speciality retail shop provision within the Kirrawee Town Centre*". The assessment estimates a market gap of approximately 11,400m² by 2016 and notes that whilst this will reduce somewhat with the development of the two planned supermarkets at the Brick Pit site, it will still exceed 7,000m² by 2021.

The Brick Pit development immediately to the north of the subject site in Flora Street has a significant bearing on the economic impact of the subject development application. In April 2008 a development application for the former Brick Pit site was lodged with Council. The proposal included two (2) “full line” supermarkets totalling 7,053m² floor area and one (1) x mini major supermarket of 513m². A further 3,000m² of retail speciality floor space was proposed. The total retail floor space was 10,566m². In 2009 the application was amended to 1 x supermarket of 4,500m² and speciality retail of 3,500m² – a total of 8,000m². The development application was refused by Council, with economic impact being a substantial reason for Council’s decision. A subsequent appeal to the Land and Environment Court was dismissed.

A Part 3A Application was later approved by the Planning Assessment Commission. This application included two (2) x supermarkets (total 5,270 m²) a showroom of 2,930m², specialty retail 2,810m² and a ‘mini major’ supermarket of 1,280m². Total retail area (excluding showroom) was 9,360m². This was 1,360m² more retail floor space than previously refused by the Land and Environment Court.

The applicant for the Brick Pit development commissioned Hill PDA to prepare a study of centres in the Shire to justify the extent of retail floor space within the Brick Pit development. That study was reviewed on behalf of Council by Don Fox Planning (DFP) who were of the opinion that the Hill PDA study created a form of ‘self-fulfilling prophecy’ in that Part A of the report predicted the need for additional retail floor space and Part B ‘offered up’ the solution to the shortfall by providing that space in the form of the Brick Pit development. DFP highlighted a number of problems with the Hill PDA report in that it was commissioned by the applicant, not Council and previous studies commissioned by Council had found that the existing retail network was functioning well. It was also Council’s philosophy to consider Kirrawee as a village centre and nearby Sutherland as a higher-order Urban Centre.

DFP indicated that the environmental impact report accompanying the PAC Application prepared by Pitney Bowes concluded that without the “benefit” of the support of the Brick Pit development application, Kirrawee will be affected by the growth of other centres within the Shire. This conclusion was based on a perceived connection between the Brick Pit development and the Kirrawee retail strip. DFP said that there was no reason to suggest that without the Brick Pit development Kirrawee would not continue to operate as a local centre and provide convenience needs of the local population. Even if Sutherland was to expand, it would reinforce Sutherland as a major centre within the Shire network. Further, Kirrawee would continue to complement the role of Gymea as a Local Centre and fulfil a niche as a local convenience centre.

The Pitney Bowes 2008 Economic Assessment placed significant emphasis on supermarket/retail floor space at a ratio of m² to 1,000 population. The DFP review concluded that even if there is a shortfall in supermarket/retail floor space in the Shire, it should be located in the Sutherland Town Centre

given its status in the Sutherland Shire Retail Network. This view was also supported by the Department of Planning's Draft South Subregional Strategy.

Council commissioned MacroPlan to undertake a Retail Sustainability Assessment on the 2008 DA (based on two (2) supermarkets). The conclusions of this review are relevant to the subject application given that its approval would effectively result in two (2) full line supermarkets in the Kirrawee precinct. The reports states:

"The size and scale of the retail and supermarket component of the proposed development is not supported from a sustainability perspective and is clearly inconsistent with the typology of centres and desired hierarchy of centres established in the Metropolitan Strategy and South Subregional Strategy."

In the Land and Environment Court Judgement, Commissioners Tuor and Taylor noted the following in relation to the relevant retail objectives for Zone 7 - Mixed Use Kirrawee:

".. we do not accept that (the proposal) will result in a revitalising of the existing Kirrawee Town Centre, which is envisaged to remain the main retail precinct of Kirrawee, or the Railway precinct. The size of the retail proposal on the Brick Pit site will impact on the existing Kirrawee Town Centre. The evidence indicates, although inconclusive, that there may be an impact on individual retailers but that the existing centre is likely to remain viable. However, the evidence does not indicate that the existing Kirrawee Town centre or the Kirrawee Railway precinct will be "revitalised" in the face of such strong competition and therefore, the proposal is inconsistent with objective (j).

