

SYDNEY SOUTH PLANNING PANEL

Panel Reference	2017SSH034
A Number	MA17/0413
LGA	Sutherland Shire
Proposed Development:	S96(2) Modification of DA11/1048 - To delete parts (a) and (b) of Condition 7 of the approval of DA11/1048 which required the construction of a roundabout at the intersection of Freya Street and Siandra Drive and the carrying out of works to create 3 lanes westbound at the intersection of Freya Street and Bates Drive.
Street Address:	Lot 55 DP 1189490 - 1-13 Freya Street, Kareela
Applicant/Owner:	Caverstock Group Pty Ltd
Date of MA lodgement	8 September 2017
Number of Submissions:	<i>Eighteen (18)</i>
Recommendation:	<i>Refusal</i>
Regional Development Criteria (Schedule 4A of the Act)	
List of all relevant s79C(1)(a) matters	Sutherland Shire Local Environmental Plan 2015 Sutherland Shire Development Control Plan 2016 i.e. any: <ul style="list-style-type: none"> relevant environmental planning instruments proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority
List all documents submitted with this report for the Panel's consideration	Appendix "A" Submissions Summary Appendix "B" Submission from Elected Council Appendix "C" Assessment Report DA11/1048 (2011SYE117) Appendix "D" Roads & Maritime Services Letter (17/12/2012)
Report prepared by:	Christine Edney, Environmental Assessment Officer Sutherland Shire Council
Report date	12 February 2018

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?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP Not Applicable

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)? No
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? No
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

Assessment Report and Recommendation Cover Sheet

REPORT SUMMARY

REASON FOR THE REPORT

The application is referred to the SSPP as it is a modification submitted under Section 96(2) of the Environmental Planning and Assessment Act 1979 to a Development Application (DA11/1048) approved by the Sydney East Joint Sydney Regional Planning Panel (JRPP). The SSPP has delegated the determination of minor Section 96(1) and 1A applications to the Director, Shire Planning but more substantial modifications under Section 96(2) are required to be reported back and determined by the SSPP.

PROPOSAL

The application is to delete parts (a) and (b) of Condition 7 of the approval of DA11/1048 which required the construction of a roundabout at the intersection of Freya Street and Siandra Drive and the carrying out of works to create 3 lanes westbound at the intersection of Freya Street and Bates Drive.

THE SITE

The site is 12,923m² in area and has frontages to Bates Drive, Freya Street and Siandra Drive. Surrounding development is mostly detached houses with several health consulting rooms across Freya Street to the east and a small area of bushland to the north west. The site has been a shopping centre since the early 1970s.

Work on the construction of the approved development has been completed. The construction of the roundabout and intersection works the subject of this modification has not been carried out.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

Development Application No. MA17/0413 to delete parts (a) and (b) of Condition 7 of the approval of DA11/1048 which required the construction of a roundabout at the intersection of Freya Street and Siandra Drive and the carrying out of works to create 3 lanes westbound at the intersection of Freya Street and Bates Drive. at Lot 55 DP 1189490 1-13 Freya Street, Kareela be refused for the following reasons:

1. The application is considered unacceptable pursuant to the provisions of Section 79C(a)(i) of the Environmental Planning and Assessment Act 1979, in that failure to carry out the required works is contrary to the aims of Sutherland Shire Local Environmental plan 2015 , in particular that failure to carry out the works does not protect and enhance the amenity of residents, workers and visitors in the Kareela area.
2. The application is considered unacceptable pursuant to the provisions of Section 79C(a)(i) of the Environmental Planning and Assessment Act 1979, in that the proposed development is contrary to the objectives of the B2 Local Centre Zone in particular that failure to carry out the

works does not result in creation of an attractive vibrant and safe public domain .

3. The application is considered unacceptable pursuant to the provisions of Section 79C(c) of the Environmental Planning and Assessment Act 1979, in that failure to carry out the works would adversely impact on traffic and pedestrian safety and the amenity of residents of and visitors to Kareela .
4. The application is considered unacceptable pursuant to the provisions of Section 79C(e) of the Environmental Planning and Assessment Act 1979 in that failure to carry out the works would not be in the public interest.

ASSESSMENT OFFICER'S COMMENTARY

1.0 DESCRIPTION OF PROPOSAL

DA11/1048 granted approval for alterations and additions to an existing shopping centre and the erection of a new car park.

