



IRF22/1105

## Gateway determination report – PP-2021-6325

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147 Garnet Road, Kareela

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**Table 1: Reports and plans supporting the planning proposal**

Relevant reports and plans
Planning Proposal dated October 2021
Proponent Planning Proposal dated April 2021
Traffic and Parking Impact Assessment dated May 2021
Bushfire Assessment Report dated April 2021
Flood Assessment Report dated April 2021
Grey Headed Flying Fox Flora and Fauna Management Plan dated April 2021
Fauna and Flora Assessment Report dated April 2021
Arboricultural Impact Assessment Report dated May 2020
Landscape Concept Plan dated May 2021
Storm Water Management Concept Plan dated May 2020
EPBC Act Decision and Conditions dated 9 March 2021
Concept Designs dated April 2021
Site Analysis Plans dated April 2021
Site Survey Plan dated November 2019
Planning Proposal Application Form
Planning Proposal Submission Form
Sutherland Shire Local Planning Panel Agenda dated 1 June 2021 (Gateway recommendation)
Sutherland Shire Local Planning Panel Minutes dated 1 June 2021 (Gateway recommendation)
Sutherland Shire Council Strategic Planning Committee Meeting Agenda dated 12 July 2021
Sutherland Shire Council Strategic Planning Committee Meeting Minutes dated 12 July 2021
Sutherland Shire Council Meeting Agenda dated 26 July 2021
Sutherland Shire Council Meeting Minutes dated 26 July 2021
Sutherland Shire Design Review Forum meeting minutes dated 9 September 2021
Sutherland Shire Local Planning Panel Agenda dated 5 October 2021 (PPA meeting)
Sutherland Shire Local Planning Panel Minutes dated 5 October 2021 (PPA meeting)

Department's initial concerns with the planning proposal dated 3 November 2021

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Energy, Environment and Science Group Preliminary Comments dated 19 November 2021

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Revised development concept scheme and addendum letter dated 15 December 2021

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Request to withdraw the planning proposal dated 17 January 2022

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Council response to withdrawal request dated 24 January 2022

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Grey Headed Flying Fox Population Letter dated 18 March 2022

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Council's updated Strategic Justification for R2 Zoning and APU dated 23 March 2022

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# 1 Introduction

## 1.1 Overview of planning proposal

**Table 2: Planning proposal details**

<b>LGA</b>	<b>Sutherland Shire</b>
<b>PPA</b>	Sutherland Shire Local Planning Panel
<b>NAME</b>	Planning proposal to amend Sutherland Shire LEP 2015 affecting proposed Lot 104 at 147 Garnet Road, Kareela
<b>NUMBER</b>	PP-2021-6325
<b>LEP TO BE AMENDED</b>	Sutherland Shire Local Environmental Plan 2015
<b>ADDRESS</b>	147 Garnet Road, Kareela (the site)
<b>SITE AREA</b>	9,569m <sup>2</sup>
<b>DESCRIPTION</b>	Proposed Lot 104 in Lot 1142 DP 752064
<b>RECEIVED</b>	18/10/21
<b>FILE NO.</b>	EF21/15948
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this planning proposal

The planning proposal seeks to facilitate a residential flat building development at 147 Garnet Road, Kareela by amending the Sutherland Shire Local Environmental Plan 2015 (Sutherland LEP 2015).

The originally submitted planning proposal sought the following amendments to the Sutherland LEP 2015:

- rezone from SP2 Infrastructure – Educational Establishment (SP2) to R4 High Density Residential;
- introduce a maximum floor space ratio (FSR) of 0.7:1;
- increase the maximum building height from 12 metres to 16 metres;
- identifying the site on the terrestrial biodiversity mapping; and
- introduce a minimum 50% landscaped area requirement.

As discussed in this report, during the Gateway assessment concern was raised by the Department about the proposed rezoning of the land to R4 High Density Residential.

The Department also considered the proposed maximum floor space ratio of 0.7:1 as potentially not being in keeping with what would usually be permitted in an R4 High Density Residential zone and does not align with Council's usual locational approach to R4 High Density Residential zoning.

Additional information has been submitted with the planning proposal outlining an alternate land use zoning response to be considered by the Department as follows:

- rezone from SP2 Infrastructure – Educational Establishment (SP2) to R2 Low Density Residential (R2);
- introduce residential flat buildings as an additional permitted use under Schedule 1 of the LEP.
- Retention of the previous development standards and ecological and landscaping mapping.

This is referred to in the report as the alternative zoning approach. The mechanism to implement the intended outcomes of the planning proposal are discussed further throughout this report including the supporting development concept scheme.

## 1.2 Site description

The planning proposal is located on part of the land known as 147 Garnet Road, Kareela, legally described as Lot 1142 in DP 752064.

A two lot subdivision of the land was approved on November 2020 under Council DA20/0381. The planning proposal states that the new lots will be created prior to finalisation (if supported). These two proposed lots are known as proposed Lots 104 and 105.

The planning proposal applies to proposed Lot 104 of this approved subdivision (the site), which has a proposed site area of 9,538m<sup>2</sup> (**Figures 1 and 2**).

The site currently accommodates:

- the Sylvanvale Foundation Head Office; and
- an indoor hydrotherapy pool.

Sylvanvale Foundation is a disability services provider that have been operating in the Sutherland Shire for several decades. These existing built forms are one storey in height. The site does not contain nor is near any heritage items and is not located in or near a heritage conservation area.

Vehicular and pedestrian access to the site is provided through driveways from Garnet Road and Mikarie Place. The northern end of the site is burdened by an easement for electricity transmission.

The planning proposal site does not include the existing childcare centre for disabled children – which is located on proposed Lot 105.

The land slopes significantly to the east. The site's ground level (existing)<sup>1</sup> is 13m beneath the ground level (existing) of the low density residential development to the west of the site along Garnet Road and Manooka Place (**Figures 17 and 18**).

The site has areas of remnant Coastal Enriched Sandstone Dry Forest and is heavily vegetated with over 160 existing trees (**Figure 3**).

<sup>1</sup> Ground level (existing) under the Sutherland LEP 2015 means the existing level of a site at any point.





Figure 1: The land (source: the planning proposal)

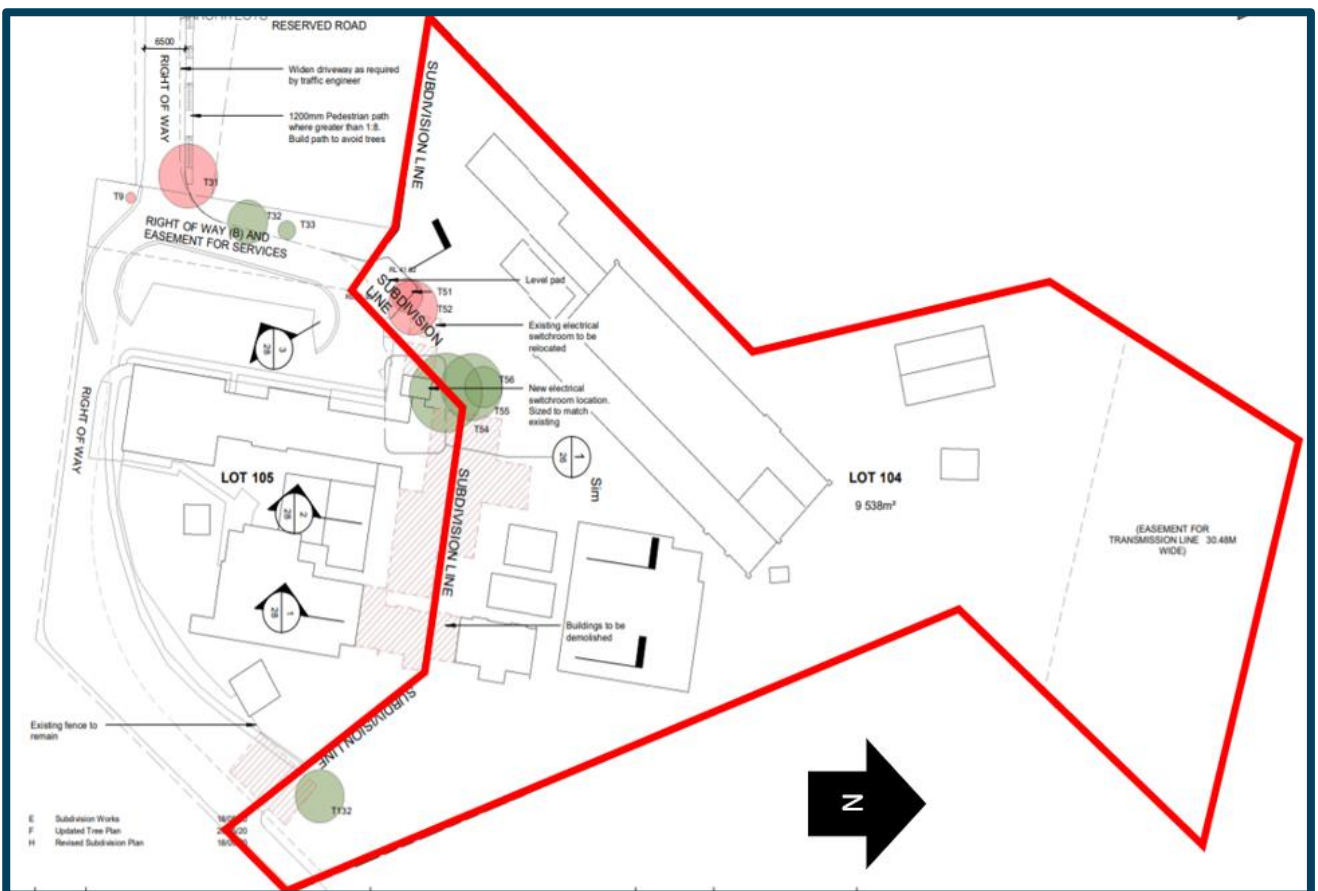


Figure 2: Approved two lot subdivision of DA20/0381 – the planning proposal site is highlighted red (source: DA20/0381)



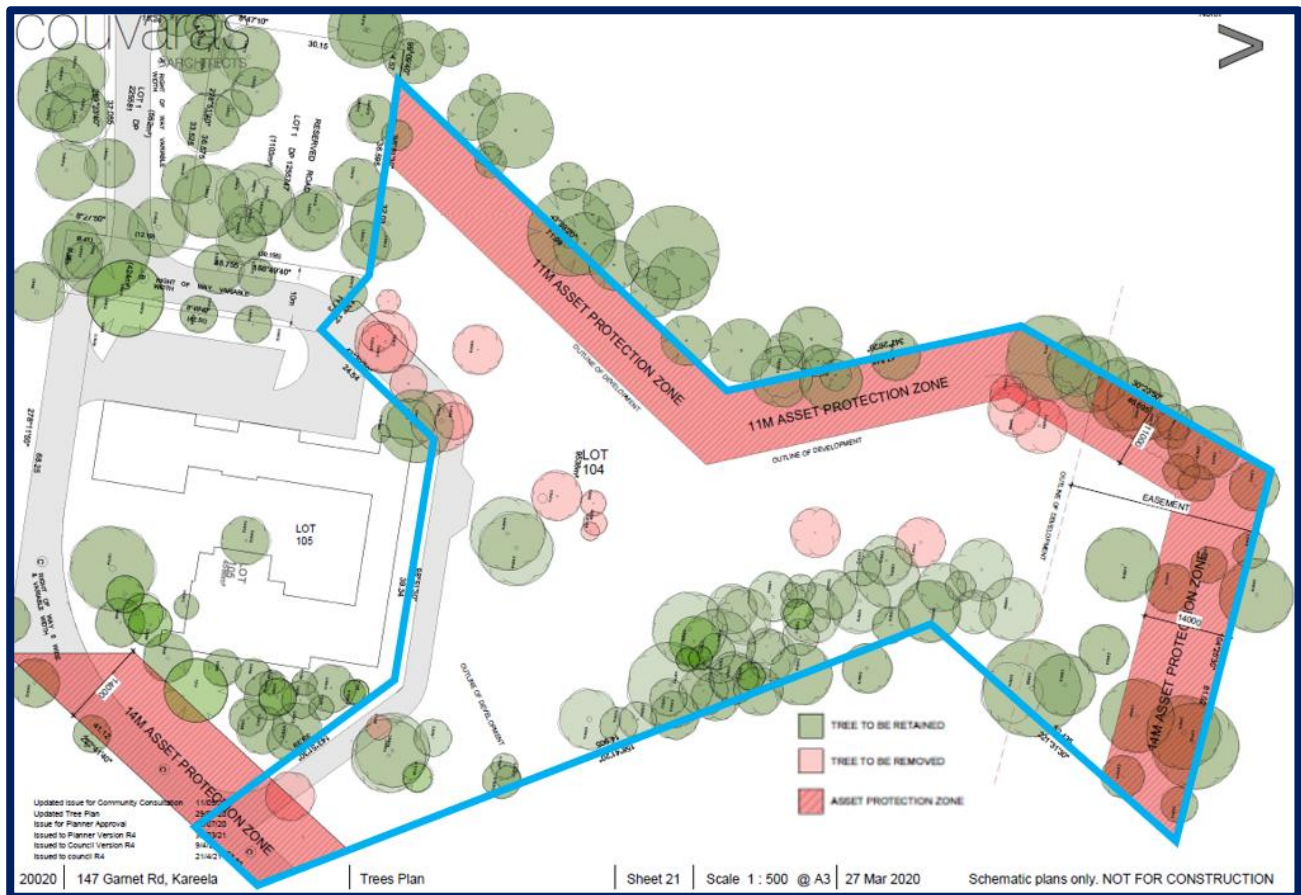


Figure 3: Tree removal plan with the existing trees (the site highlighted blue) dated December 2021

## 1.3 Surrounding area

The site is within an urban area but is not immediately surrounded by residential development (**Figure 4**).