We find that the proposal is also inconsistent with objective (k) in relation to the role and function of Kirrawee Town Centre. ... the role and function of retailing in Kirrawee Town Centre as stated in objective (b) of Zone 9 is to promote viable, small, local and speciality shops to support the needs of the local population. The role of retailing in Zone 7 is to support this role as stated in objective (l) of Zone 7. Due to the size of the retail component of the development, particularly the undisputed evidence that the supermarket would be the largest in the area and would attract people from a wide catchment area, the proposal is likely to elevate the retail role of Kirrawee Town Centre above that of a local centre."

The Court concluded that a supermarket of the size proposed in Kirrawee would impact on the Sutherland Town Centre and may impact on its ability to attract a further supermarket given that retailing is identified as playing an important and integrated function with other uses in the sustainability of the Sutherland Centre.

The original development application for the Brick Pit development was refused by Council and an Appeal in the Land and Environment Court upheld the refusal. That development comprised a total of 6,693m² of retail floor area of which 4,500m² was allocated to two (2) supermarkets. A subsequent

application was approved by the Planning Assessment Commission (PAC) and that development proposal increased the proposed retail floor area to 14,340m², which included a 5,270m² full line supermarket and a 1,280m² 'mini major' or 'discount' supermarket.

In its submission to the PAC Council argued that the increase in retail floor space to the original scheme would further affect the structure of centres within the Sutherland Shire and the provision of two supermarkets would have dire consequences on the retail function of other surrounding centres including Gymea, Kareela, Jannali and Sutherland, as well as traffic flow.

The proposal currently before the JRPP for determination would, if approved, effectively result in two full-line supermarkets in close proximity to the Kirrawee Centre. This would have an adverse impact on the effectiveness of the existing retail hierarchy in the Sutherland Shire, in particular the role and function of Kirrawee as a Village Centre and the ability of the Sutherland Centre to attract another supermarket and fulfil its role as a primary Urban Centre.

In this way, the proposal does not satisfy objective (k) of the applicable zone under Council's LEP which is *'to ensure any expansion of retail activity within the zone maintains the role and function of Kirrawee Town Centre and does not adversely impact on the sustainability of other centres in the Sutherland Shire'*.

10.5 Site Contamination

Council's Environmental Scientist has reviewed the preliminary environmental site assessment (PESA) undertaken on the subject site on behalf of the applicant. The assessment identified a number of potential contamination sources including a disused underground storage tank (UST), several chemical containers and manufacturing and processing machinery.

Whilst the assessment has not been undertaken strictly in accordance with the NSW EPA guidelines, the investigation has provided an indication of the contamination status of the subject site. Based on the initial assessment, the contamination risk associated with the site has not been completely characterised and remains a moderate risk to human health and the environment. The extent of contamination in both the soil and groundwater beneath the subject site remains unclear.

Council's Environmental Scientist has concluded that, based on the information at hand, the application should not be supported until the contamination issues are adequately resolved. A detailed environmental site assessment is required. This should include targeted groundwater assessment to determine the contamination status of the site, delineate the contaminated groundwater plume and assess the suitability of the site to house the development proposed. This must be undertaken in accordance with NSW EPA guidelines by a suitably qualified professional.

Should it not be possible to complete a detailed soil investigation due to access issues, constraints associated with occupiers of the buildings or similar, a detailed proposal to investigate, remediate and validate the site following demolition of the buildings should be submitted. This must outline the methodology proposed to investigate and remediate the site prior to construction of the proposed buildings and include details of the underground storage tank removal, disposal and validation on 38 Flora Street.

10.6 Draft Sutherland Shire Local Environmental Plan 2013 (DSSLEP 2013)
DSSLEP 2013 was placed on exhibition on 19 March 2013 and is matter for consideration under S.79C(1)(a)(ii) of the EPA Act.

The land is proposed to be rezoned B4 Mixed Use under DSSLEP 2013. The proposed development, being a shop, is permissible in the proposed zone.

The following draft development standards are of relevance to the proposal:

Clause	Standard	Proposed	Complies?
Draft Sutherland Shire Local Environmental Plan 2013			
4.3	Max. allowable height of building = 16 m	14 m	Yes
4.4	Max. allowable floor space ratio = 1:1	0.6:1	Yes

At this stage DSSLEP2013 has limited statutory weight in the assessment of applications. The proposed development is generally consistent with the draft provisions.

