

## SYDNEY SOUTH PLANNING PANEL

<b>Panel Reference</b>	2016SHH003
<b>DA Number</b>	DA16/1668
<b>LGA</b>	Sutherland Shire
<b>Proposed Development:</b>	Demolition of existing structures and construction of mixed use commercial development including Woolworths supermarket, Dan Murphy's liquor store, commercial tenancies, child care centre, parking, signage and associated facilities
<b>Street Address:</b>	Lot B DP 373329, Part Lot D DP 373329, Lot A DP 373329, Lot C DP 373329, Part Lot D DP 373329, Part Lot B DP 373473, Lot 1 S/P 12439, Lot 2 S/P 12439, Lot 3 S/P 12439, Lot 4 S/P 12439, S/P 12439  24 - 38 Flora Street, Kirrawee
<b>Applicant/Owner:</b>	Ionic Management Pty Ltd
<b>Date of DA lodgement</b>	7 December 2016
<b>Number of Submissions:</b>	Eight (8)
<b>Recommendation:</b>	Refusal
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	General Development over \$20 million
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015)</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy No. 55- Remediation of Land (SEPP 55)</li> <li>• Greater Metropolitan Regional Environmental Plan No. 2- Georges River Catchment</li> <li>• Draft Sutherland Shire Development Control Plan 2015 (SSDCP 2015).</li> <li>• Sutherland Shire Section 94 Contribution Plans</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p>Response from: Sydney Trains,</p> <p>Response from: Roads &amp; Maritime Service (RMS)</p> <p>Response from NSW Police</p> <p>Response from Economic Consultant</p> <p>Report from the Architectural Review Advisory Panel</p>
<b>Report prepared by:</b>	Evan Phillips - Environmental Assessment Officer (Planner) Sutherland Shire Council
<b>Report date</b>	29 June 2017

### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**

### Conditions

Have draft conditions been provided to the applicant for comment? **No**

## EXECUTIVE SUMMARY

### REASON FOR THE REPORT

The application is referred to the Sydney South Planning Panel as the development has a capital investment value of more than \$20 million and is nominated under Schedule 4A(3) of the Environmental Planning and Assessment Act 1979. The application submitted to Council nominates the value of the project as \$45,133,000.00.

### PROPOSAL

The proposal is for the demolition of existing structures within the site and construction of a two storey mixed use commercial development to include a Woolworths supermarket, Dan Murphy's liquor store, two shop / café tenancies, a child care centre and a large commercial/retail area. There are two levels of basement parking and an at-grade open parking area accommodating a total of 435 car parking spaces.

### THE SITE

The subject site is located on the southern side of Flora Street and has combined site area of approximately 9,726m<sup>2</sup> and slopes from the north western corner of the site, to the south eastern corner. The site is approximately 100m east of the main street of the Kirrawee Town Centre and is 200m walking distance to the entry of Kirrawee Train Station.

### ASSESSMENT OFFICER'S RECOMMENDATION

#### THAT:

That Development Application No. DA16/1668 for Demolition of existing structures and construction of mixed use commercial development including Woolworths supermarket, Dan Murphy's liquor store, commercial tenancies, child care centre, parking, signage and associated facilities Lot B DP 373329, Part Lot D DP 373329, Lot A DP 373329, Lot C DP 373329, Part Lot D DP 373329, Part Lot B DP 373473, Lot 1 S/P 12439, Lot 2 S/P 12439, Lot 3 S/P 12439, Lot 4 S/P 12439, S/P 12439 (Nos. 24 – 38) Flora Street, Kirrawee, be refused for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of s.79B(1) of the Environmental Planning and Assessment Act 1979 in that the proposal has failed to obtain concurrence from Sydney Trains required under Section 86 of State Environmental Planning Policy (Infrastructure) 2007.
2. The application is considered unacceptable pursuant to the provisions of s.79C(1) (a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal fails satisfy the objectives of Zone B4 – Mixed Use of Sutherland Shire Local Environmental Plan 2015 in that the proposal fails to appropriately facilitate the re-vitalisation of the Kirrawee Town Centre and ensure that any expansion of retail activity in 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.

3. The application is considered unacceptable pursuant to the provisions of s.79C(1) (a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal fails to comply with Clause 5.9 Preservation of trees or vegetation of Sutherland Shire Local Environmental Plan 2015 in that the proposal fails to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.
4. The application is considered unacceptable pursuant to the provisions of s.79C(1) (a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal fails to comply with Clause 6.16 Urban Design – General of Sutherland Shire Local Environmental Plan 2015 in that the proposal fails to:
  - i. achieve a high quality design and development outcome;
  - ii. strengthen, enhance or integrate into the existing character of the Kirrawee locality;
  - iii. contribute to the desired future character of the locality concerned;
  - iv. retain or enhance the natural environment;
  - v. appropriately consider the principles for minimising crime risk set out in Part B of the Crime Prevention Guidelines and the extent to which the design of the development applies those principles.
5. The application is considered unacceptable pursuant to the provisions of s.79C(1) (a) (iii) of the Environmental Planning and Assessment Act 1979 in that the proposal fails to satisfy the development objectives and controls contained within Chapter 16 – B4 Mixed Use Kirrawee and Chapter 34 – Child Care Centres / Signage of Draft Sutherland Shire Development Control Plan 2015 with specific regard to the:
  - i. Locality Strategy;
  - ii. Mix of land uses within development;
  - iii. Street setback, semi - active frontage and landscape;
  - iv. Child care centre design (internal), parking area and air quality;
  - vi. Signage.
6. The application is considered unacceptable pursuant to the provisions of s.79C(1) (e) of the Environmental Planning and Assessment Act 1979 in that it is considered that in the circumstances of the case approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

## 1.0 DESCRIPTION OF PROPOSAL

The proposal is to develop a mixed use building comprising two levels with two levels of basement parking below.

The ground floor accommodates a Woolworth's supermarket (GFA of 3,940m<sup>2</sup>), a Dan Murphy's liquor store (GFA of 1,195m<sup>2</sup>), a lobby (GFA of 428m<sup>2</sup>) and a retail specialty shop/café (88m<sup>2</sup>) to the west of the frontage. The western side of the site provides an at-grade parking area for 45 car spaces. Travelators and lifts are proposed to access both the lower ground level car parking and upper floor commercial areas of the development.

The basement levels incorporate a combined total of 390 car parking spaces and due to the 5m fall of the site from west to east a lower level retail shop/café (65m<sup>2</sup>) is proposed on the eastern side of the sites frontage. The Woolworths Administration office (GFA of 199m<sup>2</sup>) is located on the southern side of the development. A loading area located at the rear of the site is accessed via two main access / egress points for vehicles (including trucks) from Flora Street. Demolition, earthworks, landscaping, 20 business identification signs and associated civil works also form part of the scope of works.

A mezzanine level is located between the ground and first floor accommodating the Dan Murphy's administration office (GFA of 82m<sup>2</sup>).

The first floor accommodates approximately 3,100m<sup>2</sup> of commercial/retail floor spaces and a child care centre (GFA of 550m<sup>2</sup>) accommodating 90 children between the ages of 0 - 6.

