

## SYDNEY SOUTH PLANNING PANEL

<b>SSPP No:</b>	2017SSH012
<b>DA No:</b>	MA17/0129
<b>Local Government Area:</b>	Sutherland Shire
<b>Proposed Development:</b>	Section 96(2) Modification Application to DA15/1134 - Increase in number of commercial tenancies, design amendment to retail tenancy, use of a tenancy for Coles distribution centre, use and fit out as child care centre, amend carparking condition, include liquor sales in supermarket and amend working hours
<b>Street Address:</b>	Lots 1 & 2 DP 589977 & Lot 1 DP 179075 (No. 566-594) Princes Highway, Kirrawee
<b>Applicant/Owner:</b>	Combined Projects (Kirrawee) Pty Ltd
<b>Number of Submissions:</b>	10
<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>• Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.</li> <li>• State Environmental Planning Policy (Infrastructure) 2007.</li> <li>• State Environmental Planning Policy No 55 - Remediation of Land.</li> <li>• State Environmental Planning Policy No 64 - Advertising and Signage.</li> <li>• Sutherland Shire Local Environmental Plan 2015 (SSLEP2015).</li> <li>• Sutherland Shire Development Control Plan 2015 (SSDCP2015).</li> </ul>
<b>List all documents submitted with this report for the panel's consideration:</b>	<ul style="list-style-type: none"> <li>• Draft Conditions of Development Consent</li> <li>• Public Submissions</li> <li>• Proposed plans of development</li> <li>• Calculation plans</li> </ul>
<b>Recommendation:</b>	<b>Approval, in part</b>
<b>Report By:</b>	Daniel Lukic – Environmental Assessment Officer (Planner) Sutherland Shire Council

### **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**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### **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**  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### **Conditions**

*Have draft conditions been provided to the applicant for comment?* **Yes**  
*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## EXECUTIVE SUMMARY

### REASON FOR REPORT

In accordance with the provisions Section 21(1) of *State Environmental Planning Policy (State and Regional Development) 2011*, the SSPP remains as the consent authority for any modification application made pursuant to Section 96(2) of Environmental Planning and Assessment Act 1979 for a regionally significant development determined by the JRPP or SSPP.

### PROPOSAL

Consent is sought to modify Development Consent 15/1134 by undertaking internal and external changes within the commercial component of the development site, increase the number of retail tenancies from 19 to 23, establish a child care centre & a shopping distribution centre and amend conditions of consent at the Brick Pit site, Kirrawee.

### THE SITE

The site is located between The Princes Highway, Oak Road and Flora Street, Kirrawee.

### ASSESSMENT OFFICER'S RECOMMENDATION

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THAT:

Modification Application No. 17/0129 undertaking internal and external changes within the commercial component of the development site, increase the number of retail tenancies from 19 to 23, establish a child care centre & a shopping distribution centre and amend conditions of consents at Lots 1 & 2 DP 589977 & Lot 1 DP 179075 (No. 566-594) Princes Highway, Kirrawee be approved in part and Conditions 1 and 62 be amended in accordance with the following:

1. Approved Plans, Documents & Relationship with other Consents.

*The development must be undertaken in accordance with the terms and conditions of the Major Project MP10\_0076 'Concept Approval' (Inclusive of Modifications 1 - 4) and Development Consent No. DA14/0368 (relating to the early works), **except where modified by Modification Application MA17/0129 submitted to Council on 3 April 2017.** The development must also be undertaken substantially in accordance with the details and specifications set out on the Plan / Drawings:*

<b>Plan number</b>	<b>Reference</b>	<b>Date</b>
<b>Architectural Plans - Prepared by Turner Architects</b>		
DA-101-040 (Rev 3)	Site Plan - General Envelope Diagram	29.01.16
<b>General Arrangement Plans</b>		
DA-110-005 (Rev 4)	Basement 03	12.02.16
DA-110-006 (Rev 3)	Basement 02	29.01.16

DA-110-007 (Rev 3)	Basement 01	12.02.16
DA-110-010 (Rev 3)	Level 01, Building B-C & G Podium	29.01.16
DA-110-020 (Rev 3)	Level 02, Building D-E Podium	29.01.16
DA-110-030 (Rev 3)	Level 03	29.01.16
DA-110-040 (Rev 3)	Level 04	29.01.16
DA-110-050 (Rev 3)	Level 05	29.01.16
DA-110-060 (Rev 3)	Level 06	29.01.16
DA-110-070 (Rev 3)	Level 07	29.01.16
DA-110-080 (Rev 3)	Level 08	29.01.16
DA-110-090 (Rev 3)	Level 09	29.01.16
DA-110-100 (Rev 3)	Level 10	29.01.16
DA-110-110 (Rev 3)	Level 11	29.01.16
DA-110-120 (Rev 3)	Level 12	29.01.16
DA-110-130 (Rev 3)	Level 13	29.01.16
DA-110-140 (Rev 3)	Roof Level	29.01.16
<b>Elevations</b>		
DA-250-001 (Rev 4) except where notated in blue	North & South Elevations	15.03.17
DA-250-101 (Rev 3)	East & West Elevations	29.01.16
<b>Elevations 1:200</b>		
DA-251-010 (Rev 1)	Building A	11.09.15
DA-251-020 (Rev 3)	Building A	29.01.16
DA-252-010 (Rev 4)	Building B	15.03.17
DA-253-010 (Rev 3)	Building C	29.01.16
DA-254-010 (Rev 3)	Building D	29.01.16
DA-254-020 (Rev 3)	Building D	29.01.16
DA-254-030 (Rev 3)	Building D	29.01.16
DA-254-040 (Rev 3)	Building D	29.01.16
DA-255-010 (Rev 3)	Building E	29.01.16
DA-255-020 (Rev 3)	Building E	29.01.16
DA-255-030 (Rev 3)	Building E	29.01.16
DA-255-040 (Rev 3)	Building E	29.01.16
DA-256-010 (Rev 4)	Building F	12.02.16
DA-257-010 (Rev 3)	Building G	29.01.16
DA-257-020 (Rev 3)	Building G	29.01.16
<b>Sections</b>		
DA-350-001 (Rev 4)	Section 1 & 2	29.01.16
DA-350-101 (Rev 3)	Section 3 & 4	29.01.16