The proposed modification seeks to delete parts (a) and (b) of Condition 7 of the approval of DA11/1048 which required the construction of a roundabout at the intersection of Freya Street and Siandra Drive and the carrying out of works to create 3 lanes westbound at the intersection of Freya Street and Bates Drive.

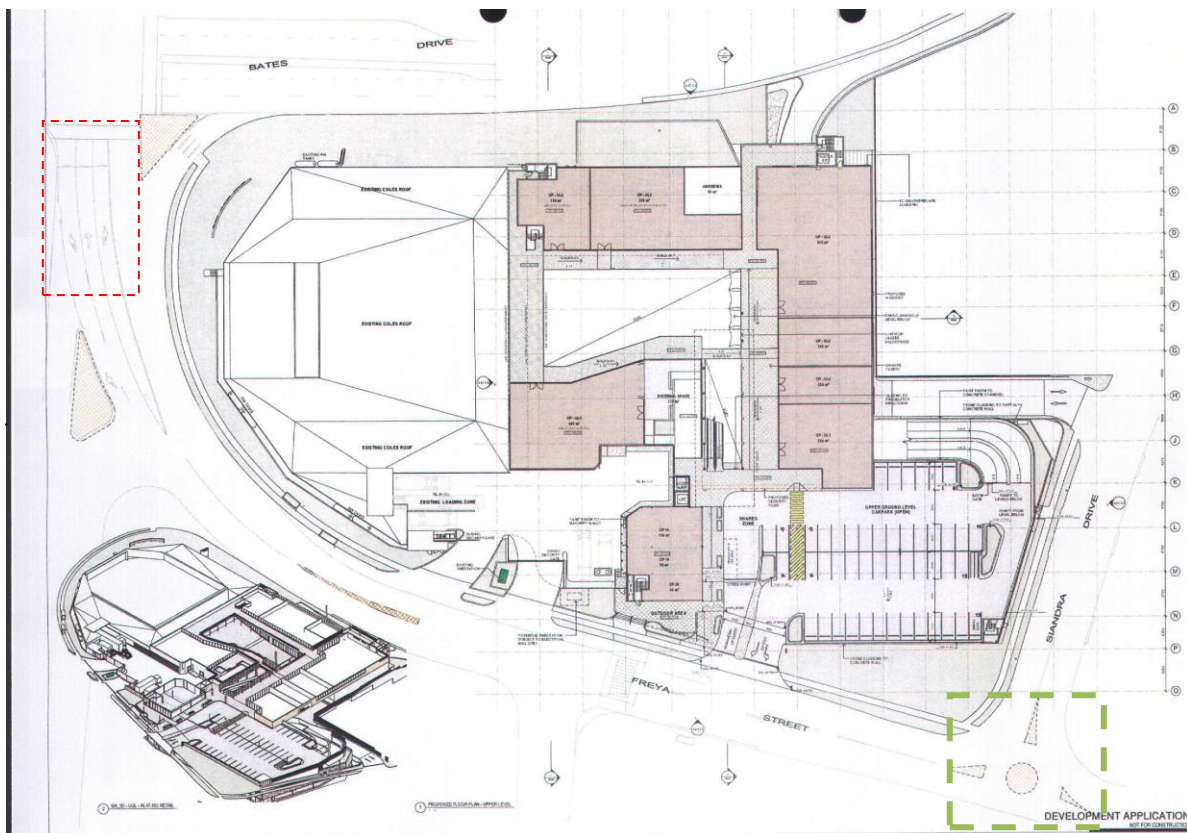


Fig 1: Site Plan including location of road works

Red Dashed Box – location of intersection works, Green Dashed Box location of roundabout works.

2.0 SITE DESCRIPTION AND LOCALITY

The subject land is located at 1-13 Freya Street, Kareela. Currently situated on the site is a recently remodelled shopping centre containing a Coles Supermarket, a child care centre and a variety of retail and commercial tenancies as well as a four level car park.

The site is irregular in shape, 12,923m² in area and has frontages to Bates Drive, Freya Street and Siandra Drive. The site has been a shopping centre since the early 1970s. The site slopes from the east (Freya Street) to the west (Bates Drive).