The proposed hours of operation for the commercial tenancies are as follows:

- Woolworths – 6am to Midnight (7 days)
- Dan Murphy's – 9am to 10pm (Monday – Saturday), 10am – 10pm (Sundays)
- Child care centre – 7am 6pm (Monday – Fridays) over 51 weeks (closed between Christmas and New Year)
- Retail and Commercial Tenancies - Unknown

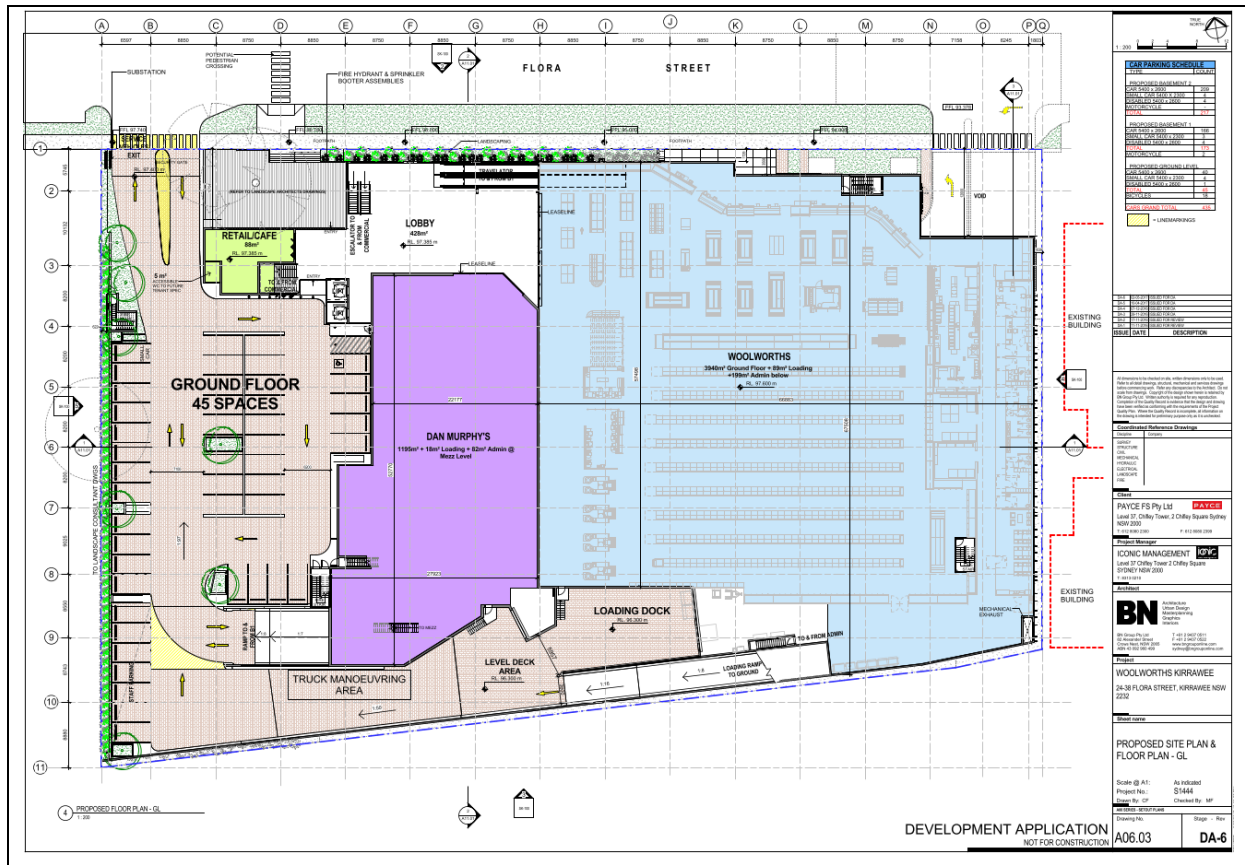


Figure 1: Site Plan

## 2.0 SITE DESCRIPTION AND LOCALITY

The subject site is located on the southern side of the Flora Street, and takes in six (6) individual allotments, being No's 24 to 38 Flora Street inclusive. The combined land is rectangular in shape with a site area of approximately 9,726m<sup>2</sup>. There is a fall of approximately 7m from the north western corner of the site, to the south eastern corner.

Currently, the individual sites are occupied by industrial 'factory unit' style developments. There are multiple vehicular access points servicing the sites. Adjoining to the west and east are industrial developments of a similar scale. Immediately to the rear (south) of the site is the Sutherland-Cronulla railway line. Several large established trees are located within the front of No's 24, 26 & 38 Flora Street. Located within the street frontage of the subject site is the eastern extent of a remnant community of Sydney Turpentine Ironbark Forest (STIF), an Ecologically Endangered Community.

Directly opposite the site is the Kirrawee "Brick Pit" site. Based on a modified Part 3A 'Major Project' Concept Approval issued by the Planning and Assessment Commission, the Joint Regional Planning Panel has recently approved the detailed development application for the site. This consisted of a large mixed use development including a public park and 7 residential apartment blocks (comprising 749 units / up to 14 storeys / 69,310m<sup>2</sup> GFA) over a retail podium accommodating 14,190m<sup>2</sup> of commercial floor space (including a 4,740m<sup>2</sup> major supermarket). This development is currently under construction and its approval has significant bearing on the assessment of this application currently before the Panel.

There are currently two modification applications for the Brick Pit site. One modification application is currently being assessed by the Department of Planning and Environment where consent is sought to increase the number of residential units from 749 to 808. The second modification application seeks consent to reconfigure the commercial component of the development to increase the number of commercial tenancies from 19 to 24, introduce a 90 space child care centre and a Coles shopping distribution facility. Both applications are currently under assessment.

The property is located within Zone B4 - Mixed Use precinct under the provisions of Sutherland Shire Local Environmental Plan 2015 (SSLEP 2015), which is located approximately 100m east of the main street of the Kirrawee Town Centre (B2- Local Centre zone) and 200m from Kirrawee Train Station. The proposed mixed use commercial development is a permissible form of development within the B4 zone.



Figure 2: Aerial Photograph



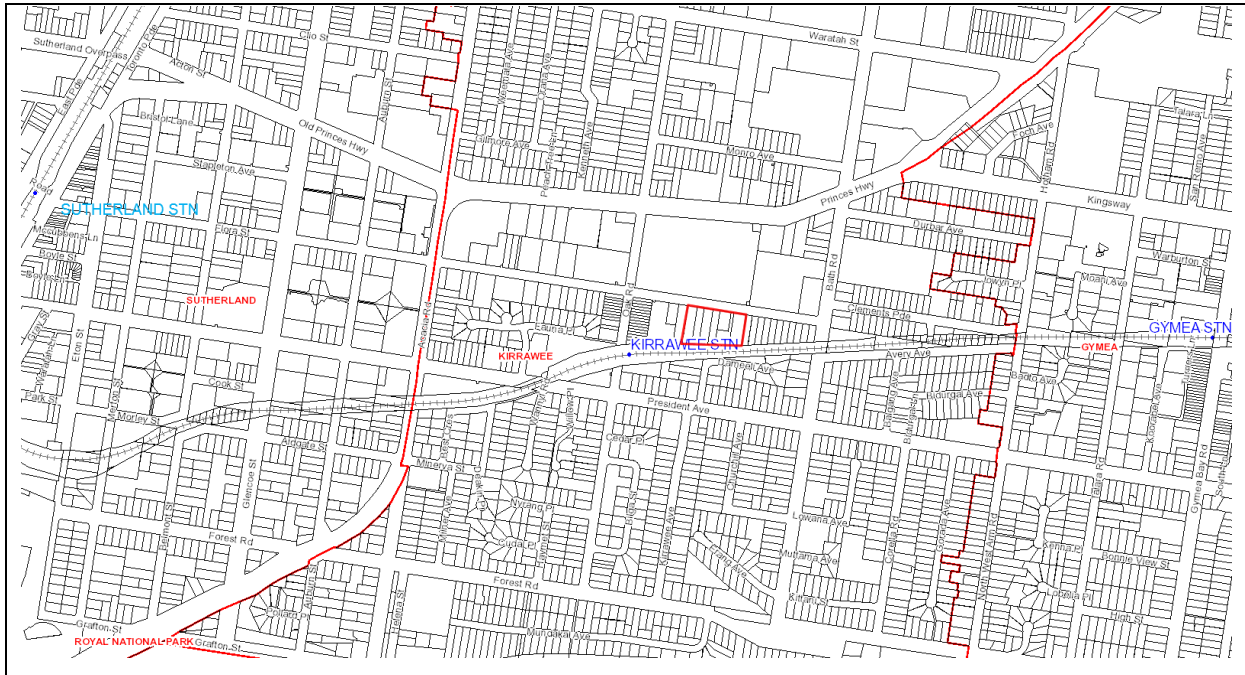


Figure 3: Site Location Plan

### 3.0 BACKGROUND

A history of the development site and proposal is as follows:

- The Joint Regional Planning Panel (JRPP) previously considered an application in 2014 for a Supermarket (Woolworths) and liquor outlet (BWS) on the subject site (DA13/1192 - 2014SYE002). Council's recommendation was that the proposal should be refused, as the form of the proposed building would detract significantly from the desired character of the Kirrawee Centre, and that the traffic and economic implications of the proposal were unacceptable when considered in conjunction with the redevelopment of the Kirrawee Brick Pits. The matter was considered by the JRPP on 3 April 2014 and the Panel's determination was as follows:

*"1. The Panel resolves unanimously to accept the recommendation of the planning assessment report to refuse the application.*

*2. While the Panel adopts the reasons for refusal mentioned in the planning assessment report, the principal reason for refusal is that of economic impact on surrounding centres.*

*3. The Panel notes that the question of the economic impact of supermarkets in Kirrawee on surrounding centres has been the subject of consideration in the recent past by expert consultants to the council, by the Planning Assessment Commission and by the Land and Environment Court. The common thread running through these considerations has been that more than one full-line supermarket in Kirrawee would have a devastating economic impact on surrounding centres. That supermarket has already received consent on the site to the north of the subject site."*

- Since the previous refusal, a revised development scheme incorporating additional land (No. 24-26 Flora Street) and a generally greater intensity of the development was submitted (2016SYE018). The JRPP was briefed on 6 April 2016 and the application was withdrawn prior to

the scheduled determination. The primary outstanding concerns relating to this application which required resolution were in relation to:

- Submitted economic impact analysis and failure to address previous JRPP reasons for refusal;
  - Requirements of Sydney Trains as a concurrence authority;
  - Site contamination and remediation;
  - Engineering concerns including on site stormwater management, public domain works, traffic impact and heavy vehicle access;
  - Urban design and landscape considerations including the Street setback, active frontage, landscape design and tree protection (STIF community) and recommendations of the Architectural Review Advisory Panel.
- A formal pre-application discussion (PAD) for the current / subject development application was not held.
  - The current application was submitted on 7 December 2016.
  - A public information session between Council Officers and interested residents was held during the exhibition period on session 10 January 2017 and the session was attended by 2 parties.
  - The application was publicly exhibited until 27 January 2017. 361 owners of properties were notified of the application and the application was also advertised in the local press (the *Leader*). Seven (7) written submissions have been received in response.
  - The application was considered by the Architectural Review Advisory Panel on 2 February 2017
  - Council officer's requested additional information on 8 & 20 March 2017 which included:
    - Design amendments including response to the recommendations made by the Architectural Review Advisory Panel (ARAP).
    - Design changes to incorporate a greater street setback and landscaped frontage retaining existing vegetation consistent with Council's Policies.
    - The requirements of Sydney Trains in relation to building maintenance within the site adjoining the rail corridor.
    - Further detail in relation to:
      - The design of the child care centre (including parking area) and suitability of air quality and protection of children's health.
      - Safety and crime prevention.
      - The traffic report (including modelling of locality intersections) and the adequacy of vehicular access / egress for service vehicles.
      - The stormwater management plan

The applicant was also advised that the review / assessment of the submission in relation to economic impacts was still proceeding.

- Final amended plans and supporting information in response to Council's concerns were lodged 10 May 2017



#### 4.0 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 generally provided adequate information to enable a reasonable assessment of this application. The deficiencies associated with the applicants submission are further discussed in the referral and assessment components of this report.

#### 5.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Draft Sutherland Shire Development Control Plan 2015 (SSDCP2015) and administrative requirements of the Sydney South Planning Panel.

361 adjoining or affected owners were notified of the proposal and eight (8) submissions were received as a result. A summary of the main issues raised in these submissions is provided in the table below:

Address	Date of Letter/s	Main Issues
1 Inverness Place, Kareela	9 December 2016	Traffic and congestion in addition to Brick Pit development and cumulative approvals in locality.
82 View Street Gymea	10 December 2016	Overdevelopment of land within Sutherland Shire
30 Castlewood Ave Woollooware	14 December 2016	Adequacy of road infrastructure, traffic, congestion in addition to Brick Pit development
Unit 13/49 Flora St Kirrawee.	16 January 2017	Traffic impact on Flora Street between Oak Road and Acacia Road, including safety of residents / pedestrians Viability of the local shops in Oak Rd, Kirrawee with the trading hours of Woolworths reportable to be 7am - 12 midnight.
Unit 9. 88-90 Flora St., Kirrawee	26 January 2017	Traffic impact on Flora Street between Oak Road and Acacia Road, including safety of residents / pedestrians
24 Mundakal Avenue Kirrawee	26 January 2017	Traffic and congestion in addition to Brick Pit development Pedestrian safety Need for additional supermarket in locality
22 Flora Street Kirrawee	28 January 2017	Location of entry driveway and conflict with adjoining driveway / motor vehicle repair workshop business Traffic impact and safety within Flora Street and locality in addition to the Brick Pit redevelopment

The above matters are generally discussed and addressed in the "assessment" and "specialist comments" sections of this report.

## 6.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone B4 – Mixed Use pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being a mixed use commercial development, is a permissible land use within the zone with development consent from Council.

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

- State Environmental Planning Policy 55 – Remediation of Land (SEPP55)
- State Environmental Planning Policy 64 – Advertising & Signage (SEPP64)
- State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)
- Sutherland Shire Local Environmental Plan 2015 (SSLEP2015)
- Draft Sutherland Shire Development Control Plan 2015 (SSDCP2015).
- Sutherland Shire S94 Contribution Plans

## 7.0 COMPLIANCE

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

### **State Environmental Planning Policy No. 55- Remediation of Land (SEPP55)**

SEPP55 requires a consent authority to consider whether the land is contaminated and, if so, whether the land will be remediated before the land is used for the intended purpose. A site inspection and search of Council records has revealed that the subject site is likely to be contaminated.

The applicant has undertaken detailed investigation and submitted a Remedial Action Plan (RAP) and Interim Site Audit Advice prepared by NSW EPA Accredited Site Auditor. This matter is further discussed in the internal specialist components of this report and suitable conditions are recommended in relation to site remediation. The proposal is consistent with the provisions of SEPP55 and the site is considered to be suitable for its intended use.

### **State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**

The following provisions of State Environmental Planning Policy (Infrastructure) 2007 apply to the development.

#### *Section 104: 'Traffic Generating Development'*

The development is classified as traffic generating development and has been referred accordingly to the RMS. The RMS response is further detailed in the 'external referral' component of this report.

#### *Section 86: 'Excavation in, above or adjacent to rail corridors'*

The development the penetration of ground to a depth of at least 2m below ground level (existing) within 25m (measured horizontally) of a rail corridor and has been referred accordingly to Sydney

Trains for concurrence. Sydney Trains have not granted concurrence. Their response is further detailed in the 'external referral' component of this report.

### **State Environmental Planning Policy No. 64 – Advertising & Signage (SEPP64)**

The provisions of SEPP64 applies to all signage visible from a public space. The proposal been assessed against Schedule 1 of SEPP64 'assessment criteria' (refer below) and is considered to generally satisfy the criteria subject to the imposition of conditions of development consent in relation to provision, size, finished quality and illumination (including hours). This is also discussed in the Assessment component of this report.

<b>Assessment Criteria</b>	<b>Assessment</b>
Character of the area	The signage strategy reflects the mixed use zoning of the land and nature of the proposed development and subject to conditions is generally capable of keeping with the desired future character of the area.
Special areas	The signage is not anticipated to detract from the amenity or visual quality of the land including, environmental attributes and heritage significance.
Views and vistas	The signage strategy is generally not anticipated to obscure or compromise views or be visually dominant in the skyline. A reduction in the height of the pylon sign would further reinforce this criteria.
Streetscape, setting or landscape	The signage strategy generally contributes to the visual interest of the buildings and subject to minor refinement is unlikely to dominate the streetscape or cause visual clutter.
Site and building	Signage is generally suitably located and subject to minor reductions in of a size, the signage is proportionate and integrates appropriately with the built form.
Associated devices	The signage is proposed to be securely fixed.
Illumination	All signs are proposed to be illuminated. To enhance the amenity of the area conditions can be imposed in relation to quantity of illuminated signs and operation (hours, level of illumination)
Safety	The signage areas are capable of presenting pedestrian and vehicle safety issues. Suitable conditions can be imposed limiting illumination and non-static / obtrusive signage.