Immediately adjoining the site is existing bushland, with the Bates Drive School to the east and Sylvanvale Childcare Centre to the south.

The site neighbours a Grey Headed Flying Fox (GHFF) camp (**Figure 4**). The GHFF is a vulnerable native mammal protected by legislation including the NSW Biodiversity Conservation Act 2016 (BC Act) and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The wider area is predominately 1 and 2 storey low density residential development, which has been zoned R2 (**Figure 5**). The R2 zoned land to the west is located on a ridge line which is approximately 13m above the ground level of the site.

The site is approximately (**Figure 6**):

- 250m west of the Princes Highway;
- 2km north west of the Miranda Strategic Centre;
- 1.3km north of GyMEA Station;
- 2km south east of Southgate Shopping Centre;
- 140m west of Kareela Oval Reserve; and
- 450m west of GyMEA North Public School.



Figure 4: Aerial image of the surrounding area (GHFF camp highlighted yellow)

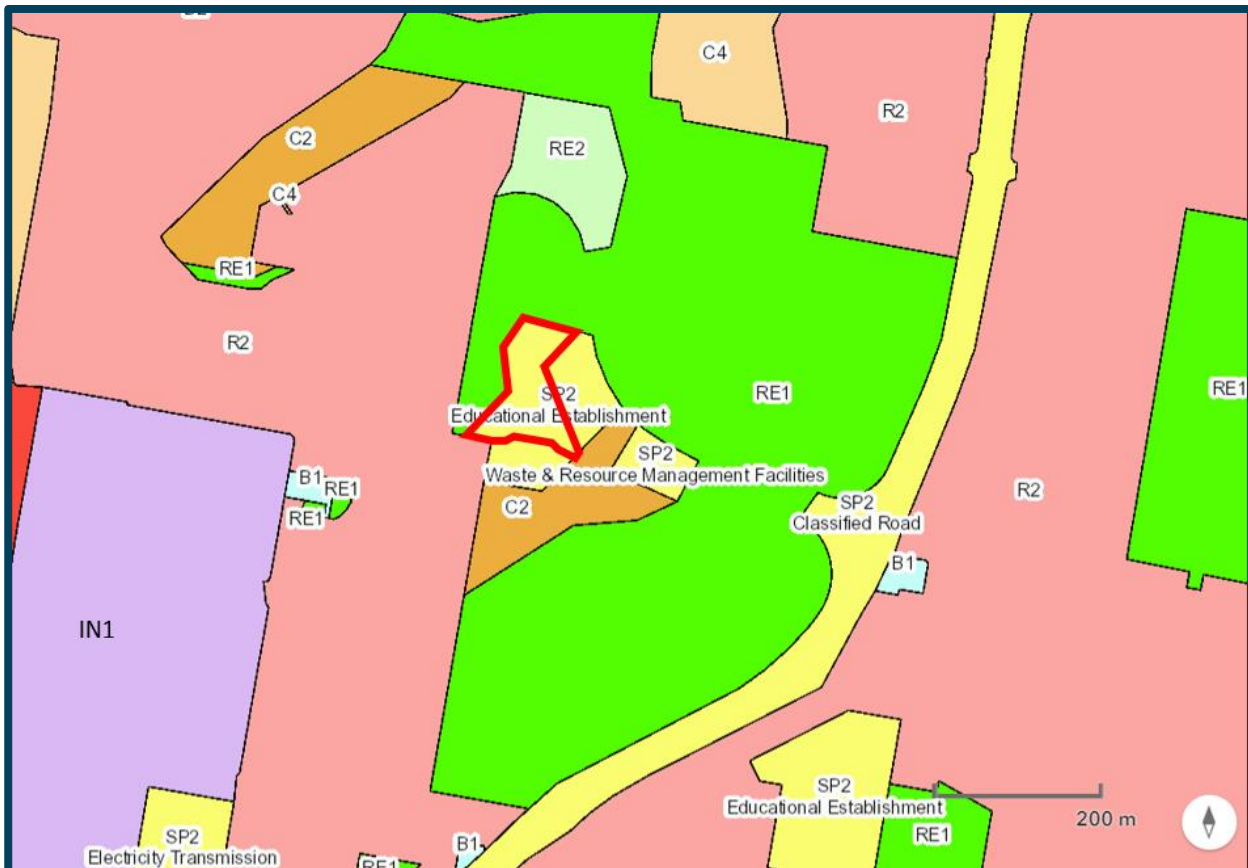


Figure 5: Zoning context map (the site highlighted red)



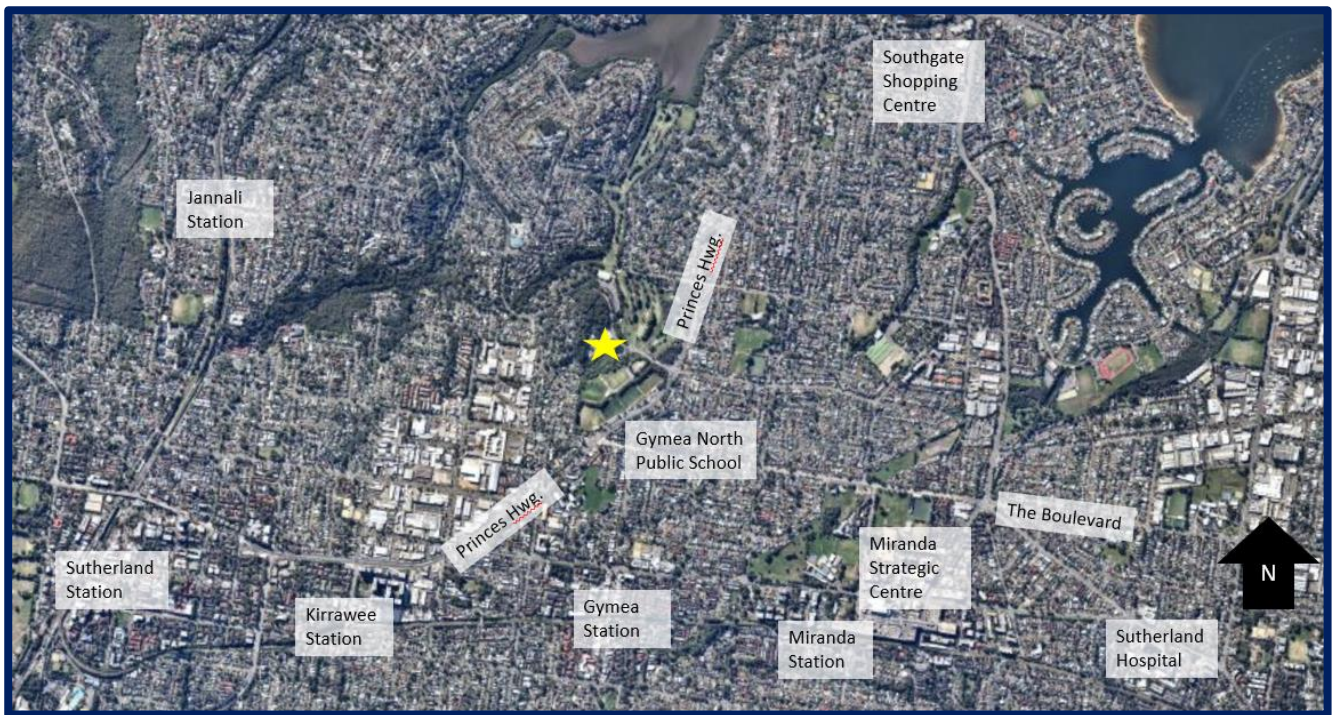


Figure 6: Broader context map (the site highlighted yellow)

## 2 Proposal

### 2.1 Objectives or intended outcomes

The objectives of the planning proposal are to:

- facilitate the redevelopment of the site for residential flat building purposes; and
- better protect the environmental qualities of the site to ensure they are maintained into the future.

The planning proposal states that the site is currently operated by Sylvanvale, a registered charity who provide services, accommodation and employment to people with disabilities.

The site has been used by Sylvanvale as their head office but is no longer required. The planning proposal states that it seeks to rezone the site to facilitate its redevelopment for residential purposes so that Sylvanvale's capital and operations can be redeployed to more suitable sites.

The proceeds from the sale of the site once rezoned will also facilitate construction of supported accommodation for people with disabilities at other locations elsewhere in the Sutherland Shire.

The planning proposal notes that the ecological constraints, slope, bushfire hazard risk and electrical easements make the site unsuitable for an educational establishment and notes that the site provides an opportunity to improve local housing choice and deliver residential units within a bushland setting.

## 2.2 Explanation of provisions

Table 3 provides details of the planning proposal's amendments to the Sutherland LEP 2015.

**Table 3: Current and Proposed controls (as originally submitted)**

Control	Current	Proposed
<b>Zoning</b>	SP2 Infrastructure – Educational Establishment	R4 High Density Residential
<b>Maximum height of building</b>	12m	16m
<b>Floor Space Ratio</b>	n/a	0.7:1
<b>Terrestrial Biodiversity</b>	n/a	Include site on Terrestrial Biodiversity LEP Map
<b>Landscape Area Minimum Area Requirement map</b>	n/a	Include site in LEP's Landscaped Area Minimum Area Requirements Map and required a minimum of 50%

There is concern is that the R4 zone permits for a range of other uses not just residential flat buildings and is perhaps not suitable for the site given the low density residential density of development that characterises the local area.

Since the submission of the initial Gateway request in October 2021, Council wrote to the Department in response to these concerns and recommended instead that the site be zoned R2 Low Density Residential while simultaneously also permitting residential flat buildings as a singular additional permitted use for the site; a use which is not normally permitted for this zone.

However, because the retained expectation for the site to conserve sensitive vegetation and provide a high level of landscaped area, council thought it appropriate that on balance residential development was appropriate for the site. The Department agrees with this logic.

The proposed development standards for maximum building height of 16m and FSR of 0.7:1 remains unchanged. In this regard it is recommended that given that these controls assist to give rise to the concept scheme for residential flat development, that the planning proposal be clear that these standards only apply to this form of development. The planning proposal should also conversely be clear that the same built form development standards that currently apply under LEP 2015 for R2 zones will also apply to the site.

In this regard a Gateway condition is recommended to require that the planning proposal be updated to reassess the combined effects of these proposed zoning and development standards. It is also recommended that the planning proposal be clear that these built form controls only apply to residential flat building development on the site and not to other forms of development permitted within the R2 zone.

## Development Control Plan

The planning proposal is accompanied by proposed DCP provisions in the appendix of the report but Council has not yet prepared a draft Development Control Plan (DCP). Based off the proposed DCP provisions in the report, the DCP will seek to address matters including landscaping, tree retention, tree planting, setbacks and car parking controls. The planning proposal outlines that the site is unusual in its context, and it is important for any development to be compatible with site's existing remanent vegetation and neighbouring GHFF camp.