Surrounding development is mostly detached brick and tile dwelling houses with several health consulting rooms across Freya Street to the east and a small area of bushland to the north west.

An aerial photo showing the location of the site is contained below.



Fig 2 : Aerial Photo of site and Surrounding Area

3.0 BACKGROUND

A history of the development proposal is as follows:

- The Development Application to which the subject modification relates is DA11/1048. DA11/1048 was determined by the JRPP on 19 September 2012 for alterations and additions to an existing shopping centre and a new car park. A copy of the Assessment Report of that application is attached as Appendix “C”
- Subsequent to the approval several development applications have been approved by Council / Land and Environment Court for works at the site. These are outlined in the Table below.

DA No.	Description of Application	Approval Date
DA 13/0646	Construction of additional retail and new car park entry off Bates Drive	8 September 2014 (LEC)

DA15/1065	Alterations and additions to approved shopping centre and relocation of approved signage	26 November 2015 (Council)
DA15/1276	Use of an area approved for commercial use and adjoining space as a child care centre accommodating 50 children	10 December 2015 (Council)

There have also been a number of CDCs and DAs for tenancies and signage.

- The current application was submitted on 26 September 2017.
- The application was placed on exhibition with the last date for public submissions being 23 October 2017. Eighteen submissions were received.
- The application was considered by Council's Submissions Review Panel on 13 December 2017.
- An Information Session was held on 11 October 2017 and 9 people attended.
- Council officers requested traffic count information from the Applicant on 7 November 2017:
- The requested additional information was lodged on 14 November 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 provided adequate information to enable an assessment of this application.

5.0 PUBLIC PARTICIPATION

The application was advertised in accordance with the provisions of Sutherland Shire Development Control Plan 2015 (SSDCP 2015). 212 adjoining or affected owners were notified of the proposal and 18 submissions including a petition from Kareela Public School's Parents and Citizens Association (bearing 217 signatures) were received as a result.

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

In addition the elected Council has made a submission in regard to this application. A copy of this is attached as "Appendix B"

6.0 MAJOR ISSUES

The main issues identified are as follows:

- Works need for traffic and pedestrian safety
- Works needed to relieve congestion / improve traffic flow
- Developer should comply with consent conditions
- Concern regarding traffic study methodology

Two of the submissions related only to the Freya Street/ Bates Drive intersection works and not to the requirement for a roundabout at the intersection of Freya Street and Siandra Drive. Similarly the issues raised in these submissions relate to:

- Traffic and Pedestrian Safety
- Traffic Congestion / Flow
- That Developer should comply with consent conditions

The matters raised in the public submissions were concluded to be substantive, relevant and reasonable by Council's Submission Review Panel, and these matters are discussed in detail in the Assessment section of this report

7.0 STATUTORY CONSIDERATIONS

The subject land is located within Zone B2 Local Centre pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being retail and commercial premises, 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 or Policies are relevant to this application:

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

8.0 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.

8.1 History of Conditions

The roundabout and intersection upgrade works were not part of the original development proposal. This works were recommended by Council's Consultative Traffic Forum and Council planning officers and the intersection upgrade by the Roads and Maritime Services (a copy of their letter of 17 January 2012 is attached as Appendix 'D'). Traffic issues were raised by 161 of the 177 objectors to the original application. The applicant on 17 May 2012 amended to application to include the roundabout and intersection upgrade.

Following the submission of the amended plans Council's Traffic Engineer made the following comment:

"I have reviewed the amended plans and measures proposed by the applicant to mitigate any likely traffic impacts arising from the development proposal. I am of the opinion that the existing traffic conditions, traffic survey data and proposed traffic generation as stated in the applicant's traffic report are consistent with existing Council data and site observations and the Roads and Traffic Authority Guidelines for Traffic Generating Development."

The proposed design changes and intersection treatments provide a much improved arrangement to the applicant's original submission.

The proposed intersection treatments will improve existing traffic management and traffic safety in Freya Street including a reduction in delays and queuing in Freya Street at the Bates Drive intersection during PM peak periods.