DA-350-201 (Rev 3)	Section 5 & 6	29.01.16
DA-730-006 (Rev 1)	Basement 02 to Level 01	11.09.15
DA-730-020 (Rev 1)	Level 02 to Level 05	11.09.15
DA-730-060 (Rev 1)	Level 06 to Level 09	11.09.15
DA-730-100 (Rev 1)	Level 10 to Level 13	11.09.15
<b>Adaptable Apartment Plans</b>		
DA-800-001 (Rev 3)	Sheet 01	29.01.16
DA-800-002 (Rev 3)	Sheet 02	29.01.16
DA-800-003 (Rev 1)	Sheet 03	11.09.15
DA-800-004 (Rev 1)	Sheet 04	11.09.15
DA-800-005 (Rev 1)	Sheet 05	11.09.15
DA-800-006 (Rev 1)	Sheet 06	11.09.15
DA-800-007 (Rev 1)	Sheet 07	11.09.15
<b>Apartment Plans</b>		
DA-810-101 (Rev 1)	1 Bedroom Small	11.09.15
DA-810-151 (Rev 1)	1 Bedroom Large	11.09.15
DA-810-201 (Rev 1)	2 Bedroom Small	11.09.15
DA-810-251 (Rev 3)	2 Bedroom Large	29.01.16
DA-810-301 (Rev 1)	3 Bedroom Small	11.09.15
DA-810-351 (Rev 3)	3 Bedroom Large	29.01.16
DA-810-352 (Rev 3)	3 Bedroom Large	29.01.16
<b>Retail Tenancy Plans</b>		
DA-811-010 (Rev 3)	Retail 01 Supermarket (Major) 1	29.01.16
DA-811-011 (Rev 3)	Retail 01 Supermarket (Major) 2	29.01.16
DA-811-020 (Rev 3)	Retail 02 Liquor	29.01.16
DA-811-030 (Rev 3)	Retail 03 Supermarket (Mini Major)	29.01.16
<b>Signage (External)</b>		
DA-850-008 (Rev 3)	Signage - Ground Level	29.01.16
DA-850-251 (Rev 3)	Signage - North & South Elevations	29.01.16
DA-850-252 (Rev 3)	Signage - East & West Elevations	29.01.16
DA-850-351 (Rev 3)	Signage - Sections 2 & 3	29.01.16
<b>Materials and Finishes</b>		
DA-950-001 (Rev 1)	External Finishes	11.09.15

<b>Landscape Plans - Prepared by Scott Carver Pty Ltd</b> Note: The final design and delivery of the public park is to be determined and finalized as part of the VPA.		
LD-DA000 (Rev 2)	Landscape Cover Sheet	27.01.2016
LD-DA100 (Rev 2)	Tree Management Plan	27.01.2016
LD-DA101 (Rev 2)	General Arrangement Plan	27.01.2016
LD-DA102 (Rev 2)	Detail Plan 1	27.01.2016
LD-DA103 (Rev 2)	Detail Plan 2	27.01.2016
LD-DA104 (Rev 2)	Detail Plan 3	27.01.2016
LD-DA105 (Rev 2)	Detail Plan 4	27.01.2016
LD-DA106 (Rev 2)	Level 1 Podium Plan	27.01.2016
LD-DA107 (Rev 2)	Level 1 Building B Podium Plan	27.01.2016
LD-DA108 (Rev 2)	Level 1 Building C Podium Plan	27.01.2016
LD-DA109 (Rev 2)	Level 2 Podium Plan	27.01.2016
LD-DA110 (Rev 2)	Level 2 A&B Podium	27.01.2016
LD-DA200 (Rev 2)	Landscape Section AA	27.01.2016
LD-DA201 (Rev 2)	Landscape Section BB	27.01.2016
LD-DA202 (Rev 2)	Landscape Section CC	27.01.2016
LD-DA203 (Rev 2)	Landscape Section DD	27.01.2016
LD-DA204 (Rev 2)	Landscape Section EE	27.01.2016
LD-DA205 (Rev 2)	Landscape Section FF	27.01.2016
LD-DA206 (Rev 2)	Landscape Section GG	27.01.2016
LD-DA210 (Rev 2)	Level 1 Podium Section AA + BB	27.01.2016
LD-DA211 (Rev 2)	Level 2 Podium Section AA + BB	27.01.2016
<b>Internal Site Works Plans – Prepared by NORTHROP</b>		
DA1.01	Cover Sheet, Drawing Schedule and Locality Plan	28.01.16
DA1.11	Specification Notes – Sheet 1	28.01.16
DA1.12	Specification Notes – Sheet 2	28.01.16
DA1.21	General Arrangement Plan	28.01.16
DA1.31	Typical Sections – Sheet 1	28.01.16
DA1.32	Typical Sections – Sheet 2	28.01.16
DA1.40	Property Acquisition Works - Overall	28.01.16
DA1.41	Property Acquisition Works – Sheet 1	28.01.16
DA1.42	Property Acquisition Works – Sheet 2	28.01.16
DA1.43	Property Acquisition Works – Sheet 3	28.01.16
DA2.01	Concept Sediment and Erosion Control Plan	28.01.16
DA2.11	Sediment and Erosion Control Details – Sheet 1	28.01.16
DA3.01	Bulk Earthworks Plan	28.01.16
DA4.01	Concept Stormwater Management Plan - Overall	28.01.16
DA4.02	Stormwater Catchment Plan	28.01.16