### **State Environmental Planning Policy No. 65 – Design Quality Principles (SEPP65)**

Whilst SEPP65 does not apply (i.e. no residential component), the application of the nine design quality principles and general parameters is considered to be a useful tool in the application assessment to ensure an appropriate design quality is achieved, particularly given the context of the site being located within a Mixed Use zone and that future development on adjoining lots may include residential components.

Further, Sutherland Shire Council engages its Architectural Review Advisory Panel (ARAP) to guide the refinement of developments and the SEPP65 Heads of Consideration are used to structure the Panel's comments. An assessment of the proposal has been undertaken having regard to the relevant design quality principles. As discussed further in the ARAP and Council Architect / Landscape Architect discussions, there remain outstanding concerns regarding the urban design quality and architectural merits. The proposal particularly fails to adequately satisfy the principles in relation to context and neighbourhood character, built form and scale, and landscape.

#### Local Controls – SSLEP2015 and SSDCP2015

The table below details the main standards / controls within SSLEP2015 & SSDCP2015 relevant to this application.

Sutherland Shire Local Environmental Plan 2015			
Clause	Standard	Proposed	Complies
4.3	Height of Buildings - 16m	Less than 16m	Yes
4.4	Floor Space Ratio Max – 1:1	9647m <sup>2</sup> GFA 0.991:1	Yes
5.9	Preservation of trees or vegetation	The revised development proposal seeks to retain existing site vegetation within the frontage. The design of the development (including basement) is likely to adversely impact upon tree health and fail to satisfy the objectives of the clause. Design amendments are required to ensure the adequate preservation of trees.	No
5.10	Heritage Conservation	Disturbed land rating of archaeological sensitivity. No apparent evidence of aboriginal artefacts / relics within site. The proposal does not warrant an Aboriginal Archaeological Study being undertaken.  Schedule 5 identifies the Kirrawee Brick Pit site opposite as an archaeological site (Item A2404). The major development approval on this site required concurrence from the Heritage Division of the Office of the Environment and Heritage. the development scheme which included a conservation management plan and reconstruction of a brick kiln on the northern part of the site was supported. The proposal is not anticipated to detract from, the heritage significance of heritage item. A detailed heritage assessment is not required to be submitted.	Yes  Yes
6.2	Earthworks	The proposal includes minimal earthworks and clause	Yes

		6.2 of SSLEP 2015 requires certain matters to be considered in deciding whether to grant consent. These matters include impacts on drainage; future development; quality and source of fill; effect on adjoining properties; destination of excavated material; likely disturbance of relics; impacts on waterways; catchments and sensitive areas and measures to mitigate impacts. Excavation is generally limited to the building footprint. The proposal is acceptable subject to suitable conditions to minimise potential impacts to adjoining lands (i.e. Geotechnical / dilapidation). The relevant matters have been considered and the application is acceptable.	
6.4	Stormwater Management	Clause 6.4 requires Council to be satisfied of certain matters in relation to stormwater management prior to development consent being granted. These matters include maximising permeable surfaces; on-site stormwater retention minimising the impacts on stormwater runoff. These matters have been addressed to Council's satisfaction.	Yes
6.15	Energy Efficiency & Sustainable Development	The proposal incorporates appropriate measures and construction techniques in conjunction with the development.	Yes
6.16	Urban Design & Non Residential Buildings	Clauses 6.16 and 6.18 of SSLEP 2015 contain certain matters of consideration relating to urban design. The relevant matters have been considered as a part of the assessment of the application and the proposal <b>is not</b> considered to be acceptable. These matters are further discussed in the SEPP65 / ADG compliance and assessment components of this report.	No

<b>Sutherland Shire Development Control Plan 2015</b>			
<b>Clause</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
<b>Chapter 16 – B4 Mixed Use Kirrawee</b>			
4.2.1	Lots to be of sufficient width – 20m	>20m	Yes
4.2.2	Development designed to address the street / clearly definable entry	The main entry to the development engages Flora Street and is orientated towards the west / Oak Road and centre of Kirrawee.	Yes
4.2.8	Street trees planted at 10m	Subject to detailed frontage design	Yes

	intervals	and public domain works approval	
5.2.1	Street Setbacks 7.5m	1.726m	No. Variation of 76.9% - refer to assessment
6.2.1	Semi Active Street Frontage	Semi Active Street Frontage	Refer to assessment
7.2.1	Side / Rear Setbacks Nil	West) 622mm East) 1.039m South) 800mm	Yes  Note: Sydney Trains concurrence / 1.5m setback requirement
8.2.2	Loading & unloading within site. Entry / exit in forward direction	Loading & unloading within site. Entry / exit in forward direction	Yes
13.2.1	Car Parking Rates Commercial: 1 space per 30m <sup>2</sup> - 324 spaces Child Care Centre: 1 space per 4 children in attendance (23 spaces – 90 children)	435 spaces total	Yes
13.2.3	Motorcycle Parking 1 space per 25 car spaces.	2 motorcycle spaces	No
13.2.4	Bicycle Parking – 1 space per 10 car spaces (first 200), 1 space per 20 thereafter	18 bicycle spaces	No
<b>Chapter 34 – Other Uses (Signage)</b>			
6.2.2	Not greater than 25% of elevation above awning	<25%	Yes
6.2.(4)(5) )	Not protrude > 300mm from face or be above parapet	Not protruding > 300mm	Yes
6.3.2 (a)	Freestanding pole sign to not exceed height of surrounding buildings / tree canopy or 8m (least)	8.4m	No – refer to assessment
<b>Chapter 36 – Late Night Trading</b>			
3.2.1	Intermediate Activity Area Base Hours 6am – midnight (bottle shops to cease at 10pm)	Woolworths 6am – midnight Dan Murphys 9am – 10pm Others – within core business areas	Yes Yes Yes



## Child Care Centre Criteria

The table below details the main standards / controls applicable to child care centres required by SSDCP2015 and the Children (Education and Care Services) Regulation 2012 and Supplementary Provisions. Insufficient Plan detail has been provided to ascertain compliance with the internal design criteria and provision of required facilities and spaces. Final design is subject to approval and licensing from the NSW Government - Department of Education.

<b>Chapter 34 – Other Uses (Child Care Centres)</b>			
<b>Clause</b>	<b>Standard</b>	<b>Proposed</b>	<b>Complies</b>
Outdoor play spaces	Located to provide clear access to toilets and indoor play areas	Appears to adjoin indoor area.	Yes
	Located away from the main entrance of the child care centre, car parking or vehicle circulation areas	Located away from these areas	Yes
	Adequately fenced on all sides. All fencing adjoining a public space is to be a minimum height of 1800mm.	Adequately fenced on all sides	Yes
Storage	Adequate storage areas for garbage and recycling bins on site	Generally, storage areas available within the site	Yes
Centres located on the first floor of a building	The centre shall have a safe haven and dedicated fire stair with hand rail designed to stop children falling through	Dedicated fire stair from indoor and outdoor areas	Yes
Health and safety controls	Where located within 150m of a major road (traffic volume exceeds 6,000 vehicles per day) must demonstrate that air quality will be in accordance with NSW EPA and NEPM guidelines.	Not located within 150m of major road. Air quality testing undertaken due to co-location with traffic generating land uses. Application does not demonstrate acceptable environment for children's health	Yes  Refer to assessment
	Must not be located adjacent to development that is subject to SEPP 33 – Hazardous and Offensive Development	Location acceptable	Yes
	Must not be located adjacent to general or heavy industrial land uses	Location acceptable	Yes
	Not be located adjacent to or in view of the entrance to injecting rooms, drug clinics, brothels or sex shops	Location acceptable	Yes
	Parking areas must be fenced to separate the carpark from the childcare centre	Basement parking area separate to centre.	Yes

Landscaping for childcare centres	Landscaping should ameliorate the visual impacts of the built form and car parking	N/A	N/A
Car Parking	1 space/4 children = 23spaces	5 dedicated / time limited spaces in basement	No

## 8.0 SPECIALIST COMMENTS AND EXTERNAL REFERRALS

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

### 8.1 Sydney Trains

The development penetrates the ground to a depth of at least 2m below ground level (existing) within 25m (measured horizontally) of a rail corridor and has been referred to Sydney Trains for concurrence. Initial concerns regarding the proposed setbacks along the property boundary between the site and the rail corridor and inability for building and maintenance (including graffiti removal) to occur without the applicant requiring access to the rail corridor. The applicant was requested to provide design amendments and additional information in response.