This is intended to help minimise the impact of future building footprints and limit this development to part of the site already substantially modified. This approach also allows for more trees to be retained while also providing a buffer between new residents and the existing GHFF camp (**Figure 7**).

Approximately 60% of the site has been disturbed to provide for the existing development. The draft DCP will seek to ensure development maintains the natural features on site by limiting future development to the existing disturbed areas (**Figure 8**).

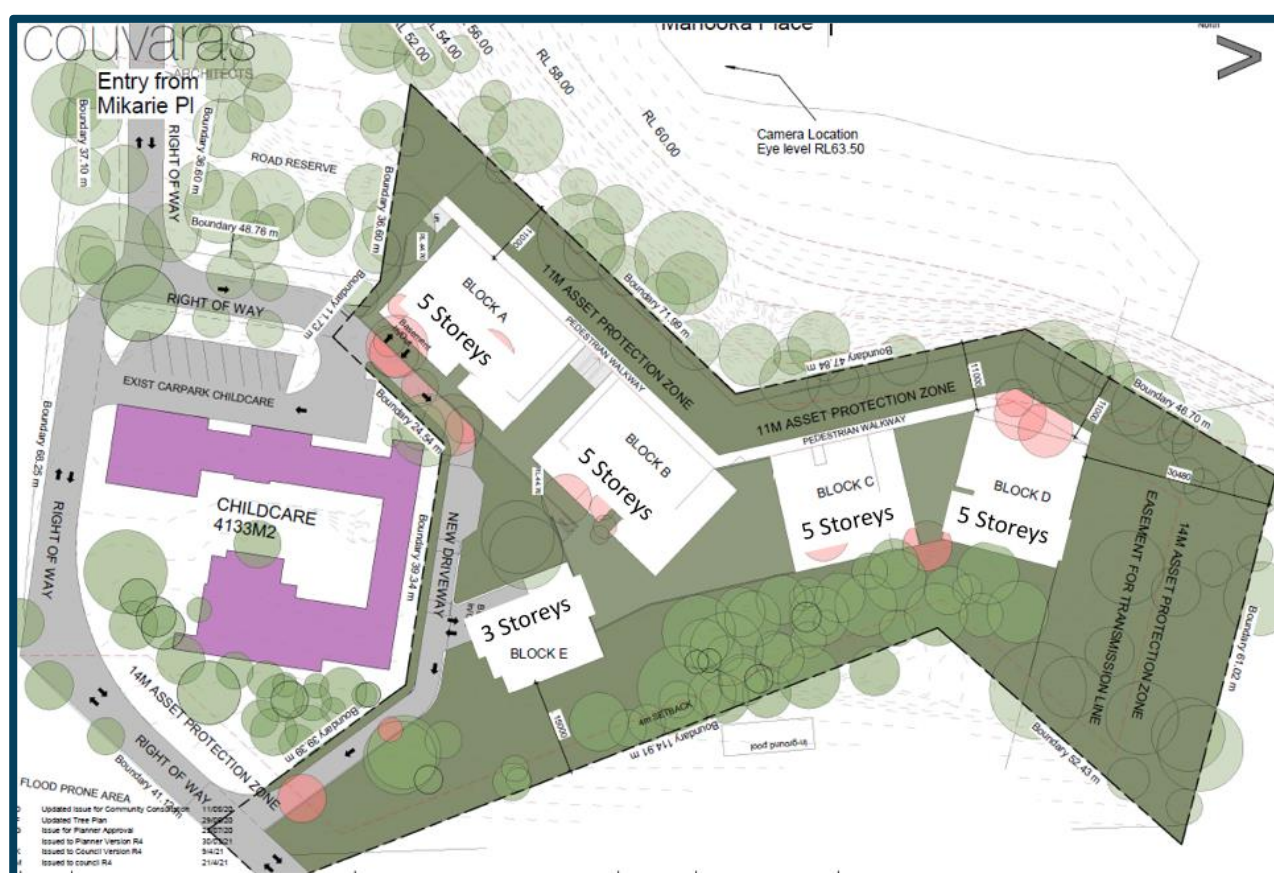


Figure 7: Development concept scheme informing draft DCP (Source: the planning proposal)



## Clause 6.5 Environmentally Sensitive Land - Terrestrial Biodiversity

The objectives of Clause 6.5 include:

- Clause 6.14 Landscaped areas in certain residential, business, industrial and environment protection zones

This clause will require a minimum 50% of the site to be provided for landscaped area, which is defined in the Sutherland LEP 2015 as a part of a site used for growing plants, grasses and trees, and excludes any building, structure or hard paved area.

The Gateway determination has been conditioned to require the Explanation of Provisions to be updated and the proposed mapping must be consistent with these amendments. This should include clarification of the proposed mapping of Maximum Building Height and Maximum FSR.

## 2.3 Mapping

The planning proposal includes mapping changes to the floor space ratio, height of buildings, land zoning, terrestrial biodiversity and landscape area maps.

A comparison of the existing and proposed LEP mapping is below (**Figures 9 to 13**).

