

1 July 2022
Our Ref: 20728C.3TW_S4.55(1A)



planning consultants

Mr Jim Betts
Secretary
NSW Department of Planning, Industry and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Betts,

**RE: SECTION 4.55(1A) APPLICATION TO MODIFY
DEVELOPMENT CONSENT NO. SSD-10379
SUTHERLAND ENTERTAINMENT CENTRE**

1.0 Introduction

DFP has been commissioned by ADCO on behalf of Sutherland Shire Council to prepare an application under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify development consent No. SSD-10379 (as modified) for the redevelopment of the Sutherland Entertainment Centre and public domain upgrades surrounding the site, including Peace Park.

The section 4.55(1A) application seeks to modify SSD-10379 in relation to the following:

- Removing an existing Chinese Elm (Tree 26) to facilitate the construction phase of the development. This tree will be replaced by a super advanced tree.
- Rectifying an inconsistency between the stamped approved landscape plans and the arborist report in relation to Tree 14 (Chinese Elm).
- Changes to the colour of concrete of specified external areas; and
- Other minor landscape modifications.

Details of the modifications are discussed in **Section 4.0** of this letter.

This letter includes the information necessary for Department of Planning and Environment (DPE) to assess and determine the application including:

- A background outlining the approved development;
- A brief description of the site context;
- Details and reasons for the proposed modifications;
- An environmental assessment; and
- Our conclusion and recommendations.

We have concluded that the proposed modifications will result in a development that is substantially the same as the approved development and will have minimal environmental

impact and accordingly, the proposal is considered to satisfy the requirements to enable these modifications to be approved pursuant to s4.55(1A) of the EP&A Act.

2.0 Background

On 1 October 2020, NSW Department of Planning, Industry and Environment (DPIE, now DPE) granted development consent to State Significant Development No. SSD-10379 for the redevelopment of the Sutherland Entertainment Centre and public domain upgrades surrounding the site, including Peace Park. The Sutherland Entertainment Centre and Peace Park are located at 22 and 30 Eton Street, Sutherland.

On 24 December 2020 an application to modify Conditions B2, B8 and E3 of SSD-10379 was approved (SSD-10379-Mod-1). The modification to these conditions involved minor amendments to the wording of these conditions. It is noted that the proposed modification does not relate to any of the conditions that were subject of this approved Modification Application.

3.0 Site Context

3.1 Site Description

The Sutherland Entertainment Centre (SEC) is located at 22 and 30 Eton Street Sutherland (otherwise known as Lot 7, Section 46, DP 802 and Lot 1 DP1253156, respectively). Peace Park is located to the immediate north of the SEC. The site is rectangular in shape and has a frontage to Eton Street to the west and Merton Street to the east. **Figure 1** below is a locality plan of the site.