Upon receipt / review of the information Sydney Trains has advised that the amended plans do not meet setback requirements for maintenance. A minimum 1.5m setback is required, unless the applicant can prove that they can maintain the area in a smaller setback space. At present Sydney Trains cannot continue with the assessment and concurrence has not been granted.

If the 1.5m setback is provided to the satisfaction of Sydney Trains, a re-design will be required that will entail a minor reduction in commercial floor space and the re-alignment of building form and loading ramp, dock and driveway modifying the proposal.

A copy of this response is attached as **Appendix A**

### 8.2 NSW Roads & Maritime Services (RMS)

The development is classified as traffic generating development and has been referred accordingly to the RMS for comment. Generally no objection to the proposed development has been raised. There are however unresolved matters resulting from an assessment of the applicants revised traffic report and concept plan of the proposed upgrade to the traffic signals at President Avenue/Oak Road intersection which are as follows:

1. *The current intersection layout provides a shared through and left turn arrangement in lane 1 and a shared through and right turn arrangement in lane 2. The current layout allows better flexibility for northbound traffic on Oak Road. Therefore the concept plan will need to be amended to reflect this change as Roads and Maritime does not support the proposed changing of the lanes northbound on Oak Road.*
2. *Section 2.4 of the Roads and Maritime guidelines for Traffic Signal Design requires that signalised marked foot crossings must be provided on all legs of an intersection. The*

*current proposal does not include a signalised marked foot crossing on the southern leg of the President Avenue/Oak Road intersection. Therefore a pedestrian crossing should be provided on the southern leg of the President Avenue/Oak Road intersection.*

Council has provided the RMS additional information, including modelling of the President Avenue/Oak Road intersection. As submitted, the application has failed to adequately resolve external traffic impacts and final response from the RMS has not been received at the time of writing this report.

A copy of this response is attached as **Appendix B**

### **8.3 NSW Police**

The application was referred to the NSW Police for a Crime Risk Assessment in accordance with the protocol established with Council. In their response the NSW Police have addressed the liquor sales component and child care centre / parking components separately.

Liquor: The NSW Police object to this application due to, the likely negative social impacts, the public interest not being served by an additional full service liquor store and failure to comply with the Sutherland Shire Council Draft Development Control Plan 2015 with respects to 'Late Night Trading' and 'Social Impact' considerations. The NSW Police submit there is a significant risk that liquor sold from this new liquor store will increase the prevailing levels of alcohol related crime, disturbance and adverse impacts upon the amenity of Kirrawee from a minority of customers who abuse packaged liquor.

Child care centre / other development components: The NSW Police have recommended operational and design treatment options for consideration throughout the development including the child care centre, car parking and loading dock areas so as to improve Crime Prevention Through Environmental Design factors. Suitable conditions of development consent can be imposed to reduce opportunities for crime and to enhance general safety and surveillance of the development / surrounds.

A copy of this response is attached as **Appendix C**

### **8.4 Economic Consultant**

Having regard to the history of the site and locality to accommodate an additional full line supermarket in addition to the 'Brick Pit' redevelopment (including previous economic assessments / considerations), Council has engaged an external planning specialist to undertake a review of the submitted Economic Impact Assessment (including peer review). The concluding statement from the peer review consulted provided the following:

*"In our opinion, the MPD EIA fails to provide sufficient assurance that this development, should it proceed, will not adversely impact on the adopted centre hierarchy for the Sutherland Shire, nor does it provide valid reasons as to why the strategic planning direction for the LGA and the district should*

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*be disregarded. The EIA clearly acknowledges that this development will shift the focus of retailing from Sutherland to Kirrawee and seeks to justify this based on the lack of availability of a site in the Sutherland town centre within a single parcel. However, we note that this development parcel comprises six separate allotments.*

*Whilst the economic feasibility of a development is a consideration, where a development is clearly inconsistent with the strategic direction for the area, the developer's expectations in terms of profit margin may need to be reconsidered. Further, other developers have made investment decisions based on the adopted strategic framework and to consider development which is contrary to that framework would be prejudicial and have significant impacts in relation to a return on investment for those who have abided 'by the rules'.*

*In our opinion, the development is inconsistent with the objectives of the B4 zone as it would result in development which is clearly contrary to Council's vision for the Sutherland town centre.*

*We have considered the MPD EIA and in our opinion some questionable assumptions and methodologies have been used. The heavy reliance which has been placed on the Quantum data to justify the need for additional supermarket floorspace is concerning as is the underestimation of the turnover of the supermarket. Overall, we could not reasonably advise Council or the Panel that the MPD EIA provides us with sufficient comfort as a reflection of the possible economic impacts that could result should this proposal proceed.*

*And even if we could provide such assurances, the issue of the development's inconsistency with the strategic frameworks and zone objectives must, in our opinion, be the over-riding reasons as to why this proposal should not be supported."*

A copy of this response is attached as **Appendix D**

### **8.5 Architectural Review Advisory Panel (ARAP)**

The application was referred to ARAP for comment. The Panel outlined that many of the previous comments (DA15/1664) continue to apply to the proposal, particularly in relation to the Flora St frontage, entries, retention of existing trees, and landscape. The form and mix of the development has generally improved, however the Panel further recommends that:

- *Landscaping for Flora Street is increased, including retention of existing trees, additional new street trees and revisions to the landscape environment along the footpath and adjacent to the building façade.*
  - *Design of the western entry sequence and cafe in the north-west corner of the site is re-examined to integrate the existing mature trees. The public presentation and sequence of entry from the street is not well resolved at present, and this will create an opportunity to address this issue. A more centralised area with improved way-finding and clear addresses to each of the various functions should be considered.*
  - *Deep soil planting for large trees is provided in the western car-park.*
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- *A comprehensive and effective solar protection strategy to the west-facing glazing and open areas of the childcare facility is provided.*
- *Potential conflicts between the service vehicle exit path and vehicular movement within the western car park and the ramp access to level B1 are resolved.*
- *The Flora Street facades are further refined and modulated.”*

A copy of this response is attached as **Appendix E**. The applicant has inadequately responded to the comments of ARAP in the revised development scheme submitted to Council. Further comments are provided below.

## **8.6 Architect**

Council's Architect has undertaken an assessment of the proposed development with respects to urban design and architectural merit and the response to the ARAP comments. A summary of the response is provided below:

- No substantial changes that adopt the ARAP recommendations has been made. The result is a hard edged visually dominant building up against the street edge. With the metropolis brick pit development underway opposite, the street will become canyon like with virtually no human scale meaningful interactive space for residents / customers. This is highlighted by the token retail café space that is about a fifth of the size of the supermarket lobby that it funnels the entry to. Similarly, the basement retail / café in the undercroft of the building, amongst the sundry substation/ other incidentals remains uninviting and unidentifiable.
- The supermarket use dominates the street front presentation which overpowers the multi-use of the whole development. Pedestrian entry from the street is not obvious and the east and rear elevational treatments are weak in that they appear to be not worthy of any considered design aspect. In that this development will be seen from all angles including from above and that there is no attempt to retain existing mature vegetation pushing the development to all the edges of the site demonstrates a disregard of the design for its locality.
- There are conflicts in pedestrian and vehicle movements in the basement; about the entry and along the street, which raises some concern about the safety of patrons entering and exiting the development.
- For a development site and a use as proposed there is so much potential to re-establish the “shop” with the community instead of creating enclosed environments that have no connection to place or the external environment which is what Architecture should be about. However, this proposal avoids this aspect which together with the avoidance of incorporating some quite minor ARAP recommendations will result in this development being a poor design attempt.