DA4.11	Concept Stormwater Management Plan – Sheet 1	28.01.16
DA4.12	Concept Stormwater Management Plan – Sheet 2	28.01.16
DA4.13	Concept Stormwater Management Plan – Sheet 3	28.01.16
DA4.14	Concept Stormwater Management Plan – Sheet 4	28.01.16
DA4.31	Stormwater Management Devices – Sheet 1	28.01.16
DA4.32	Stormwater Management Devices – Sheet 2	28.01.16
DA4.33	Stormwater Management Devices – Sheet 3	28.01.16
DA4.34	Stormwater Management Devices – Sheet 4	28.01.16
DA4.35	Stormwater Management Devices – Sheet 5	28.01.16
DA5.01	Concept Siteworks and grading Plan - Overall	28.01.16
DA5.11	Concept Siteworks and Grading Plan – Sheet 1	28.01.16
DA5.12	Concept Siteworks and Grading Plan – Sheet 2	28.01.16
DA5.13	Concept Siteworks and Grading Plan – Sheet 3	28.01.16
DA5.14	Concept Siteworks and Grading Plan – Sheet 4	28.01.16
DA5.31	Road Longitudinal Sections – Sheet 1	28.01.16
DA5.32	Road Longitudinal Sections – Sheet 2	28.01.16
DA5.41	Road Cross Sections – Sheet 1	28.01.16
DA5.42	Road Cross Sections – Sheet 2	28.01.16
DA5.43	Road Cross Sections – Sheet 3	28.01.16
DA9.01	Details – Sheet 1	28.01.16
<b>External Works Plans – Prepared by NORTHROP</b>		
DA11.01	Cover Sheet, Drawing Schedule and Locality Plan	28.01.16
	Inclusive to	
DA20.06	Details – Sheet 6	28.01.16
<b>Torrens and Stratum Title Subdivision – Prepared by John Walton</b>		
2750-15DP1 (Ver 1)	Draft Subdivision Road Dedication Sheets 1-2	28.09.15
2750-15DP2 (Ver 1)	Draft Subdivision Park dedication Sheets 1-2	28.09.15
2750-15DP3	Draft Subdivision 5 Lot Stratum Sheets 1-8	29.01.16

and any details on the application form and on any supporting information received with the application except as amended by the following conditions.

**Note:** The following must be submitted to Sutherland Shire Council prior to the commencement of any building or subdivision work.

- i) A Construction Certificate/s.
- ii) Notification of the appointment of a Principal Certifying Authority and a letter of acceptance from that Principal Certifying Authority.

- iii) *Notification of the commencement of building and/or subdivision works with a minimum of 2 days' notice of such commencement.*

*Under section 109E(2) of the Environmental Planning and Assessment Act 1979, please note that Sutherland Shire Council must be appointed as the Principal Certifying Authority for all subdivision works.*

62. *Hours of Operation & Operational Management*

*These conditions are imposed to ensure that the operation of the licensed premises does not adversely affect the amenity of the locality.*

**A. Ongoing**

i) *Trading Hours*

*The Coles and Aldi supermarkets may operate between the hours of 6.00am and 12 midnight seven days a week. The ancillary liquor retail sales within Coles and Aldi shall cease trade at 9:00pm or as reduced by the NSW Department of Industry – Liquor and Gaming (or subsequent amending department or authority).*

***The First Choice Liquor Store shall operate between the hours of 9.00am to 9.00pm Monday to Saturday and 10.00am to 9.00pm Sundays.***

ii) *Occupation of the site*

*The premises must not be occupied by staff or contractors beyond 1 hour after the cessation of trading nor before 8.00am on any day.*

*Note: Only Cleaning, bakery and fresh food preparation for staff and contractors is permitted undertaken outside these hours of operation, between midnight and 6am daily*

iii) *Sale of Liquor*

*The sale and supply of liquor in the licensed premises must be in accordance with the terms and conditions of an approved liquor licence issued by the Office of Liquor Gaming and Racing.*

*Any liquor supplied or sold must not be consumed on the premises.*

iv) *Plan of Management*

*In addition to the above the premises must operate in accordance with the Operational Management Plan (Appendix 27) submitted with this application.*

v) ***Hours of Operation for dispatch vehicles associated with the shopping distribution facility***

***All dispatch vehicles associated with the shopping distribution centre must only enter and leave the site between 6am to 10pm, Monday to Sunday.***

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## **ASSESSMENT OFFICER'S COMMENTARY**

### **1.0 DESCRIPTION OF PROPOSAL**

The application seeks approval for internal and external modifications to facilitate the following primary amendments:

- the subdivision of retail tenancy 02 into five tenancies (retail tenancy 02, 02A, 02B, 02C, and 02D) including an extension of retail tenancy 02A towards the west;
- use of the new retail tenancy 02 for a Coles distribution centre, with the use of the remaining tenancies 02A, 02B, 02C, and 02D subject to separate development applications or complying development certificate;
- the subdivision of retail tenancy 05 into two tenancies (retail tenancy 05 and 05A);
- the use and fit out of retail tenancy 05 as a child care centre;
- minor changes to the configuration and shape of various other retail tenancies including reduction to the size of retail tenancies 18 and 19, minor expansion of retail tenancies 15 and 16 to the north, minor expansion of retail tenancies 10-14 to the south;
- modification to the stair and escalator access from Flora Street to ground floor level in between retail tenancies 16 and 19;
- amendment of condition No. 5(iii) regarding car parking provision for the commercial uses to reflect the Concept Plan approval;
- clarification in the conditions of consent that the approved supermarket use includes ancillary liquor sales; and
- amendment to Condition No. 62 to allow re-stocking inside the Coles and Aldi supermarkets to occur outside of the trading hours.

**Appendix B:** proposed amended floor plans for the commercial component of the development.

**Appendix C:** proposed fit out plan for the child care centre within Retail 05.

The modification application seeks to amend Conditions 1, 5 and 62 of this consent. A copy of Conditions 1, 5 and 62 form **Appendix D** to this report.