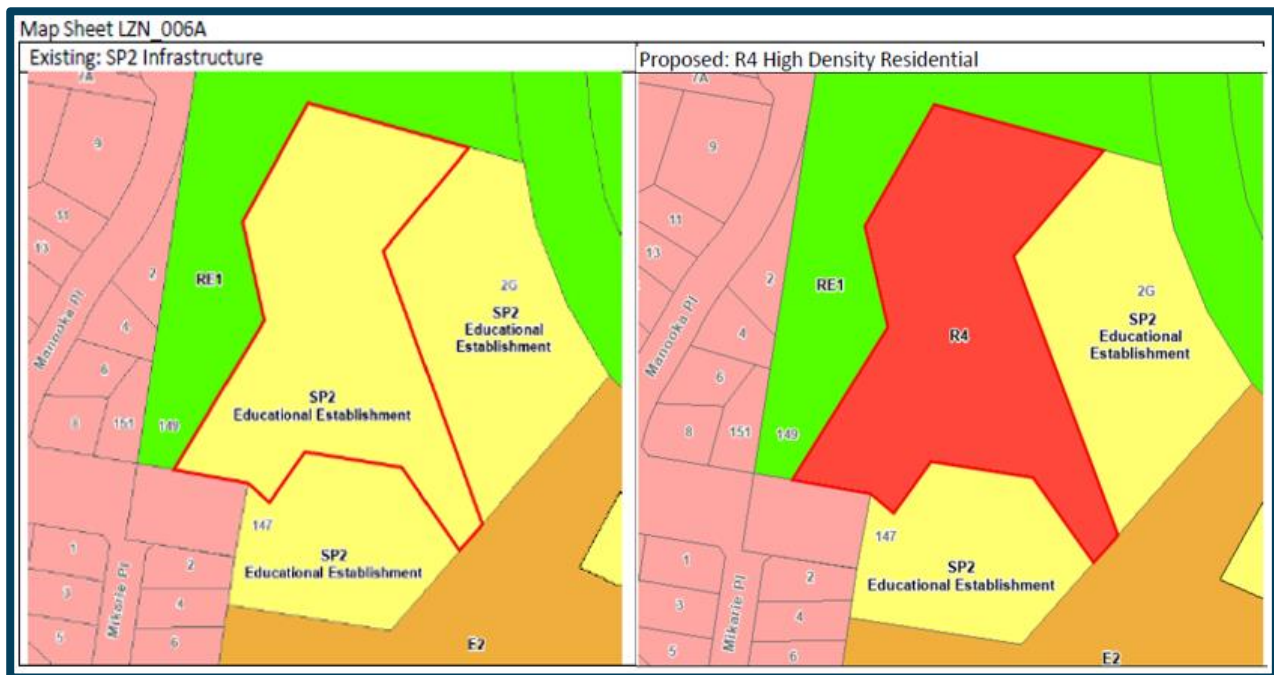


Figure 9: Current (left) and proposed (right) land zoning map

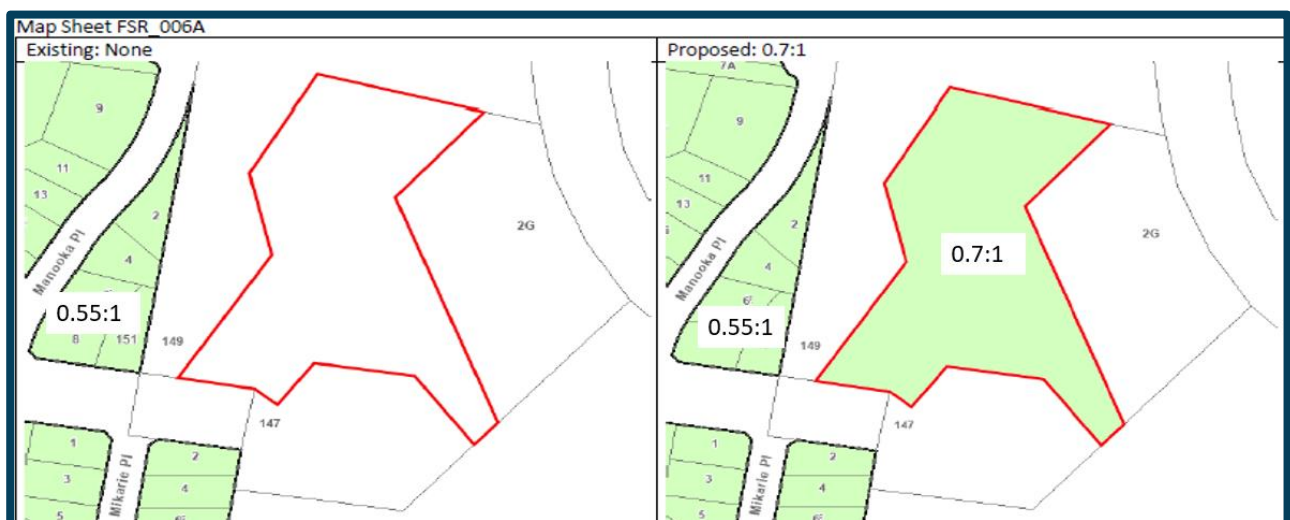


Figure 10: Current (left) and proposed (right) floor space ratio map



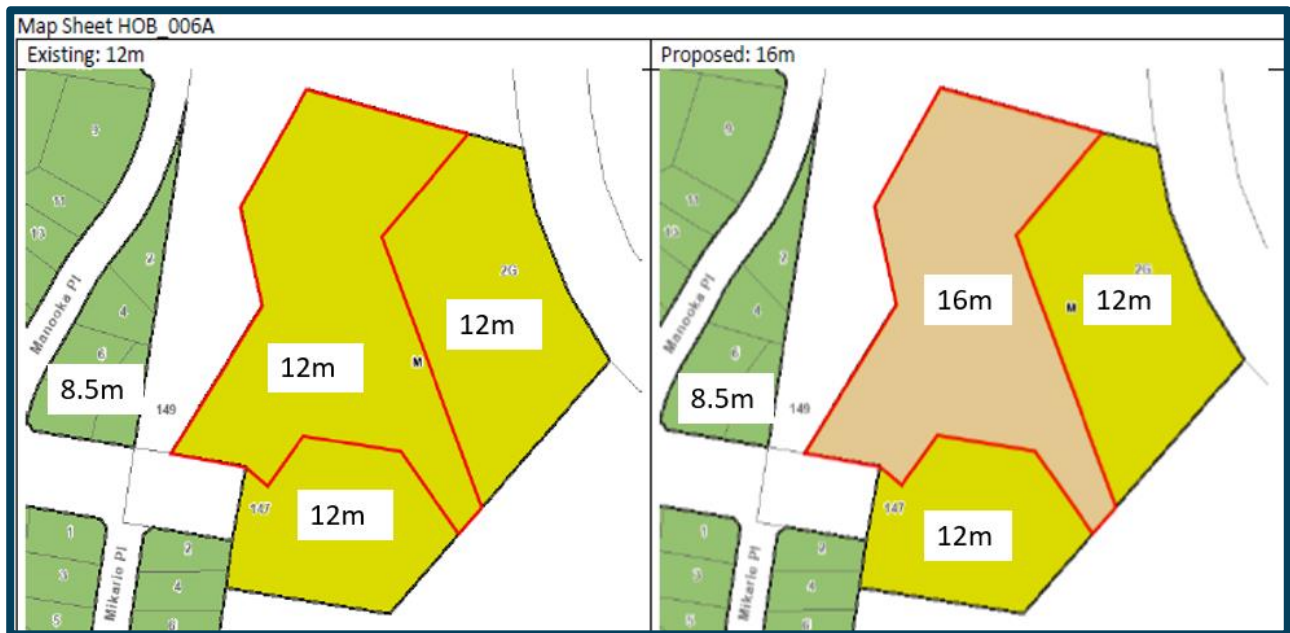


Figure 11: Current (left) and proposed (right) height of buildings map

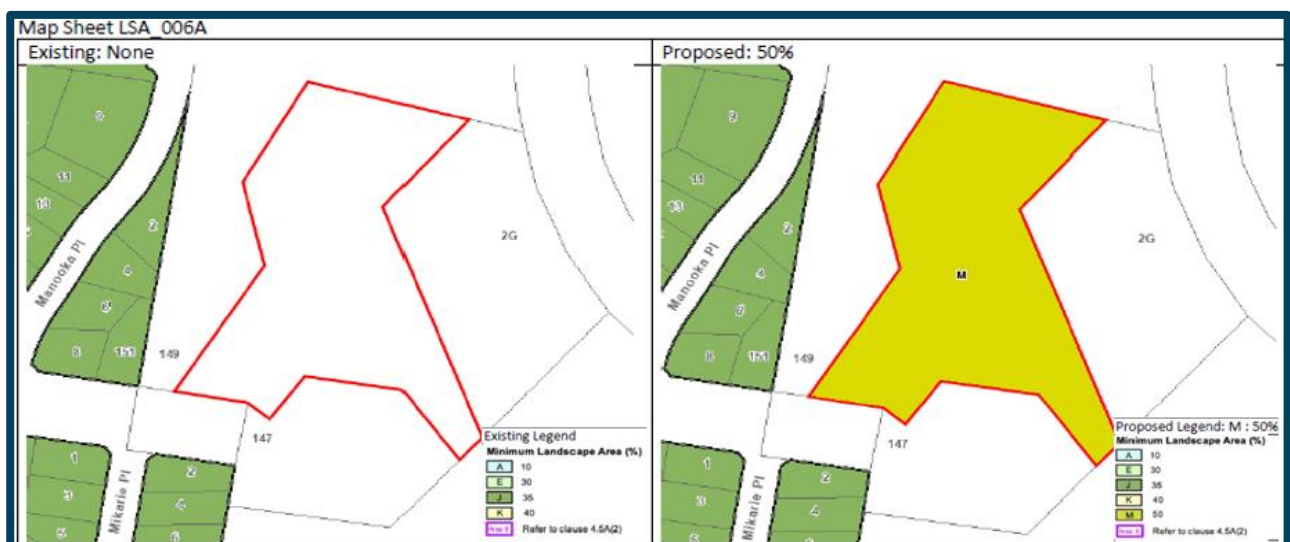


Figure 12: Current (left) and proposed (right) landscape area map

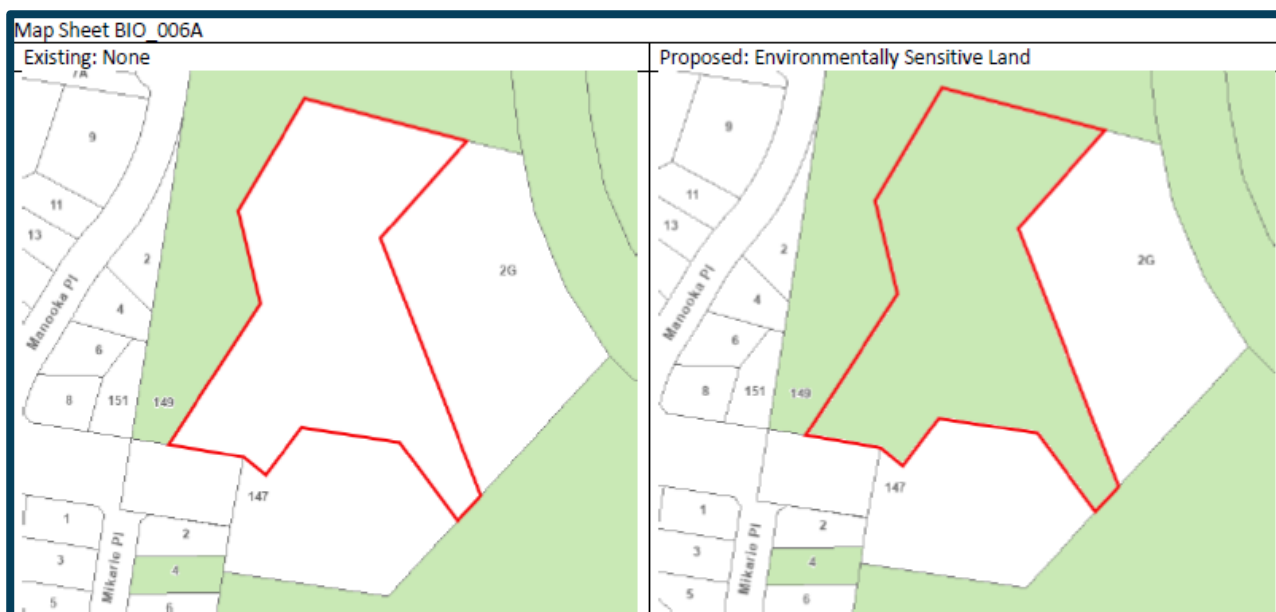


Figure 13: Current (left) and proposed (right) terrestrial biodiversity map

## 2.4 Background and Planning Proposal History

The planning proposal states that the Sylvanvale Foundation was formed in 1947 to give children with a disability a better quality of life through access to education and social inclusion.

Sylvanvale is currently relocating their head office to a business centre to improve accessibility. The planning proposal states that the site is surplus to their needs and proceeds from the sale will be used to construct supported independent living housing for people with a disability.

The existing childcare centre will be retained and will be subdivided from the parent lot in the proposed Lot 105 resulting from DA20/0381.

### May 2020 Planning Proposal

On 29 May 2020, a previous version of the planning proposal was lodged with Sutherland Shire Council by the proponent. It is understood this sought to facilitate a development concept including 42 townhouses.

It is understood Council did not support this concept because it demonstrated unacceptable outcomes due to the extent of tree removal, the extent of built form over the site, and poor integration with the site's natural features.

### April 2021 Planning Proposal

On 30 April 2021, a revised planning proposal was submitted by the proponent which contained two further development options (**Figures 14 and 15** below).

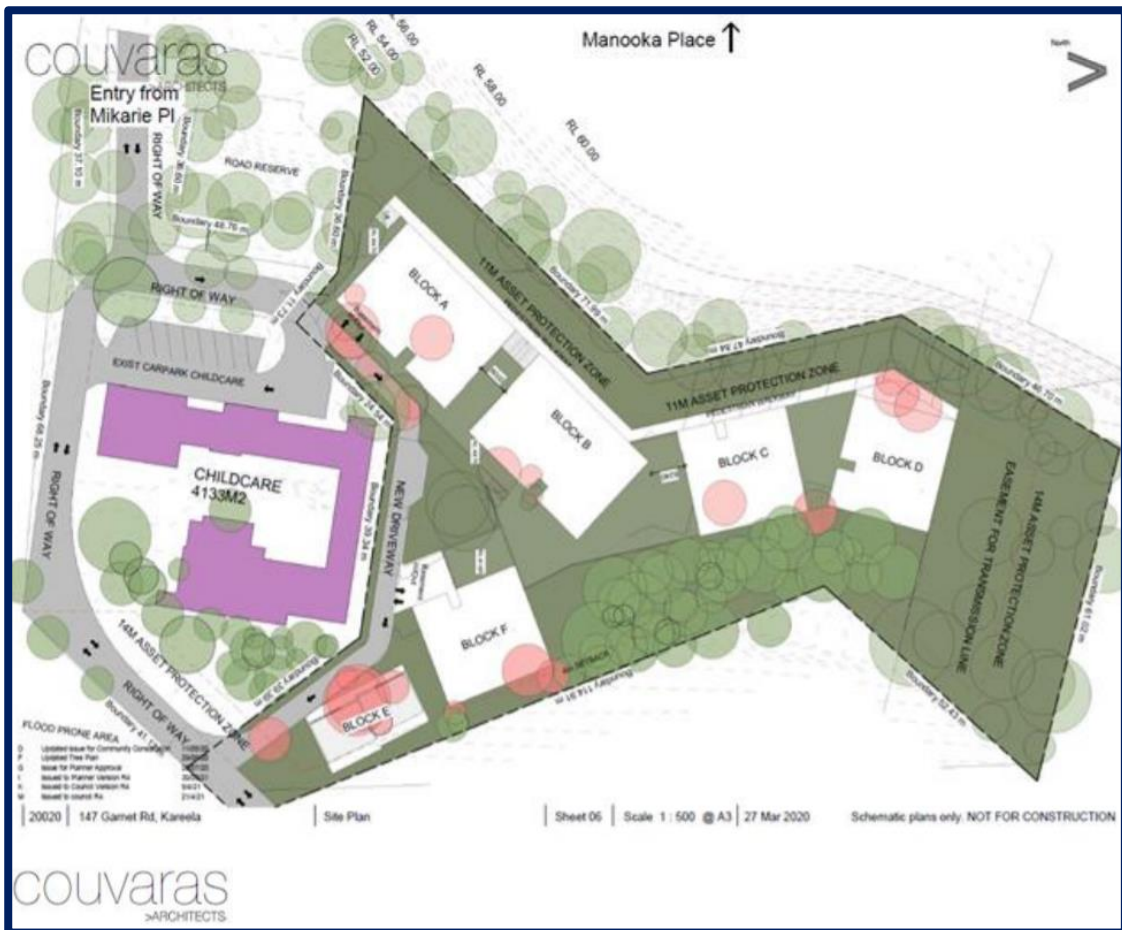


Figure 14: Residential flat building option – supported by a R4 High Density Residential zoning

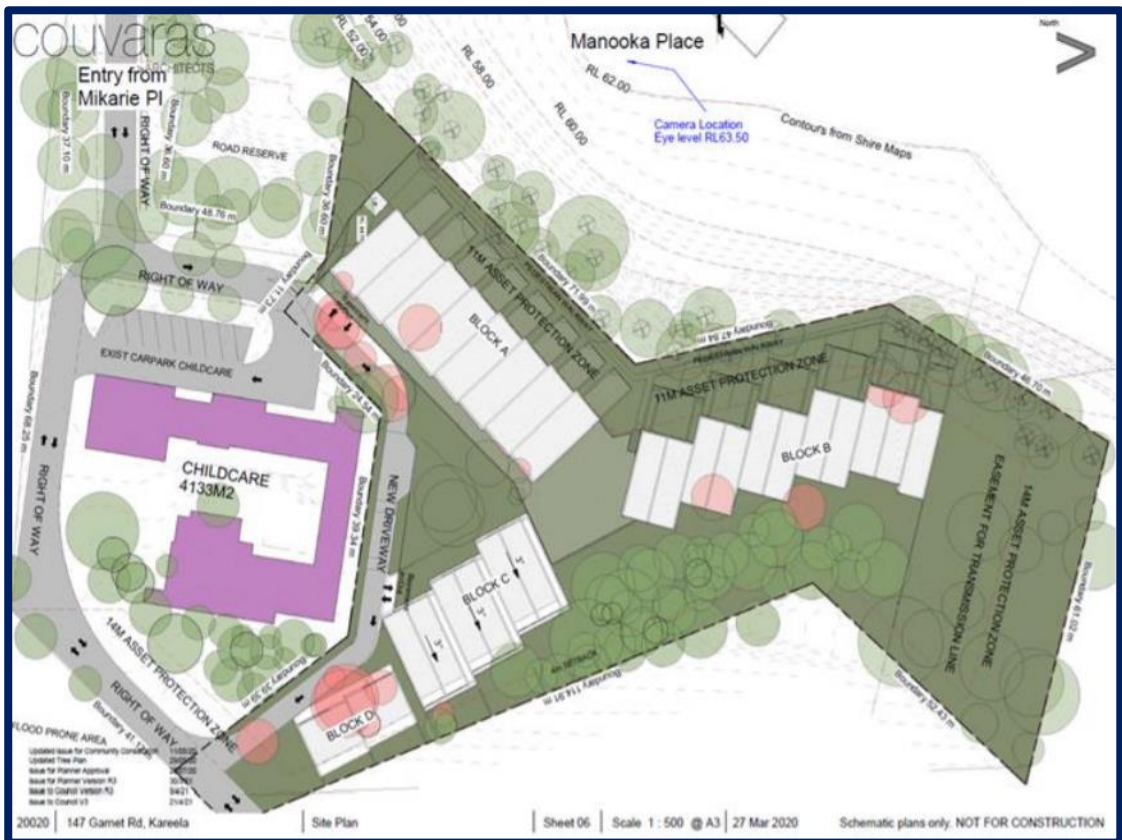


Figure 15: Townhouse option – supported by R3 Medium Density Residential zoning

### Sutherland Shire Local Planning Panel – recommendation to Council

On 1 June 2021, the Sutherland Shire Local Planning Panel (the Local Panel) reviewed the planning proposal. Council officers recommended the planning proposal proceed to the Department for Gateway.