11.0 SECTION 94 CONTRIBUTIONS

Section 94A Development Contribution Plan “Land within the Kirrawee Mixed Use – Zone 7 Land, May 2007” is applicable. A levy of \$24,440 (1% of the development cost) is payable.

12.0 DECLARATION OF AFFILIATION

The applicant has not declared any donations or affiliations with any political party.

13.0 CONCLUSION

The proposed development is for the construction, fit-out and use of a building as a shop with basement parking at 28-38 Flora Street, Kirrawee.

The subject land is located within *Zone 7 - Mixed Use Kirrawee* pursuant to the provisions of Sutherland Shire Local Environmental Plan 2006. The proposed development, being a shop, is a permissible land use within the zone with development consent. However, the proposed development fails to satisfy several of the relevant objectives of the zone, particularly those relating

to urban design and the sustainability of the Kirrawee Town Centre and other centres within the Sutherland Shire.

The economic impacts of the proposal, coupled with the approved Brick Pit development, will result in a cumulative impact on nearby centres, which is unacceptable to Council. The proposal will significantly reduce the potential for Sutherland, Kareela, Jannali and Gymea to attract major retailing opportunities in the medium to long term, which will disrupt the Shire's centres hierarchy greatly.

The traffic impacts of the proposal have been significantly underestimated and so cannot be properly assessed, but in light of Council's own observations and data taken from reporting on the Kirrawee Brick Pit redevelopment proposal, it is apparent that the supermarket will result in unacceptable impacts on the local street network. Loading is poorly resolved in a safety and manoeuvring sense and also in relation to urban design.

Further, site contamination issues have not been properly resolved as required by SEPP 55.

In response to public exhibition five (5) submissions were received. The matters raised in these submissions have been discussed in this report and include economic impact, traffic impacts and urban design issues.

The application has been assessed having regard to the Heads of Consideration under Section 79C (1) of the Environmental Planning and Assessment Act 1979 and the provisions of Sutherland Shire Local Environmental Plan and all relevant Council DCPs, Codes and Policies.

Following detailed assessment it is considered that Development Application No. 13/1192 cannot be supported for the reasons outlined in this report.

14.0 RECOMMENDATION

That Development Application No. 13/1192 for Construction, Fit-Out and Use of a Building as a Shop With Basement Parking on Lot A, Lot B, Lot C & Part Lot D DP 373329 and Part Lot B DP 373473 (Nos. 28-38) Flora Street, Kirrawee be refused for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to satisfies objectives (j), (k), and (l) of Zone 7 – Mixed Use Kirrawee as the proposal is considered likely to have an adverse impact on the vitality of the Kirrawee Town Centre and the role of both the Kirrawee and Sutherland centres as a Village Centre and Town Centre respectively within the established Sutherland Shire retail network..
2. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment

Act 1979, in that the proposed development fails to satisfy objective (g) of Zone 7 – Mixed Use Kirrawee as the proposal does not appropriately address the street frontage in that the number of vehicular access points and the truck manoeuvring area within the front setback are considered impracticable and unsafe and accordingly are a poor urban design outcome.

3. The application is considered unacceptable pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to achieve the urban design outcomes required by Clause 48(a) and (b)(ii) of Sutherland Shire Local Environmental Plan 2006.
4. The application is considered unacceptable pursuant to the provisions of Section 79C(a)(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development fails to satisfy the consent authority that the development will be carried out in a manner that minimises, manages or eliminates risk to human health and the environment as required by Clause 22 of Sutherland Shire Local Environmental Plan 2006.
5. The application is considered unacceptable pursuant to the provisions of Section 79C(a)(a)(iii) of the Environmental Planning and Assessment Act 1979, in that the proposed development does not provide appropriately designed loading and unloading facilities as required by Clause 4.4.a.2 of Chapter 7 of Sutherland Shire Development Control Plan 2006.
6. The application is considered unacceptable pursuant to the provisions of Section 79C(a)(a)(iii) of the Environmental Planning and Assessment Act 1979, in that the proposed removal of two street trees which contribute to the streetscape is considered contrary to objectives c, e, and g of Clause 4.4.h.1 of Chapter 4 of Sutherland Shire Development Control Plan 2006.