### **2.0 SITE DESCRIPTION AND LOCALITY**

The former 'Brick Pit' site is located at 566-594 Princes Highway Kirrawee is bounded by the Princes Highway to the north, Oak Road to the west, Flora Street to the south and two parcels of land being used for industrial purposes to the east. The site is located approximately 250m from the Kirrawee Centre and Railway Station and is 42,524m<sup>2</sup> in size. A large tract of remnant Sydney Turpentine-Ironbark Forest



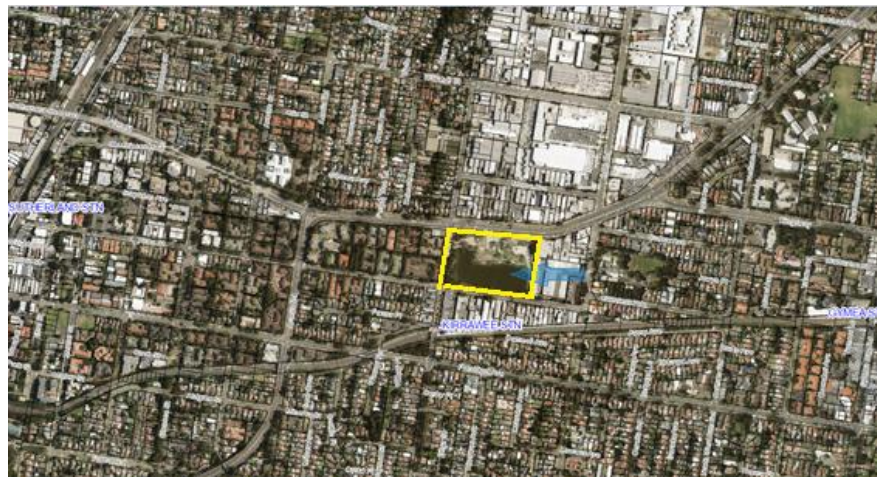
(STIF) is accommodated in the south-west corner of the site and the land accommodates an item of local heritage significance, being the remnant brick kiln.

The Kirrawee Local Centre is located south-west of the site. This commercial precinct is characterised by single storey commercial and shop top housing. West of the site are three storey residential apartment buildings. To the north, south and east of the site are predominantly industrial developments. Low density residential land uses and associated land uses (education/placed of public worship) are located approximately 200m further along Flora Street / Bath Road to the east.

At present, construction works associated with this development consent have commenced onsite.



*Image A: Aerial View of Site*



*Image B: Aerial View of Locality*

### **3.0 BACKGROUND**

A history of the development proposal is as follows:

- Major Project MP10\_0076 (the Concept Approval) was approved by the Department of Planning (the Department) on 23 August 2012.
- The Concept Approval has been amended four times. Modification No.3 (MOD3) being the most significant whereby the number of units increased from 459 to 749 and limited the retail/commercial and the residential floor space areas to 69,310m<sup>2</sup> and 14,190m<sup>2</sup> respectively.

- A fifth modification (MOD5) of the Concept Approval has been lodged with the Department which seeks consent to increase the number of residential units to 808 from 749. This application is yet to be determined.
- Development Application 15/1134 (the original DA) was submitted on 30 September 2015 and approved by the Joint Regional Planning Panel (JRPP) on 2 May 2016, subject to conditions.
- Four modifications have been determined by the way of approval which included setback changes, deletion and amendments to a number of conditions, hours of operation, parking restrictions, deliveries, signage, adjustments to parking, excavations matters, changes to levels and modifications to be consistent with MOD3. These modifications applications were approved in part.
- This modification application was lodged with Council on 3 April 2017.
- The application was publicly exhibited from 11 April 2017 to 11 May 2017. Ten submissions were received.
- On 3 May 2017, an Information Session was held at Council. Four people attended.
- On 14 June 2017, a letter was sent to the applicant seeking clarification and additional information.
- On 20 June 2017, the Sydney South Planning Panel (SSPP) was briefed on the development proposal. Eight key issues were discussed, being: clarification on traffic modelling, number and types of vehicles used for the online shopping distribution facility, clarification of parking rates, clarification of parking shortfalls, clarification on how the amenity of residents will be protected from the operation of a 24 hours distribution facility, additional information being submitted for the child care development, amendments to the air quality impact assessment report, and information regarding the location of exhaust and ventilation systems for basement parking.
- On 3 July 2017, additional information was received from the applicant.

#### 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 provided adequate information to enable an assessment of this application.

#### 5.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the Administrative Provisions of Draft Sutherland Shire Development Control Plan 2015. Then (10) submissions were received.

A full list of the locations of those who made submissions, the dates of their correspondence and the issues raised is contained within **Appendix E** of this report.

A summary of the main issues is provided below:

Address	Date of submission	Issues
48/81 Flora Street, Kirrawee	5/4/2017	1, 2, 3, 4, 5
48/81 Flora Street, Kirrawee	6/4/2017	1
1 Inverness Place, Kareela	6/4/2017	4, 6
No address given	16/4/2017	7

No address given	20/4/2017	2, 6, 7, 8
No address given	18/4/2017	Concerns are not relevant to the application
5 Fauna Place, Kirrawee	28/4/2017	5, 6, 9
48/81 Flora Street, Kirrawee	9/5/2017	10
No address given	11/5/2017	2, 5, 6, 10
26 Durbar Avenue, Kirrawee	12/5/2017	5, 6, 12, 13

#### 5.1 Loss of the Aldi Shopping Facility

The plans of development show that the Aldi shopping facility will remain within the development.

#### 5.2 Impacts of a 24hr distribution centre

The hours of operation for the distribution centre have been amended by the applicant. It is proposed to limit the operation of the distribution centre between 6am to 12am, seven days a week.

#### 5.3 Concerns with another child care development located in the locality

It is recognised that a number of approvals have been granted for new child care developments in recent times in addition to existing facilities within the Kirrawee locality. However, the impact of a new facility and/or competition is not a matter that is typically taken into account in a planning assessment.

#### 5.4 Loss of the park, lake and library and impacts to the community

This application does not propose and/or seek any changes to the park and/or community facilities.

#### 5.5 Opposed to the number of units increasing from 749 to 808.

MOD5 has been lodged with The Department of Planning and Environment seeking their consent to increase the number of residential units. The assessment of MOD5 has no impact upon the assessment of the subject modification application.

At the time of drafting this assessment report, MOD5 is yet to be determined by the Department.

#### 5.6 Traffic and capacity of the public road system

Concerns have been raised by Council's Engineering Division regarding traffic generation and the capacity of the local road system. A detailed assessment is provided in Section 9 of this report.