The Local Panel's recommendations discussed in Table 4 below with Council's response are based on the R4 High Density Residential (R4) zoning concept/option (**Figure 14** - previous page):

**Table 4: Local Panel recommendations and Council's response**

Local Panel recommendations	Council's response
A Site Specific DCP be prepared to ensure appropriate provisions are put in place to avoid any adverse developmental impacts on the surrounding environment.	Council will prepare a site-specific DCP incorporating the Panel's comments and exhibit it concurrently with the planning proposal.
All development should occur on the existing disturbed areas of the site so that removal of significant trees and landscaped areas can be avoided. This included removing blocks E and F from the concept scheme.	<p>Council outlined that this will be represented in the site-specific DCP.</p> <p>Note - the draft site specific DCP provisions submitted with the planning proposal removes buildings E and F as intended areas for development.</p> <p>The remaining supporting concept scheme material has not been updated with the planning proposal package to reflect this outcome. A Gateway condition is recommended to require all supporting documentation to be updated to reflect consistency with the draft site specific DCP.</p>
The Panel supported the 50% vegetation requirement and stated that there should be no loss of trees on the site and there should be a net increase of native species on site. The Panel also recommended an improved habitat corridor adjoining the eastern boundary. The Panel stated that block E should be removed.	<p>The draft site-specific DCP provisions submitted with the planning proposal requires the replacement of any trees lost on site.</p> <p>Council also states that limiting development to the existing developed areas will minimise the removal of trees on site and will be enforced in the site-specific DCP as outlined above. Council noted that the removal of block E would increase the minimum landscaping on the site.</p>
The Panel acknowledged the sensitive flora and fauna surrounding the site, and stated the ecological impacts required careful consideration, justification and management, with particular focus to the adjoining national significant GHFF colony.	DCP provisions to limit development to the existing cleared area will better protect existing vegetation and provide for a habitat corridor. A Management Plan will be required to manage impacts to the GHFF community and the effects of construction. In response to the Panel's comments Council decided to add the site to the terrestrial biodiversity – environmentally sensitive land map.
The Panel noted that given the intention for diverse housing, affordable housing should be considered as part of the outcome.	<p>Council noted this recommendation and also noted that the addition of affordable housing, coupled with managing the environmental constraints on site would likely impact the feasibility of the development.</p> <p>Under SEPP 70 Affordable Housing Council must demonstrate that the addition of affordable housing must not undermine development feasibility.</p>



### Sutherland Shire Council's Strategic Planning Committee Meeting

On 12 July 2021, the planning proposal was considered by Council's Sutherland Shire Strategic Planning Committee (the Committee). Council officers recommended the planning proposal proceed to the Department for Gateway, being:

- rezoned to R4 High Density Residential;
- introduce a maximum floor space ratio of 0.7:1
- increase the maximum building height to 16m;
- introduce a Landscape Area requirement of 50%; and
- introduce Clause 6.5.

The Committee was unable to form a quorum due to the declaration of interests. In response, the matter was deferred to the 26 July Council meeting.

### Council Meeting

On 26 July 2021, the planning proposal was considered by the Sutherland Shire Council.

The Council was unable to form a quorum due to the declaration of interests. In response, the Council delegated its functions as planning proposal authority (PPA) to the Local Panel.

### Sutherland Shire Design Review Panel (SSDRP)

On 9 September 2021, the planning proposal was considered by the SSDRP, which supported the planning proposal, but expressed concern that the supporting concept scheme did not establish adequate design analysis.

The SSDRP suggested that the planning proposal include a Design Management Plan and make greater effort to integrate with the landscape.

Council staff advise with the planning proposal that these issues can be addressed through the draft DCP and development assessment process and need not delay the request for a Gateway determination.

### The Local Panel Meeting as PPA

On 5 October 2021, the Local Panel determined that it should accept the role of PPA and that the planning proposal be submitted to the Department for Gateway Determination.

It was also determined that the Chief Executive Officer of Sutherland Shire Council be given delegated authority to make any amendments that are required by the Gateway Determination before the planning proposal is exhibited and that a site-specific DCP be exhibited concurrently with the planning proposal.

It was also determined that the Local Panel should be given plan making authority and consist of Grant Christmas (Chair), Julie Savet Ward (Expert Member), Philippa Frecklington (Expert Member) and Kurt Ingle (Community Representative Member).

On 18 October 2021, the planning proposal was submitted to the Department for a Gateway determination. The supporting concept scheme can be found at **Figure 16**.

## Additional Documentation submitted to address Department concerns from Gateway assessment

On 19 November 2021, Energy, Environment and Science Group (EES) provided comments on the planning proposal. These are discussed in detail in **Section 5.1** of this report.

On 15 December 2021, Council submitted a revised concept scheme which intended to:

- realise and reflect the proposed 0.7:1 FSR; and
- contain the proposed development to existing disturbed areas of the site.

This revised development concept scheme seeks to facilitate the following as shown in **Figures 17 to 19**:

- 63 dwellings in 5 residential flat buildings;
- Flat buildings heights range from 3 to 5 storeys;
- 118 car spaces;
- 6,676m<sup>2</sup> of gross floor area (GFA); and
- 4,800m<sup>2</sup> of landscaping.

Architectural section drawing of a building complex. The drawing shows two main building volumes. The left volume is a multi-story structure with a grid-like facade. Below it is a basement level, also labeled "Basement". The right volume is a taller, more slender structure with a similar grid-like facade. A dashed line indicates the "16m Height Line". A vertical dashed line on the left is labeled "RL 62.00 Manooka Pt". A note "Height limit complies beyond" is present. The ground is indicated by a hatched area. Trees are shown on the left and right sides of the building complex.

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### *Additional Information January 2022*

On 17 January 2022, the Department raised additional concerns with the proposal, including:

- the strategic justification for the proposed rezoning of the site to R4 High Density Residential noting a lack of consistency with the LHS and surrounding residential context;
- the lack of information to clarify why the land was previously zoned SP2 Infrastructure but is no longer needed and is now surplus land; and
- the potential impacts of rezoning the site on the GHFF camp.

On 24 January 2022, Council responded to these concerns by:

- providing additional background on the history of the site and how it came to be zoned SP2 – see **Section 3 Need for the Planning Proposal** of this Report for further details;
- that Council has no established approach for managing the SP2 zoning on this land because of its unique topography and ecological constraints; and
- that a residential flat buildings concept scheme appropriately responds to the site specific constraints, but failed to adequately respond to the provisions of the LHS.

Nonetheless, concern remained that the additional information did not demonstrate the proposed R4 zoning giving effect to the LSPS and LHS.

### *Additional Information March 2022*

In March 2022, Council and the proponent provided further information to support the residential flat buildings option. This information noted that this built form outcome would appropriately mitigate impacts on the environmental constraints of the site.

The proponent outlined that the GHFF camp had largely vacated the adjacent land, moving to the Camelia Gardens, Caringbah South.

On 18 March 2022, a GHFF Population analysis dated March 2022 was provided which assessed a total of 90-140 GHFF in the camp. This number is significantly less than the 10,000 recorded within the past 10 years that made the site a nationally significant.

On 23 March 2022, Council responded to the remaining concerns by stating it would be supportive of a low density approach using an R2 Low Density Residential zone with an additional permitted use (APU) for residential flat buildings.

### *Documentation for assessment*

The subsequent assessment in Section 3 to 5 of this report has been undertaken against the additional information provided above, specifically:

- the revised concept scheme dated December 2021; and
- the additional information dated March 2022 suggesting a R2 Low Density Residential zoning with an Additional Permitted Use for Residential Flat Buildings.

Gateway conditions have been included to ensure all documentation reflects the additional information and revisions made since submission of the Gateway request in October 2021 as appropriate.

### 3 Need for the planning proposal

The planning proposal states that it is not the direct result of a local strategic planning statement or specific planning study. The planning proposal and additional information provided state that the site is no longer suitable for Sylvanvale's purposes as disability services provider, which the SP2 zoning seeks to support.

The planning proposal notes that:

- as Sylvanvale has grown and the support services provided to people with disability have evolved over time, the topography of the site has made it unsuitable for the direct provision of services and support to Sylvanvale clients;
- Sylvanvale now bases its support services in locations where its clients can be part of the community. Sylvanvale also focuses its work on appropriately supported groups homes. This change in direction over time has meant that their head office now occupies the site exclusively; and
- the use of the site as Sylvanvale's head office is no longer appropriate because overflow car parking is now conflicting with surrounding low density residential development. Sylvanvale seeks to relocate these administrative activities to conventional office space in a commercial centre.

The planning proposal notes that the ecological constraints, slope, bushfire hazard risk and electrical easements make the site unsuitable for an educational establishment. Despite this the proposal seeks to support these intended outcomes to conserve and protect existing important trees and vegetation.

A planning proposal is the best means to deliver the intended outcomes as it will provide the mechanism to facilitate the desired built form outcome as part of a future development assessment.

## 4 Strategic assessment

### 4.1 District Plan

The site is in the South District and the Greater Sydney Commission released the South District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*.

The planning proposal is consistent with the following District Plan Planning Priorities as discussed in Table 5.

**Table 5: District Plan assessment**

District Plan Priorities	Assessment
Planning Priority S1: Planning for a city supported by infrastructure	The site is surrounded by an urban residential setting and has reasonable access to existing services. The planning proposal notes that the intended future development seeks to comply with Council's DCP requirements for parking. As show in the approved subdivision application on site DA20/0381, utilities and services can be provided for residential purposes on this site.

District Plan Priorities	Assessment
	A condition of Gateway will require consultation with the relevant utility providers.
Planning Priority S3: Providing services and social infrastructure to meet people's changing needs	The planning proposal will result in additional housing choice available within Kareela and the wider Sutherland Shire. This will provide the potential for a housing typology that allows people to downsize from the detached dwelling that is common within Sutherland Shire.
Planning Priority S4: Fostering healthy, creative, culturally rich and socially connected communities	The proximity of the site to existing residential areas provides the opportunity to contribute to a socially connected community.
Planning Priority S5: Providing housing supply, choice and affordability, with access to jobs, services and public transport	<p>The intention of the planning proposal to enable residential development to occur on the land will provide the opportunity to contribute to additional housing supply in the Sutherland Shire.</p> <p>The site is located within an existing urban residential setting with reasonable access to existing services and some public transport services. Whilst not in close proximity to mass transport, the objectives of the planning proposal to balance the unique site constraints and opportunities arising from its topographical setting is well considered. The planning proposal intends to provide for a type of housing that will appropriately respond to its environmental setting whilst also contributing to additional housing choice.</p>
Planning Priority S6: Creating and renewing great places and local centres and respecting the District's heritage	<p>This priority recognises the importance of creating great places that bring people together and conserve environmental heritage.</p> <p>The planning proposal has the potential to provide a residential development within proximity of existing services to support the liveability of residents on site. Council's planning proposal states that the site may contain indigenous archaeology. The planning proposal states that as development will be contained to existing disturbed land there is minimal chance to impact any potential indigenous archaeological heritage on site.</p> <p>A condition of Gateway requires consultation with Heritage NSW to comment on the possibility of indigenous archaeological heritage on the site.</p>
Planning Priority S14: Protecting and enhancing bushland, biodiversity and scenic and cultural landscapes and better managing rural areas	<p>This planning priority seeks to ensure:</p> <ul style="list-style-type: none"> <li>• biodiversity is protected, urban bushland and remnant vegetation is enhanced;</li> <li>• scenic and cultural landscapes are protected; and</li> <li>• environmental, social and economic values in rural areas are protected and enhanced.</li> </ul> <p>The planning proposal seeks to retain remanent bushland and limit development to existing disturbed areas on site. To achieve these outcomes, the planning proposal intends to introduce the site into clauses 6.5 and 6.14 of the Sutherland LEP 2015, which require:</p> <ul style="list-style-type: none"> <li>• consideration of future developments impacts on the site's existing terrestrial biodiversity;</li> </ul>