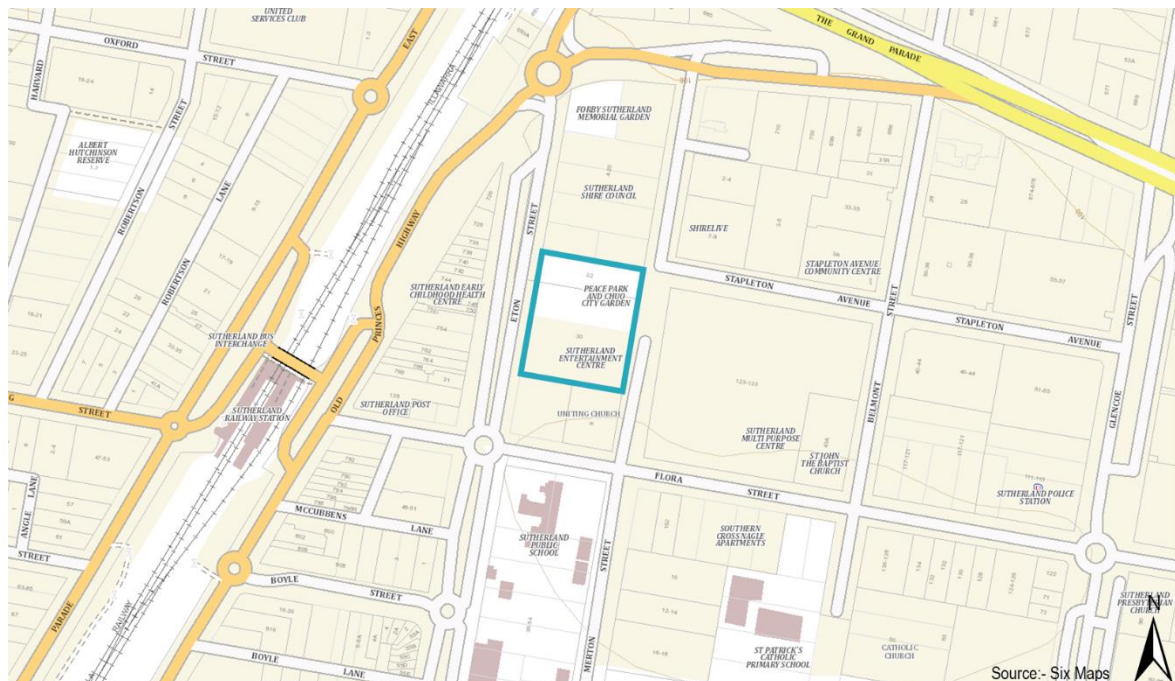


Figure 1 Site Location

3.2 Surrounding Development

To the north of Peace Park is the at grade car park associated with the Sutherland Council civic centre and the civic centre building.

To the east of Merton Street is an at grade car park and Japanese Gardens (which are located to the east of and have an interface with Peace Park). Merton Street continues north from the

Japanese Gardens to link with the Princes Highway. Merton Street continues as a pedestrian link only through the Japanese Gardens.

To the west is Eton Street. In the vicinity of the site, the carriageway of Eton Street is separated by angled car parking. To the west of Eton Street are retail and commercial buildings associated with the Sutherland town centre. Sutherland railway station, which is to the west of Old Princes Highway, is approximately 220m (walking distance) from the SEC.

To the south is a two-storey commercial building (Centrelink office) and the Sutherland Uniting Church. The building associated with Sutherland Uniting Church is a heritage item.

4.0 Proposed Modification

The SSD approval issued by DPIE included a number of conditions. The following conditions have been identified as requiring modification:

- A1. The development may only be carried out:*
- (a) in compliance with the conditions of this consent;*
 - (b) in accordance with all written directions of the Planning Secretary;*
 - (c) in accordance with the EIS and Response to Submissions;*
 - (d) in accordance with the management and mitigation measures; and*
 - (e) in accordance with the approved plans in the table below.*

The table referenced in condition A1(e) lists the approved documentation including architectural plans and landscape plans.

The proposed modifications to SSD-10379 have been set out below.

4.1 Tree 14

The proposed modification relating to Tree 14 (Chinese Elm) involve rectifying an inconsistency between the approved landscape plans prepared by NBR Architecture, dated 17 January 2020 and the arborist report that was submitted with the original application.

In this regard, the arborist report dated 14 February 2020 prepared by Rennie Bros. Tree Surgeons that was submitted with the original SSD application identified Tree 14 as a tree to be retained – refer Section 4.2 and Plan 2 of the arborist report. However, the approved landscape plans identify Tree 14 are being required to be removed – refer LDA-106/Rev 3.

The works proposed in the vicinity of Tree 14 are such that it is unlikely that this tree will be able to be retained.

A letter has been prepared by Sutherland Shire Council which supports the removal of this tree, rectifying the inconsistency between the landscape plans and the arborist letter. That letter states the following:

In relation to tree 14, Council would like to advise that there appears to have been an error in the arborist report and this should have been nominated to be removed as part of the major refresh works for Peace Park outside the Sutherland Entertainment Centre.