#### 5.7 Opposed to the number of tenancies in the commercial component of the site due to increased impacts

The number of tenancies will increase from 19 to 24, which will be achieved by dividing some of the larger tenancies into smaller tenancies. An increase in the number of tenancies is considered negligible, however; there are other issues associated with the proposal that are addressed in Section 9 of this report.

#### 5.8 Development is out of character with the locality

The modification application does not seek any major changes to the built form assessed and approved by the Concept Approval and the original DA. As such, the modification application is acceptable in this regard.

#### 5.9 Loss of on-street car parking

This was considered during the assessment of the Concept Approval and the original DA. While the proposal will introduce two new traffic generating land uses within the approved commercial level, the modification application will not result in any additional impacts regarding on-street parking than what has been assessed in the aforementioned applications.

#### 5.10 There are already sufficient amount of commercial/retail shops within the existing Kirrawee village. Impacts upon pedestrian movements by construction and general traffic movements, Development contravenes LEP height limit and too many storeys, Development is out of character with the locality.

The impact of the development upon the existing commercial precinct in Kirrawee, impacts associated with the construction, height limits and character of the development were all considered in the assessment of the Concept Approval and the original Development Application. The development was considered acceptable in regard to the aforementioned matters.

#### Revised Plans

The applicant lodged revised architectural plans on 3 July 2017. In accordance with the requirements of draft SSDCP2015 these plans were not publicly exhibited as, in the opinion of Council, the changes being sought did not intensify or change the external impact of the development to the extent that neighbours ought to be given the opportunity to comment.

### **6.0 STATUTORY CONSIDERATIONS**

The land is zoned Part B4 Mixed Use and Part RE1 Private Recreation in accordance with Sutherland Shire Local Environmental Plan 2015 (SSLEP2015). The proposed development is characterised as being 'mixed use' and is a permissible land use activity with development consent.

The following Environmental Planning Instruments (EPIs) and Development Control Plan (DCP) are relevant to this application:

- Sutherland Shire Local Environmental Plan 2015 (SSLEP2015).
- Sutherland Shire Development Control Plan 2015 (SSDCP2015).

### **7.0 STATEMENT OF COMPLIANCE**

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

Standard/ Control	Required	Proposed	Complies? (% Variation)
<b>Sutherland Shire Local Environmental Plan 2015</b>			
Clause 4.3 height of building	50m	No change to approved building.	Not Applicable
Clause 4.4 floor space ratio	2.0:1	An increase of 454.3m <sup>2</sup> of commercial/retail GFA	No. A 3.2% increase to commercial/retail GFA. Refer to Section 9.1.
<b>Sutherland Shire Development Control Plan 2015 – Chapter 17</b>			
8.2.2	Loading & unloading within site.	No change to approved arrangements	Yes
13.2.2	Car Parking Rates 1 space per 4 children in attendance (Reduced rate assessed on merit) Total required: 23	7 on-street spaces to be converted to 15min time limited parking between 7.30-9.30 and 2.30-5pm.	No. 228.5% non-compliance. 16 spaces are deemed appropriate. See Section 9.3
<b>Sutherland Shire Development Control Plan 2015 – Chapter 35 Other Uses (Child Care Centres)</b>			
Entry	Well lit entry and visible to street	Entry has been designed to comply	Yes
Outdoor play areas	Located to north/north east of building Away from parking areas Adequate distance from adjoining living/bedrooms	Outdoor play area has northern aspect, located above and as far as practical away from parking areas, adequate separation from residential units	Yes
Garbage	Located to minimise noise & odour and adequate storage capacity	A central waste facility is provided for all commercial tenancies in Basement Level 3	Yes
Health	Within 150m major road, where >6000 movements/day, air quality report to demonstrate suitable air quality	Revised air quality impact assessment report demonstrates compliance.	Yes

## 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 Roads and Maritime Services

The application was referred to the Roads and Maritime Services who raised no objection to the proposal.

### 8.2 NSW Police Force – Sutherland Local Area Command

The application was referred to The NSW Police Force who recommended no conditions of consent. However, concerns were raised regarding the first occupation of tenancies by Complying Development Certificate approvals where development consent conditions relating to sale of alcohol may not be included. Clarification has been sought.

### **8.3 Ausgrid**

The application was referred to Ausgrid who recommended conditions of consent. However, conditions have already been imposed in the original consent.

### **8.4 Architect (Assessment Team)**

The application was referred to Council's Architect who raised concerns with Crime Prevention Through Environmental Design (CPTED) in regard to the proposed amendments to the pedestrian entrance from Flora Street. This issue is discussed further in Section 9.5.

### **8.5 Health Regulations Unit**

The application was referred to Council's Health Regulation Unit who, apart from raising some issue with restocking of shelves outside of trading hours, raised no objection to the proposal.

### **8.6 Environmental Scientist**

The application was referred to the Environmental Scientist who raised no issues with the additional information submitted in response to initial concerns regarding air quality. Conditions are recommended.

### **8.7 Community Services**

The application was referred to Council's Community Services Section who advised they are supportive of the child care centre, but raised concerns with air quality due to the child care's proximity to The Old Princes Highway. A greater number of parking spaces are recommended to be provided for the child care centre.

### **8.8 Engineering Division**

The application was referred to Engineering Division – Traffic Engineer who has advised that the development is unacceptable based on traffic generation and access to the site. These issues are discussed in detail in Sections 9.2 and 9.5 of this report.

## **9.0 ASSESSMENT**

Following a detailed assessment of the application having regard to the Heads of Consideration under Section 79C(1) of the Act 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 Consistency with the Part 3A Major Project Concept Approval - Gross Floor Area Conflicts**

The Concept Approval sets out the development parameters for the site including building levels, envelopes, quantum of gross floor areas, parking provision, finished heights, separation distances and setbacks. The Concept Approval gave consent to a total gross floor area of 14,190m<sup>2</sup> for the commercial component of the development.