District Plan Priorities	Assessment
	<ul style="list-style-type: none"> <li>regard to the neighbouring GHFF camp through considerations of habitat connectivity and fragmentation; and</li> <li>50% of the site to be used for landscaped area.</li> </ul> <p>The supporting concept scheme retain existing cultural and scenic landscapes because it:</p> <ul style="list-style-type: none"> <li>responds to the context of the site which is beneath the ground level (existing) of neighbouring low density residential development to the west along Garnet Road and Manooka Place; and</li> <li>is mitigated from Bates Drive by the existing 2 storey built form of the Bates Drive School.</li> </ul> <p>The site-specific DCP will support these LEP provisions by including detailed planning controls, including:</p> <ul style="list-style-type: none"> <li>that development be limited to the existing disturbed areas of the site, as identified in a supporting diagram (<b>Figure 8</b> – page 12);</li> <li>includes a development concept scheme which is limited to existing disturbed land on the site;</li> <li>has a requirement for no net loss of trees and requires any removed tree to be replaced to be offset with native vegetation; and</li> <li>includes built form and operational mitigation measures to manage impacts to the neighbouring GHFF camp, including acoustic and lighting controls.</li> </ul> <p>These requirements have been informed by:</p> <ul style="list-style-type: none"> <li>an ecological assessment, which outlines that impacts to threatened and migratory species on site will not be significant in accordance with Section 7.3 of the BC Act and the EPBC Act. The ecological assessment states that there will be minimal disturbance to the neighbouring GHFF camp;</li> <li>a Council approved Fauna Management Plan (see further discussion in <b>Section 5.1</b>);</li> <li>a GHFF Population Report dated April 2022 has been provided which assessed a total of 90-140 GHFF roosting in the camp. This number is significantly less than the 10,000 recorded within the past 10 years; and</li> <li>arboriculture report that details appropriate tree removal and replanting.</li> </ul> <p>It is recommended that Council consult with EES as part of community consultation.</p>
Planning Priority S15: Increasing urban tree canopy cover and delivering Green Grid connections	<p>This planning priority seeks to ensure:</p> <ul style="list-style-type: none"> <li>urban tree canopy cover is increased; and</li> <li>the Green Grid links parks, open spaces, bushland and walking and cycling paths.</li> </ul> <p>To achieve these outcomes, the planning proposal intends to introduce the site into clause 6.14 of the Sutherland LEP 2015, which requires 50% of the site to be used for landscaped area.</p>

District Plan Priorities	Assessment
	<p>This will provide opportunities for increasing the tree canopy on the site by requiring future development to be restricted to limited areas of the site.</p> <p>This is reinforced by the supporting site specific DCP which requires:</p> <ul style="list-style-type: none"> <li>• development be limited to the existing disturbed areas of the site, as identified in a supporting diagram (<b>Figure 8</b> – page 12);</li> <li>• includes a development concept scheme which is limited to existing disturbed land on the site; and</li> <li>• has a requirement for no net loss of trees and requires any removed tree to be replaced to be offset with native vegetation.</li> </ul> <p>These requirements have been informed by an arboricultural report which identifies which trees may be removed and which trees are to be protected. The report outlines the various trees that are to be removed for construction and outlines where they should be replanted on site. This is illustrated in an accompanying landscape plan.</p> <p>It is noted that the arboricultural report and accompanying landscape plan have been prepared to support a previous development concept scheme.</p> <p>The Gateway has been conditioned to require an updated report which reflects the current supporting development concept scheme.</p>
<p>Planning Priority S18: Adapting to the impacts of urban and natural hazards and climate change</p>	<p>The planning proposal is both flood and bushfire prone. The planning proposal adequately addressed this planning priority.</p> <p>Detailed assessment of the flood and bushfire hazards is undertaken in <b>Section 4.3 – Section 9.1 Ministerial Directions of this report.</b></p>

## 4.2 Local Strategies

The planning proposal is consistent with the strategic direction and objectives of the Sutherland Shire Local Strategic Planning Statement, including those identified in Table 6 over the page.

**Table 6: Sutherland Shire Local Strategic Planning Statement assessment**

LSPS Priorities	Assessment
Planning Priority 1: Align planning to existing infrastructure	<p>The planning proposal intends to provide appropriate car parking for the proposed dwellings to reduce stress on the surrounding on-street car parking. Under the requirements of the Sutherland Shire DCP parking provisions the development is required to provide a total of 118 car parking spaces for resident and visitor use. The most up to date residential flat building development concept scheme (<b>Figures 17 to 19</b> – page 20) proposes 120 parking spaces on site and therefore complies with the requirements of the Sutherland Shire DCP.</p> <p>The planning proposal states that the existing utilities available will be able to provide for the proposed amount of dwellings. As previously stated, a Gateway condition will require consultation with the relevant utility providers.</p> <p>This aligns with Action 1.1 <i>Land use planning will consider the capacity of existing infrastructure, committed improvements and will forecast demand from the current population growth trends of the LSPS.</i></p>
Planning Priority 2: Managing traffic congestion and parking	<p>As discussed above, the intended concept scheme seeks to cater for all parking associated with the development on site. Providing off-street parking will minimise pressure on the surrounding on-street parking and in turn improve on the liveability of the development and area.</p>
Planning Priority 7: Respecting local character	<p>The planning proposal intends to minimise the visual impact of the development by maintaining vegetation screening on site through the proposed 50% landscaping provision.</p> <p>The alternate zoning approach is in keeping with the surrounding residential context. The impact of the proposed height of the residential flat buildings on the surrounding area will be mitigated by the 13m fall of the site from west to east the location of the site being 13m below the residential area to the west.</p> <p>The planning proposal notes that the significant trees on site that are currently viewed from this area will remain to screen the development and as such there should be minimal loss of views as a result of the development.</p>
Planning Priority 10: Provide our community with housing choice by making available opportunities for a range of housing sizes and types within each community	<p>The planning proposal seeks to create a total of 63 dwellings on a site that will comprise units of different sizes. This will be realised in the creation of a total of five residential flat buildings comprising 1 to 4 bedroom apartments.</p> <p>This diversity of dwelling sizes will allow greater choice for the community and provide a housing typology that is currently underserved within the area as it is currently dominated by detached dwellings.</p>
Planning Priority 19: Aboriginal Heritage, Natural Habitats and Landscapes	<p>This planning priority seeks to retain and enhance the large areas of Sutherland Shire that remain as natural bushland. The LSPS notes the LGA contains a significant proportion of the remaining, unique Hawkesbury Sandstone biota. The planning</p>

	<p>proposal gives effect to this priority. This is discussed in detail in <b>Section 4.1 – District Plan</b> under planning priorities S14 and S15.</p> <p>The planning proposal notes that there may be the presence of indigenous archaeological heritage on site. This is discussed further in <b>Section 4.3 – Section 9.1 Ministerial Directions of this report</b>.</p> <p>A condition of Gateway requires community consultation with EES.</p>
Planning Priority 20: Urban Tree Canopy	<p>The planning proposal outlines that redevelopment will occur on existing disturbed ground. The planning proposal aims to ensure this occurs through implementing a 50% landscaping requirement within the Sutherland LEP 2015.</p> <p>The addition of the site to the Sutherland LEP 2015 Terrestrial Biodiversity mapping will provide further protection for the vegetation on site, requiring compliance with the requirements of Clause 6.5.</p> <p>Further protection for the urban tree canopy is to be provided through the accompanying site-specific DCP which will ensure the replacement of any tree removed as well as identifying significant trees not to be removed.</p>
Planning Priority 23: Manage Risks from Hazards	<p>The planning proposal is both flood and bushfire prone. The planning proposal adequately addressed this planning priority.</p> <p>Detailed assessment of the flood and bushfire hazards is undertaken in <b>Section 4.3 – Section 9.1 Ministerial Directions of this report</b>.</p>



The planning proposal is consistent with the strategic direction and objectives of other local strategies, including the Sutherland Shire Local Housing Strategy, identified in Table 7 below:

**Table 7 Other local strategies**

Other Local Strategies	Assessment
Community Strategic Plan (CSP)	<p>This Planning Proposal aligns with the following actions outlined in the Sutherland Shire Community Strategic Plan:</p> <p><i>2.2.1 Enhance and protect our diverse flora, fauna and ecological communities</i></p> <p><i>2.2.2 Manage, promote and enhance our tree canopy in urban and natural areas</i></p> <p><i>2.2.3 Encourage responsible urban planning which balances growth with environmental sustainability</i></p> <p><i>6.2.1 Through future development, plan for the delivery of a diversity of housing types that meets the needs of residents at different stages of their lives.</i></p>
Sutherland Shire Local Housing Strategy	<p>The LHS was adopted by Council in December 2020 and endorsed by the Department on 11 June 2021.</p> <p>The LHS includes 7 objectives to ensure the appropriate delivery of housing with the local context of the Sutherland Shire LGA. These objectives include;</p> <ul style="list-style-type: none"> <li>• to meet the current and future needs of smaller sized households; and</li> <li>• to consider environmental constraints in nominating locations for additional housing.</li> </ul> <p>The LHS then nominates specific actions to deliver the identified objectives. This includes recommendations for future built form outcomes and suggested planning controls. These are focused on existing centres, being informed by the LSPS. While the site is not identified in any of these areas the alternate zoning approach is in keeping with the LHS, because it:</p> <ul style="list-style-type: none"> <li>• provides for new residential development in an urban context, being: <ul style="list-style-type: none"> <li>○ 250m west of the Princes Highway;</li> <li>○ 2km north west of the Miranda Strategic Centre;</li> <li>○ 1.3km north of GyMEA Station;</li> <li>○ 2km south east of Southgate Shopping Centre;</li> <li>○ 140m west of Kareela Oval Reserve; and</li> <li>○ 450m west of GyMEA North Public School.</li> </ul> </li> <li>• can facilitate a built form outcome that responds to the site's topographic and ecological constraints;</li> <li>• overall density of the development is relatively low given the lower FSR that normally applied to residential development and the requirements for conservation of bushland and landscape open space which will provide a buffer to adjoining sites;</li> <li>• restricts development to part of the site and thereby restricts the overall density of development to respond to its context; and</li> <li>• seeks to respect neighbouring low density residential development, public open spaces and environmental protection zoned land. See <b>Section 5.1 Site Specific Assessment - Environmental</b> of this report.</li> </ul> <p>A Gateway condition has been included to require the planning proposal include the additional information provided that addresses the LHS.</p>

## 4.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions as discussed in Table 8 below:

**Table 8 - Section 9.1 Ministerial Direction assessment**

Directions	Consistency	Assessment
1.4 Site Specific Provisions	Consistent	<p>This Direction aims to discourage unnecessarily restrictive site-specific planning controls.</p> <p>The planning proposal is consistent with this Direction because;</p> <ul style="list-style-type: none"> <li>uses permitted under the R2 zone will be permitted;</li> <li>it will provide for a better planning outcome having regard to the site specific issues with the site, including remanent bushland and the neighbouring GHFF camp.</li> </ul> <p>The additional permitted use is considered the best means of providing for a built form outcome which appropriately responds to these issues.</p> <p>The Gateway determination has been conditioned to require clarification on the preferred mechanism for implementing the intended outcomes.</p> <p>Specifically, this clarification should discuss the development standards which will apply to other forms of development permitted in the R2 zone (i.e. dwelling houses and multi-dwelling housing), noting the proposed development standards appear to only support a residential flat building development.</p>
3.1 Conservation Zones	Consistent	<p>This objective of this Direction is to protect and conserve environmentally sensitive areas. Whilst the site is not currently identified as environmentally sensitive land in the Sutherland LEP 2015, it adjoins land that is identified on the Terrestrial Biodiversity Map.</p> <p>The Direction requires a planning proposal to include provisions that facilitate the protection and conservation of environmentally sensitive areas.</p> <p>The planning proposal is consistent with this direction because:</p> <ul style="list-style-type: none"> <li>it seeks to introduce provisions that facilitate the protection and conservation of environmentally sensitive areas by identifying the site under Clause 6.5;</li> <li>introducing a 50% landscaping requirement to the site; and</li> <li>restrict development to existing disturbed land on the site.</li> </ul>
3.2 Heritage Conservation	Unresolved – Gateway condition	<p>This Direction seeks to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The planning proposal states that the direction applies as the site may contain indigenous archaeological items. The planning proposal is not supported by any detailed heritage assessment.</p>