The modification seeks to rectify the inconsistency between the approved landscape plans and the submitted arborist report.

4.2 Tree 26

It is proposed to remove Tree 26 (Chinese Elm) to facilitate the construction phase of the development. The removal of Tree 26 will mitigate safety concerns on Eton Street by reducing

the number of traffic movements occurring on Eton Street and instead allowing these to occur via Merton Street. It is anticipated that the land where Tree 26 is currently located will be used for storing materials, plant access and to accommodate a crane platform.

Following the completion of the construction works, Tree 26 will be replaced with a super advanced Chinese Elm tree (800L), which involves a two-year maintenance program that will aid the development of the tree. This option was the preferred option over re-planting the existing Tree 26, due to the level of risk associated with this alternate option. Sutherland Shire Council's Senior Arborist stated the following:

'a significant degree of risk to the long term survival of the tree.....successful transplant is about 50% success rate'.

Based on this advice, it is considered that a replacement tree will achieve the greatest certainty to providing a healthy tree moving forward.

As provided in **Figure 2** below, Tree 26 is located along the eastern side of the site and is proximate to Merton Street which adjoins the eastern side boundary. The approximate location of Tree 26 has been circled in red.



Figure 2 Site aerial and approximate location of Tree 26

4.3 Concrete Colour Changes

Modifications are proposed to the colour of the concrete of approved elements of the landscaping. As provided on the plans prepared by ADCO, the changes in concrete colour include the approved external retaining walls, hobs, bleacher seating and stairs. The concrete colour for these areas, identified on the plans prepared by ADCO is proposed to change from an off-white colour and will be replaced by a standard grey.

It is noted that all of the above elements have been approved with a non-standard grey concrete colour. The proposed modifications to the concrete colour are minor and the need for the change predominantly arises from maintainability and repair concerns that have been raised by Council.

4.4 Additional Minor Modifications

As detailed in the modified architectural drawings prepared by NBRS Architecture, minor landscape modifications are proposed. These include the removal of outdoor seating, updates for grated drains to be as per the civil design, retaining wall changes to planter, additional landscaping and associated features, amendments to the location bike racks and other minor modifications which will have negligible impacts on the overall use and operation of the site. It is noted that the artwork on General Arrangement Plan 3 is indicative and will be undertaken via a separate planning pathway.

4.5 Modified Condition

Having regard to the modifications that have been detailed above, it is proposed to modify Condition A1 as follows:

A1. The development may only be carried out:

- (a) in compliance with the conditions of this consent;*
- (b) in accordance with all written directions of the Planning Secretary;*
- (c) in accordance with the EIS and Response to Submissions;*
- (d) in accordance with the management and mitigation measures; and*
- (e) in accordance with the approved plans in the tables below. The original approved plans prevail except as modified by the additional approved plans*

Additional Approved Drawings prepared by NBRS Architecture			
Drawing No.	Revision	Name of Drawing	Date
18465-NBRS-L-101	G	General Arrangement Plan 1	30/06/2022
18465-NBRS-L-102	F	General Arrangement Plan 2	30/06/2022
18465-NBRS-L-103	J	General Arrangement Plan 3	30/06/2022
18465-NBRS-L-104	C	General Arrangement Plan 4	30/06/2022

5.0 Statutory Provisions

Section 4.55 of the EP&A Act contains the provisions that must be considered in determining an application to modify a Notice of Determination. In this regard, the relevant section is s4.55(1A) of the EP&A Act.

This application is lodged under s4.55(1A) as the proposed modifications are considered to be minor in nature and will have only minimal environmental impact (see **Section 6.0**).

In addition to the EP&A Act, clauses 98, 99 and 100 within Part 5, Division 1 of the EP&A Regulation 2021 contains the information that must be submitted with an application to modify a consent. This information is contained in this letter and provided as part of the application, via the NSW Planning Portal.

Clauses 101, 102 and 103 do not apply to the proposed modification.