The statement that accompanied the modification application states that the proposed amendments do

not result in any change to the approved commercial/retail gross floor area (GFA). However, upon review of the proposed plans, the commercial/retail gross floor area will be altered as detailed below:

- The expansion of proposed Retail Tenancy 02A into five tenancies will increase in retail/commercial GFA by 240.5m<sup>2</sup>.
- A 89.5m<sup>2</sup> mezzanine level in proposed Retail Tenancy 02 will be deleted.
- The alterations to Retail Tenancies 18 and 19 will increase in commercial/retail GFA by 53.6m<sup>2</sup>
- The alterations to Retail Tenancies 12, 13 and 14 will increase in commercial/retail GFA by 108.2m<sup>2</sup>
- The alterations to Retail Tenancies 10 and 11 will increase in commercial/retail GFA by 87.2m<sup>2</sup>
- The alterations to Retail Tenancies 15 and 16 will increase in commercial/retail GFA by 54.3m<sup>2</sup>

The commercial/retail GFA is proposed to increase by 454.3m<sup>2</sup>, resulting in a total GFA of 14,643.2m<sup>2</sup>. This represents an increase of approximately 3.2%.

**Appendix F** shows Council's calculation of the resultant increases.

The GFA plans submitted with the modification application (**Appendix G**) do not include the outdoor play area associated with the child care development as commercial/retail GFA. The outdoor play area must be included in the GFA calculation in accordance with the definition of SSLEP2015 (that is, the development has external walls/non-openable elevation to the Princes Highway) and furthermore, it has the capacity of being used for other commercial and/or retail land use activities in the future. **Appendix H** shows the GFA plans submitted with Development Application DA15/1134.

Consent cannot be granted to any increase of commercial/retail GFA pursuant to s96 of the Act as this is not the legal planning mechanism to make such changes. A s96 modification application cannot override a Part 3A approval. Any change to the quantum must be subject of a s75W modification application. Given the substantial difference to commercial/retail GFA, it is recommended that the Panel refuse the changes that result in any increase in the GFA as the proposed plans of development will not be consistent with the Concept Approval.

Despite the above, based on the merits of the case, the division of Retail Tenancy 02 into Tenancies 02 (the shopping distribution facility) and Tenancies 02B, 02C & 02D and the division of Retail Tenancy 05 to create 05 and 05A can be supported as these changes do not result in any additional GFA. The creation of Tenancy 02A can only be supported if the westward extension is refused as the extension results in additional commercial/retail GFA.

## 9.2 Traffic Generation and the capacity of the local road system

A comprehensive assessment has been undertaken by Council's Traffic Engineer. The following comments are made:

*“Although the s96 does not result in any change to the approved GFA of 14,190m<sup>2</sup> (this statement is superseded by the commentary made in Section 9.1 above) it consists of a substantial reduction in low traffic and parking generator GFA such as amenities/circulation area from 933m<sup>2</sup> to 273m<sup>2</sup> and showroom area from 3,902m<sup>2</sup> to 1,448m<sup>2</sup>. In lieu of this, it proposes to increase high parking and traffic generating areas such as the child care centre with 90 children, medical component of 817m<sup>2</sup>, Coles Dark Store of 585m<sup>2</sup>, and speciality store of 909m<sup>2</sup>.*

*The s96 traffic report prepared by Ason group has estimated that introducing additional high parking and traffic generator GFA would generate additional 75 vehicle trips during PM peak hour and 6 vehicle trips during Saturday peak hour. In order to address the traffic impact for s96 GFA changes, the applicant has adopted lower traffic generation rate for other components such as supermarket, mini-major, speciality store based on the survey in East Village development, Victoria Park.*

*The methodology to adopt the lower generation rate is considered inappropriate, as Brickpit site is located in high car ownership area and not accessible by frequent public transport services.*

*Council revised traffic modelling indicates that with the traffic generated from approved DA15/1134 (using Halcrow trip generation rate) the President Avenue/Oak Road intersection would operate unsatisfactorily with LoS F with average delay of 85 seconds. This is a significant increase in delay and indicates the intersection requires upgrading for the approved Brickpit traffic to maintain the current LoS. Unfortunately, this was not satisfactorily addressed as part of the approved Brickpit applications and original concept plan.*

*Therefore, the additional traffic generated from the s96 will further deteriorate the intersection LoS and delay, and hence cannot be supported without increasing the capacity of the President Avenue / Oak Road intersection.”*

Due to external traffic generation impacts, Council's is not supportive of the child care centre as this is a high traffic generator and it cannot be supported without modifications to the President Avenue and Oak Road intersection. However; no objections are raised to the operation and use of the shopping distribution facility.

The shopping distribution facility will only generate three additional trips during PM hour. Vehicles associated with the distribution facility will have four parking spaces located on Basement Level B3 and these vehicles will enter and leave the site from the loading dock access points, thus, not conflicting within resident and/or consumer traffic.

Based on the merits of the application, it is recommended that the Panel refuse the child care centre component of the modification application and only approve the shopping distribution facility.



### 9.3 Car parking requirements for the 90 space Child care centre

Condition 5(iii) of the Original DA states “...the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times.” This parking quantum was set by those car parking rates that were established by Condition 14 from the Concept Approval.

Condition 14 from the Concept Approval does not contain any car parking rate for a child care development and as such, SSDCP2015 prevails.

The statement that accompanied the application and separately the Traffic Impact Assessment Report (TIA) advises that the site has the capacity to provide a total of 564 parking spaces for non-residential uses, however; no evidence and/or plans were submitted to demonstrate how this can be achieved. It is likely that internal landscaping and street tree planting would be lost to accommodate any increase in parking provision.

The applicant has proposed that seven (7) parking spaces located adjacent to the child care centre at ground level/internal road be used for drop off/pick up purposes and such spaces be time restricted to 15 minutes (P1/4) between 7.30am to 9.30am and 2.30pm to 5.00pm, Monday to Friday. SSDCP2015 requires one parking space per four children, thus 23 parking spaces must be provided. The 23 parking spaces for the child care development will increase the total demand to 564 spaces.