## **8.7 Heritage Architect**

The application was referred to Council's Heritage Architect for comment. An assessment of the proposed development has been undertaken with regards to potential impacts on the heritage significance of the Kirrawee Brick Pit site opposite the site which is identified as an archaeological site (Item A2404) under SSLEP2015. The location of the proposed development is remote to the Kiln which is part of the Brick Pits re-development conservation strategy and any negative heritage impacts

are minimal. No objections to the proposed development have been raised regarding heritage impacts.

## **8.8 Landscape Architect**

Council's Landscape Architect has undertaken an assessment of the proposed development with regards to tree removal / retention, site planning and landscape design. A summary of the recommendations are as follows:

*Landscape Design:* The proposed planting to the street frontage does not meet the objectives of the Draft DCP2015 – no 7.5m planting strip has been provided and the scheme relies on Ironbark street trees to provide shade, but as there are overhead power lines it will not be possible to plant Ironbarks there. Opportunities should be provided to modulate the building setback to create vegetative pockets where trees can be planted consistent with the comments from ARAP.

*Existing Trees:* The revised scheme has made a significant shift towards saving two (Trees 5 and 6) of the three existing remnant *Eucalyptus paniculata* (Grey Ironbark) trees at the front of the site. The proposal does however result in the removal of Tree 4 which should be retained in alternate design as the tree is healthy and forms part of a tight knot group. The basement setbacks and surface / landscape treatment around the base of the trees is also insufficient to ensure their adequate protection and additional setbacks to the basement from the north western corner and modification to the forecourt is required. The proposal is not supported and retention of the vegetation provides a great benefit to the streetscape and the entry forecourt of the development.

*Surface Carpark:* The revised scheme also attempts to retain and protect Tree 14 (*Eucalyptus nicholli*) in the middle of the western boundary on the neighbouring property by incorporating an increased setback to part of the basement levels however the design including parking spaces at ground level would need to be removed to ensure adequate protection. The 1m planter width along the western boundary is acceptable for growing the tall hedging shrubs proposed and further recommendations to the planter boxes within the surface car park have been made.

*Level 1 Roof Gardens / Child Care Centre:* The design of the outdoor play area is supported however there is very little foliage to soften the space. At least 12 additional large tubs with small trees should be placed around the western edge of the play area to provide canopy, colour and shade. Plant species within the outdoor play area and commercial courtyard/ terrace spaces are not shown.

## **8.9 Traffic Engineers**

The application was referred to Council's Traffic Engineers and a summary of the recommendations are as follows:

Parking Provision:



- The proposed development has a provision of 462 on-site parking spaces including 9 disabled parking spaces which meet the minimum requirement of parking for this site in accordance with RMS guidelines and Council DCP.
- In addition, the development has a provision of 4 motorcycle spaces and 18 bicycle parking spaces to comply with Council DCP.
- The parking provision of this development is considered acceptable.

Heavy vehicle site ingress / egress:

- The traffic report indicates that 19m semi-trailers are to exit the site (turn left) which will encroach into the opposite side of the travel lane which will create potential hazards for oncoming vehicles. It is therefore recommended that the truck size be restricted to a 12.5m large rigid truck or modify the driveway to accommodate 19m semi-trailer turning path. For a semi-trailer turning out of the site, a left turn would be more desirable than right turn.

External road upgrade (Oak Road / President Ave)

- There is a significant alignment issue for Oak Rd with the proposed layout. In order to resolve the alignment issue and reduce the impact on the tree and utilities in north west corner of the intersection, a 50m left turn from President Avenue in to Oak Rd north bound and 3 approach and 1 departure lanes in Oak Road northern approach is recommended.
- Further traffic modelling undertaken by Council indicates that with the concept layout and additional traffic generated from the Woolworths development site (including childcare and commercial components), the President Avenue / Oak Road intersection delay would increase slightly.
- In order to maintain reasonable level of services at the intersection, the proposed Woolworths and Dan Murphy development can be supported without Childcare Centre and commercial components. The President Avenue / Oak Road intersection would need to be upgraded to provide the 50m left turn from President Avenue in to Oak Rd north bound and 3 approach and 1 departure lanes in Oak Road northern approach.

Comment: The development is reliant on external site works including modifying the President Avenue / Oak Road intersection to the south west of the site. Council's Traffic Engineers have been liaising with the Roads & Maritime Service (RMS) to resolve the layout (including geometry) of the intersection to meet RMS satisfaction given the existing constraints at the intersection and the fundamental alignment issue. Resolution of the matter and final response from the RMS has not been received at the time of writing this report.

**8.10 Senior Development Engineer**

Council's Senior Development Engineer has undertaken an assessment of the submission with regards to frontage design / works, vehicular access and parking provision, stormwater construction and site management. Concerns regarding Heavy Rigid Vehicle manoeuvring and potential conflicts within Flora Street are further discussed in the Traffic Engineer referral above. Generally no other objections to the proposal have been raised subject to suitable conditions of development consent.

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### **8.11 Communities Unit**

The application as referred to Council's Community Services Section for comment. The main concern raised relates to the cumulative social impact of liquor licences (restaurant and retail) under approval in the area. The Woolworths site is likely to be less activated at night than South Village. Security, monitored CCTV and graffiti prevention (avoiding blank walls) will all be critical elements in crime prevention through environmental design. Alcohol should be prohibited in the carpark (Alcohol Free Zone). Recommendations have also been made in relation to child care centre design (including carpark), Compliance with AS2890.6 (2009) and Crime Prevention through Environmental Design principles.

### **8.12 Environmental Health**

The application as referred to Council's Environmental Health Officer for comment. Generally no objections were raised subject to suitable conditions of development consent. Loading and delivery times are recommended to be in line with the approved Brick Pit development opposite the site to maintain reasonable residential amenity.

### **8.13 Environmental Science – Contamination**

Council's Environmental Scientist has undertaken an assessment the applicant's submission including Remedial Action Plan (RAP) prepared by an accredited site auditor with respects to land contamination. The preferred remedial option (number 3) within the RAP being 'targeted excavation and offsite removal of the impacted material' is supported to render the site suitable for the proposed commercial and sensitive child care centre land use. Sufficient information has been provided for cl7 of SEPP 55 to be appropriately satisfied and Council can provide specific conditions of consent to ensure that the site is appropriately remediated and a site audit statement prepared at the end of the process. This site audit statement will also be required to state that the site is suitable for the proposed commercial use including a child care facility."

### **8.14 Environmental Science – Air Quality**

Council's Environmental Scientist has undertaken an assessment of the applicant's submission with respects to air quality and children's health. The submitted air quality report including location of the testing is considered reasonable in respect of determining the level of pollutants affecting the site from current traffic and operational activity. The report is however, inconclusive as the applicant has not addressed on and off site in respect to vehicular traffic generated by the development. This includes vehicle emissions generated in close proximity to the childcare centre or potentially exhausted from basement parking areas which could be dispersed within the site. In addition to the potential pollutants generated by traffic utilising the site, and from the new development at the Kirrawee brick pit site and the close proximity to the intersection with Flora St and Oak Rd (which is likely to be heavily congested resulting in queuing of traffic) has not been modelled

Insufficient information has been provided to make a reasonable assessment of the air quality impacts and risk to the health of children using the childcare centre from the changes that will occur from traffic

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both on and off the site. Consideration of the air quality impacts need to also take into account the proposed reduction in the health standards for PM 2.5 from 25ug/m<sup>3</sup> to 20ug/m<sup>3</sup>. Air quality modelling needs to address emissions input from all car parking areas on site (includes basement ventilation) and on street and reflect queuing (approx. 20 to 30m) from the cnr of Oak Rd. An appropriate Air Quality Management Plan should also accompany the information provided and insure that it is included in the Management Plan of the childcare centre

## **9.0 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.

### **9.1 Zone Objectives and Economic Impact**

The proposed development is located within Zone B4 – Mixed Use and the objectives of this zone are as follows:

- *To provide a mixture of compatible land uses.*
- *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.*
- *To permit light industrial uses that are compatible with the desired future residential amenity of the zone.*
- *To facilitate the re-vitalisation of the Kirrawee town centre and the Kirrawee railway station precinct.*
- *To ensure that any expansion of retail activity in 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.*

The redevelopment of the site and the proposal to include another large full-line supermarket in Kirrawee in addition to the Brick Pit re-development site has been subject to prior assessments and consideration. Council's prior assessment and the determination by the Joint Regional Planning Panel concluded that an additional 'full line' supermarket in the Kirrawee locality would adversely impact upon, and significantly undermine the sustainability of Centre's within the Sutherland Shire.