With respect to traffic impacts, the application can now be supported subject to the provision of the following measures:

- *Upgrade of the intersection of Freya Street and Bates Drive to incorporate 3 lanes in the west bound approach in Freya Street.*
- *A roundabout at the intersection of Freya Street and Siandra Drive. The roundabout will result in some loss of parking adjacent to Nos. 14-18 Freya Street. Improvement to driveway access at these properties may also be required.*
- *Provision of a speed reduction device on the southbound approach to the proposed Freya Street and Siandra Drive roundabout.*
- *A pedestrian refuge and road narrowing treatment in Freya Street in lieu of the proposed pedestrian crossing adjacent the northern corner of Solveig Crescent. This will result in loss of parking adjacent to No. 10 Freya Street.*
- *Realignment of the western kerb in Freya Street between the proposed loading dock entry and car park entry to facilitate an exclusive left turn lane entry into the car park and maintain the northbound through lane in Freya Street*
- *Widening of the median separation between the entry and exit lanes in Freya Street from 1.2m to 2m.*
- *Submission of a Loading Dock Management Plan to Council's satisfaction.*

The roundabout can be safely accommodated in Freya Street and will improve the safety of access and egress to and from Siandra Drive for shoppers and residents of Siandra Drive. It will reduce traffic speeds along Freya Street on approach to and departure from the shopping centre and is unlikely to result in any significant increases in traffic delays on Freya Street. The roundabout will result in some loss of parking along the eastern side of Freya Street. Measures to minimise impacts on access to adjoining properties will be considered as part of the detailed design process.”

The traffic analysis by the applicant's consultant in 2012 Traffix indicated that the intersection upgrade works would improve the performance of the intersection, in particular during the afternoon peak where the existing 95% queue length/intersection delay would reduce from 140 metres/40 seconds to 82 metres/36.5 seconds. If the works were not carried out, the traffic analysis indicated that the queuing length would instead increase to 171 metres/43.7 seconds.

Without these modifications to the proposal the application would not have been supported by assessing staff.

8.2 Traffic and pedestrian safety

The roundabout is considered necessary for traffic safety reasons that are directly related to the centre's redevelopment including:

- It will slow traffic down at the intersection so making exit from Siandra Street into Freya Street and pedestrian movement safer. This is particular a concern as redevelopment of the centre encouraged more service vehicles to use Siandra Drive to access the secondary loading dock and the creation of the Bates Drive entry brings more vehicles in at a lower level which encourages more vehicles to exit via the Siandra Drive exit which is 2 levels lower than the Freya Street exit.
- It provides a safer situation for vehicles exiting the centre via the main Freya Street driveway as well as Siandra Drive by slowing traffic down and giving drivers the alternative of turning left when leaving the centre and doing a "U" turn at the roundabout instead of having to turn right into traffic.

The intersection improvement works at the corner of Bates Drive and Freya Street are considered necessary and are linked to the centre in that:

- The centre is the main traffic generator in Kareela and is located at the only vehicular entry/ exit point to the suburb.
- For the reasons discussed in 9.2 below it is considered that the traffic generated by the centre will soon grew beyond the pre development levels and as a result the intersection performance will become worse and traffic safety will be endangered.
- Improvement of the intersection is likely to benefit the centre itself as people who perceive the intersection to be safer and easier to use are likely to return to / start using the centre.
- Approval of the development was contingent on the upgrade of the intersection.

8.3 Traffic Volumes/ Congestion

The applicant has submitted traffic counts undertaken in March and May 2016 which indicate that traffic volumes were at those times less than the traffic generation of the centre in 2010 prior to the centre's redevelopment. The centre's official opening was in October 2016 but works were not completed nor the centre fully occupied till after then.

The traffic count increased by 6.7% between the March and the May 2016 traffic counts which is likely to be an indication that patrons are slowly returning to the centre who went elsewhere during the disruption caused by the major works at the site. If this 6.7 % increase is extrapolated over the medium term then then traffic generated by the centre would have potentially reached the 2010 situation by October 2017 and reach the expected post development (864 vehicles) level by July 2018. Whilst the rate of increase may slow it is still considered that the centre will reach the anticipated level of traffic on which the requirement for the works was based.

The traffic study submitted by the applicant shows a significant increase in average vehicle delays at the Siandra Drive / Freya St intersection (from 3.8 to 7.3 seconds). This is considered to be an indication that the situation will be worse when traffic volumes increase as anticipated and that the development has had significant impacts on the Freya Street / Siandra Drive intersection. It is also important to recognise that tenancies can and will change over time and greater traffic generation needs to be accommodated for now as it cannot be imposed based on individual future uses.