The child care centre was not a land use activity that was ever envisaged as part of the Concept Approval or in the assessment of the Original DA. The TIA report assumes that the majority of uses of the child care development will be parents/carers that either live or work within the site and visit the centre by means other than private car. Further, the TIA states that the site benefits from a high level of public transport accessibility and providing car parking below the maximum permissible rate would further encourage the use of public transport, lessening the demand for additional parking to be provided in association with the child care development.

Council is of the opinion that the justification in the TIA to vary parking requirements is not well founded. The Brick Pit site is not well supported by public transport systems and there is no certainty that only parents/careers residing in the Brick Pit site will form the majority of users of the child care centre. The Sutherland Shire is not afforded with the same level of public transport services that is available to the East Village development, Victoria Park, and as such, is heavily depended on passenger motor vehicles.

Given that the child care centre development is a traffic generating land use activity which will generate additional demand for parking, Council is of the opinion that additional parking must be provided. However, as detailed earlier in this report, consent cannot be granted to the modification application as parking rates have been set by the Concept Approval and consent cannot be granted pursuant to s96 of the Act to override the Part 3A approval. Any change to the quantum must be subject of a s75W

modification application. Further, Condition 5(iii) of the Original DA sets the maximum of 541 parking spaces for the commercial development. Approval of the application in its current form will also be inconsistent with the Original DA.

Based on the merits of the application, it is recommended that the Panel refuse the child care development.

#### 9.4 Car parking requirements for the commercial floor space increase

As detailed above, the proposed reconfiguration of the commercial/retail floor plate results in an additional 454.3m<sup>2</sup> floor space. In accordance with Condition 14(a) of the Concept Approval (dealing with car parking rates), Retail Tenancies 10 to 16 inclusive, Tenancies 18 & 19 and Retail Tenancy 02A are likely to be used for "Specialty Retail" which require 4.2 spaces per 100m<sup>2</sup>. According to Council's calculations, an additional 108 parking spaces are required, or a total demand of 649 spaces.

Condition 5(iii) of the Original DA states *"...the parking demand of the non-residential uses within the development must not exceed the parking provision provided (i.e. 541 spaces). Future use of the commercial spaces shall be restricted to ensure sufficient parking is provided at all times."*

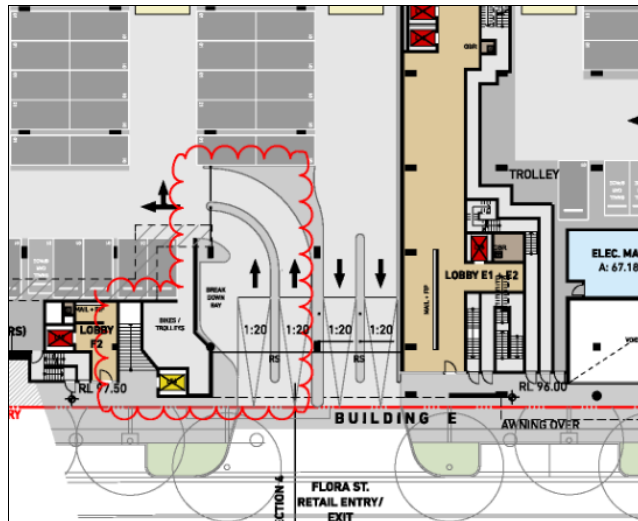
Condition 14(a) of the Concept Approval is a limiting factor to the subject modification application. The Concept Approval condition cannot be overridden by the additional parking demands created by the additional commercial/retail GFA created in the subject application. Without change to the GFA quantum and parking allocations set by the Concept Approval, refusal of the subject modification application is warranted.

Based on the merits of the case, it is recommended that the Panel refuse the reconfiguration of the commercial/retail floor plate that result in additional commercial/retail GFA. As such, the changes to Retail Tenancies 10 to 16 inclusive, Tenancies 18 & 19 and the westward expansion of Tenancy 02 must be refused. There can be no additional GFA added to the development unless an amendment is considered and approved by the Department pursuant to s75w of the Act.

#### 9.5 Access from Flora Street and stair and escalator access

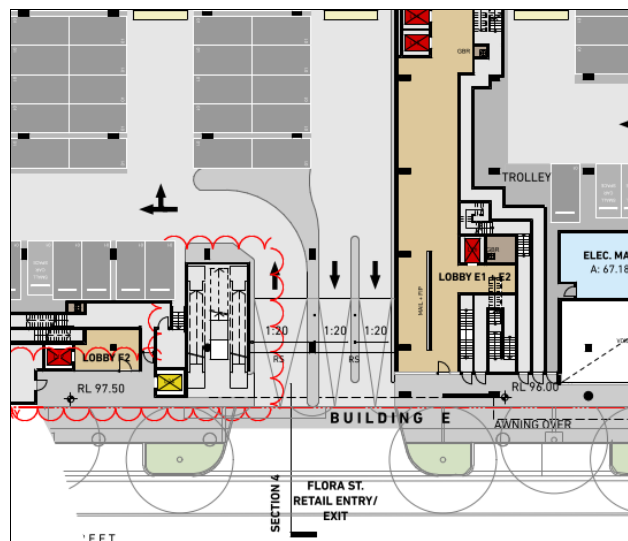
Consent is sought for the modification of the stair and escalator access from Flora Street to the ground floor between Retail Tenancies 16 and 19. Whilst the stairs and escalator will maintain pedestrian access to the commercial and retail areas, it will result in an adverse impact to vehicular access to the parking areas from Flora Street.

The approved plans below show two entry and two exit lanes to Basement Level 1, with recessed boom gates and a car break down bay (refer to Image C below). The recessed boom gates will allow for six vehicles to queue within the site waiting for access into the car parking area.



*Image C: approved pedestrian and vehicle entrance off Flora Street*

The proposed pedestrian and access alteration (see Image D below) will reduce the access to only one entry and two exit lanes to Flora Street, deleting the break down bay and provide only a single boom gate located at the property boundary. The boom gate will eliminate any opportunity to queue onsite, resulting in longer queuing on Flora Street, thus affecting the efficiency of the access arrangements.