Notwithstanding this prior position, an assessment has been undertaken having specific regard to the core objectives and controls contained within SSLEP2015 and draft SSDCP2015 applicable to this application, and in the context of a Brick Pit development of a scale far greater than previously considered. The development's ability to ensure that the expansion of retail activity in the zone to maintain the role and function of Kirrawee town centre and does not adversely impact on the sustainability of other centres in the Sutherland Shire is of concern. The anticipated devastating impact on surrounding centres and inconsistency with SSLEP2015 is discussed in the assessment below.

Council engaged an external planning specialist to undertake a review of the applicants submitted Economic Impact Assessment (including peer review). Significant concerns have been raised in regard to the conclusions and methodologies used. The proposal fails to satisfy the core objective of the B4 Mixed Use zone in that the proposal does not ensure that the expansion of retail activity in 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.

Approval of the development will have an adverse impact on the effectiveness of the existing retail hierarchy in the Sutherland Shire Local Government Area, in particular the ability of the Sutherland Centre to fulfil its role as a the primary Commercial Centre. The proposal also fails to appropriately facilitate the re-vitalisation of the Kirrawee town centre.

## **9.2 Centre Strategy - Mix of Land Uses**

The site is subject to the specific controls and a Centre Strategy contained within the draft SSDCP2015 for the Kirrawee Town Centre. Whilst a mixed use development is defined as a building or place comprising 2 or more different land uses, the building is anticipated to accommodate an upper residential component. Specifically, draft SSDCP2015 requires the mixed use precinct in Flora Street to include new residential flats above lower level (ground and first floor) commercial development. It is anticipated that at ground level, commercial uses will complement and create an extension of the Oak Road main street precinct.

Council acknowledges the proposed approach to provide only a mix of commercial uses. This does provide flexibility and commercial / employment opportunity in the zone, deviating and providing variation in what otherwise would be a standardised street level commercial environment. It also enables higher intensity commercial activity such as a supermarket to be separate from more sensitive residential land uses. However, as further discussed the inclusion of a residential component in a bona-fide mixed use development as envisaged under Council's Policies could lessen traffic generation and overall impacts.

## **9.3 Centre Strategy & Setbacks / Frontage Design**

Draft SSDCP2015 identifies a strategy for the Kirrawee Centre and the Flora Street Precinct with specific reference to desired setbacks and frontage design. As a core aim the Centre Strategy also seeks to retain and enhance the landscape character of the centre, particularly the established remnant trees Sydney Turpentine Iron Bark Forest (STIF) which is a the local remnant Endangered Ecological Community (EEC). This is to be achieved with the provision of a semi- active frontage and inclusion of a 7.5m setback in the frontage design. The relevant figures contained within SSDCP2015 are provided below:



Figure 4: Street Setbacks



Figure 5: Active Street Frontages

The applicant requests to vary the provisions of SSDCP2015 in the circumstances of this case. It is Council’s view that the development should provide a balance across this expansive site frontage with both a semi- active frontage orientated towards the Kirrawee Centre, and a greater setback to enable the retention of STIF and additional plantings. This would enable the development to contribute to the desired streetscape character and to provide landscape / visual relief to the non-active portions of the building’s facade. The proposal does not include setbacks and a frontage design sufficient to satisfy SSDCP2015 and reliance on planting in narrow strips (including first floor planters) or within the public domain to meet the landscape aims is not supported.

Amendments have been made during the course of assessment whereby the location of the driveway on the north western corner of the site are redesigned to retain the large Ironbarks (*Eucalyptus paniculata*). The proximity of the basement and ground level / forecourt treatment is however inadequate to enable their appropriate retention. A re-design would need to occur, including the reconfiguration of the basement parking level and loss of parking provision.

The retention of the large Ironbark in the north east corner has also not been considered in the design, yet Council acknowledges this to be difficult having regard to the setback controls and proposed site configuration. The development appropriately orientates itself towards the Oak road Kirrawee Centre.

There is a mature *Eucalyptus nicholii* (Willow Leaved Peppermint) and two *Acmena smithii* (Lilly Pilly) located in the middle of the eastern boundary in the neighbouring property (No. 40) that will be impacted by the proposed works. Suitable conditions of consent can be prescribed to adjust the basement footprint and to ensure no more than 10% of the Tree Protection Zone of these trees is removed to ensure their retention. An increased planter width adjoining the property boundary and use of tree blisters (e.g. 5m x 3m x 1200mm deep) should also be incorporated to provide shade and landscape relief within the surface carpark and to support the landscape aims of Council's DCP.

Amendment to the site planning and design of the development is required to respond to the above and provide an approach that reflects the local biodiversity and indigenous plant form / character of the Sutherland Shire. The oversupply of parking enables modification to the basement / hard stands areas possible. As proposed, the development fails to satisfy the relevant provisions of SSLEP2015 and SSDCP2015 and is not supported.

#### **9.4 Traffic Impact, Parking and Safety**

Concerns have been raised regarding the traffic and safety impacts associated with the proposal. Particularly due to the intensity of the proposal (i.e. including a 'full line' supermarket), changing nature of the surrounding road network (including generation of brick pit development) and proximity to adjoining and sensitive land uses such as schools and lower density residential development.

The existing and pending upgraded road network (resulting from the Brick Pit re-development) does not have sufficient capacity to accommodate the proposed development and traffic generated.

There is also a broader deficiency noted within the locality which will limit precinct development envisaged under SSLEP2015. The applicant acknowledges the deficiency and proposes to undertake external roadway upgrades. The intersections of Oak Road / Flora Street and Oak Road / President Avenue require augmentation to accommodate the land use and to minimise external traffic impacts. There are however outstanding concerns regarding the applicant's submission and design which remain unresolved and final response and support from the RMS has not been received. The requirement to upgrade the intersection also results in an adverse impact on existing STIF vegetation (the local remnant Endangered Ecological Community (EEC)) in Pollard park. Along with an intersection upgrade, Council's Traffic Engineers recommend a development of a lesser intensity,

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albeit a reduction in upper level commercial floor space to minimise external impacts and to maintain traffic generation at acceptable levels.

Car parking within the site exceeds the minimum parking rates. Parking (including accessible) and the pedestrian access to the child care centre is not however isolated from the main flow of traffic within the car park. Whilst the mixed use nature of the development is acknowledged, a dedicated parking area and 'safe pedestrian' zone separate from other visitor traffic and parking areas should be provided to minimise risks to children within the parking area.

The fundamental economic issue of whether an additional full-line supermarket is appropriate for this locality remains at hand. The catchment is currently at, or beyond its capacity. From a planning perspective, given the anticipated traffic generation for a supermarket typically exceeds that of smaller commercial uses, the Kirrawee locality would have better opportunity to absorb traffic generated by future mixed use development elsewhere along Flora Street and in the zone should a supermarket be absent from the development catchment. Further, the inclusion of a residential component in a 'mixed use' building (as envisaged under Council's Policies) would further lessen traffic generation and overall impacts.

#### **9.5 Business Operation & Residential Amenity**

The application includes the detailed use and fitout for a Woolworth's supermarket, Dan Murphy's Liquor and a child care centre. There are also 2 retail / café tenancies at ground level and 7 first floor commercial tenancies, the fitout and use of which are not the subject of this application. These commercial spaces within the development will require separate consent for their initial uses post construction of the development.