5.1 Section 4.55(1A) of the Act

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that a number of matters be addressed, as discussed below:

“A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) It is satisfied that the proposed modification is of minimal environmental impact”***

Tree 14

This tree was shown as a tree to be removed as part of the approved landscape plan. However, this was inconsistent with the Arborist Report, which identified Tree 14 as being retained. This inconsistency is rectified as part of this proposed modification application, which confirms that Tree 14 is to be removed.

As the approved landscape plans already confirmed the removal of Tree 14, addressing the inconsistency with the Arborist Report does not result in any additional environmental impacts.

Tree 26

Tree 26 was previously nominated for retention, however, to facilitate the construction works it is now proposed to remove Tree 26. This will increase the area on site for storing materials, plant access and for positioning of a crane platform, as well as limiting ingress and egress routes for construction workers / vehicles that are accessing the site.

Following the completion of the works, a super advanced Chinese Elm Tree will be planted as a replacement. Council's tree officer has advised that a replacement tree will have a greater chance of survival, compared to re-planting the existing Tree 26.

Concrete Colours Changes

The proposed change to the concrete colour of the elements described in **Section 4.3** of this letter is unlikely to increase impacts to the environment. The colours change will result in a finished standard grey colour which will be easier to maintain and repair compared to the approved off-white and 'warm' grey colouring. It is unlikely that there will be any associated environmental impacts generated by this colour change.

Additional Minor Modifications

The additional minor modifications as part of this application are minor in nature and are not likely to generate any additional environmental impact.

- “(b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”***

The proposed modifications relate to the development as approved in SSD-10379. The modifications involve the correction of an inconsistency regarding the removal of Tree 14 and the removal and replacement of Tree 26 in order to facilitate the construction works. Other minor modifications include changes to the concrete colour to external elements of the approved development and other minor landscape element amendments. These changes do not substantially modify the development from that originally approved.

- “(c) It has notified the application in accordance with:**
- (i) The regulations, if the regulations so require, or**
 - (ii) A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modifications of a development consent,”**

Modification applications to State Significant Development that involve minimal environmental impact (Section 4.55(1A)) are generally placed on public notification for 14 days (if exhibited).

- “(d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be”**

Should any submissions be received that are associated with the proposed modification application, they will be appropriately responded to during the assessment phase of the application.

Subsections (1) and (2) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in **Section 6.0** of this submission.

5.2 Part 5 Division 1 of the EP&A Regulation 2021

Pursuant to clauses 98, 99 and 100 of the Regulation, the information required to be submitted with an application to modify a development consent under s4.55 are contained in this letter and provided as part of the application via the NSW Planning Portal.

Clauses 101, 102 and 103 do not apply to the proposed modification.

6.0 Environmental Planning Assessment

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) as are of relevance to the proposed modification must be taken into consideration in determining the application for modification.

In addition, 4.55(3) requires the consent authority to take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

6.1 Notice of Determination – SSD-10379

The development consent for SSD-10379 includes the following notation:

These conditions are required to:

- *prevent, minimise, or offset adverse environmental impacts;*
- *set standards and performance measures for acceptable environmental performance;*
- *require regular monitoring and reporting; and*
- *provide for the ongoing environmental management of the development*

The proposed replacement of Tree 26 following the construction works with a super advanced species will offset adverse environmental impacts as a result of removal of the tree.

It is considered that the proposed rectification of the inconsistency in documenting of the removal of Tree 14, the proposed concrete colour changes and other minor modifications will not generate any additional environmental impacts.

6.2 Section 4.15(1)(a) – Planning Controls

6.2.1 Sutherland Shire Local Environmental Plan 2015

The subject site at 22-30 Eton Street, Sutherland is zoned part B3 Commercial Core and part RE1 Public Recreation. The redevelopment of the SEC and associated upgrades to Peace Park were approved as a community facility, which is a permissible land use within both the B3 and RE1 zones, in accordance with the Sutherland Local Environmental Plan 2015 (the LEP). This proposed modification application does not propose to change the approved use for the site.