*Image D: proposed pedestrian and vehicle entrance off Flora Street*

CPTED concerns are raised regarding the changes. The amended plans will result in additional concealment areas internal and external of the site. Conditions requiring the location of the elevator to be moved so that it is setback and in line with the southern wall of the proposed stairs and escalators so as to remove concealment areas should be included if the SSPP were of a view that this aspect of the development should be supported.

However, based on the merits of the case, it is recommended that the Panel not to support the amended pedestrian and vehicular access arrangements due to CPTED and adverse impacts of additional traffic & queuing and the reduced access efficiency into the basement parking level off Flora Street.

#### 9.6 Condition 5(iii) – Car Parking

*The applicant seeks to amend Condition No. 5(iii) regarding car parking provision for the commercial uses to reflect the Concept Plan approval;*

Council is of the opinion that there is no utility in replicating Condition 14 from the Concept Approval into the development consent. Condition 5(iii) of the Original DA is reflective of the Concept Approval condition. As such, it is recommended that Condition 5(iii) of Development Consent DA15/1134 remain as originally approved.

#### 9.7 Ancillary Liquor Sales

*The applicant seeks to further clarify in the conditions of consent that the approved supermarket uses include ancillary liquor sales; and*

Council raises no objection to the proposed amendments to the condition, however; it is recommended that the condition be amended not in the manner specified by the applicant. Council is of the opinion that the sale of liquor be limited to 9pm or as reduced by the NSW Department of Industry – Liquor and Gaming (or subsequent amending department or authority). This will ensure that any changes to licensing and/or restrictions set by the aforementioned department and/or authority does not affect compliance with the consent conditions and/or require any modifications to the development consent.

#### 9.8 Supermarket Activities

*The applicant seeks to amend Condition No. 62 to allow re-stocking inside the Coles and Aldi supermarkets to occur outside of the trading hours.*

Condition 62A(i) of the Original DA permit the supermarkets to operate from 6am to 12am, seven days a week, except liquor sales which are restricted to 9pm.

Condition 62A(ii) of the Original DA already permits staff to remain onsite for an hour after the cessation of trade, in this case 1am. Further, Condition 62A(ii) permits “cleaning, bakery and fresh food preparation for staff and contractors is permitted undertaken outside these hours of operation, between midnight and 6am daily.” Please refer to **Appendix D** for conditions of consent as originally approved.

Council is of the view that there is already ample opportunity afforded for the restocking of shelves. Restocking, in most circumstances, can be undertaken either before peak AM and/or after peak PM shopping hours where customer levels are minimal. There has been no evidence provided with the application that demonstrates any need for any extension in time for internal restocking to occur between 12am to 6am. As such, it is recommended that the condition remain as drafted.

With the introduction of the Coles shopping distribution facility, it is recommended that the hours of operation for dispatch by vehicle from the Coles distribution facility will be limited between 6am to 10pm,

seven days a week. This is consistent with the information provided on the Home Delivery and Collection Information section on the Coles Australia website.

Limiting vehicle dispatch times will ensure that the amenity of sensitive receptors is maintained at all times, not only for residents within the Brick Pit, but particularly those sensitive receptors living in the immediately area and nearby vehicle access locations. As such, it is recommended that item (v) be added to Condition 62 to limit dispatch times between 6am to 10pm, seven days a week.

#### **9.9 Changes to the building façade**

Consent is sought to make changes to the window treatment along the façade. Apart from the issues raised in Section 9.5 regarding the access into the basement level from Flora Street, no issues are raised to the proposed alterations.

### **10 SECTION 94 CONTRIBUTIONS**

The modification application does not trigger any additional developer contributions pursuant to Section 94 or Section 94A of the Environmental Planning and Assessment Act 1979.

### **11 DECLARATION OF AFFILIATION**

Section 147 of the EP&A Act requires the declaration of donations or gifts in excess of \$1,000. In addition, Council's DA form requires a general declaration of affiliation. In relation to this MA, a declaration has been made that there is no affiliation.

### **12 CONCLUSION**

Consent is sought to modify Development Consent 15/1134 undertaking internal and external changes within the commercial component of the development site, increase the number of retail tenancies from 19 to 23, establish a child care centre & a shopping distribution centre and amend conditions of consent at the Brick Pit site, Kirrawee.

Based on the merits of the application, Council recommends that the SSPP approve the modification application in part, subject to conditions. Due to increases in the gross floor area of the commercial/retail area of the Brick Pit development, consistency issues with the Part 3A Concept Approval and traffic generation concerns, Council recommends that the Panel refuse any changes that result in the increase in GFA, the amended access to Flora Street and the operation and use of a child care centre.

A summary of Council's recommendations are as follows:

- a) Refuse any increase in commercial/retail Gross Floor Area, specifically the changes proposed to Retail Tenancies 02A, 10 to 14 inclusive, 15-16, 18-19
- b) Support the shopping distribution facility
- c) Support the division of Retail Tenancy 02 to create tenancies 02A, 02B, 02C, 02D and 02E except for any extension to tenancy 02A
- d) Support the division of Retail Tenancy 05 to create tenancies 05 and 05A

- e) Refuse the fitout of Retail Tenancy 05 for a child care centre
- f) Refuse the modification to the stair and escalator access from Flora Street
- g) Refuse to amend Condition No.5(iii)
- h) Support amendment to Condition 62 regarding liquor sales
- i) Refuse the amendment to Condition 62A(i) regarding restocking of shelves after hours for the supermarkets
- j) Amend Condition 62A to insert operational hours for vehicles associated with the shopping distribution facility
- h) Support the changes to the building façade except those changes associated with the proposed modified pedestrian access from Flora Street.

Ten submissions were received during the public exhibition period. The matters raised have been discussed in the report and conditions, where required, are recommended to ensure that the proposal has minimal adverse impacts.

In accordance with the assessment provisions contained in Section 96 and the Heads of Consideration pursuant to Section 79C of Environmental Planning and Assessment Act 1979, Sutherland Shire Local Environmental Plan 2015, Sutherland Shire Development Control Plan 2015 and relevant policies, codes and plans, it is recommended that the Sydney South Planning Panel grant consent in part to the modification application.

#### **RESPONSIBLE OFFICER**

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