Directions	Consistency	Assessment
		<p>The planning proposal states that it is consistent with this Direction as the resulting development would only occur on existing disturbed ground.</p> <p>Nonetheless, a detailed heritage assessment addressing potential for archaeological heritage is required to demonstrate consistency with this direction.</p> <p>The Gateway determination has been conditioned to require this additional information and consult with Heritage NSW during community consultation.</p>
4.1 Flooding	Consistent	<p>The objectives of this direction are to ensure that development of flood prone land is consistent the NSW Government's Flood Prone Land Policy, and to ensure that provisions of an LEP are commensurate with flood hazard and considers flood impacts on and off the land.</p> <p>The planning proposal is supported by a Flood Assessment Report dated April 2021. This identifies a limited eastern portion of the site as affected by a 1:100 flood event.</p> <p>The planning proposal is consistent with this Direction because:</p> <ul style="list-style-type: none"> <li>• this limited section of the site is not identified as being existing disturbed land, and therefore is not identified for future development; and</li> <li>• the Flood Assessment Report concludes that future development of the site can adequately address these flooding impacts and address relevant Council flood planning controls.</li> </ul> <p>Flooding impacts on this proposal can be further considered and adequately addressed as part of the development application</p> <p>The Gateway determination has been conditioned to require consultation with EES during community consultation.</p>
4.3 Planning for Bushfire Protection	Consistent	<p>This direction aims to protect life, property and the environment from bush fire hazards.</p> <p>The site is identified as being bushfire affected and is supported by a Bushfire Assessment Report dated April 2021. This has been prepared in accordance with Planning for Bushfire Protection 2019.</p> <p>The Bushfire Assessment Report accompanying the planning proposal has identified the need for asset protection zones (APZ) on the south-eastern, northern and western boundaries of the site.</p> <p>The APZ's need to be:</p> <ul style="list-style-type: none"> <li>• 14m from the south-eastern and northern boundaries; and</li> <li>• 11m from the western boundary.</li> </ul> <p>The planning proposal is consistent with this Direction, because:</p> <ul style="list-style-type: none"> <li>• the development concept scheme proposes building envelopes consistent with these APZs; and</li> <li>• the site will be repurposed from a listed special fire protection use under the <i>NSW Rural Fires Act 1997</i> to a lower risk residential use.</li> </ul>

Directions	Consistency	Assessment
		<p>The Bushfire Report requires future residential development on the site to incorporate bushfire protection measures, including:</p> <ul style="list-style-type: none"> <li>• water supply (hydrants complying with AS2419)</li> <li>• construction complying with AS3959 (eg: Bushfire Attack Level ratings – materials selection, glass needed or type of timbers/restrictions etc) and</li> <li>• internal access provisions including notably that the new road design facilitates fire truck movement within the grounds.</li> </ul> <p>These requirements are capable of being addressed as part of the development application process.</p> <p>A Gateway condition requires consultation with the NSW Rural Fire Service during community consultation.</p>
4.4 Remediation of Contaminated Land	Consistent	<p>This Direction aims to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered at the planning proposal stage.</p> <p>The planning proposal includes discussion against the requirements of former SEPP No.55 – Contamination of land (SEPP 55). This discussion outlines that:</p> <ul style="list-style-type: none"> <li>• the site has been used as Sylvanvale Head Office, an indoor hydrotherapy swimming pool, the Aspect School and a Sylvanvale owned child-care centre (which is to remain on a separate lot); and</li> <li>• there is no known history of contamination on the site, nor has it been used for any past contaminating use outlined in the past as identified in table 1 of the <i>contaminated land planning guidelines</i>.</li> </ul> <p>Despite this, it is necessary for the planning proposal to be updated to address this Direction.</p> <p>A condition of Gateway has been included to ensure the planning proposal addresses this Direction.</p>
4.5 Acid Sulfate Soils	Inconsistent – justified and of minor significance	<p>The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils. This Direction applies when a site is identified as being affected by acid sulfate soils.</p> <p>The site is identified under the Sutherland LEP 2015 as being affected by Class 5 acid sulfate soils. The planning proposal is not supported by a geotechnical analysis.</p> <p>Any inconsistency with this Direction is justified and of minor significance, because:</p> <ul style="list-style-type: none"> <li>• the site is currently developed for urban purposes; and</li> <li>• Clause 6.1 Acid Sulphate Soils in Sutherland Shire LEP 2015 can ensure future development of the site adequately responds to the acid sulphate soils affecting the site.</li> </ul>

Directions	Consistency	Assessment
5.1 Integrated Land Use and Transport	Consistent	<p>This Direction requires a planning proposal to consider improving access to housing, jobs and services by walking, cycling and public transport and reducing reliance on cars.</p> <p>The site is located within an existing urban residential setting. There is existing services and public transport within reasonable proximity to the site. The planning proposal has outlined it will be able to meet the parking requirements of the Sutherland Shire DCP on site.</p> <p>A Gateway condition requires consultation with Transport for NSW during community consultation.</p>
6.1 Residential zones	Consistent	<p>This Direction aims to encourage housing choice, make efficient use of infrastructure and services and minimise the impact of residential development on environment and resource lands.</p> <p>The planning proposal seeks to create residential floor space that will assist in broadening housing choice opportunities.</p> <p>The location is in proximity to a range of services and existing infrastructure. Therefore, the planning proposal will make efficient use of the existing infrastructure and services.</p>

## 4.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs, including those discussed in Table 9 below.

**Table 9: Assessment of planning proposal against relevant SEPPs**

SEPPs	Requirement	Assessment
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	The SEPP regulates exempt and complying development codes which may apply to the resulting development.	The planning proposal will introduce a terrestrial biodiversity affectation on the site which will mean some exempt and complying development cannot occur. This will ensure that development occurring on site is assessed through a development application to Council so that all environmental concerns are adequately addressed in any development. Some other codes such as the Housing Alteration Code may still apply to the site.
State Environmental Planning Policy (Transport and Infrastructure) 2021	Aims to facilitate effective delivery of infrastructure. Identifies matters to be considered in the assessment of development adjacent to particular types of infrastructure.	<p>The site contains an electricity transmission easement on the northern portion of the site. The supporting documentation and concept plans demonstrate that the development has been designed to mitigate any impact on the electricity transmission easement.</p> <p>To ensure the development appropriately responds to the transmission easement, the Gateway determination has been conditioned to require consultation with Ausgrid.</p>

SEPPs	Requirement	Assessment
State Environmental Planning Policy (Biodiversity and Conservation) 2021	<p>Chapter 2 – This chapter of the SEPP regulates management and removal of vegetation.</p> <p>The planning proposal will involve the management of existing vegetation on the site</p> <p>Chapter 6 – this chapter of the SEPP regulates development on land adjacent to bushland zoned or reserved for public open space.</p> <p>RE1 Public Recreation and E2 Environmental Conservation zoned land adjacent to the site contains bushland and the flying fox colony.</p> <p>Chapter 11 – this chapter of the SEPP applies to the preparation of Local Environmental Plans and Development Control Plans within the Catchment Area.</p>	<p><i>Chapter 2</i></p> <p>The planning proposal and site-specific DCP both outline measures to ensure minimal removal and replacement of vegetation on site. The proposed 50% landscaping requirement in the LEP and requirement for building footprints to be located on existing disturbed land will assist in minimising the impact of the development on the existing vegetation on site.</p> <p><i>Chapter 6</i></p> <p>The planning proposal seeks to introduce various measures to protect and maintain existing vegetation on site. The proposed 50% landscaping requirement, DCP provisions requiring development to occur only on existing disturbed land and proposed addition of terrestrial biodiversity will ensure that existing habitat on site is protected.</p> <p>The resulting development will be assessed against SEPP No 19 due to the significant vegetation present on site and the proximity of the site to the flying fox colony.</p> <p>The environmental assessment of this planning proposal is discussed further in <b>Section 4.1 of this report</b>.</p> <p><i>Chapter 11</i></p> <p>The planning proposal is consistent with the objectives and controls of this chapter.</p> <p>The planning proposal seeks to maintain a landscaped area (permeable land surface) to at least 50% of the site's area, retain trees and vegetation and be required to comply with Clause 6.4 Stormwater Management of the Sutherland LEP 2015.</p> <p>This has the potential to maintain or improve the quality of the site's stormwater discharges into the Georges River catchment, while maintaining or improving the environmental quality of the site itself.</p>

SEPPs	Requirement	Assessment
State Environmental Planning Policy (Housing) 2021	Chapter 2, Part 1 is relevant as the Local Panel discussed opportunities for providing affordable housing on the site.	<p>Chapter 2, Part 1 of the Housing SEPP provides for Sutherland Shire Council to prepare an affordable housing contribution scheme to levy for the provision of affordable housing.</p> <p>Council is yet to prepare and endorse an affordable housing contribution scheme. The next step in the process will be for Council to prepare an affordable housing contribution scheme and amend their local environmental plan to reference the scheme.</p> <p>Until this occurs, other mechanisms are available to deliver affordable housing, including a VPA.</p> <p>It is understood Council is continuing to investigate the introduction of an affordable housing contribution scheme in accordance with clauses 13, 14 and 15 the Housing SEPP. The supporting guidance has been issued by the Department as part of its approval for council's LHS.</p>
SEPP No 65 – Design Quality of Residential Apartment Buildings	SEPP 65 is relevant as the planning proposal includes a concept design for six residential flat buildings. Whilst specific design details will be assessed as part of any future development application, it is relevant to consider the design principles of this SEPP and its relationship to the Apartment Design Guide (ADG)	<p>A general assessment has been undertaken by the Department of the concept scheme has shown it to be in keeping with the Apartment Design Guide (ADG).</p> <p>Detailed design of buildings that comply with the proposed envelopes will be undertaken at the DA stage, where compliance with SEPP 65 will need to be demonstrated.</p> <p>Nonetheless, the concept scheme provides:</p> <ul style="list-style-type: none"> <li>the bulk and scale impacts from the proposed 16m maximum building height are satisfactory, because: <ul style="list-style-type: none"> <li>the site's ground level (existing) is 13m beneath the ground level (existing) of the low density residential development to the west along Garnet Road and Manooka Place; and</li> <li>is mitigated from Bates Drive by the existing 2 storey built form of the Bates Drive Disability School.</li> </ul> </li> <li>6m of building of building separation being generally achieved in accordance with the ADG;</li> <li>a maximum 18m building depth is proposed to ensure that apartments receive adequate daylight and natural ventilation and optimise natural cross ventilation, in accordance with the ADG;</li> </ul>



SEPPs	Requirement	Assessment
		<ul style="list-style-type: none"> <li>• building depths that will support a range of apartment layouts and can achieve compliance with the ADG;</li> <li>• building orientations that seek to maximise solar access for apartments; and</li> <li>• deep soil zones will meet the minimum requirement of 7% of the site area.</li> </ul> <p>Though it is considered that a future residential flat building development can achieve the solar access requirements of the ADG, the following updates are required for community consultation:</p> <ul style="list-style-type: none"> <li>• hourly shadow diagrams at mid-winter that show the full extent of overshadowing, including to neighbouring properties; and</li> <li>• 3D perspectives showing solar access to the proposed residential development.</li> </ul>

## 5 Site-specific assessment

### 5.1 Environmental

#### Critical habitats and threatened species

The site is immediately adjacent to Kareela Creek Reserve which is home to the Grey Headed Flying Fox (GHFF) camp (**Figure 20** below).



Figure 20: Indicative GHFF camp boundary neighbouring the site

*Commonwealth Environment Protection and Biodiversity Conservation Act 1999*

GHFF are listed as a threatened fauna species under the EPBC Act.

In response, Council has undertaken consultation with the Commonwealth Department of Environment to determine whether the planning proposal could affect matters regulated by the EPBC Act.

On 9 March 2021, the Commonwealth Department of Environment issued a decision that the planning proposal was not a 'controlled action' under the EPBC Act, provided it is undertaken in accordance with the manner described in the decision document.