8.4 That the developer should comply with consent conditions

It has been a long held principle of planning that should an applicant benefit from a consent for development that the applicant should also bear the responsibility of complying with the conditions of that consent. The developer took up the consent in full knowledge that these conditions applied. The road works were a significant consideration in Council's assessment in 2012 when approval of the proposal was recommended to the Joint Regional Planning Panel. The applicant choose to take up the benefit of the development consent and should therefore accept its burden. The upgrades were a significant component of the assessment and without them approval would not have been recommended.

8.5 Concerns re traffic study

One submission related to the traffic report submitted by the applicant. Council's traffic engineer has reviewed the submitted report and is satisfied with the traffic counts and study methodologies.

Traffic counts were undertaken over a 7 day period and intersection counts were undertaken on weekdays when traffic counts are likely to be higher due to school and work trips.

The increased delays at the Freya Street/ Siandra Drive intersection can be explained by the changed configuration of the centre which now encourages a greater percentage of the centre's traffic especially service vehicles to use Siandra Drive. Council does not rise specific concerns with the traffic counts or study methodology but instead considers that patronage is still returning following a long and disruptive construction period.

8.6 Additional Submission from Applicant

On 25 January 2018 the applicant's planning consultant submitted additional information including a traffic report and road safety audit from a Traffic Engineer. This was assessed by Council's Traffic Engineer who made the following comments:

"Augmentation of the traffic signals.

The condition was imposed to reduce vehicle delays and significant queuing in Freya St noting that the back of queue during peak periods impacts on the pedestrian and traffic safety in Freya Street.

A roundabout at the intersection of Siandra Drive and Freya Street.

The condition was imposed to:

- *Improve the safety of the intersection in light of increased usage under the new centre design and existing sight distance and gap acceptance issues.*

- *Reduce the speed of traffic in Freya Street along its frontage of the shopping centre and thereby improve the safety of pedestrians and vehicles entering and exiting the centre in Freya Street*

In this regard it is important to note that the applicant's safety audit identifies these very issues via Design Deficiencies 1 (intersection priority), 3 (sight distance Siandra Drive) and 4 (sight distance Freya St exit) and General Comments G2 (Gap acceptance) and G4 (pedestrian behaviour). The provision of a roundabout at Siandra Drive address/improves all of these issues. The roundabout will also act as an incentive for motorists to exit via Siandra Drive which is both to their benefit and traffic and pedestrian safety in Freya Street.

Council will further consider the other issues and recommendations identified in the safety audit and action as considered necessary. However it is reiterated that implementation of the existing conditions of consent will provide the best outcome in addressing the majority of issues identified in the applicant's road safety audit."

9.0 SECTION 94 CONTRIBUTIONS

At the time of the original approval the application site was not subject to Council Section 94 contribution plan. The proposed modification does not generate any Section 94 contributions.

10.0 DECLARATION OF AFFILIATION

Section 147 of the Environmental Planning and Assessment Act requires 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.

11.0 CONCLUSION

The proposed modification seeks to delete parts (a) and (b) of Condition 7 of the approval of DA11/1048 which required the construction of a roundabout at the intersection of Freya Street and Siandra Drive and the carrying out of works to create 3 lanes westbound at the intersection of Freya Street and Bates Drive, at 1-13 Freya Street, Kareela.

The subject land is located within Zone B2 Local Centre pursuant to the provisions of Sutherland Shire Local Environmental Plan 2015. The proposed development, being retail and commercial premises, is a permissible land use within the zone with development consent.

In response to public exhibition 18 submissions including a petition were received. The matters raised in these submissions have been discussed in this report and include traffic/ pedestrian safety, traffic congestion/ volumes and that the developer should comply with the consent conditions.

It is considered that the modification application should be refused as the works are necessary to protect the amenity and pedestrian and traffic safety of Kareela residents, centre workers and customers. The applicant has taken the benefit of the consent based on the provision of these upgrades and now when the construction of the centre has been completed (other than some outstanding landscaping works) is seeking to delete it's more burdensome requirements.

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 and Policies. Following detailed assessment it is considered that Application No. MA17/0413 is not supported for the reasons outlined in this report.

RESPONSIBLE OFFICER

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