The land is identified as an 'Intermediate Activity Area' under SSDCP2015 and is subject to the standard Late Night Trading controls with respects to operating hours. Specific controls also exist for bottle shops/package liquor stores must cease trade at 10pm. The proposal conforms to the 'Base Hours' specified within Council's DCP which are the standard operating hours premises may reasonably expect if a development application is approved. The hours in which the loading docks are in use and the development serviced are recommended to be restricted in line with the approval given to the Brick Pits site given the potential impacts to the surrounding residential environment (including Flora Street, Oak Road and Bath Road) and future re-development of adjoining land. These hours of use are generally anticipated within higher density zoned land and are consistent with other examples of commercial premises operating within larger urban Centres with residential interface. It is anticipated that reasonable neighbourhood amenity would be maintained in the Kirrawee precinct subject to the imposition of suitable conditions of development consent.

Consideration to crime prevention and social impacts have been given in relation to the proposed Dan Murphy's and additional liquor retail sales to the Kirrawee locality. Specific concerns have been raised by the NSW Police regarding the applicant's submission, including compliance with SSDCP2015 and the potential adverse safety and social impacts associated with the development. It is noted that the

Brick Pit development also accommodates 2 liquor sale stores and an existing retail outlet is located within the Oak Road Local Centre.

## **9.6 Child Care Centre Design & Health**

The child care centre is proposed to provide long day care for 90 children between the ages 0-6 and operate Monday to Friday between 7:00am and 6:00pm. The absence of immediate residential neighbours /potential noise receivers indicates that no detrimental impact would be presented to the amenity of the neighbourhood. Sufficient separation from the western side boundary is proposed in the event of future redevelopment of the adjoining land for mixed commercial / residential use. The collocation of the land use with the supermarket and liquor store is considered to be acceptable.

The controls and requirements for centres contained within the Education and Care Services National Regulations for Child Care Centres are largely replicated within SSDCP2015. A detailed floor layout / fitout plan (excluding outdoor play space) has not been provided to demonstrate that the facilities within the building and provision of outdoor play space are generally appropriate to accommodate the child capacity proposed. Council is unable to ascertain whether the child care centre has been designed at the assessment stage having regard to these relevant Policies and Standards. Further, the application fails to demonstrate whether an appropriate environmental will be provided and maintained for children with respects to air quality. The potential adverse impacts on children's health must also be considered when assessing site suitability and a precautionary approach is adopted by Council.

Council's DCP requires 1 car space to be provided per 4 children in attendance. The submitted plans indicate 5 dedicated / time restricted parking spaces within the lower basement level adjacent to the lift core. Additional parking is required to be exclusively allocated to the child care centre to comply with the development control. The parking (including accessible) and pedestrian access to the child care centre from the carpark should also be exclusive, safe and separate from other visitor traffic and parking areas associated with the other commercial uses within the development.

## **9.7 Signage Strategy**

The proposal includes a signage strategy which includes 12 signage areas (including 1 double sided pylon sign 8.4m in height) and accommodates 24 signs. A number of the signs are not for business identification, rather are proposed as vehicle directional signage to assist in way-finding for vehicular movement to and from the parking area. With the exception of a wall mural sign located internally within the site, all signs are proposed to be illuminated.

An Assessment of the proposal has been undertaken in accordance with Schedule 1 of SEPP64 (discussed in section 7), SSLEP2015 and SSDCP2015. Generally the signage strategy responds well to the character and zoning of the site being located within a mixed use precinct. The quantum and strategy of unrestricted illumination is not anticipated to reinforce the desired streetscape character and is likely result in obtrusive visual effects and adverse amenity impacts to future residents opposite the site within the Brick Pit residential apartments. The height and scale of the freestanding pylon sign

is also inconsistent with SSDCP2015 (i.e. maximum 8.0m and examples of approvals for similar signage in the locality (e.g. along the Princes Highway associated with motor showroom land uses and the Brick Pit site).

Subject to minor refinement the signage strategy is capable of integrating with the scale / nature of the development and the desired visual character of the mixed use area. This would include reductions in signage size in line with SSDCP2015, and operational restrictions to maintain safety of the vehicle / pedestrian movements (e.g. static signage only) and to protect the amenity of future residents opposite the site (e.g. restrict illumination to business operating hours and level of illumination).

#### **10.0 SECTION 94 CONTRIBUTIONS**

The proposed development will attract Section 94A Contributions in accordance with Council's adopted Mixed Use Kirrawee Plan. This contribution is based upon the proposed cost of the development and has been calculated at 1% of \$45,133,000.00 (the estimated cost of development identified on the development application form). Therefore, Section 94A Levy contributions for the proposed development would be \$451,330.00 in the event of an approval.

#### **11.0 DECLARATION OF AFFILIATION**

Section 147 of the Environmental Planning and Assessment Act, 1979 requires the declaration of donations/gifts in excess of \$1000. In addition Council's development application form requires a general declaration of affiliation. In relation to this development application no declaration has been made.

#### **12.0 CONCLUSION**

The proposed development is for a mixed use commercial development at 24 - 38 Flora Street, Kirrawee. The subject land is located within Zone B4 – Mixed Use pursuant to the provisions of Sutherland Shire Local Environmental Plan 2006. The proposed development is a permissible land use within the zone with development consent from Council.

In response to public exhibition 7 submissions were received.

The economic impacts of the proposal, particularly when considered in conjunction with the intensity of the Brick Pit development site to the north, will adversely impact on the effectiveness of the existing retail hierarchy in the Sutherland Shire Local Government Area. In particular, the ability of the Sutherland Centre to fulfil its role as the primary Commercial Centre. The proposal fails to ensure that the expansion of retail activity in 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. The building form, site planning and overall design (including landscape) fails to reinforce the desired character of development within the Flora Street precinct. Further design refinement and resolution of a number of outstanding matters (including Sydney Trains / RMS) is required prior to a favourable recommendation can be made.

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. DA16/1668 should not be supported for the primary reasons outlined in this report and specified below.

1. The application is considered unacceptable pursuant to the provisions of s.79B(1) of the Environmental Planning and Assessment Act 1979 in that the proposal has failed to obtain concurrence from Sydney Trains required under Section 86 of State Environmental Planning Policy (Infrastructure) 2007.
  2. The application is considered unacceptable pursuant to the provisions of s.79C(1) (a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal fails to satisfy the objectives of Zone B4 – Mixed Use of Sutherland Shire Local Environmental Plan 2015 in that the proposal fails to appropriately facilitate the re-vitalisation of the Kirrawee Town Centre and ensure that any expansion of retail activity in 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.
  3. The application is considered unacceptable pursuant to the provisions of s.79C(1) (a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal fails to comply with Clause 5.9 Preservation of trees or vegetation of Sutherland Shire Local Environmental Plan 2015 in that the proposal fails to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.
  4. The application is considered unacceptable pursuant to the provisions of s.79C(1) (a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal fails to comply with Clause 6.16 Urban Design – General of Sutherland Shire Local Environmental Plan 2015 in that the proposal fails to:
    - i. achieve a high quality design and development outcome;
    - ii. strengthen, enhance or integrate into the existing character of the Kirrawee locality;
    - iii. contribute to the desired future character of the locality concerned;
    - iv. retain or enhance the natural environment;
    - v. appropriately consider the principles for minimising crime risk set out in Part B of the Crime Prevention Guidelines and the extent to which the design of the development applies those principles.
  5. The application is considered unacceptable pursuant to the provisions of s.79C(1) (a) (iii) of the Environmental Planning and Assessment Act 1979 in that the proposal fails to satisfy the development objectives and controls contained within Chapter 16 – B4 Mixed Use Kirrawee and Chapter 34 – Child Care Centres / Signage of Draft Sutherland Shire Development Control Plan 2015 with specific regard to the:
    - i. Locality Strategy;
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- ii. Mix of land uses within development;
- iii. Street setback, semi - active frontage and landscape;
- iv. Child care centre design (internal), parking area and air quality;
- v. Signage.

6. The application is considered unacceptable pursuant to the provisions of s.79C(1) (e) of the Environmental Planning and Assessment Act 1979 in that it is considered that in the circumstances of the case approval of the development would set an undesirable precedent for similar inappropriate development and is therefore not in the public interest.

**RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is the Manager, Major Development Assessment (EPH)