Since issuing this decision, the planning proposal supporting development concept scheme have been revised. A Gateway condition has been included to require consultation with the Commonwealth Department of Agriculture, Water and the Environment.

*Council approved Fauna Management Plan*

To avoid the potential for the planning proposal to significantly impact the GHFF camp, a Council approved Fauna Management Plan (FMP) dated April 2021 has been prepared.

The FMP is intended to prescribe the actions necessary to minimise potential impacts during the demolition, construction and operation of a future residential development on the site.

The GHFF Fauna Management Plan outlines the following measures to reduce the potential for impact to the GHFF camp:

- increase spacing between powerlines to avoid potential electrocution of GHFF;
- avoid planting new vegetation species within the study area that would encourage the GHFF to use the study area and, therefore, be more susceptible to other negative impacts;
- future landscape planting of the study area should use flora species characteristic of Coastal Enriched Sandstone Dry Forest; and
- implement noise and lighting mitigation measures to reduce disturbance to the GHFF camp;
- require air-conditioning to allow dwellings to be closed during high temperature days;
- require covers over external car parks and other outdoor areas; and
- require landscaping with tall, fragrant, non-roost and non-food trees to deter GGFF moving closer.

These proposed measures can be adequately implemented through the development application process, because:

- the proposed development will need to address Clause 6.5; and
- form part of the site-specific DCP.

*EES Comment*

Noting the GHFF camp neighbours the site, EES were requested to provide comments on the planning proposal which included:

- the range and scope of the likely biodiversity impacts associated have been correctly identified;
- concern was expressed that an increase in residential development in proximity of the GHFF camp is not appropriate. It is noted that the proposal is for 43 dwellings which would more than double the number of sensitive receivers within 160m of the camp boundary; and

- recommended that an adequate a buffer be required from the nearest boundary of the camp to the closest residence;
- recommended a Gateway condition requiring the preparation of DCP controls to address buffers, construction and design requirements, including:
  - residential dwellings with outlook to the GHFF camp to have double glazed windows and appropriate sound insulation;
  - prohibit balconies, courtyards or accessible gardens facing the GHFF camp;
  - require air-conditioning to allow dwellings to be closed during high temperature days;
  - covers over external carparks and other outdoor areas; and
  - landscaping with tall, fragrant, non-roost and non-food trees to deter GGFF moving closer.

On 18 March 2022, a GHFF Population analysis was provided by the proponent which assessed a total of 90-140 GHFF roosting in the camp. This number is significantly less than the 10,000 recorded within the past 10 years. In addition, a DCP and FMP have been developed to inform the proposed development of the site.

The Gateway determination includes a condition which requires consultation with EES during community consultation. The Department considers this will provide further opportunity for discussion to occur with EES prior to finalisation.

#### Built form outcome

The planning proposal seeks to facilitate a built form outcome for a future residential flat building development that responds to the site's natural features, existing remanent bushland, neighbouring GHFF camp and surrounding low density residential development.

This is achieved by:

- restricting the development footprint to existing disturbed areas;
- conversely requiring that any future development is to dedicate at least 50% of the site as landscaped area;
- allowing for appropriate separation between future development on the site and the GHFF camp by limiting development on the disturbed land away from this camp, and by providing a buffer to the GHFF camp while also retaining existing remanent bushland;
- requiring all future development on the site be compatible with built form controls for all other forms of development permitted under the R2 Low Density Residential zone on nearby and adjoining sites; and
- limiting the development to a 16m maximum building height, which is only 3 metres (or one storey) in height above the existing ground levels for nearby low density residential development to the west of the site, along Garnet Road and Manooka Place. Hence, most of the development is expected to be screened by existing vegetation within and on the adjoining sites to the west, north and east of the site.

#### Acoustics

The FMP has been informed by an acoustic assessment of the impacts future development on the site will have to the GHFF camp. This also includes suitable measures to ensure residential development can be compatible with the noise from the GHFF camp.

The analysis informing the FMP concludes that:

- that future noise sources from the residential development are unlikely to impact the GHFF colony; and

- that the proposed building development can be sufficiently insulated against noise from the neighbouring GHFF camp using standard building materials.

The FMP includes several suggested noise mitigation measures which can be implemented to ensure acceptable noise during any future construction works. moveable screens, exhaust silencers, conducting high-noise generating activities outside sensitive periods. These can be appropriately addressed through the development application process.

## 5.2 Social and economic

Table 10 below provides an assessment of the potential social and economic impacts associated with the planning proposal.

**Table 10: Social and economic impact assessment**

Social and Economic Impact	Assessment
Social	<p>The planning proposal seeks to facilitate a residential development amongst a largely residential setting. The planning proposal will provide the opportunity to provide for a diversity of housing choice that caters to a variety of social demographics.</p> <p>Managing the environmental impacts on site and maintaining high levels of vegetation will have positive impacts for both the residential amenity of future residents and will assist in protecting the habitats for existing fauna on the site and in the surrounding area</p>
Economic	<p>The planning proposal will create the mechanism to provide development on site which will:</p> <ul style="list-style-type: none"> <li>• create housing diversity within Sutherland Shire;</li> <li>• create local employment during the development and construction period;</li> <li>• support local businesses through the addition of new households into the area; and</li> <li>• increase housing supply.</li> </ul>



## 5.3 Infrastructure

Table 11 below provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal, and what infrastructure is proposed in support of the proposal.

**Table 3 Infrastructure assessment**

Infrastructure	Assessment
Traffic and Transport	<p>The accompanying traffic report estimates that there will be net reduction of 106 trips in both the AM and PM peak hours when compared to the existing traffic generation of the site. This includes a reduction of both incoming and outgoing trips. This will be assessed further as part of any future development application on the site.</p> <p>A Gateway condition requires consultation with Transport for NSW during community consultation.</p>
Infrastructure	<p>The site is currently serviced by all necessary infrastructure which was also addressed as part of the approved two lot subdivision DA20/0381.</p> <p>The planning proposal will be submitted to Ausgrid and Sydney Water for comment as part of the community consultation period. This is reflected in the Gateway Determination.</p>

## 6 Consultation

### 6.1 Community

An exhibition period of 20 working days is considered appropriate and forms a condition of the Gateway determination.

### 6.2 Agencies

The planning proposal does not specifically identify which agencies will be consulted.

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- Ausgrid;
- Energy, Environment and Science Group;
- WaterNSW;
- NSW Rural Fire Service;
- Sydney Water;
- Heritage NSW;
- Commonwealth Department of Agriculture, Water and the Environment; and
- Transport for NSW.

## 7 Timeframe

A project timeline is included in the planning proposal which has a timeframe of nine months after Gateway Determination to complete the LEP.

The Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the Gateway is supported it also includes conditions requiring council to exhibit and report on the planning proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

## 8 Local plan-making authority

Given the scale and nature of the planning proposal, the Department supports Council being authorised as the local plan-making authority.

## 9 Assessment Summary

The planning proposal is supported to proceed with conditions for the following reasons:

- the alternative zoning approach is in keeping with the South District Plan, the LSPS, the LHS and other relevant Council strategic plans;
- is consistent with relevant section 9.1 Ministerial Directions, with any inconsistencies justified or any inconsistencies which are not currently addressed will be addressed by way of Gateway conditions before public exhibition;
- is consistent with all relevant applicable SEPPs;
- the proposed zoning is in keeping with the low density residential development, public open spaces and environmental protection zoned land in the surrounding area; and
- demonstrates the potential for a residential flat building outcome on the site while being compatible within the surrounding environmental context.

As discussed in the previous sections, the planning proposal must be updated before consultation to include:

- a) the relevant additional documentation and revisions provided following the Gateway request, including:
  - i) the additional strategic merit justification;
  - ii) the revised development concept scheme dated December 2021;
  - iii) additional information detailing the background and history of the site;
  - iv) an arboricultural report which is consistent with the supporting development concept scheme;
  - v) a landscape plan which is consistent with the supporting development concept scheme; and
  - vi) the GHFF Population analysis dated March 2022.
- b) the Explanation of Provisions, be updated to reflect the revised approach as follows:
  - i) there be a proposed R2 Low Density Residential zone for the site with the additional permitted use under Schedule 1 of LEP 2015 for residential flat building development
  - ii) that the proposed landscape and terrestrial biodiversity mapping under LEP 2015 for the site apply to permitted uses, not just for the proposed residential flat building development;



- iii) that the proposed maximum 16m building height and 0.7:1 floor space ratio development standards only apply to any future residential flat building development; and
- iv) that the built form controls that apply to all other development permitted in the R2 zone mirror that which applies to adjoining development in the R2 zone.
- c) a detailed assessment of the impacts of this revised approach and provide suitable justification for this also;
- d) sufficient mapping to inform community consultation and clarify the LEP mapping that is intended to be amended;
- e) information that clearly demonstrate consistency with, or that any inconsistency is justified and/or of minor significance, for the following section 9.1 Direction:
  - i) 3.2 Heritage conservation – include:
    - o updated analysis on the potential presence of indigenous and archaeological heritage items of significance on the site.
  - ii) 4.4 Remediation of Contaminated Land;
- f) hourly shadow diagrams at mid-winter between 9am and 3pm which show the full extent of overshadowing, including to neighbouring properties; and
- g) 3D perspectives showing solar access to the proposed residential development.

## 10 Recommendation

It is recommended the delegate of the Secretary:

- agree that the inconsistencies with section 9.1 Direction 4.5 Acid Sulfate Soils is justified and of minor significance; and
- note further justification is required to demonstrate consistency with section 9.1 Directions 3.2 Heritage conservation and 4.4 Remediation of Contaminated Land.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

- 1) Prior to community consultation, the planning proposal is to be updated to include:
  - a) the relevant additional documentation and revisions provided following the Gateway request, including:
    - i) the additional strategic merit justification;
    - ii) the revised development concept scheme dated December 2021;
    - iii) additional information detailing the background and history of the site;
    - iv) an arboricultural report which is consistent with the supporting development concept scheme;
    - v) a landscape plan which is consistent with the supporting development concept scheme; and
    - vi) the GHFF Population analysis dated March 2022.
  - b) the Explanation of Provisions, be updated to reflect the revised approach as follows:
    - i) there be a proposed R2 Low Density Residential zone for the site with the additional permitted use under Schedule 1 of LEP 2015 for residential flat building development
    - ii) that the proposed landscape and terrestrial biodiversity mapping under LEP 2015 for the site apply to permitted uses, not just for the proposed residential flat building development;

- iii) that the proposed maximum 16m building height and 0.7:1 floor space ratio development standards only apply to any future residential flat building development; and
    - iv) that the built form controls that apply to all other development permitted in the R2 zone mirror that which applies to adjoining development in the R2 zone.
  - c) a detailed assessment of the impacts of this revised approach and provide suitable justification for this also;
  - d) sufficient mapping to inform community consultation and clarify the LEP mapping that is intended to be amended;
  - e) information that clearly demonstrate consistency with, or that any inconsistency is justified and/or of minor significance, for the following section 9.1 Direction:
    - i) 3.2 Heritage conservation – include:
      - o updated analysis on the potential presence of indigenous and archaeological heritage items of significance on the site.
    - ii) 4.4 Remediation of Contaminated Land;
  - f) hourly shadow diagrams at mid-winter between 9am and 3pm which show the full extent of overshadowing, including to neighbouring properties; and
  - g) 3D perspectives showing solar access to the proposed residential development.
- 2) Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
- a) the planning proposal must be made publicly available for a minimum of 20 working days; and
  - b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021)*.
- 3) Consultation is required with the following public authorities:
- Ausgrid;
  - Energy, Environment and Science Group;
  - WaterNSW;
  - NSW Rural Fire Service;
  - Sydney Water;
  - Heritage NSW;
  - Commonwealth Department of Agriculture, Water and the Environment; and
  - Transport for NSW.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 30 working days to comment on the proposal

- 4) A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

- 5) The planning proposal must be placed on exhibition not more than 3 months from the date of the Gateway determination.
- 6) The planning proposal must be reported to council (or Planning Panel) for a final recommendation no later than 7 months from the date of the Gateway determination.
- 7) The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
- 8) Given the scale and nature of the planning proposal, the Department supports Council being authorised as the local plan-making authority.

Alexander Galea

A/Manager, Eastern and South Districts

31 May 2022

Laura Locke

Director, Eastern and South Districts

Assessment officer

Patrick Connor

Planning Officer, Eastern and South Districts

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