Clause 6.16 of the LEP relates to urban design. In deciding whether to grant consent for any development to which this clause applies, the consent authority must consider the following:

- (a) *the extent to which high quality design and development outcomes for the urban environment of Sutherland Shire have been attained, or will be attained, by the development,*
- (b) *the extent to which any buildings are designed and will be constructed to—*
 - (i) *strengthen, enhance or integrate into the existing character of distinctive locations, neighbourhoods and streetscapes, and*
 - (ii) *contribute to the desired future character of the locality concerned,*
- (c) *the extent to which recognition has been given to the public domain in the design of the development and the extent to which that design will facilitate improvements to the public domain,*
- (d) *the extent to which the natural environment will be retained or enhanced by the development,*
- (e) *the extent to which the development will respond to the natural landform of the site of the development,*
- (f) *the extent to which the development will preserve, enhance or reinforce specific areas of high visual quality, ridgelines and landmark locations, including gateways, nodes, views and vistas,*
- (g) *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 proposed development applies those principles.*

It is considered that the proposed minor modifications to the approved development as described in this letter do not interfere with the high-quality design of the approved development and the broader urban environment of Sutherland Shire. The modifications have sought to maintain the existing environment where possible and in the case of Tree 26, a suitable replacement tree will be planted. It is therefore considered that the development as modified will be consistent with the provisions of clause 6.16 of the LEP.

There are no provisions of other environmental planning instruments or development controls plans which are of relevance to the proposed modification works.

6.3 Section 4.15(1)(b) – Natural and Built Environmental Impacts

6.3.1 Natural and Built Environment

The proposed modifications are unlikely to result in adverse impacts on the natural environment. Whilst Tree 26 is proposed to be removed, a suitable replacement tree will be planted following completion of the construction works. The rectification of the inconsistency between the arborist report and the landscape plans does not result in any additional natural impacts in that Condition A1 of SSD-10379 approved the landscape plans which included the removal of Tree 14.

The modification to the concrete colouring from off white and warm grey to a standard grey colour is not likely to generate any built environment impacts. The primary purpose for this

change in colouring is for maintenance/repair purposes, with Council raising concerns around the repair of concrete structures that consist of off-white and warm grey colours with respect to colour matching.

6.4 Section 4.15(1)(b) – Social and Economic Impacts

Due to the nature of the proposed modification, there will be no change to the social or economic impacts from what was assessed under SSD-10379.

6.5 Section 4.15(1)(c) – Suitability of the Site for Development

Under the original consent for SSD-10379, the development was approved as a community facility. The proposed modification works relate to this use and are therefore considered suitable.

6.6 Section 4.15(1)(e) – Public Interest

In accordance with Section 4.15(1)(e) of the EP&A Act, the proposed modifications are considered to be in the public interest. The proposed modifications to SSD-10379 will satisfy the provisions of the relevant environmental planning instruments, having regard to the objects of the Environmental Planning and Assessment Act (the Act). As a result, it is considered that the proposed modifications are within the public interest.

7.0 Conclusion and Recommendations

This report accompanies an application under section 4.55(1A) of the EP&A Act to modify development consent No. SSD-10379, for the purposes of removal and replacement of Tree 26, rectifying an inconsistency between the approved arborist report and landscape plans regarding the removal of Tree 14 and changes to the colouring of concrete and other minor works for specified external elements of the approved development.

The modifications will result in a development that is substantially the same as the approved development and the proposed modifications have been assessed as having only minimal environmental impacts. Accordingly, the proposal is considered to satisfy the requirements pursuant to Section 4.55(1A) of the Act.

Accordingly, we are of the view that the proposed modification is acceptable in this particular instance and can be approved under section 4.55(1A).

Yours faithfully,

DFP PLANNING PTY LTD



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PROJECT PLANNER**

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Reviewed: _____

